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

SHANNON PEREZ, et al., Plaintiffs, v. STATE OF TEXAS, et al., Defendants.	§ § § § § § §	CIVIL ACTION NO. 11-CA-360-OLG-JES-XR [Lead Case]

MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES, Plaintiffs, v. STATE OF TEXAS, et al., Defendants.	§ § § § § § § §	CIVIL ACTION NO. SA-11-CA-361-OLG-JES-XR [Consolidated Case]

TEXAS LATINO REDISTRICTING TASK FORCE, et al., Plaintiffs, v. RICK PERRY, Defendant.	§ § § § § §	CIVIL ACTION NO. SA-11-CA-490-OLG-JES-XR [Consolidated Case]

MARGARITA V. QUESADA, et al., Plaintiffs, v. RICK PERRY, et al., Defendants.	§ § § § § §	CIVIL ACTION NO. SA-11-CA-592-OLG-JES-XR [Consolidated Case]

EDDIE RODRIGUEZ, et al.,	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO.
	§	SA-11-CA-635-OLG-JES-XR
RICK PERRY, et al.,	§	[Consolidated Case]
Defendants.	§	

CONDITIONAL MOTION FOR PRELIMINARY INJUNCTION ON IMPLEMENTATION OF 2013 REDISTRICTING PLANS FOR 2016 ELECTION CYCLE

In the event the Court has not issued a decision on the merits by the time the 2016 election cycle commences, the parties filing this motion—LULAC plaintiffs, NAACP plaintiffs, Perez plaintiffs, Quesada plaintiffs, and Rodriguez plaintiffs—urge the Court to grant them a preliminary injunction, barring implementation of the 2013 House and Congress redistricting plans for the 2016 election cycle.

The first major step in the 2016 election cycle is the month-long period of candidate qualifying for the March 2016 party primaries, which opens just over a month from now, on November 14, 2015, and ends at 6 p.m. on December 14, 2015.

The movants satisfy the four-part test for a preliminary injunction set out in such decisions as *Texans for Free Enterprise v. Texas Ethics Comm'n*, 732 F.3d 535, 536-37 (5th Cir. 2013).

A. LIKELIHOOD OF SUCCESS ON THE MERITS

First, the movants have demonstrated a likelihood of success on the merits of their challenges to implementation of the 2013 House and Congressional plans. They have established this likelihood of success for two reasons.

1. Fourteenth Amendment and Section 2 of the Voting Rights Act

The 2013 plans for both the House and the Senate violate the Equal Protection Clause of the Fourteenth Amendment and Section 2 of the Voting Rights Act. The particulars of these violations have been fully briefed in the round of briefing following the August 2014 trial on the 2011 redistricting plans and in previous briefing following the September 2011 merits trial and interim map hearings. The evidence supporting movants' claims is thoroughly reviewed in these earlier briefings.[*]

We recognize that the Court had held a trial on the legality of the 2011 plans. Once liability for those plans is declared under the Constitution and Section 2, it is clear that the interim remedy adopted by the Court in 2012 and enacted by the State in 2013 (with only a modest variation in the House plan) fail to fully remedy the violations. For example, the 2013 congressional plan fails to effectively remedy the clear violation with respect to CD23. Current CD23 in the interim-2013 enacted plan deprived Latino voters of their right to elect their candidate of choice, something they possessed prior to 2011. At a minimum, the Court should not permit that violation to continue for yet another election cycle.

2. Preclearance under Section 3 of the Voting Rights Act

Movants are also likely to succeed on the merits because they have demonstrated that the 2011 House and Senate redistricting plans were enacted for an invidious racial purpose and that,

[*] This earlier briefing extensively canvasses the evidentiary record, with pinpoint record citations. Rather than repeat these discussions and citations, this motion instead incorporates them by reference. Relevant briefing after completion of the August 2014 trial includes: (a) for the NAACP plaintiffs, Doc. 1280 (post-trial brief) at 17-30 (intent) and at 30-43 (Section 2 dilution); (b) for the NAACP plaintiffs, Doc. 1294 (post-trial reply brief) at 3-10 (intent) and at 10-15 (Section 2 dilution); (c) for the Perez plaintiffs, Doc. 1263 (post-trial brief) at 1-5 (fragmentation) and at 5-9 (*Larios* claim); (d) for the LULAC, Quesada, and Rodriguez plaintiffs, Doc. 1277 (joint post-trial brief—congressional) at 22-45 (CD35 and Travis County) at 46-51 (Nueces County) at 51-57 (South Texas "envelope") and at 57-66 (Dallas-Fort Worth Metroplex); and (e) for the LULAC, Quesada, and Rodriguez plaintiffs, Doc. 1292 (joint post-trial reply brief—congressional) at 7-11 (invidious racial intent) and at 12-15 (Travis County and CD25) and at 15-18 (Nueces County and CD27) and at 18-21 (DFW Metroplex) and at 21-23 (South Texas envelope).

as a consequence, the Court should invoke the bail-in provisions of Section 3 of the Voting Rights Act to require preclearance of, at a minimum, any redistricting plans legislatively adopted for the Texas Legislature or Texas congressional seats subsequent to the initiation of this lawsuit in 2011. This means that the redistricting plans for the Texas House and Texas Congressional seats could not be implemented without having first obtained preclearance from either this Court or the Attorney General of the United States. The substantial briefing and evidence supporting these claims is found in the same hearings and briefing following the September 2011 and August 2014 trials, as well as the interim map hearings in the spring of 2012.

B. SUBSTANTIAL THREAT OF IRREPARABLE HARM IF INJUNCTION NOT GRANTED

If the requested injunction is not granted, the movants face a substantial threat of irreparable harm. Two election cycles have already come and gone since this Court enjoined the 2011 plans and ordered interim plans for the 2012 and 2014 election cycles. Movants have timely worked to have their voting rights recognized and protected, but there has not yet been a ruling on the merits of their claims. This means that, if the 2016 election is allowed to proceed using the plans first challenged in 2011 and then again in 2013, and if (as they have urged) they have established the *bona fides* of their voting rights claims, their full rights to exercise one of the most fundamental actions in a democratic society—voting unencumbered by racial animus and invidious racial effect—will have been violated for more than half a decade and more than half the inter-censal period before the next census happens. By any existing legal standard, this denial of their fundamental rights constitutes irreparable harm.

C. THREATENED INJURY OUTWEIGHS ANY HARM TO THE STATE

There is no actual harm to the State from having to give full and fair recognition to the rights of minority voters in Texas House and Texas Congressional elections. The state has shown itself unwilling to take any steps to protect those rights without either the threat of, or the actual occurrence, of judicial intervention. Even then, as in the 2013 redistricting efforts, it has shown itself unwilling to take corrective action except in the most grudging and narrow manner possible. But what it has shown is the ability to move with alacrity. There is more than enough time *now*—with a little over two months remaining before completion of the first step in kicking the 2016 election cycle into full gear—for the state to put into place new plans that protect minority voters throughout the state and to do so in a timely manner for the 2016 election cycle. This Court should order such relief now so that, for the first time in half a decade, elections may be conducted under a districting regime that does not violate the constitutional and statutory rights of Texas's minority voters.

D. INJUNCTION WILL NOT DISSERVE THE PUBLIC INTEREST

The public interest can hardly be disserved by the State being required to conduct its upcoming House and congressional elections under a legal districting system that honors minority voting rights. The public certainly has an additional interest in having the elections proceed under an orderly, concrete schedule—but there is more than enough time for that interest to be met at the same time as the fundamental interest in an election that does not reduce minority voting rights to something less than is constitutionally and statutorily required.

CONCLUSION

We have styled this motion "conditional" because a timely ruling on the merits would obviate the need for the preliminary injunction requested in this motion. Absent that, however, the parties strongly urge the Court to grant them a preliminary injunction, which bars the state from closing candidate qualifying for the 2016 party primaries using the 2013 districting plans for the Texas House and Congressional seats.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 2015, I filed a copy of the foregoing for service on counsel of record in this proceeding through the Court's CM/ECF system.

/s/ Renea Hicks
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