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

SHANNON PEREZ; et al, Plaintiffs, -and- CONGRESSPERSONS EDDIE BERNICE JOHNSON, SHEILA JACKSON LEE, AND ALEXANDER GREEN, Plaintiff-Intervenors, v. STATE OF TEXAS; et al, Defendants	CIVIL ACTION NO. 11-CA-360-OLG-JES-XR [Lead case]

AFRICAN-AMERICAN CONGRESSPERSONS',
EDDIE BERNICE JOHNSON, SHEILA JACKSON-LEE, AND ALEXANDER GREEN,
BRIEF ON *ALABAMA LEGISLATIVE BLACK CAUCUS, ET AL V. ALABAMA ET AL*

COME NOW Plaintiff-Intervenors, the African-American Congresspersons Eddie Bernice Johnson, Sheila Jackson-Lee, and Alexander Green (hereinafter, "Congressional Plaintiffs"), and submit this brief as directed by the Court's Order of March 25, 2015 (Doc. 1301). The Court asked the parties to respond to three questions in light of the United States Supreme Court's decision in *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 4257 (2015) ("*Alabama LBC*"), specifically (1) identify the districts for which the Congressional Plaintiffs are asserting *Shaw*/racial gerrymandering claims and discuss how the Supreme Court's Alabama LBC decision affects those claims, (2) whether the Supreme Court's opinion has any

affect on any other of the Congressional Plaintiffs' claims, and (3) whether further factual development is needed here.

The African-American Congressperson herein adopt and support the arguments put forth in the *Joint Supplemental Brief for LULAC, NAACP, and Rodriguez Plaintiffs on Alabama LBC decision* (Doc. 1302) filed in this case on April 20, 2015.

Dallas and Fort Worth Metroplex. In the Alabama case, the Supreme Court is offering guidance in regards to what may be prohibited by the concept of racial gerrymandering. The Court reasserts its previously declared principle that the use of race should be in the context of the map drawers applying or adhering to traditional redistricting principles. The Court cites *Miller v. Johnson*, 515 U.S. 900, 913, 916 (1995) and discusses whether race was the predominant factor in placing voters in a particular district. In the opinion the Court made it clear that one cannot simply say that desiring adherence to a 1% deviation standard for the population of districts and complying with Section 5 of the Voting Rights Act were not automatically sufficient reasons to justify the placing of voters in a particular district and in this instance African-American voters. The backdrop that is relevant here is that the court seemed to emphasize in one of the districts, SD26, there was an already safe functioning minority opportunity district but the State added 15,785 new voters to the district and less than 100 of them were white voters. In Texas, the minority population grew by almost 4,000,000 while whites increased by 464,032 during that same time period. See LULAC Exhibit 16. This is what has occurred in regards to Congressional Districts 30 in Dallas and 9 in Harris County and Fort Bend Counties in C185. And even in the adopted plan C235 we still see the same type violation with CD30 in Dallas. Many minority voters could have been placed in other areas to either

provide more influence for minorities in the area or in Dallas County provided for the creation of naturally occurring districts that would likely elect a candidate who would be responsive to the needs of African-Americans. Dr. Richard Murray has also testified in this matter that it would be easy to create a new naturally occurring district in the Houston area that would also allow for the election of a candidate that would be responsive to minority voters. Nonetheless, of the 4 new congressional seats Texas gained, which were entirely due to growth in the minority population, all of the gain under C185 went to the Anglo representation. Tr. 1384:8-1386:3, August 14, 2014 (Murray). Of the four (4) new congressional seats created none were created for racial and ethnic minorities. Tr. 1483: 17-19, August 15, 2014.

CD30 in Dallas had the following Voting Age Population Demographics in C100:

CD30 in C100	VAP	VAP %	Total
Black and Hispanic (BH)	389,179	76.7%	81.3%[1]
Other	11,001	2.2%	1.9%

CD30 in Dallas had the following Voting Age Population Demographics in C185:

CD30 in C185	VAP	VAP %	Total
Black and Hispanic (BH)	399,398	81.5%	85.2%
Other	8,994	1.8%	1.7%

[1] The U.S. Census for 1990 and 2000 show CD30 having a Total Black and Hispanic Population of 66.3% and 73.9% respectively. CD30 goes from 66.3% Black and Hispanic population to 73.9% to 81.3% to 85.2% in C185.

CD30 in Dallas had the following Voting Age Population Demographics in C235:

CD30 in C235	VAP	VAP %	Total
Black and Hispanic (BH)	377,184	75.9%	80.2%
Other	13,357	2.7%	2.5%

The State received significant growth in the Dallas/Fort Worth Metroplex during the decade preceding the last round of redistricting. The number of Black and Hispanic voters increased substantially while the Anglo population actually decreased. Tr. 1393:15-1394:18, August 14, 2014 (Murray); Ex. EX-601, p. 32. However, the new seat that was provided to the area in C185 was a seat that was provided to white voters who do not align with the minority voters who provided the growth. This could only be accomplished through a racial gerrymander, the primary focus of the Supreme Court in the Alabama case. The State declined to apply traditional redistricting principles throughout the area in order to ensure the success of this racial gerrymander. Both Dr. Richard Murray and George Korbel for LULAC detailed the clear racial gerrymander of the Dallas/Fort Worth Metroplex by showing how slices of minority voters were isolated to be placed into districts with hostile voters in order to ensure that white voters would prevail in the district. Dr. Murray indicated that eleven Congressional Districts were in or brought into the Metroplex to help accomplish this. Suburban and rural voters with no connection to the minority voters were looped in with those voters to ensure that minority voters had no opportunity of electing a candidate of choice or one supportive of their issues. The State took Dallas County and cut it into five (5) congressional districts, packed minorities into District 30, cracked minorities in Districts 5 and 6, and cut off the minority community from Districts 24

and 32 and tied those into suburban Dallas, Denton, and Collin counties. Tr. 1222:20-1224:16, August 14, 2014 (Korbel). Under C185, the DFW area was packed and cracked and minorities have no opportunity to elect candidates of their choice. Tr. 1397:8-24, August 14, 2014 (Murray).

Under Plan C185, the extension of CD26 into Tarrant County juts into two areas with concentration of minority populations of approximately 134,000 people (70.4% Hispanic and 6.8% African American), and ties them into a suburban area of Tarrant and Denton counties which has 563,000 people in it and is more than two-thirds (⅔) Anglo, which Dr. Korbel testified the map drawers were unlikely to have drawn by chance. Tr. 1220:23-1222:18, August 14, 2014 (Korbel). "C185 creates a tangle of districts like the 5th and 6th that start out in rural and small town communities and cut into Tarrant and Dallas Counties to get enough people to reach the 698,488 required, but not enough minority voters to give them an opportunity to elect a representative of their choice. Other districts like the 24th combine enough low participation/high population minority precincts with high participation/low population Anglo neighborhoods to effectively deprive minorities of the opportunity to elect candidates of their choice." Ex. EX-601, p. 34.

Under the State's plan, CD30 is packed with what is believed to be the largest percentage of African American and Hispanic constituency during Congresswoman Johnson's tenure in Congress (85.2%). CD30 was drawn in a manner to specifically prevent minorities from obtaining a third ability-to-elect seat. The enacted map brought 11 congressional districts into the DFW Metroplex. Ten of them are dominated by conservative Anglo voters with a history of polarized voting against minorities. This leaves CD 30 the lone opportunity district for protected

minorities in the Metroplex in C185. Ex. EX-601, p. 34. Vote dilution was a crucial factor in accomplishing this racial gerrymander. Looking at the DFW Region it is clear that not only did we see a racial gerrymander as to CD30 in both maps, but we also see a racial gerrymander in the region where but for the race of candidates they were placed in districts in order to ensure that white voters would control districts. Race was the predominant factor throughout the region regarding the placement of voters in different districts and even in the decision on how to configure districts or to determine the number that came in and out of the Metroplex. As Korbel and Murray indicated, districts that were moving towards being reflective of minority interests were simply cut up to ensure that this development would not occur. What occurred in C185 in Dallas County necessarily impacted a number of other Congressional Districts, including CD6, CD5, CD24, CD32, CD33, CD24 and CD12.

Harris and Fort Bend Counties. Dr. Richard Murray said the following about growth in the Area and the minority influence on or contribution to growth:

> Harris and Fort Bend Counties added about 920,000 people between 2000 and 2010, and all of that growth was among minorities, as the two-county Anglo population declined by 42,422 in the area. Hispanic growth in the two counties was 615,885, and with a black increase of 209,375 for a combined gain of 824,260. Given that the ideal population for a congressional district in 2011 is just 698,488 it would seem obvious that opportunities for black and Hispanic voters in Harris and Fort Bend Counties ought to be significantly enhanced by a new map, especially with four additional districts coming in Texas.

Dr. Richard Murray, Congressional Plan C185 and the Voting Rights Act: A Consideration of General Relevant Factors with a Specific Focus on the Deficiencies of the Enacted Plan in the Dallas/Fort Worth and Houston Areas. Ex. EX-601, p. 27. However, C185 failed to a create a new Hispanic district or any such naturally occurring districts and violated a number of traditional redistricting principles in regard to CD9 and CD18 (the effective African-American

districts). Ex. EX-601, p. 27. What occurred in Harris and Fort Bend counties between 2000 and 2010 was (1) great population growth, (2) declining non-Hispanic white population, (3) huge surge in Hispanic population, (4) robust African-American growth, and (5) a sharp increase in Asian population. Tr. 1393:15-1394:18, August 14, 2014 (Murray); Ex. EX-601, p. 32. C185 also ignores traditional redistricting factors in CD9 including ignoring communities of interest, member constituent relations, and the population dynamics of the area. Ex. EX-601, p. 28. In addition, prior to C185, CD18 was moderately overpopulated (22,503 or +3.22%) which means that only minor changes were required to meet the one person, one vote requirement. NAACP Ex. 44, p. 29. CD9 and CD18 in C235 are acceptable districts. The handling of African-American and Latino voters in Harris and Fort Bend Counties indicate very clearly that race was a predominant consideration in order to advance the interests of white Congresspersons and that neither C185 or C235 adequately recognizes those interests.

Statewide Background Support. Though the Supreme Court said that racial gerrymandering claims should not be analyzed on a statewide basis, it seems clear that looking at issues statewide there is worthy evidence for the court to understand what the State of Texas did in this case. In other words it still provides valuable evidence to help show the design behind the individual actions that are at issue. According to Stephen Ansolabehere, Expert for the Rodriguez Plaintiffs, 88 percent of whites were placed in districts that whites control in C185 compared to 44 percent of Latinos. Such a stark number shows that race must be at play on some level in the drafting. Dr. Murray says that "Plan C185 does not reflect the reality that 82% of the state's growth was Hispanic and African-American, which entirely accounted for the four new Texas seats. But rather than using that surplus to enhance minority voter opportunities, the

new map actually reduces the opportunity for black and Hispanic voters to elect persons to represent them in Washington, D.C." It is important to note that Blacks and Browns vote cohesively in Dallas, Harris and Fort Bend counties. Importantly, the Congressional Plaintiffs are also making or supporting claims as to CD25,Travis County, Nueces County and CD23 in regards to racial gerrymandering. For example, taking Black voters in Travis County and connecting them with white voters adverse to their interests going northward for almost 200 miles seems clearly to both emphasize race to take them out of a district with voters with whom they are aligned and isolate them as meaningless voters in a district that makes no sense. This is a problem similar to what was observed by the Supreme Court in the Alabama case where it indicated that there may be no impact in reducing an African-American percentage on the ability to elect candidates. In this instance they excluded African-Americans from their Hispanic allies and joined them with a district that makes no sense, runs south to San Antonio and includes small slivers of real estate between Travis and Bexar Counties which are 70 or 80 miles apart. Race was clearly a predominant factor in drawing this district. And clearly traditional redistricting principles were subordinated in this effort.

C185 greatly diminishes Hispanics' political influence in Texas and results in only 44% of Hispanics of voting age residing in districts where they have a good opportunity to elect candidates of their choice versus 88% of Anglos, which means that only 12% of Anglos are stranded in districts where they cannot elect a candidate of choice compared to more than half the Hispanic voting age population who are stranded, including the approximately 206,000 Hispanics in Nueces County alone. Tr. 1402:12-1403:4, August 14, 2014 (Murray); Murray 02/28/14 Supp. Report at pg. 19; Ansolabehere 08/8/11 Report. C185 shifts CD27 "north into

the heavily Coastal Bend Counties instead of its historic alignment south to Cameron County" which "maroons 206,293 Nueces County Hispanics in an Anglo district while removing them from an effective minority district." Ex. EX-601, p. 26. Even the Interim Plan, C235, resulted in one of the largest blocks of "stranded Hispanics," 206,293 Hispanics (60.6% of the total population)", in CD27 (Nueces County) which runs "north to include a majority Anglo CVAP that is strongly polarized against candidates preferred by the Latinos in the district." Tr. 1403:5-16, August 14, 2014 (Murray); AACP Ex. 650.

CD25 (Travis County) under Plan C100 is a crossover district where there is a sufficient White vote to help the minority-preferred candidate win which means that CD25 was a viable, performing minority opportunity district in both general and primary elections. Tr. 953:18-961:2, August 13, 2014 (Ansolabhere); Ex. Rodriguez Plaintiffs EX-914, p. 20-24. But C185 cuts Travis County five different ways: (1) District 10 goes from Lake Austin, through the minority community in Travis County, and then over to the suburbs of Houston; (2) District 25 goes from the edge of Fort Worth and down to pick up a portion of the minority community in Travis County; (3) District 21 goes from the north side of San Antono, the Hill Country, and picks up a portion of the minority community in Travis County; (4) District 17 comes in from several Central Texas counties and picks up a minority growth area in Travis County; and (5) the balance of Travis County goes to San Antonio into District 35. Tr. 1227:20-1228:25, August 14, 2014 (Korbel). The intentional carving up of Travis County into five separate congressional districts--"an extreme gerrymander without precedent in the history of Texas redistricting"--eliminates "the opportunity of black voters to influence the election of a candidate of choice." Tr. 1403:17-1406:23, August 14, 2014 (Murray); Murray 08/23/11 Supp. Report. Under Plan C185,

Travis County is divided into five congressional districts primarily dividing minority communities although it was possible for the State to wholly create a congressional district where the minority community could potentially elect a candidate of their choice within Travis County. Tr. 1227:4-12, August 14, 2014 (Korbel).

Again, the Court cites *Miller v. Johnson*, 515 U.S. 900, 913, 916 (1995) and confirms that in such cases you look to see if race was the predominant or motivating factor in placing voters in a particular district; and secondly if there was such an action then was there a compelling reason that would justify the government in taking such an action.

The Court discussed in great detail SD26 in the Alabama opinion, indicating that the State decided to adhere to a 1% deviation standard, so SD26 (an African-American Senate District) needed additional voters. It indicated that 15,785 new voters were added to the district and only 36 or so were white. The court indicated that the law did not require that the numbers in a district not decrease at all, but the correct analysis concerned the voters ability to elect the candidate of their choice. It indicated in a district with a record of electing African-Americans it might be that reducing the percentage of African-Americans from 70 to 65 would have no negative impact on the ability of the Black voters to elect the candidate of their choice. This is essentially where we are with many of the districts discussed herein. The State's expert, Dr. John Alford, acknowledged that African-American districts with at least 35% African-American population are all known to be performing districts:

2 Q. Okay. And I think Dr. Murray indicated that there was not
3 an office around that he was familiar with where African
4 Americans were at least 35 percent that did not perform? And
5 I think you indicated that in your testimony on direct; is

6 that correct?

7 A. That is correct. I think districts in the 35 to

8 40-percent range, if they are drawn to be performing

9 districts, that they perform.

Tr. 1953:2-9, September 14, 2011 (Alford). CD30 did not need the extremely large percentages of minorities so that the candidate of choice of the minority community might be elected. In fact, placing some of those voters in other districts would enhance the voting strength of racial and ethnic minorities. Instead of 85.2 percent or a greater percentage of minorities in CD30, NAACP/Congressional Intervenors Plan C193 provided for 76.8 percent of her district being African-American and Hispanic. This compares to the 80 percent number that we also find in C235.

In order to show that race was a motivating factor, the court said you can do so by showing matters such as the shape or circumstantial evidence. An important question, the court says, is whether traditional redistricting principles were subordinated to this effort. The redistricting plans passed by the Texas Legislature on June 1 and 3, 2013, do not afford individual plaintiffs an equal opportunity to participate in the political process and to elect representatives of their choice. As Dr. Murray says, the map drawers had to be very clever this time around, taking growth that was 90 percent minority and awarding 4 new seats to white voters. This is evidence of the intent in drawing the individual districts that are here in question.

The Court said it cannot explain how the interest in keeping the exact same percentage of African-American voters in a district is narrowly tailored to achieve a compelling state interest in

the stated goal—compliance with section 5. It did note, however, that as the DOJ had indicated—a court's analysis of narrow tailoring must have a strong basis in evidence. And once again though we understand a statewide claim is not to be made in this area, it is important to note that the influence of minority voters was less in C185 than it was in C100—even though the State's 4 new seats were earned on the basis of minority voters (nearly 90% with 65 percent of the growth being Latino and 14 percent being African-American). And in the plan passed by the Texas Legislature in 2011, Congressional Districts 9, 18, and 30 were drawn in a way that undermined the ability of African-Americans, and Latinos who would act in coalition with African-Americans to further their interests, to effectively participate in the political process in those areas. The State uses a different standard for its treatment of minority voters and residents compared to white voters and residents in the redistricting process. The design to diminish minority influence statewide is evidentiary of an intent in regards to the drawing of individual districts.

C193 and C218 Show Proper Ways of Furthering Minority Interests in Certain Areas. It was possible for the State to draw districts in which the additional African-American and Hispanic populations would have an ability to elect a candidate of their choice instead of simply packing as many as possible into specific Congressional districts or isolating them in others. The NAACP retained an expert redistricting demographer and cartographer to show this through Demonstration Plans. Afr. Am. Cong. and NAACP Plaintiffs' Ex. 656. Demonstration Plan (C193) shows that there is an appropriate way to handle the configuration of CD30 consistent with traditional redistricting principles and also to properly handle the growth in the

Metroplex to benefit the new voters who have come into the area in a manner that does not use race as a predominant consideration. Tr. 691:12-20, August 12, 2014 (Johnson). Specifically:

1. Demonstration Congressional Districts 34 and 35 contained in C193 are located in Dallas and Tarrant counties. Tr. 797:15-16, August 13, 2014 (Fairfax).
2. Demonstration Congressional Districts 34 and 35 contained in C193 were compact enough to avoid *Shaw* problems. Tr. 795:1-7, August 13, 2014 (Fairfax).
3. "Congressional district 34 contained in Plan C193 had a combined Hispanic plus Black CVAP percentage that was majority minority and stood at a projected 56.8% for 2014." Afr. Am. Cong. and NAACP Plaintiffs' Ex. 656, p. 17.
4. "Congressional district 35 [contained in Plan C193] was a majority Hispanic district with a Hispanic CVAP percentage of 52.4% and a combined Hispanic plus Black CVAP of 68.9% in 2014." Afr. Am. Cong. and NAACP Plaintiffs' Ex. 656, p. 17.

CDs 9, 18 and 30 would all continue to be viable in this plan and minority voters not only would not unnecessarily be packed into those districts, but they would be added to districts where their presence might make a difference elsewhere. And as the Supreme Court said in the Alabama case, there is nothing in the law that prevents all decreases in minority population percentage in minority districts. Notably, Dr. Ansolabehere testified that Demonstration Map C220 shows that an additional district (numbered "35") could have been placed "south of San Antonio, stretching around the southern part of San Antonio and heading up to the Hays County and Travis County line,...maintaining the other districts in that area as majority Hispanic districts." Tr. 940:15-941:3, August 13, 2014. Demonstration Map C220 also shows that an additional

Hispanic majority district could have been created in "the envelope" without disrupting the crossover district in CD25, which C185 failed to do. Tr. 961:3-962:3, August 13, 2014. By doing this, the racial gerrymandering of much of Travis County's African-American population could have been avoided and there would be no need to have some unusually long and illogical district such as CD25 in C185 (or C235).

In sum, "the NAACP [and Congresspersons'] plan restores the traditional cores of District 9 and 18 that were unnecessarily dismembered by Plan C185." Ex. EX-601, p. 37. The NAACP and Congressperson's plan also better protects the two existing African American opportunity districts in the Houston area and provides an opportunity to create a second Hispanic opportunity district in the area, which C185 deliberately fails to do. Ex. EX-601, p. 37. And in the Dallas/Forth Worth Area, the NAACP and Congresspersons' alternative plan "provides three effective minority opportunity districts in the area, rather than the single district that was drawn 20 years ago." The alternative map also corrects defects that ignore traditional redistricting principles while also giving most of the regions' minority population outside of CD30 the opportunity to elect candidates of their choice. Ex. EX-601, p. 37. The NAACP/LULAC Plan C218 functions similarly.

Other Claims. It is more than likely that assessment of racial gerrymandering claims may impact most other claims that have been brought, but due to their specific nature, it is clear that the racial gerrymandering claims will particularly impact claims of vote dilution, intentional discrimination as well as *Miller* and *Shaw* type claims that have been brought.

The African-American Congresspersons reside in their current Congressional Districts. NAACP is an Association with members statewide. It has members in Bell County, McLennan

County, Brazos County, Fort Bend County, Dallas, Tarrant, Bexar and Tarrant Counties--some of the counties most impacted by racial gerrymandering.

Further Factual Development. As the LULAC and Rodriguez Plaintiffs stated in their *Joint Supplemental Brief for LULAC, NAACP, and Rodriguez Plaintiffs on Alabama LBC decision* (Doc. 1302) filed in this case today, the Congressional Plaintiffs believe there is no need for further factual development of the record in this case in light of *Alabama LBC*. Further evidence on the substantive issues would nearly certainly be repetitive and of little or no use to the Court in making its decision.

Conclusion. The Dallas and Fort Worth Metroplex is the subject of an egregious racial gerrymander in both C185 and C235. CD30 particularly is the subject of an egregious racial gerrymander. Racial gerrymandering also affected the drawing of districts in other areas around the State including Harris, Fort Bend and Travis Counties.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2015, I electronically filed the foregoing document with the Clerk of the United States District Court, Western District of Texas, San Antonio Division, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/Gary L. Bledsoe

Gary L. Bledsoe