

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

SHANNON PEREZ, *et al.*,)

Plaintiffs,)

v.)

STATE OF TEXAS, *et al.*,)

Defendants.)

_____)

JOHN T. MORRIS,)

Plaintiff,)

v.)

STATE OF TEXAS, *et al.*,)

Defendants.)

_____)

TEXAS LATINO REDISTRICTING)
TASK FORCE, *et al.*,)

Plaintiffs,)

v.)

RICK PERRY ,)

Defendant.)

_____)

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

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

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

MARAGARITA V. QUESADA, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	CIVIL ACTION NO.
)	SA-11-CA-592-OLG-JES-XR
)	[Consolidated case]
v.)	
)	
RICK PERRY, <i>et al.</i> ,)	
)	
<i>Defendants</i>)	
_____)	
)	
MEXICAN AMERICAN LEGISLATIVE)	CIVIL ACTION NO.
CAUCUS, TEXAS HOUSE OF)	SA-11-CA-361-OLG-JES-XR
REPRESENTATIVES (MALC),)	[Consolidated case]
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	
)	
EDDIE RODRIGUEZ, <i>et al.</i> ,)	CIVIL ACTION NO.
)	SA-11-CA-635-OLG-JES-XR
<i>Plaintiffs,</i>)	[Consolidated case]
)	
v.)	
)	
RICK PERRY, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**PLAINTIFF JOHN T. MORRIS’ RESPONSE TO DEFENDANT’S
MOTION TO DISMISS AND REPLY TO DEFENDANT’S
RESPONSE TO PLAINTIFF’S MOTION TO AMEND**

NOTE

The following should be taken for what it is - the observations of a highly interested but nevertheless pro se complainant.

COMPLAINANT’S CONTENTION IN RESPECT TO DEFENDANT’S OPPOSITION TO AMENDED COMPLAINTS AND MOTION TO DISMISS

This Court allowed a motion to reconsider joined by this party to insure that the parties to the reconsideration motion would have the opportunity to appeal after this Court’s final opinion was rendered. It is this parties contention in the following arguments that this case meets all of the prerequisites of a public interest exception to the mootness doctrine which allows appeals from a case which would otherwise be moot absent an important public issue, likelihood that the issue will recur, (even with new parties) and that it may repeatedly frustrate review.

JURISDICTIONAL ARGUMENT

In defendant State’s opposition to plaintiff’s amended complaints and motion to dismiss a first impression jurisdictional issue is presented (Dkt. 786). Defendant’s motion states that this is “not an ordinary case.” *Id.* How true that is since the State wholly enacted the interim plans in respect to the State House and Congressional plans as its official election plans though it was clearly stated by this Court that these were still in the process of litigation. Since these were not newly enacted apportionments but simply the adoption of the interim plans and the state’s public hearings were not meaningfully consequential and effectively merely sham hearings, can it be legally stated that these plans are a “new apportionment” as stated by the defendant State and consequently requiring a new three-judge panel.

In a letter to Speaker of the House Joe Straus from Attorney General Greg Abbott, Abbott stated that “[T]hese maps already have the approval from the federal judges (emphasis added) overseeing this litigation.” It would appear from this that the maps and the Attorney General’s actions are completely entangled in the initial consolidated case meaning there is no new legal basis upon which to declare this case moot.

ANSWER TO DEFENDANT’S MOOTNESS ARGUMENT

Political gerrymandering has been recognized as a detriment to the democratic process for over two centuries and has grown more serious recently. In *Veith v. Jubelirer* (541 U.S. 267, 2004), Supreme Court Justice Antonin Scalia stated that the practice, since known as gerrymandering, traced back well before the Constitution and that “there were allegations that Patrick Henry attempted (unsuccessfully) to gerrymander James Madison out of the First Congress.” In 1812 it received its name from the “notoriously outrageous political districting,” as Scalia characterized it, from Elbridge Gerry and the salamander shape of an election district in Massachusetts. Since then after enumerable attempts by both Congress and the federal courts to restrict it gerrymandering has recently become a practice that has increasingly led to fewer swing districts and a greater preponderance of Democratic and Republican leaning districts resulting in a greater divide between the parties as reported this July by the Cook Political Report as related in the Wall Street Journal. Under these circumstances partisan gerrymandering can clearly be considered an important public interest and possibly, with little argument, the over-riding political issue of our time, and making it the first element of the public interest exception to the mootness doctrine (American Jurisprudence 2d Sec. 604).

The second element of the exception is whether political gerrymandering will recur *Id.* The practice has not abated for over two hundred years and there is little reason to believe that it will end without some government or constitutional sanction enforced by the federal courts. And in fact this recurrence issue is the reason for the present amendment to this plaintiff's complaint. And it should be noted that whether there is a recurrence or not is a burden the party asserting mootness must shoulder, (Adarand Constructors, Inc. v. Slater, 528 U.S. 216, 2000).

The third element of the public interest exception is whether the issue is likely to repeatedly frustrate review. If the Court does not invoke the public interest exception and with the state free to redistrict at will and the time consuming nature of the voting process from filing periods to election this extremely important public issue will continue to frustrate review. Baring other factors that would prevent the litigation from becoming moot, political gerrymandering litigation could become moot every two years. In 2011 as reported in the Houston Chronicle on June 1st of that year "[A]fter five months and almost no public debate the...committee chairs finally released a joint map for congressional redistricting." This 2011 plan was drawn during a special session as has been done this year with the newly enacted interim maps. And as has been noted the state is willing to drag its feet and exercise its right to appeal, often if necessary, to retain its Republican party advantage, which may well be a Democratic party effort in the future. Under these circumstances evading review would appear to be a clear possibility. And if the plaintiffs are forced to file new complaints, with all that will entail, in combination with the State's right to redistrict biannually the evasion of review seems likely rather than just a possibility.

ADDITIONAL ARGUMENT

In *Storer v. Brown* (415 U.S. 724, 1974) the Court stated in a footnote (736, 737) that this stated case revolved around an election issue and adjudicated by a three-judge court in California was not moot since it was “capable of repetition, yet evading review” which in the context of election cases, where “[T]he construction of the statute, and understanding of its operation, and possible constitutional limits on its application, will have the effect of simplifying future challenges.” A case that would otherwise be moot may proceed to a judgement for no other reason than to form the basis of case law that may simplify future litigation.

Submitted with respect this day August 5th, 2013

/s/ John T. Morris
John T. Morris
Plaintiff Pro Se
5703 Caldicote St.
Humble, TX 77346
281-852-6388

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2013 a true and correct copy of this filing was delivered to all counsel in this matter listed below via the United States District Court, Western Division of Texas, San Antonio Division, CM/ECF system or when this was not possible by electronic mail or Certified United States postal mail.

DAVID RICHARDS
Texas Bar No. 1684600
Richards, Rodriguez & Skeith LLP
816 Congress Avenue, Suite 1200
Austin, TX 78701
512-476-0005
davidr@rrsfirm.com

RICHARD E. GRAY, III
State Bar No. 08328300
Gray & Becker, P.C.
900 West Avenue, Suite 300
Austin, TX 78701
512-482-0061/512-482-0924 (facsimile)
rick.gray@graybecker.com
**ATTORNEYS FOR PLAINTIFFS
PEREZ, DUTTON, TAMEZ,
HALL, ORTIZ, SALINAS,
DEBOSE, and RODRIGUEZ**

CHAD W. DUNN
chad@brazilanddunn.com
K. SCOTT BRAZIL
scott@brazilanddunn.com
Brazil & Dunn
4201 FM 1969 West, Suite 530
Houston, TX 77068
281-580-6310/281-580-6362 (facsimile)
**ATTORNEYS FOR INTERVENOR-
DEFENDANTS TEXAS DEMOCRATIC
PARTY and BOYD RICHIE**

GERALD GOLDSTEIN
State Bar No. 08101000
ggandh@aol.com
DONALD H. FLANARY, III
State Bar No. 24045877
donflanary@hotmail.com
Goldstein, Goldstein and Hilley
310 S. St. Mary's Street
29th Floor, Tower Life Bldg.
San Antonio, TX 78205-4605
210-226-1463/210-226-8367 (facsimile)

PAUL M. SMITH, MICHAEL B.
DESCANTIS, JESSICA RING AMUNSON
Jenner & Block LLP
1099 New York Ave., NW
Washington, D.C. 20001
202-639-6000

J. GERALD HEBERT
191 Somerville Street, # 405
Alexandria, VA 22304
703-628-4673
hebert@voterlaw.com

JESSE GAINES
P.O. Box 50093
Fort Worth, TX 76105
817-714-9988
gainesjesse@ymail.com
**ATTORNEYS FOR PLAINTIFFS
QUESADA, MUNOZ, VEASEY,
HAMILTON, KING and JENKINS**

DAVID MATTAX
david.mattax@oag.state.tx.us
DAVID J. SCHENCK

david.schenck@oag.state.tx.us
MATTHEW HAMILTON FREDERICK
matthew.frederick@oag.state.tx.us
ANGELA V. COLMENERO
angela.colmenero@oag.state.tx.us
ANA M. JORDAN
ana.jordan@oag.state.tx.us
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, TX 78711
512-463-2120/512-320-0667 (facsimile)
**ATTORNEYS FOR DEFENDANTS STATE
OF TEXAS, RICK PERRY, HOPE
ANDRADE, DAVID DEWHURST and
JOE STRAUS**

JOSE GARZA
Texas Bar No. 07731950
Law Office of Jose Garza
7414 Robin Rest Dr.
San Antonio, Texas 78209
210-392-2856
garzpalm@aol.com

MARK W. KIEHNE
mkiehne@lawdcm.com
RICARDO G. CEDILLO
rcedillo@lawdcm.com
Davis, Cedillo & Mendoza
McCombs Plaza
755 Mulberry Ave., Ste. 500
San Antonio, TX 78212
210-822-6666/210-822-1151 (facsimile)
**ATTORNEYS FOR MEXICAN
AMERICAN LEGISLATIVE CAUCUS**

STEPHEN E. MCCONNICO
smconnico@scottdoug.com
SAM JOHNSON

sjohnson@scottdoug.com
S. ABRAHAM KUCZAJ, III
akuczaj@scottdoug.com
Scott, Douglass & McConnico
One American Center
600 Congress Ave., 15th Floor
Austin, TX 78701
512-495-6300/512-474-0731 (facsimile)
**ATTORNEYS FOR PLAINTIFFS CITY
OF AUSTIN, TRAVIS COUNTY, ALEX
SERNA, BALAKUMAR PANDIAN,
BEATRICE SALOMA, BETTY F. LOPEZ,
CONSTABLE BRUCE ELFANT, DAVID
GONZALEZ, EDDIE RODRIGUEZ,
ELIZA ALVARADO, JOSEY MARTINEZ,
JUANITA VALDEZ-COX, LIONOR
SOROLA-POHLMAN, MILTON GERARD
WASHINGTON, NINA JO BAKER, and
SANDRA SERNA**

DONNA GARCIA DAVIDSON
P.O. Box 12131
Austin, TX 78711
512-775-7625/877-200-6001 (facsimile)
donna@dgdlawfirm.com

FRANK M. REILLY
Potts & Reilly, LLP.
P.O. Box 4037
Horseshoe Bay, TX 78657
512-469-7474/512-469-7480 (facsimile)
reilly@pottsreilly.com
**ATTORNEYS FOR DEFENDANT
STEVE MUNISTERI**

NINA PERALES
Texas Bar No. 24005046
nperales@maldef.org

MARISA BONO
mbono@maldef.org
REBECCA MCNEILL COUTO
rcouto@maldef.org
Mexican American Legal Defense
and Education Fund
110 Broadway, Suite 300
San Antonio, TX 78205
210-224-5476/210-224-5382 (facsimile)

MARK ANTHONY SANCHEZ
masanchez@gws-lw.com
ROBERT W. WILSON
rwwilson@gws-law.com
Gale, Wilson & Sanchez, PLLC
115 East Travis Street, Ste. 1900
San Antonio, TX 78205
210-222-8899/210-222-9526 (facsimile)
**ATTORNEYS FOR PLAINTIFFS TEXAS
LATINO REDISTRICTING TASK
FORCE. CARDENAS, JIMENEZ,
MENENDEZ, TOMACITA AND JOSE
OLIVARES, ALEJANDRO AND
REBECCA ORTIZ**

ROLANDO L. RIOS
Law Offices of Rolando L. Rios
115 E. Travis Street
Suite 1645
San Antonio, TX 78205
210-222-2102
rrios@rolandorioslaw.com
**ATTORNEY FOR INTERVENOR-
PLAINTIFF HENRY CUELLAR**

LUIS ROBERTO VERA, JR.
Law Offices of Luis Roberto Vera, Jr. &
Associates

1325 Riverview Towers
111 Soledad
San Antonio, TX 78205-2260
210-225-3300
irvlaw@sbcglobal.net

GEORGE JOSEPH KORBEL
Texas Rio Grande Legal Aid, Inc.
1111 North Main
San Antonio, TX 78213
210-212-3600
korbellow@hotmail.com
**ATTORNEYS FOR INTERVENOR-
PLAINTIFF LEAGUE OF UNITED
LATIN AMERICAN CITIZENS**

MAX RENE HICKS
Law Office of Max Renea Hicks
101 West Sixth Street
Suite 504
Austin, TX 78701
512-480-8231/512-480-9105 (facsimile)
rhicks@renea-hicks.com
**ATTORNEY FOR PLAINTIFFS CITY OF
AUSTIN, TRAVIS COUNTY, ALEX
SERNA, BETRICE SALOMA, BETTY F.
LOPEZ, DAVID GONZALEZ, EDDIE
RODRIGUEZ, MILTON GERARD
WASHINGTON and SANDRA SERNA,
CONSTABLE BRUCE ELFANT**

VICTOR L. GOODE
Asst. Gen. Counsel, NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215-5120
410-580-5120/410-358-9359 (facsimile)
vgoode@naacpnet.org
**ATTORNEYS FOR INTERVENOR-
PLAINTIFF THE TEXAS STATE
CONFERENCE OF NAACP BRANCHES**
ROBERT NOTZON
State Bar No. 00797934
Law Office of Robert S. Notzon

1507 Nueces Street
Austin, TX 78701
512-474-7563/512-474-9489 (facsimile)
robert@notzonlaw.com

ALLISON JEAN RIGGS
ANITA SUE EARLS
Southern Coalition for Social Justice
1415 West Highway 54, Ste. 101
Durham, NC 27707
919-323-3380/919-323-3942 (facsimile)
anita@southerncoalition.org
allison@southerncoalition.org

**ATTORNEY FOR INTERVENOR-
PLAINTIFFS TEXAS STATE
CONFERENCE OF NAACP
BRANCHES, EARLS, LAWSON,
WALLACE and JEFFERSON**

JOAQUIN G. AVILA
P.O. Box 33687
Seattle, WA 98133
206-724-3731/206-398-4261 (facsimile)
jgavotingrights@gmail.com
Served via electronic mail
**ATTORNEY FOR MEXICAN
AMERICAN LEGISLATIVE CAUCUS**

DAVID ESCAMILLA
Travis County Asst. Attorney
P.O. Box 1748
Austin, TX 78767
512-854-9416
david.escamilla@co.travis.tx.us
Served via electronic mail
**ATTORNEYS FOR PLAINTIFF
TRAVIS COUNTY**

KAREN M. KENNARD
2803 Clearview Drive
Austin, TX 78703

512-974-2177/512-974-2894 (facsimile)
karen.kennard@ci.austin.tx.us
Served via electronic mail
**ATTORNEY FOR PLAINTIFF
CITY OF AUSTIN**

/s/ John T. Morris
John T. Morris
Plaintiff Pro Se
5703 Caldicote St.
Humble, TX 77346
281-852-6388