

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

WENDY DAVIS, <i>et al.</i> ,	§	
Plaintiffs,	§	
	§	
vs.	§	Civil Action No.
	§	SA-11-CA-788-OLG-JES-XR
RICK PERRY, <i>et al.</i> ,	§	[Lead Case]
Defendants.	§	

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AMERICAN CITIZENS (LULAC), <i>et al.</i> ,	§	
Plaintiffs,	§	Civil Action No.
	§	SA-11-CA-855-OLG-JES-XR
vs.	§	[Consolidated Case]
	§	
RICK PERRY, <i>et al.</i> ,	§	
Defendants.	§	

**INTERVENOR’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Intervenor, Texas State Senator Craig L. Estes (“Senator Estes”), respectfully proposes the following findings of fact and conclusions of law with respect to his proposed interim map, Plan S167. He offers no findings of fact or conclusions of law relating to the merits of this case. As of the time this motion was filed, Plaintiffs had not yet reviewed the Findings of Facts and Conclusions of Law, Defendant Steve Munisteri, in his capacity as Chair of the Republican Party of Texas, agreed with all Findings of Fact and Conclusions of Law contained herein, and Defendants Rick Perry, in his capacity as Governor of the State of Texas, Hope Andrade, in her capacity as Secretary of State of Texas, and the State of Texas agreed with Findings of Fact Nos. 1, 9, 11, 12–17, 24, and 25.

## I. Findings of Fact

1. The United States Census Bureau's 2010 census revealed that Texas State Senate districts in West Texas, particularly Districts 28, 29, and 31, were under-populated. (*See* Plan S100, District Population Analysis with County Subtotals ("DPACS") Report.)
2. The 2010 census revealed that most of the areas in Texas that had experienced the highest growth rates were located along the Interstate 35 corridor. (*See id.*)
3. To comply with the one-person-one-vote requirements of the United States Constitution, the Legislature shifted the under-populated West Texas Senate districts towards the population growth in the southeast. (*Compare* Plan S100 *with* Plan S148.)
4. The enacted Senate map, Plan S148, reflects a policy of not pairing incumbents. (*Compare* Plan S100 *with* Plan S148.)
5. Plan S148 reflects a policy of preserving the rural character of Districts 22, 24, 28, 30, and 31. (*See* Plan S148.)
6. Plan S148 reflects a policy of transferring population to the western districts by passing roughly 100,000 residents of Tarrant County to District 22, which transferred population to District 24, which transferred population to District 28. (*Compare* Plan S100, DPACS Report, *with* Plan S148, DPACS Report.)
7. Plan S148 reflects a policy of making District 12 the dominant district in Denton County. (*Compare* Plan S100, DPACS Report, *with* Plan S148, DPACS Report.)
8. Plan S148 reflects a policy of preserving and strengthening the Republican voting strength of Republican districts. (*Compare* Plan S100, 2008 General Election Analysis (GEA) Report *and* 2010 GEA Report, *with* Plan S148, 2008 GEA Report *and* 2010 GEA Report.)

9. As of May 2011, Senate District 10 had, with one exception, voted reliably Republican in every major election in recent history. (Expert Report of Dr. John Alford at 3; Testimony of Dr. James Alford, D. D.C. Tr. Vol. 7A, 38:15–16.)

10. Senator Wendy Davis defeated Senator Kim Brimer after the latter's activities led to negative publicity during the election year. (*See* Wendy Davis Deposition Exhibits 3–7.)

11. Plan S148 reflects a policy of increasing the Republican voting strength of District 10. (*Compare* Plan S100, 2008 General Election Analysis (GEA) Report *and* 2010 GEA Report, *with* Plan S148, 2008 GEA Report *and* 2010 GEA Report.)

12. Before Plan S148 was enacted, District 10 contained the following neighborhoods, which have substantial minority populations: the Far Northside, Diamond Hill/Jarvis, Northside/Stockyards, Riverside, Ryan Place, the Old Southside, Poly, Eastern Hills, Southside, Stop Six, Handley, Seminary, Worth Heights, Southeast Fort Worth, Echo Hills, South Hills, Forest Hill, Meadow Creek, Everman, and over half of Meadowbrook. (*Compare* Pls'. Ex. 60 *with* Plan S100.)

13. Before Plan S148 was enacted, Senate District 10 did not contain the following neighborhoods, which have substantial minority populations: Lake Como/Alamo Heights or a large portion of Meadowbrook. (*Compare* Pls'. Ex. 60 *with* Plan S100.)

14. Senator John McCain received 52.1% of the votes for President in District 10 in the 2008 General Election. (Plan S100, 2008 DEA Report.)

15. Governor Rick Perry received 52.7% of the votes for Governor in District 10 in the 2010 General Election. (Plan S100, 2010 DEA Report.)

16. Chief Justice Wallace Jefferson received 50.5% of the votes for Supreme Court of Texas Chief Justice in District 10 in the 2008 General Election. (Plan S100, 2008 DEA Report.)

17. Justice Eva Guzman received 57.6% of the votes for Supreme Court of Texas Place 9 in District 10 in the 2010 General Election. (Plan S100, 2010 DEA Report.)

18. Justice Dale Wainwright received 50.2% of the votes for Supreme Court of Texas Place 7 in District 10 in the 2008 General Election. (Plan S100, 2008 DEA Report.)

19. If the 2008 General Election had been held in Plan S167's District 10, Senator John McCain likely would have received about 52.4% of the vote. (Plan S167, 2008 DEA Report.)

20. If the 2010 General Election had been held in Plan S167's District 10, Governor Rick Perry likely would have received about 52.6% of the vote. (Plan S167, 2010 DEA Report.)

21. If the 2008 General Election had been held in Plan S167's District 10, Chief Justice Wallace Jefferson likely would have received about 50.4% of the vote. (Plan S167, 2008 DEA Report.)

22. If the 2010 General Election had been held in Plan S167's District 10, Justice Eva Guzman likely would have received about 57.8% of the vote. (Plan S167, 2010 DEA Report.)

23. If the 2008 General Election had been held in Plan S167's District 10, Justice Dale Wainwright likely would have received about 50.2% of the vote. (Plan S167, 2008 DEA Report.)

24. Before Plan S148 was enacted, Senate District 10 had a combined black and Hispanic population of 47.5%, a black voting age population (VAP) of 17.9%, a Hispanic VAP of 24.8%, a combined black and Hispanic VAP of 42.4%, and a Spanish surname voter registration (SSVR) of 12.1%. (Plan S100, DPACS Report; Plan S100, Population and Voter Data with Voter Registration Comparison (PVDVRC) Report.)

25. Before Plan S148 was enacted, the minority coalition in Tarrant County, if such a coalition existed, was only able to elect candidates of its choice with the help of white “crossover” voters. (Alford Report, at 2, 4–5.)

26. White “crossover” voters contributed substantially to the election of Senator Wendy Davis in 2008. (*Id.* at 4–5.)

27. If Plan S167 were adopted as this Court’s interim map, Senate District 10 as drawn therein would have a combined black and Hispanic population of 47.4%, a black VAP of 15.5%, a Hispanic VAP of 26.6%, a combined black and Hispanic VAP of 41.8%, and an SSVR of 12.6%. (Plan S167, DPACS Report; Plan S167, PVDVRC Report.)

28. If Plan S167 were adopted as this Court’s interim map, the minority voters within Senate District 10 as drawn therein would have sufficient numbers to control the outcome of the Democratic primary if they formed a coalition. (*See* Plan S167, DPACS Report; Plan S167, PVDVRC Report.)

29. If Plan S167 were adopted as this Court’s interim map, Democratic candidates would have the same likelihood of winning general elections in Senate District 10 as they did under the current district lines. (*Compare* Plan S100, 2008 GEA Report *and* 2010 GEA Report, *with* Plan S167, 2008 GEA Report *and* 2010 GEA Report.)

30. Plan S167 would avoid pairing incumbents. (*See* Plan S167.)

31. Plan S167 would keep Districts 22, 24, 28, 30, and 31 predominantly rural. (*See* Plan S167, DPACS Report.)

32. Plan S167 would make District 12 the dominant district in Denton County. (*See id.*)

33. Plan S167 would transfer population to the districts in West Texas by extending District 22 into Tarrant County. (*See id.*)

34. Plan S167 would maintain, though not strengthen, District 10's status as a Republican district. (*Compare* Plan S100, 2008 GEA Report *and* 2010 GEA Report, *with* Plan S167, 2008 GEA Report *and* 2010 GEA Report.)

35. The interim map previously adopted by this Court, Plan S164, changed the lines of five districts from their configuration under enacted Plan S148. (*Compare* Plan S148 *with* Plan S164.)

36. Plan S164's changes from the enacted plan affected three counties. (*Compare* Plan S148 *with* Plan S164.)

37. Plan S167 would change the lines of only four districts from their configuration under enacted Plan S148. (*Compare* Plan S148 *with* Plan S167.)

38. Plan S167 confines its changes from the enacted plan to a single county. (*Compare* Plan S148 *with* Plan S167.)

## II. Conclusions of Law

1. Retrogression occurs only when a voting change diminishes the voting strength of a protected minority group. *See Reno v. Bossier Parish Sch. Bd. (Bossier I)*, 117 S.Ct. 1491, 1497–98 (1997) (“[S]ince the new plan did not *increase* the degree of discrimination against the city’s Mexican-American population, it was entitled to § 5 preclearance because it was not retrogressive”. (quoting *City of Lockhart v. United States*, 103 S.Ct. 998, 1004 (1983)) (emphasis in original) (brackets in original omitted)).

2. Plan S167's changes to District 10 would not be retrogressive, because they would not affect the voting strength of protected minority groups. *See Bossier I*, 117 S.Ct. at

1497–98. Although Plan S167’s combined black and Hispanic VAP is slightly lower than District 10’s benchmark, this drop does not affect the alleged coalition’s voting power, because the coalition requires white Democratic crossover voters to win elections, the coalition would still dominate the Democratic primary if it exists, and the election comparisons of existing District 10 and District 10 under Plan S167 show that the slight drop in Plan S167’s combined minority VAP is not reflected in the electoral results. If minorities were able to elect candidates of their choice under the existing lines of District 10, they would be able to do so under Plan S167’s District 10 as well.

3. The United States Supreme Court has directed this Court to draw its interim map to reflect the legislative policies underlying the enacted plan to the extent that those policies do not lead to a violation of the Constitution or the Voting Rights Act. *Perry v. Perez*, 565 U.S. \_\_\_\_ (2012) (per curiam), slip op. at 4–5.

4. Plan S167 would cure the constitutional and Section 5 violations alleged by the Plaintiffs by returning Senate District 10 to the demographic and political numbers that characterized it before the Legislature redrew it and by reuniting all but one of the minority neighborhoods which Plaintiffs complain were separated and, in the case of Lake Como/Alamo Heights and Meadowbrook, adding two additional neighborhoods that were not previously located in District 10.

5. Plan S167 alters minimally the policies reflected in enacted Plan S148.

6. Because Plan S167 cures the constitutional and Section 5 violations alleged by the Plaintiffs with minimal alteration of Plan S148, it would be an appropriate interim map under the Supreme Court’s holding in *Perez*. *See id.*

Dated: February 10, 2012.

Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**

The undersigned counsel hereby certifies that he attempted to confer with all parties to the consolidated proceeding regarding these findings of fact and conclusions of law by e-mail on February 10, 2012. As of the time this motion was filed, Plaintiffs had not yet reviewed the Findings of Facts and Conclusions of Law, Defendant Steve Munisteri, in his capacity as Chair of the Republican Party of Texas, agreed with all Findings of Fact and Conclusions of Law contained herein, and Defendants Rick Perry, in his capacity as Governor of the State of Texas, Hope Andrade, in her capacity as Secretary of State of Texas, and the State of Texas agreed with Findings of Fact Nos. 1, 9, 11, 12–17, 24, and 25.

/s/ John H. H. Bennett  
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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing was filed electronically with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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