

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS, et al.,

Plaintiffs,

v.

GREG ABBOTT et al.,

Defendants.

Civil Action No. 3:21-cv-00259
(Lead Case)

FAIR MAPS TEXAS ACTION COMMITTEE,
et al.,

Plaintiffs,

v.

GREG ABBOTT et al.,

Defendants.

Civil Action No. 3:21-cv-01038
(Consolidated Case)

**FAIR MAPS PLAINTIFFS' RESPONSE TO STATE DEFENDANTS'
FIRST AMENDED MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AND
TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

Texas's First Amended Motion for Partial Judgment on the Pleadings and to Dismiss for Lack of Subject Matter Jurisdiction, Dkt. 848 ("Motion"), should be denied to the extent it purports to address claims brought by Fair Maps Plaintiffs.¹

1. The Motion Should be Denied As to Fair Maps Plaintiffs' VRA Discriminatory Effects Claims.

The Motion as to Fair Maps Plaintiffs' effects claims under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 ("VRA"), should be denied as moot given the Court's recent Memorandum Opinion and Order addressing Texas's motion to dismiss the Fair Maps Supplemental Complaint, Dkt. 853 (the "MTD Order"). As the MTD Order already addressed these claims, there remains no further relief to grant to Texas in this respect.

If the Court determines the Motion is not moot as to Fair Maps' VRA effects claims, then Fair Maps Plaintiffs respectfully contend the Motion should be denied for the reasons set forth in Fair Maps Plaintiffs' prior briefing on this issue, including their Opposition to Defendants' Motion to Dismiss Supplemental Complaint (Dkt. 788) and Letter Brief (Dkt. 816) addressing the decision in *Petteway v. Galveston Cnty.* 111 F.4th 596 (5th Cir. 2024), and incorporated by reference herein.

2. The Motion Should Be Denied As to Fair Maps Plaintiffs' Intentional Discrimination Claims.

To the extent Defendants are moving pursuant to Rule 12(c) to dismiss Fair Maps Plaintiffs' intentional discrimination claims, Motion at 4 n.3, that motion should be denied for the same reasons stated by this Court in its MTD Order. Defendants concede the same standard applies under Rule 12(b)(6) and Rule 12(c), *see* Motion at 2 (citing *Doe v. MySpace Inc.*, 528 F.3d 413, 418 (5th Cir. 2008)), and the Court in its MTD Order denied Defendants' Rule 12(b)(6) motion to

¹ Plaintiffs in the consolidated action *Fair Maps Texas Action Committee v. Abbott*, No. 3:21-cv-01038 (W.D. Tex.).

dismiss Fair Maps Plaintiffs' intentional discrimination claims. MTD Order at 11–13. That ruling is the law of the case. *See Lindquist v. City of Pasadena*, 669 F.3d 225, 238 (5th Cir. 2012).

3. Fair Maps Plaintiffs' Claims Are Not Moot.

The Motion should be denied to the extent that it asserts that Fair Maps Plaintiffs' claims are moot because the 88th Legislature ratified and reenacted the legislative maps originally passed by the 87th Legislature. As the Court cogently explained in the MTD Order: "That Fair Maps now challenges HB 1000 and SB 375 and not HP 2316 and SP 2168 is a distinction without a legally significant difference. The plans are the same, and Fair Maps plausibly alleges that the 88th Legislature adopted the rationale of the 87th." MTD Order at 13. Defendants thus cannot make it absolutely clear that the alleged wrong could not reasonably be expected to recur, as they must to establish mootness. *Friends of the Earth, Inc. v. Laidlaw Env't Servs.*, 528 U.S. 167, 170 (2000).

CONCLUSION

For the reasons stated above, Defendants' Motion should be denied. Even if any dismissal were proper under the Motion, it should be without prejudice and with leave to amend as in the MTD Order pursuant to Federal Rule of Civil Procedure 15(a)(2).

Date: March 3, 2025

Respectfully submitted,

/s/ Hilary Harris Klein

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CERTIFICATE OF SERVICE

I certify that on March 3, 2025, the foregoing document was served on counsel of record via the Court's CM/ECF system.

/s/ Hilary Harris Klein
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