

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

SHANNON PEREZ, et al.

*Plaintiffs*

v.

STATE OF TEXAS, et al.

*Defendants*

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CIVIL ACTION NO.  
5:11-CV-0360-OLG-JES-XR  
[Lead Case]

**JOINT PEREZ AND NAACP PLAINTIFFS' BRIEF CONCERNING  
ALABAMA LEGISLATIVE BLACK CAUCUS DECISION**

The Perez and NAACP Plaintiffs submit their Brief Concerning *Alabama Legislative Black Caucus* Decision as follows:

**Introduction – *Larios***

At the outset, we reiterate that the House plans for Dallas and Harris fail in their entirety. These districts were drawn to achieve 10% deviation and with the express goal of reelecting “as many Republican members to the Texas House as possible.” (2011 Tr. Vol. 4 at 995-997). This goal was achieved by overpopulating and/or packing minority districts, fragmenting minority populations and utilizing bizarre configurations, see District 105 in Dallas. This product falls afoul of *Cox v. Larios*, 542 U.S. 947 (2004), which concluded that State Redistricting plans motivated by partisan gerrymander are to be held to a strict deviation standard and not entitled to the so-called 10% safe harbor. See *Henderson v. Perry*, 399 F. Supp. 2d 756, 759 (E.D. Tex. 2005). Under the State plan, the Dallas deviation is 8.88% and the Harris deviation is 9.88%. The plan improperly used deviation to dilute minority voting opportunity in benchmark (H100) districts 101, 102, 105 and 107 in Dallas County and districts 132, 135, 137, 144 and 149 in Harris County.

### **The Alabama Decision**

The Supreme Court's Alabama decision (575 U.S. \_\_\_\_ (2015)) provides some guides that may bear upon issues before the Court.

- A. "A racial gerrymandering claim...applies to the boundaries of individual Districts." (Slip Op. at 6).
- B. Gerrymandering occurs if "Race was the predominant factor motivating the legislator's decision to place a significant number of voters within or without a particular district." (Slip Op. at 6).
- C. "...prioritizing mechanical racial targets ... provides evidence that race motivated the drawing of Districts." (Slip Op. at 10).
- D. "Ability to elect is critical not numerical percentages." (Slip Op. at 20-1).

### **Individual District Analysis**

Against this backdrop, let's examine some individual districts.

#### **A. Dallas County**

As a beginning point, the Anglo population of Dallas County stood at 33% as of 2010, yet under Plan 283, Anglo voters control 58% of the House seats. This was achieved by racial line drawing and overpopulating existing minority districts.

The precincts we see as divided along racial lines are described in the Korbel Report (Perez Ex. 133) and they are as follows:

"District 101 has contained virtually the entire city of Mesquite, in Dallas County, since single member Districts were ordered in the 1970s." HD 101 was heavily minority and had elected minority candidates of choice. Plan 283 eliminated HD 101 and split the minority community, one portion was packed into H.D. 110, over 90% minority; the heavily minority precincts in south

Mesquite were shipped into an Anglo dominated precinct H.D. 113, other minority precincts were diffused into Anglo dominated H.D. 107, and finally the remaining minority precincts were packed into H.D. 100 – 80% minority. (Korbel Report at 11-12, Perez Ex. 133).

Finally H.D. 102 had a minority population and elected minority candidates of choice. Plan 283 effectively destroyed minority strength in 102, heavy minority precincts were removed to Anglo dominated H.D. 114 and H.D. 112, and Anglo precincts added to complete the destruction of the minority vote in H.D. 102. (Korbel Report at 13, Perez Ex. 133).

In east Dallas, we assert that House Districts 110, 113, 107, 100 and 102 reflect racial line drawing and dilution of the minority vote.

In west Dallas, similar minority manipulation occurred, notably linked to H.D. 105. To make H.D. 105 an Anglo district required major manipulation. Precinct splits removed heavy Hispanic blocks and moved into H.D. 103, which was already a minority district and became significantly overpopulated. Likewise, minority district 104 was packed in order to preserve 105 as an Anglo district. (Martin Report at 8, Joint Ex. 5).

Again, the configurations of Districts 103, 104, and 105 manifest racial gerrymandering and minority vote dilution.

## **B. Tarrant County**

In Tarrant County, minority population accounted for 89% of the growth over that decade. Yet, the House Plan minimized minority seats, this was accomplished by packing minorities into Districts 90 and 95, (Martin Report at 10, Joint Ex. 5) in order to dilute HD 96 and by creating H.D. 93 as an elongated spike that splintered the minority community. (Korbel Report at 13, Perez Ex. 133). We urge that Districts 90, 93, 95 and 96 reflect racial gerrymander and consequent dilution.

**C. Harris County**

Harris County is now only 33% Anglo, but under Plan 283, Anglos control 54% of the House districts. The most notable maneuver in the plan was to pack an existing minority district 148 in order to achieve a 50% Spanish surname voter registration. (See Martin testimony at 345, hearing 9/6/2011). This action rippled into the dilution of HD 144 and the elimination of District 149 as a minority opportunity district. The treatment of Districts 148, 149, and 144 reflect a racial gerrymander and resulting dilution.

Similar treatment of minority population took place in Districts 132 and 135. Under the benchmark, these districts were majority minority, however, under the State plan, the minority population was dispersed into 3 Anglo dominated districts 132, 135 and 138, as a racial gerrymander. (Martin Report at 7, Joint Ex. 5).

**D. Bell County**

The manipulation of minority voters was not restricted to urban counties. District 54 was racially gerrymandered to protect a Republican incumbent. (Martin report at 14, Joint Ex. 5). The State has defended its splitting of minority communities with the argument “if the Legislature treats individuals differently because of the way they vote, it has not treated them differently because of race.” (State’s Post Trial Brief at 21). Yet in *Bush v. Vera*, 517 U.S. 952, 968 (1996), the Court said “to the extent that race is used as a proxy for political characteristics, a racial stereotyping requiring strict scrutiny is in operation.” The Legislative plan split the City of Killeen for the first time, shipping 32,903 persons, primarily minority, into a rural district and importing 46,937 persons who had not been in the district before, 2/3 of whom were Anglo. Thus, “in the adopted plan instead of leaving Killeen whole in District 54, the State essentially gerrymandered

the minority population by unnecessarily fragmenting the city and minority population.” (Korbel Report at 7, Perez Ex. 133).

**E. McLennan County**

The treatment of the City of Waco and the minority community of McLennan follows the same course as Bell. The benchmark District H.D. 57 had been essentially in place since 1974, the second round of *White v. Regester*, when the Court ordered McLennan into single member districts. District had a minority population of 53% and had elected the minority candidate of choice in every election until 2010. The adopted plan renumbered the district from 57 to 12 and radically altered the minority component of the district, converting to an Anglo dominated with 59.5% Anglo V.A.P. (See Martin Report at 14, Joint Ex. 5 and Korbel Report at 8-9, Perez Ex. 133).

**F. Fort Bend County**

Fort Bend County is only 38% Anglo but under Plan 283, Anglo voters will control 71% of the 3.5 seats anchored in Fort Bend. This was achieved by “splitting the minority community among districts 26, 28 and 85.” (Martin Report at 12, Joint Ex. 5). Accordingly, we contend these three districts are the product of racial gerrymander and resulting dilution.

Without going into detail, we join with MALC in its challenges to Bexar and Nueces counties, and challenge to District 41 in Hidalgo County.

**CONCLUSION**

Many of these matters we have detailed in earlier briefing. We sought here to remain as succinct as possible.

Respectfully submitted,

*/s/ David Richards*

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