

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

SHANNON PEREZ, et. al.)	
)	
)	CIVIL ACTION NO.
Plaintiffs)	11-CA-360-OLG-JES-XR
)	CONSOLIDATED ACTION
v.)	[Lead case]
)	
GREG ABBOTT, et. al.)	
)	
)	
Defendants)	

SCHEDULING ORDER

The merits of the claims against the 2011 redistricting plans have been addressed. On April 27, 2017, the Court held a status conference to discuss how the case may proceed on the claims against the 2013 plans. After hearing from counsel on various issues and taking their concerns into consideration, the Court finds that the case should proceed expeditiously to trial on the merits. The Court is aware of the condensed schedule that must be implemented in light of the 2018 election deadlines, and expects counsel and the parties to work diligently to meet the deadlines contained herein.

1. The deadline for amendment of pleadings and joinder of parties has passed, and will not be re-opened.¹

¹No motions for leave to amend the pleadings have been filed, but counsel for certain plaintiffs indicated at the status conference that they might want to amend their pleadings. (continued...)

2. Parties asserting claims for relief shall disclose their testifying experts, and the materials required by Fed.R.Civ.P. 26(a)(2)(B), by Friday, May 26.

3. Parties resisting claims for relief shall disclose their testifying experts, and the materials required by Fed.R.Civ.P. 26(a)(2)(B), by Friday, June 16.

4. Stipulations: The parties must take immediate steps to confer and determine which facts and/or issues can be stipulated. To the extent the parties can stipulate to parties' residences and standing, incumbents' home and office addresses, the legislative record, election data, ACS data, racially polarized voting, or other facts and issues upon which experts will rely in forming their opinions, they should attempt to enter such stipulations in advance of the deadline for expert disclosures.

5. *Gingles* demonstrative maps: The parties will not be permitted to offer multiple *Gingles* demonstrative maps for one district or county when one or

¹(...continued)

Other counsel, when asked to summarize their current claims, included claims that are not reflected in their live pleadings. The legislative plans being challenged were passed in June 2013. In response, plaintiffs filed motions for leave to amend their pleadings to assert claims against the new plans. After exhaustive briefing and careful deliberation, the Court granted the motions for leave and allowed the amended pleadings. Almost four years has passed and we are now on the eve of trial. To the extent the parties believe the 2013 plans are unconstitutional or otherwise illegal, those infirmities have existed since enactment of the plans. The Court later made findings on the 2011 claims, and while those findings may strengthen or weaken the claims and defenses already asserted, the findings do not give rise to claims or defenses that did not previously exist. Either the claims existed at the time of enactment or they did not, and the parties had ample opportunity to assert those claims. To the extent the Court indicated in its recent opinion on Plan H283 that it would consider certain § 2 results claims in the 2013 plan case, it meant that it would consider § 2 results claims made against the 2013 plans in the 2013 plan trial. The Court did not defer consideration of 2011 claims.

possibly two demonstrative maps will suffice. Additional, unnecessary maps will be considered cumulative. The parties should present their best demonstrative statewide map, with perhaps one alternate map in the event valid objections arise.² *Gingles* maps should utilize 2011-2015 ACS data. Preferably, *Gingles* maps and accompanying data should be stipulated joint exhibits as was done in the 2011 trial.

6. An objection to the reliability of an expert's proposed testimony under Fed.R. Evid. 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, at least two days prior to the offer of the expert's testimony at trial.³

7. The Court anticipates that additional fact discovery will be extremely limited.⁴ The parties shall disclose the names and addresses of fact witnesses, and the subject matter on which they may testify, by Monday, June 5. The parties shall

²Thus, the burden is on the parties, during discovery, to ensure that the information upon which the experts rely in drawing up their *Gingles* demonstrative maps is accurate and reliable. For example, an objection to a map because the incumbent resides outside the district boundaries will not be well taken because the parties should be seeking and providing that information prior to the deadline for expert disclosures.

³Any objections to expert testimony must be based on their current findings and opinions, and not merely a repetition of prior *Daubert* challenges that have already been addressed.

⁴The Court has not determined how many fact witnesses will be allowed at trial, but the number will be extremely limited. Due to time constraints, the offering party must show a specific need for such testimony before it is allowed (*e.g.* to show a community of interest or political cohesion), and the testimony must be very brief. The parties are urged to share both fact and expert witnesses, to the extent possible, to avoid cumulative testimony.

complete all fact discovery on or before Monday, June 26.⁵

8. Dispositive motions have been resolved, and the deadline for dispositive motions will not be re-opened.

9. All parties shall FILE their pretrial disclosures, as required by Fed.R.Civ.P. 26(a)(3), by Monday, July 3. This includes a list of the parties' claims or defenses: each district being challenged; how the party has standing to make the challenge; and the specific cause of action being asserted, which must be consistent with the claims in the live pleadings; the estimated length of trial on each plan; any written stipulations or agreements to avoid unnecessary proof at trial; the name of each fact and expert witness that the party expects to present;⁶ the designation of any witness whose trial testimony may be presented by deposition; and the identification of each document or other exhibit that the parties may offer. The parties are expected to coordinate and share joint exhibits to avoid cumulative evidence and to minimize the size of the record. Each exhibit shall be clearly marked by number, party (or joint), and district/county as applicable, and exchanged in advance of trial. If the parties intend to rely on anything that already exists in the Court's record to prove their claim, they must specifically advise the Court in writing.⁷ In other words, the parties cannot come to trial and rely on the

⁵Evidence on the legislative process will not be allowed if such evidence is merely cumulative of the official legislative record.

⁶Absent justification, this should be limited to witnesses previously disclosed.

⁷This includes prior exhibits, which must be clearly identified by party/number, and the
(continued...)

fact that a document may already be somewhere in the record, which has grown to be massive, and expect the Court to find it later. The parties should formulate a plan for efficient presentation of trial evidence and adhere to the plan as much as possible.

10. The Court will hold a pretrial conference on Friday, July 7, at 9:00 a.m. to resolve any trial time management concerns or disputed evidentiary issues.

11. This case is set for **trial before the three judge panel** commencing on Monday, July 10, at 8:00 a.m. in Courtroom No. 1, First Floor of the John H. Wood, Jr. Courthouse, 655 E. Cesar E. Chavez Blvd., San Antonio, Texas 78206. All claims must be tried in five calendar days, with the claims on the Texas House plan to proceed first.

SIGNED on this 1st day of May, 2017.

_____/s/_____
JERRY E. SMITH
UNITED STATES CIRCUIT JUDGE

_____/s/_____
ORLANDO L. GARCIA
CHIEF U.S. DISTRICT JUDGE

_____/s/_____
XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

⁷(...continued)
Court's findings on the 2011 plans, which must be clearly identified by docket/page/paragraph number.