

No. D-1-GN-11-001612

BLANCA GARCIA, <i>et al.</i> ,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiffs,</i>	§	
	§	
vs.	§	TRAVIS COUNTY, TEXAS
	§	
RICK PERRY, in his official capacity	§	
as Governor of the State of Texas, <i>et al.</i> ,	§	
	§	
<i>Defendants.</i>	§	419 th JUDICIAL DISTRICT

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT STEVE MUNISTERI'S MOTION TO DISMISS CLAIMS PURSUANT TO TEX. R. CIV. P. 41

The plaintiffs oppose Defendant Munisteri's motion to dismiss on the following grounds:

1. This lawsuit challenges the state's failure to have in place a legally valid redistricting plan for Texas congressional districts following issuance of the official 2010 decennial census.

The lawsuit was filed on May 30, 2011, at 5:35 p.m.

2. Defendants are the state itself, four state officials (the Governor, Lieutenant Governor, Speaker of the House, and Secretary of State), and the state chairs of the two major political parties.

3. At the time the lawsuit was filed, the Texas legislature had adjourned its regular session without enactment of a redistricting plan for Texas congressional seats. Since then, the state has enacted a congressional redistricting plan; however, the state has not yet secured the preclearance of that plan under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, which is necessary for it to be effective as law. *See, e.g., Clark v. Roemer*, ___ U.S. ___ (1991) (___).

4. Under the circumstances described in ¶ 3, above, a three-judge United States District Court is poised to issue an interim plan for Texas congressional districts for use in the 2012

election cycle. *See* Order of Nov. 10, 2011 (Dkt. #507), in *Perez v. Texas*, No. 5:11cv360 (consol.).

5. In light of the current situation concerning the underlying dispute in this case, there is no present need for these proceedings to go forward. It is not clear at this point, however, whether circumstances may arise in the relatively near future which will necessitate action in this Court.

6. Notwithstanding the foregoing, Defendant Munisteri asks the Court to act now to dismiss him, as Chair of the Republican Party of Texas (“RPT Chair”), from this lawsuit. His argument is that the plaintiffs’ claims do not concern actions taken by the RPT Chair and that the RPT Chair is making no counterclaims.

7. The reason the RPT Chair (and his Democratic Party counterpart) are joined as parties in the lawsuit is because they are needed to ensure complete relief can be afforded, consistent with constitutional and statutory requirements. Major political parties in Texas have substantial responsibilities in the conduct of primary elections, including

- State Party Chairs certify names of candidates from primaries to appear on the general election ballot. *See* Texas Election Code, §172.028.
- An application for a place on the general primary election ballot must be filed with: (1) the state chair. *See* Texas Election Code, §172.028.
- The political parties are responsible for accepting and ruling upon the qualifications of candidates. Candidates are required to file for office with the party. In districts entirely contained within one county, candidates file with the County Party. In districts that are in more than one county, they file with the State Party. *See, e.g.,* Texas Election Code, §172.021.
- Political Party County Executive Committees determine the order of names of candidates on the ballot. Texas Election Code, §172.082.
- The party’s determine whether a candidate meets, age and residency requirements. *Id.* Political parties also decide whether candidates have filed in a timely manner, meet residency requirements, have paid their filing fee or met signature requirements. Texas Election Code, §172.021.
- The parties are responsible for actually running the primary elections (even though they often contract with local election administrators to use machines, tabulate results, etc.). Texas Election Code, §172.001 and 172.002.

- Parties determine polling locations, Texas Election Code §43.003, as well as design and printing the ballots. Texas Election Code §52.002

If in the future a court-ordered plan must be implemented—and if it happens that the court called upon to order the plan is this Court—the political parties will have to be subject to this Court’s remedial orders in order for implementation to be effectuated.

8. It is common in redistricting cases for state political parties to be parties to the litigation for relief purposes. For example, in *Balderas v. State of Texas*, Civ. Action No. 6:01CV158 (E.D. Tex., Nov. 14, 2001) (*per curiam*), *summarily aff’d*, 536 U.S. 919 (2002), both of the two major political party chairs were defendants in the action. Both of the two major political parties were parties *throughout the Balderas litigation* and both were necessary parties for the purpose of affording complete relief when the three-judge court approved an interim remedial plan in that case that governed the 2002 elections. Similarly, in *League of United Latin American Citizens v. Perry*, 548 U. S. 399 (2006), the State Party Chairs were defendants *throughout the case* and were subject to the remedial order entered by the three-judge court on remand from the U.S. Supreme Court. And in *Terrazas v. Slagle*, 789 F. Supp. 828 (W.D. Tex. 1991), *aff’d sub nom. Richards v. Terrazas*, 505 U.S. 1214 (1992) (mem.) and *Slagle v. Terrazas*, 506 U.S. 801 (1992) (mem.), the State Party chairs were defendants throughout the litigation. Moreover, in *Upham v. Seamon*, 456 U.S. 37 (1982), the Party Chairs were not only defendants in the litigation but one of the State party Chairs (Chester R. Upham, Jr.) was the State Chairman of the Republican Party of Texas who appealed the case to the Supreme Court.

9. Keeping the RPT Chair as a party for the purpose of ensuring full compliance with judicial implementation orders, should the need arise, works no harm to the party chair. First, for the time being, there is nothing for *any* party to do in this case. Second, even should the need for

judicial action be triggered in this case, the RPT Chair will face no burdens in terms of discovery. The only burden will be if a plan is ordered into effect and the RPT Chair faces the obligation to mesh his actions in conducting primaries with the orders of this Court.

Conclusion

The Court should deny the RPT Chair's motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the above-referenced filing was transmitted to the following counsel on this 17th day of November, 2011, in accordance with the Texas Rules of Civil Procedure:

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_____/s/ Renea Hicks_____
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