

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

John T. Morris

Plaintiff

v

STATE OF TEXAS, et al.,

Defendants

CIVIL ACTION NO.  
SA-11-CA-360-OLG-JES-XR  
(Lead Case)

**JOHN T. MORRIS'S RESPONSE TO STATE  
DEFENDANT'S MOTION TO DISMISS**

The defendant's dismissal motion is in error since the State defendant's actions over time give every indication that they will not refrain from the behavior that caused the plaintiffs to file complaints initially and consequently makes their voluntary cessation suspect and this same behavior and the public importance of this issue also makes the mootness doctrine applicable. Plaintiff Morris did file an amended complaint that included the 2013 plans and which also includes a refinement of his legal theory which does not prejudice the defendants.

PART I

"[T]he 'voluntary cessation' doctrine, which provides that the '[m]ere voluntary cessation of allegedly illegal conduct does not moot a case.' *Beta Upsilon Chi Upsilon Chapter v. Machen* 586 F.3d 908, 916, citing, (*United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 203). "The basis for this doctrine is a concern that a defendant who voluntarily ceases an activity is 'free to return to his old ways.' *Id.* "Yet such concern is less warranted 'when the defendant is not a private citizen but a government actor.' *Beta Upsilon v. Machen* at 916 citing *Troiano v. Supervisor of Elections in Palm Beach County, Fla.*, 382 F.3d 1276, 1283. "In such cases, 'there is a

rebuttable presumption that the objectionable behavior will *not* recur.” (emphasis added) *Id.* In this case (*Perez v. State of Texas*) there is a clear rebuttable presumption based on relevant evidence to claim that the State has in the past and will in the future use the judicial environment available and whatever legal action necessary to avoid a full hearing of the claims in respect to alleged discrimination and illegal gerrymandering.

The Republican Party gained control of the legislature in 2002 and initiated mid-decade redistricting which gave them an almost 2 to 1 majority in the house in 2004. Incidentally, the claim was that the Republicans had not been in control of the house since reconstruction but this is true in name only since the Democratic party was the conservative party until these same conservatives switched to the Republican party. This mid-decade redistricting was unprecedented and every action the State defendants have taken since then have apparently been an attempt to avoid a full hearing of the issues. As soon as interim plans were adopted in November of 2011 they were appealed. When in 2012 the D.C. Court issued its pre-clearance decision it was appealed. And in June of 2013 the State adopted the 2012 interim plans as the states’ permanent plans and now seeks to dismiss the case claiming repeal of the 2011 plans and making the interim plans permanent moots this litigation. “Whether the repeal of a law will lead to a finding that the challenge to the law is moot depends most significantly on whether the court is sufficiently convinced that the repealed law will not be brought back.” *Coral Springs Street Systems v. City of Sunrise*, 371 F.3d 1320, 1331, (emphasis added). Or a law that is similar. In 2000 the 10<sup>th</sup> Circuit held that the re-enactment of a law can be “one substantially similar.” *See, Citizens for Responsible Gov’t v. Davidson*, 236 F.3d. 1174, 1182. Courts look at the evidence to be “sufficiently convinced” one way or the other. In this case it should be noted that there is relevance in the actions of defendants as noted above but also in a defendant’s failure to be open and forthright in court ordered negotiations. State defendants are presumed to be acting in good faith at all times during the litigation process which in respect to negotiations “emphasizes faithfulness to an

agreed common purpose and consistency with the justified expectations of the other party.” See, *Hooters of America Inc. v. Phillips* 173 F.3d 933, 940 (4<sup>th</sup> Cir. 1999). In respect to the negotiations that transpired between some of the plaintiffs and the defendants that produced the 2012 interim plans it would have been the State defendant’s obligation to tell the other parties if they had intended or even contemplated making the interim plans permanent at the time. Though it is obviously a possibility that this had not even entered their minds it cannot be dismissed in lieu of the fact that this indeed became a fact just over a year later. And just as Courts will be sufficiently convinced that a law will not be re-enacted they also look to be convinced that the parties are acting in good faith. And when “[t]he Court expressly noted that the interim maps were based on preliminary determinations under the *Perry v. Perez* standard and did not constitute rulings on the merits of the claims” and when “[a] majority of Plaintiffs argued that the interim maps did not resolve all of their claims and concerns, and asserted that further relief would be required in a final remedial plan” Dkt. 886 at 3, a letter from Attorney General Greg Abbott to Speaker Joe Straus which stated that “[t]hese (interim) maps already have the approval from the judges overseeing this litigation,” this would appear to throw a shadow of suspicion over the negotiations in regards to the interim maps in 2012. Though courts must give State defendants the presumption of good faith they obviously need not throw out all reason in the process. A reasonable person would wonder when the State defendants knew they were going to make the interim plans the state’s permanent plans in order to know whether the defendants were adhering to their obligation to be forthright during the negotiations on the 2012 interim plans. “The rule against judicial consideration or inquiry concerning legislative motive does not extend to ‘statutes alleged to violate the Equal Protection Clause on racially discriminatory grounds.’ ” *American Jurisprudence, Section 186, citing, Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252. Reason would dictate that an serious inquiry is appropriate when a defendant relies upon the Voluntary Cessation

doctrine to moot a case that has numerous plaintiffs and has been in the judicial process for a long three years.

## PART II

The Houston Chronicle reported on June 3<sup>rd</sup> of this year 2014 that “Republican-led legislatures across the South have sought to increase the concentration of black voters in a few districts, which has led to the election of fewer white Democrats and more Republicans in other districts.” The paper also reported similar challenges in Virginia and North Carolina and that the National Conference of State Legislatures says there are currently 26 active redistricting lawsuits in eight states. As has been stated in remarks to this Court last year this case “fits neatly into the public interest exception to the mootness doctrine.” This issue is likely to recur, albeit with different plaintiffs as expected by the public interest exception, and may repeatedly frustrate review. The State defendants bring up the time limit in terms of evading review which they calculate to be something similar to the length of a normal pregnancy. The D.C. Court stated in relation to “capable of repetition, yet evading review” that a “presumption applies that orders of less than two years duration ordinarily evade review.” *See, Honeywell Intern., Inc. v. Nuclear Regulatory Com’n*, 628 F.3d 568, at 576. Since the Republican Party now has the ability to redistrict mid-decennial a case of this kind could get under way and with election interruptions and appeals of one kind or another a new legislature could redistrict before any “less than two year” limit could expire. For a legislature to redistrict every two years would be unprecedented but so was mid-decennial redistricting up until 2003. Politicians are motivated to stay in office and political parties are motivated to stay in power and will use any legal means available as we have seen repeatedly. To summarize, we have a serious “public interest” that is clearly “capable of repetition” and “evading review.”

## PART III

It is well understood amongst those who are familiar with civil procedure that leave to amend will be freely given when justice so requires and given in respect to legal

theories where the defendant will not be prejudiced. But when a pleading has been appropriately amended to the satisfaction of the plaintiff even though the Court may allow further amendments there is no legal need, nor would it be appropriate to add unnecessarily to the documentation. If the State defendants will be so kind as to look at Doc. 784 they will find that this Plaintiff has indeed amended his pleadings in respect to the 2013 plans and has refined his legal theory with no prejudice to the State defendants.

*/s/ John T. Morris*  
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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this Plaintiff's motion for extension of time, was delivered to all counsel in this matter listed below via the United States District Court, Western Division of Texas, San Antonio Division, ECF system or when this was not possible by electronic mail or Certified United States postal mail.

*/s/ John T. Morris*  
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