

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ, et al.,)
)
Plaintiffs,)
)
- and -)
)
EDDIE BERNICE JOHNSON, et al.,)
)
- and -)
)
TEXAS STATE CONFERENCE OF)
NAACP BRANCHES, et al.,)
)
Plaintiff Intervenors,)
)
v.)
)
RICK PERRY, et al.,)
)
Defendants,)

CIVIL ACTION NO.
SA-11-CA-360-OLG-JES-XR
[Lead case]

MEXICAN AMERICAN LEGISLATIVE)
CAUCUS, TEXAS HOUSE OF)
REPRESENTATIVES (MALC),)
)
Plaintiffs,)
)
- and -)
)
HONORABLE HENRY CUELLAR, et al.,)
)
Plaintiff Intervenors,)
)
v.)
)
STATE OF TEXAS, et al.,)
)
Defendants)

CIVIL ACTION NO.
SA-11-CA-361-OLG-JES-XR
[Consolidated case]

TEXAS LATINO REDISTRICTING TASK)
FORCE, et al.,)
Plaintiffs,)
v.)
RICK PERRY, et al.,)
Defendants,)

CIVIL ACTION NO.
SA-11-CA-490-OLG-JES-XR
[Consolidated case]

MARAGARITA v. QUESADA, et al.,)
Plaintiffs,)
v.)
RICK PERRY, et al.,)
Defendants,)

CIVIL ACTION NO.
SA-11-CA-592-OLG-JES-XR
[Consolidated case]

JOHN T. MORRIS,)
Plaintiff,)
v.)
STATE OF TEXAS, et al.,)
Defendants,)

CIVIL ACTION NO.
SA-11-CA-615-OLG-JES-XR
[Consolidated case]

EDDIE RODRIGUEZ, et al.,)	CIVIL ACTION NO.
)	SA-11-CA-635-OLG-JES-XR
)	[Consolidated case]
<i>Plaintiff,</i>)	
)	
v.)	
)	
STATE OF TEXAS, et al.,)	
)	
<i>Defendants.</i>)	

**TEXAS LATINO REDISTRICTING TASK FORCE, ET AL. PLAINTIFFS’
RESPONSE TO TEXAS’S MOTION TO DISMISS
PLAINTIFFS’ CLAIMS AGAINST THE 2011 PLANS AS MOOT**

INTRODUCTION

The Texas Latino Redistricting Task Force Plaintiffs’ (“Task Force Plaintiffs”) claims against the 2011 redistricting plans are not moot. As the Court explained in its opinion denying the previous motion to dismiss by Defendants Rick Perry, et al. (“the State”), the State has failed to meet its burden of establishing that the challenged conduct in the 2011 redistricting plans cannot reasonably be expected to recur. *See* Dkt. 886 at 13. The State has not dispelled the strong likelihood that it will again enact redistricting plans that contain features of the 2011 plans challenged by the Task Force Plaintiffs as discriminatory, including eliminating existing Latino majority districts, failing to draw new Latino majority districts, manipulating the Latino voter turnout in districts to ensure they do not offer the opportunity to elect the Latino candidate of choice, and drawing Latino population into and out of districts on the basis of race.

The State, in an effort to end the litigation, enacted the court-drawn Congressional Plan and enacted the court-drawn House plan with some modifications.¹ However, because the State

¹ The Task Force Plaintiffs challenge one of the altered districts in the 2013 Texas House plan as discriminatory; HD90.

maintains that the challenged conduct in 2011 and 2013 is perfectly legal, it is likely to engage in it again. These circumstances are the same today as they were last September when the Court found that “there exists some cognizable danger of recurrent violation such that Plaintiffs’ claims for declaratory and injunctive relief with regard to the 2011 plans are not moot.” Dkt. 886 at 14.

Furthermore, the State’s 2013 redistricting plans contain features that the Task Force Plaintiffs continue to challenge, including the elimination of the second Latino-majority state house district in Nueces County and the removal of Nueces County from the configuration of Latino majority districts in South and West Texas. Therefore, as the Court found, “the new plans may disadvantage Plaintiffs to a lesser degree, but they disadvantage them in the same fundamental way,” and Plaintiffs’ claims are not moot. Dkt. 886 at 13.

Finally, the Task Force Plaintiffs seek equitable relief under section 3 (c) of the Voting Rights Act and this claim is sufficient to preserve jurisdiction of the Court. *See* Dkt. 886 at 14 (“Therefore, even if the Court ultimately declines to award injunctive relief, it may find that declaratory relief and equitable relief under § 3(c) are appropriate.”) (*citing Knox v. Serv. Emps. Int’l Union, Local 1000*, 132 S. Ct. 2277, 2287 (2012)).

ARGUMENT

As explained below, the State’s replacement of the challenged redistricting plans does not moot Task Force Plaintiffs’ claims.

I. A Controversy is Not Mooted When There Exists the Likelihood that Defendants’ Challenged Conduct Will Re-Occur.

A. Applicable Legal Standard

Article III of the United States Constitution provides that the “exercise of judicial power . . . depends on the existence of [an actual] case or controversy.” *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). A live controversy must be “extant at all stages of review, not merely at the

time the complaint is filed.” *Alvarez v. Smith*, 558 U.S. 87, 92 (2009) (quoting *Preiser*, 422 U.S. at 401). However, an intervening event only moots a case when it “makes it impossible for the court to grant ‘any effectual relief whatever’ to a prevailing party” *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)). This Court, in its September 2013 order denying the State’s motion to dismiss for mootness explained that a case is not moot when “the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” Dkt. 886 at 12 (citing *Preiser v. Newkirk*, 422 U.S. at 402).

A defendant’s replacement of a challenged statute does not categorically render a controversy moot. *See City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 (1982) (“[A] defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.”); *see also Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 661-62 (1993) (repeal of city ordinance does not automatically deprive a federal court of its power to determine the legality of the ordinance). If voluntary cessation of challenged behavior always served to moot a case, “the courts would be compelled to leave ‘(t)he defendant . . . free to return to his old ways[.]’” and the plaintiff would be left unable to secure relief even when the controversy remained live. *United States v. Concentrated Phosphate Export Ass’n*, 393 U.S. 199, 203 (1968) (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953)).

This Court explained that a case is mooted by the defendant’s voluntary cessation of conduct when “subsequent events [make] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” Dkt. 886 at 12 (quoting *Friends of the Earth, Inc. v.*

Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189 (2000)). Furthermore, the State, as the moving party, bears “[t]he heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to recur[.]” *Id.* (quoting *Friends of the Earth, Inc.*, 528 U.S. at 189).

B. The State Has Not Dispelled The Strong Likelihood That it Will Again Enact Discriminatory Redistricting Plans.

Texas sought to enact the court-drawn interim plans in order to “insulate the State’s redistricting plans from further legal challenge.” Dkt. 743-1 (Exhibit 1 (letter from Texas Attorney General Greg Abbott to House Speaker Joe Straus) to MALC’s Advisory to the Court). During the 2013 Legislative Sessions, the Attorney General’s office was invited but refused to offer any legal analysis of the court-drawn redistricting plans to the House Redistricting Committee. Ex. 1, Texas House Journal, Supplement—3rd Day (June 20, 2013) at S9. As a result, there is no evidence that the State adopted the court-drawn plans out of a belief that the court-drawn plans remedied any legal defects in the 2011 plans, or that they were preferable in any way to the 2011 plans (other than as a means to “insulate” the State).

Texas has not committed to refrain from engaging in the challenged acts in the future and continues to maintain that there were no shortcomings in the 2011 redistricting plans, even though the 2011 plans: eliminated the Latino-majority HD33 in Nueces County; created one less Latino opportunity House district statewide when compared to the benchmark; failed to locate a new House district in the Rio Grande Valley which had experienced significant population growth; manipulated the boundaries of HD78, HD117, and CD23 to create Latino districts that did not offer Latinos the opportunity to elect their candidate of choice; excluded Nueces County from the South Texas configuration of congressional districts in a manner that reduced the ability

to create 8 effective Latino opportunity districts; and assigned Latinos on the basis of race into and out of the Dallas-Ft. Worth congressional districts. Texas continues to maintain that these elements of the 2011 redistricting plans are consistent with law and grounded in legitimate motives, such as incumbency protection or partisanship; for this reason, Texas fails to establish that the State is unlikely to incorporate similar elements in future redistricting plans.

Without a ruling on the Task Force Plaintiffs' challenges to the 2011 plans, Texas is free to include the discriminatory elements of its 2011 plans in any future redistricting maps. *See League of United Latin Am. Citizens* [hereinafter *LULAC*] *v. Perry*, 548 U.S. 399, 415 (2006) (explaining that Texas can redistrict multiple times in one decade). For example, although Texas redistricters knew that reducing Latino ability to elect in CD23 could violate section 2, *see LULAC*, 548 U.S. at 427-29, the 2011 congressional redistricting plan swapped Latino majority precincts into and out of CD23 in order to ensure that CD23 would not elect the Latino-preferred candidate while maintaining a majority of Spanish surnamed registered voters, *see* Dkt. 482-1 at FOF Nos. 176-242; Dkt. 789-2 at Ex. Tab 4; Dkt. 790-2 at Ex. Tabs 45, 46; Dkt. 790-3 at Exs. Tabs 54, 55, 59. Redistricters made changes to HD117 to achieve the same goal. *See* Dkt. 790-2 at Ex. Tab 49; Task Force Pls. Ex. 454 (Dep. of Rep. John Garza) at 30:6-25 (deposition admitted in the *Perez* record during the Hearing on Proposed Interim Plans, *Perez v. Perry*, No. 11-cv-360, Hr'g Tr. at 704:20-705:6 (Nov. 3, 2011)); Dkt. 834-2; Dkt. 834-3 (Jan. 17 AM, pp. 159:1-11; 160:10-25 and Jan. 25 PM, pp. 106:11-108:1).

The Task Force Plaintiffs seek declaratory and injunctive relief to prevent redistricters from using the same dilutive mapping techniques in the future. Without a court ruling answering the question whether the 2011 redistricting plans violate section 2 of the Voting Rights Act and/or the U.S. Constitution, Texas will not be restrained from discriminating on the basis of

race in subsequent redistricting plans. *See Dailey v. Vought Aircraft Co.*, 141 F.3d 224, 227 (5th Cir. 1998) (“The availability of even partial relief is enough to prevent mootness.”). Thus the Task Force Plaintiffs’ requests for declaratory relief are not moot.

The State’s propensity for continued discrimination is readily apparent in its changes to the court-drawn House plan in 2013 that reduced Latino voting strength in HD90 and assigned Latinos into and out of the district on the basis of race. *See* Task Force 4th Am. Compl., Dkt. 891 at ¶ 41 (“configuration of HD 90 in Plan H358 dilutes Latino voting strength and uses race as a predominant factor to allocate Latino voters into and out of HD 90”). When a defendant replaces one illegal law with another, “[t]here is no mere risk that [Defendant] will repeat its allegedly wrongful conduct; it has already done so.” *Ne. Fla. Chapter Associated Gen. Contractors of Am.*, 508 U.S. at 662 (1993); *see also Hornbeck Offshore Servs. L.L.C. v. Salazar*, 2010 WL 3523040, at *6 (E.D. La. Sept. 1, 2010) (case was not moot where “the defendants have issued a new moratorium . . . that is substantially the same as the first one . . .”).

In addition to its most recent discrimination in the 2013 modifications to the court-drawn House plan, Texas’s history of enacting discriminatory redistricting plans weighs against a finding that the enactment of the court-drawn plans constitutes a true voluntary cessation. In each decennial redistricting since the 1970’s, one or more of its redistricting plans have been blocked as racially discriminatory. *See, e.g., LULAC*, 548 U.S. 399 (2006); *White v. Weiser*, 412 U.S. 783 (1973); *Smith v. Craddick*, 471 S.W.2d 375 (Tex. 1971).²

² *See also* Dep’t of Justice Objection Letter from Ralph Boyd to Geoffrey Connor, No. 2001-2430 (Nov. 16, 2001), available at http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/TX-2930.pdf; *Terrazas v. Slagle*, 789 F.Supp. 828 (W.D. Tex. 1991); Dep’t of Justice Objection Letter, No. 92-0070 (Mar. 9, 1992), available at http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/TX-2410.pdf; Dep’t of Justice Objection Letter, No. 91-3395 (Nov. 12, 1991), available at http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/TX-2380.pdf; *Upham v. Seamon*, 456 U.S. 37 (1982); Dep’t of Justice Objection Letter, No. 81-0298 (Jan. 29, 1982), available at http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/TX-1920.pdf; Dep’t of Justice Objection Letter, No. 81-0306 (Jan. 25, 1982), available at http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/TX-1900.pdf.

Although the State claims there is a “near categorical rule” that statutory repeal results in mootness, it concedes that Plaintiffs’ claims are not moot if there is “a reasonable expectation that the challenged conduct will be repeated following dismissal of the case.” Dkt. 995 at 4, 5 n.1 (citing *D.H.L. Assocs., Inc. v. O’Gorman*, 199 F.3d 50, 55 (1st Cir. 1999)). The cases on which Texas relies are inapposite because they presented situations in which it was clear that the challenged statute would not be re-enacted. See *McCorvey v. Hill*, 385 F.3d 846, 849 (5th Cir. 2004) (statutes were impliedly repealed by later enactments regulating the previously banned conduct); *Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637, 645 (6th Cir. 1997) (for twenty years, the State had not enforced the challenged portions of the repealed statute).

Texas seeks to invoke a favorable presumption that it would not repeal or amend a challenged law “simply to avoid litigation and that it will [not] reinstate the original legislation if given the opportunity.” *Ne. Fla. Chapter of Associated Gen. Contractors of Am.*, 508 U.S. at 677 (1993); see also *Troiano v. Supervisor of Elections*, 382 F.3d 1276, 1283 (11th Cir. 2004) (citing 13A Wright, Miller & Cooper, *Federal Practice and Procedure* § 3533.7, at 351 (2d ed. 1984)); *Fed’n of Adver. Indus. Representatives, Inc. v. City of Chicago*, 326 F.3d 924, 929 (7th Cir. 2003) (when the defendants are public officials the court places greater stock in their acts of self-correction, “so long as they appear genuine”) (citation omitted).

The cases on which the State relies did not deal with governmental actors who repeatedly run afoul of constitutional or legal principles, as Texas has in the area of redistricting. See *Massachusetts v. Oakes*, 491 U.S. 576, 583-84 (1989) (finding case was moot where challenged statute was repealed and there was no indication that government had tendency or history of unconstitutionally vague criminal statutes); see also *Diffenderfer v. Cent. Baptist Church*, 404 U.S. 412, 414 (1972) (finding mootness where state repealed statute and there was no history of

Establishment Clause violations). The trust in governmental actors placed by the courts in these cases is not warranted here where Texas has been unable to navigate a single redistricting cycle since 1970 without having one or more of its statewide redistricting plans blocked by courts or the U.S. Department of Justice. *See generally LULAC*, 548 U.S. 399 (2006).

Furthermore, because its adoption (with some modification) of the court-drawn plans was not unambiguous, Texas is not entitled to the presumption that is granted to governmental actors. *See Doe v. Wooten*, 747 F.3d 1317, 1319 (11th Cir. 2014) (finding case was not moot where “defendants failed to demonstrate unambiguous termination of the challenged conduct”).

The Eleventh Circuit in *Wooten* set out factors by which to evaluate “whether there is a reasonable basis the challenged conduct will recur”:

- (1) whether the termination of the offending conduct was unambiguous; (2) whether the change in government policy or conduct appears to be the result of substantial deliberation, or is simply an attempt to manipulate jurisdiction; and (3) whether the government has consistently applied a new policy or adhered to a new course of conduct.

Wooten, 747 F.3d at 1323 (*quoting Rich v. Sec’y, Fla. Dep’t of Corr.*, 716 F.3d 525, 531-32 (11th Cir. 2013)) (internal quotation marks omitted). The Eleventh Circuit also noted that the “timing and content of the cessation decision are also relevant [and we] are also ‘more likely to find a reasonable expectation of recurrence when the challenged behavior constituted a continuing practice or was otherwise deliberate.’” *Id.* (*quoting Atheists of Fla., Inc. v. City of Lakeland*, 713 F.3d 577, 594 (11th Cir. 2013)).

Applied here, the *Wooten* factors demonstrate that the Task Force Plaintiffs’ claims are not moot. The Attorney General’s call on legislative leaders to enact the court-drawn plans to “insulate” the State from future litigation reveals an intent “simply to deprive the District Court of jurisdiction.” *Wooten*, 747 F.3d at 1325.

In addition, the State's replacement of its 2011 redistricting plans is not unambiguous where the State continues to maintain that there are no legal defects in the plans. In fact, the Attorney General publicly criticized the court-drawn redistricting plans after their adoption in the Legislature as discriminatory against Hispanic Republicans:

With the administration's support, redistricting litigation already has unseated Texas state Reps. Jose Aliseda, Raul Torres, Aaron Pena and John Garza, as well as U.S. Rep. Quico Canseco. These representatives — all Republicans — won in 2010 in predominantly Hispanic districts. In 2011, however, the Obama administration and other partisan interest groups succeeded in getting a court to draw district lines so that only a Democrat could win these seats. As a direct result, all of these Republican Hispanic representatives lost their seats in 2012 except for Mr. Aliseda, who chose not to run for re-election. His district had been dismantled altogether at Democrats' request.

Ex. 2, Greg Abbott, *Obama's Scheme to Take Over Texas*, Wash. Times, July 30, 2013, available at <http://www.washingtontimes.com/news/2013/jul/30/obamas-scheme-to-take-over-texas/> (accessed June 9, 2014).

Texas has made clear not only that it considers its 2011 plans to be legal but that the court-drawn plans which it adopted to end the litigation are undesirable and even discriminatory. The Attorney General's refusal to testify in support of the court-drawn plans in the 2013 Texas Legislature provides further evidence that Texas's decision was not the result of "substantial deliberation" or a sign of "adhere[nce] to a new course of conduct." *Wooten*, 747 F.3d at 1323 (citation omitted).

As in *Wooten*, the presumption in favor of voluntary cessation by governmental actors is not appropriate here where the State has deliberately, repeatedly, and recently discriminated in its redistricting plans. In addition to its long history of enacting discriminatory redistricting plans, the intentional discrimination in the 2011 plans and the modification to the court-drawn House plan demonstrate that the State has not met its "heavy burden" to make "it absolutely

clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Friends of the Earth, Inc.*, 528 U.S. at 189 (quoting *Concentrated Phosphate Export Ass’n*, 393 U.S. at 203); see also *Rich*, 716 F.3d at 532 (11th Cir. 2013) (observing that defendant made limited change of policy on the eve of oral arguments and only after DOJ intervention); see also *Harrell v. Fla. Bar*, 608 F.3d 1241, 1266 (11th Cir. 2010) (cessation was “late in the game”); *Burns v. Pa. Dep’t of Corr.*, 544 F.3d 279, 284 (3d Cir. 2008) (claims not moot where state agency made voluntary changes long after litigation had commenced).

Based on application of the *Wooten* factors, Texas is not entitled to the presumption granted to governmental actors and has “failed to carry its burden to demonstrate unambiguous termination of the challenged conduct.” See *Wooten*, 747 F.3d at 1326.

C. The State’s 2013 Redistricting Plans Contain Features of the 2011 Redistricting Plans That the Task Force Plaintiffs Continue to Challenge.

The Task Force Plaintiffs challenged aspects of the 2011 redistricting plans that were not remedied in the court-drawn redistricting plans, including the elimination of HD33 in Nueces County and the removal of Nueces County from the configuration of Latino majority districts in South and West Texas. See Task Force 4th Am. Compl. at ¶ 37, 43. These features were carried forward into the 2012 court-drawn plans as well as the 2013 enacted redistricting plans. See Dkt. 690 (Opinion regarding Plan H309) at 6-8; see also Dkt. 691 (Opinion regarding Plan C235) at 49-55. Because the Task Force Plaintiffs seek resolution of these challenges to the 2011 redistricting plans and injunctive relief that will affect the 2013 redistricting plans, the Task Force Plaintiffs’ claims against the 2011 redistricting plans are not moot. Furthermore, unless remedied, the extant discriminatory features of the 2011 redistricting plans will serve as the baseline for future redistricting. See *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 327-28 (2000) (denying a claim of mootness when the challenged redistricting plan would not be used

again in the decade and explaining that unless overturned the challenged plan would serve as the baseline in future redistricting.)

The “capable of repetition, yet evading review” doctrine is applicable where: “(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subject to the same action again.” *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)).

Despite trial in the fall of 2011, final adjudication of the Task Force Plaintiffs’ challenge to the 2011 redistricting plans was stayed pending a determination on preclearance of the same plans by the U.S. District Court for the District of Columbia. One day after the United States Supreme Court determined that Texas would no longer be subject to preclearance, Defendant Governor Perry signed the 2013 redistricting bills into law. Thus, there is no way that the Task Force Plaintiffs could have sought final resolution of their challenge to the 2011 maps prior to the passage of the 2013 redistricting bills. For this reason, the case establishes the first prong of the capable-of-repetition-yet-evading-review exception to mootness.

“The second prong of the ‘capable of repetition’ exception requires a ‘reasonable expectation’ or a ‘demonstrated probability’ that ‘the same controversy will recur involving the same complaining party.’” *Fed. Election Comm’n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 463 (citing *Murphy*, 455 U.S. at 482 (internal quotation marks omitted)). Here, in addition to Texas’s status as a repeat offender in past redistricting, the 2013 redistricting plans have raised new issues of discrimination against Latino voters. *See id.* (“[T]he same controversy [is] likely to recur when a party has a reasonable expectation that it will again be subjected to the alleged illegality”) (citation omitted) (internal quotation marks omitted)).

II. The Task Force Plaintiffs' Request for Equitable Relief Under Section 3(c) of the Voting Rights Act Is Sufficient to Preserve Jurisdiction of the Court.

The Task Force Plaintiffs' request for injunctive relief under Section 3(c) of the Voting Rights Act is sufficient to qualify as a "controversy" as contemplated by the Declaratory Judgment Act. "[T]he question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941). In this case, the Task Force Plaintiffs seek declaratory relief to ensure that the discriminatory elements of the 2011 plans are never utilized, either this year or in future years.

CONCLUSION

For the foregoing reasons, the Task Force Plaintiffs respectfully request that this Court deny Texas's motion to dismiss.

DATED: June 9, 2014

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that she has electronically submitted a true and correct copy of the above and foregoing via the Court's electronic filing system on the 9th day of June, 2014. The undersigned counsel hereby certifies that she caused a true and correct copy of the above and foregoing to be e-mailed and/or facsimile to the persons listed below by the close of the next business day.

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