

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS, ET AL.

Vs.

RICK PERRY, GOVERNOR OF TEXAS,
ET AL.

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CIVIL NO. 2:03-CV-354

**AMERICAN GI FORUM BRIEF
IN SUPPORT OF A REMEDIAL ORDER**

NOW COME Plaintiffs American GI Forum of Texas, *et al.* (“GI Forum”) and submit this brief in support of a remedial order in this case.

**I.
BACKGROUND**

On June 28, 2006, the Supreme Court affirmed in part the judgment of this District Court, reversed in part, vacated in part and remanded this case for further proceedings. *LULAC v. Perry*, 548 U.S. ___, No. 05-204, slip op. at 41 (June 28, 2006) (opin. of Kennedy, J.). Specifically, the Court affirmed the District Court’s dispositions on the state-wide political gerrymandering claims and the Voting Rights Act claim against District 24, reversed and remanded on the Voting Rights Act claim with respect to District 23 and vacated the judgment of the District Court on the race-based equal protection claim and the political gerrymandering claim as to District 23. *Id.* at 3.

The Supreme Court held that the State’s redrawing of lines in District 23 violated §2 of the Voting Rights Act of 1965, 42 U.S.C. *et seq.* As a result, there is no legally valid congressional redistricting plan in place for the upcoming 2006 general election; this Court must now adopt a

remedial redistricting plan.

II.
PRINCIPLES TO GUIDE THIS COURT'S ADOPTION
OF A REMEDIAL REDISTRICTING PLAN

GI Forum urges the Court to adopt a set of redistricting principles prior to embarking upon the creation of a remedial redistricting plan, and to ensure that any remedial redistricting plan adheres to the ruling of the Supreme Court in this case and is limited to repairing the legal infirmities of the State's plan.

To assist the Court, GI Forum sets out below suggested criteria for a new remedial plan. In addition, GI Forum includes as an exhibit a demonstrative redistricting plan that employs these criteria. Given the time constraints imposed by this Court for the parties' submission of proposed remedial plans, GI Forum presents its remedial plan as only one possibility among a range of options available to the Court. More importantly, on remand GI Forum seeks a remedial plan that employs the principles set out below:

A. Restore District 23 as a Latino Opportunity District

The Supreme Court concluded that the State's configuration of District 23 illegally diluted the voting strength of Latinos. Finding that Latinos in District 23 satisfied the first precondition under *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Supreme Court noted that in the *Balderas* court-drawn plan 1151C, Latinos comprised 57.5% of the citizen voting age population in District 23 and that "the Latino majority in old District 23 did possess electoral opportunity protected by §2." *Id.* at 21. The Court further found that voting in District 23 was severely racially polarized. *Id.* Finally, the Court concluded that under the totality of circumstances, the State violated the §2 rights of Latinos when it redrew District 23. *Id.* at 36.

The restoration of District 23 as a Latino opportunity district is of primary importance to GI Forum. In order to ensure that any remedial configuration of District 23 offers Latino voters the opportunity to elect their preferred candidate, GI Forum urges this Court to adopt a District 23 that includes at least a 55% majority of Spanish-surnamed registered voters as of the 2002 general election (similar to that of 1151C) and that elects the Latino-preferred candidate in re-aggregated statewide racially-contested elections.

B. Include Webb County Whole in CD 23

Voters in Webb County played a critical role in making District 23 an opportunity district for Latinos prior to the 2003 redistricting. In its decision, the Supreme Court specifically mentioned that Webb County Latinos were both cohesive and instrumental in the performance of District 23 as an opportunity district. *See id.* at 33 (“Webb County in particular, with a 94% Latino population, spurred the incumbent’s near defeat with dramatically increased turnout in 2002 . . . In response to the growing participation that threatened Bonilla’s incumbency, the State divided the cohesive Latino community in Webb County . . .”).

The registration and turnout of Webb County voters is sufficient to ensure that District 23 offers Latinos the opportunity to elect their candidate of choice. In light of this past performance, GI Forum urges the Court to include Webb County whole in a newly-restored District 23. Maintaining Webb County whole in District 23 upholds the traditional districting principle of respecting county boundaries, maintains the integrity of a community of interest and provides District 23 with cohesive voters who can support a Latino opportunity district.

C. Ensure that South and West Texas Contains at Least Six Latino Opportunity Districts

The Supreme Court affirmed, as not clearly erroneous, this Court’s finding that, under §2, no

more than six reasonably compact Latino opportunity districts can be drawn in South and West Texas. *Id.* at 24. In light of this Court's ruling that §2's requirements are met with six Latino opportunity districts in the region, and the *Balderas* court's similar creation of six Latino opportunity districts to satisfy §2, GI Forum urges this Court maintain at least six districts in South and West Texas that contain a majority of citizen voting age Latinos and that offer Latino voters the opportunity to elect their candidate of choice. Maintaining six Latino-majority opportunity districts in the remedial plan will ensure that it complies with the requirements of §2.

D. Reconfigure CD25 in South/Central Texas

Anticipating that District 25 would be re-drawn in any redistricting plan that remedied the defects in District 23, a majority of the Supreme Court did not take up the question whether the Legislature's configuration of District 25 violated the Constitution. However, the Court did find that District 25 was not sufficiently compact to satisfy §2 and thus could not offset the loss of Latino electoral opportunity in District 23. The Court found that "The Latino communities at the opposite ends of District 25 have divergent "needs and interests," owing to "differences in socio-economic status, education, employment, health, and other characteristics." *Id.* at 18 (quoting this Court's opinion in *Session v. Perry*, 298 F. Supp. 2d 451, 502 and 512 (2003)). In light of the Supreme Court's determination that District 25, as configured by the State, encompassed differing Latino communities, and was not compact enough to satisfy §2, GI Forum suggests that this Court reconfigure District 25 so that it no longer links U.S. Mexico border communities with the City of Austin.

Furthermore, in order to limit the geographic scope of the changes to districts in the remainder of the statewide redistricting plan, GI Forum suggests that the Court maintain District 25 in the South/Central Texas region in which it was placed by the Texas Legislature in 2003.

E. Limit the Changes in the Remedial Plan to Repairing the Legal Defect in Order to

Promote Stability

Restoring District 23 will require releasing several Hill Country counties from that district and replacing that population with an area containing a greater concentration of Latino voters. In order to promote stability, GI Forum suggests that this Court move District 23's Hill Country towns and counties into District 21, where they were located previously. Uniting Hill Country towns and counties in District 21 maintains that community of interest and allows a repair to District 23. GI Forum also urges the Court to limit the "ripple effect" of its remedial redistricting plan to those districts that are affected by the repair of District 23 and the necessity of moving district lines to equalize population in South and Central Texas.

III.
GI FORUM PROPOSED REMEDIAL PLAN

The GI Forum proposed remedial plan (Plan 1417), attached as Exhibit A, is one approach to creating a remedy that follows the principles set out above.

Plan 1417 restores District 23 as a Latino opportunity district by returning it to the configuration in the *Balderas* court-ordered plan 1151C. As a result, Plan 1417 also keeps Webb County whole. The restored District 23 contains a Latino citizen voting age population of 57.4% and a Spanish surnamed voter registration of 55% in 2002. District 23 in Plan 1417 will offer Latino voters the opportunity to elect their candidate of choice and satisfies the requirements of Section 2. *See id.* at 21.

Plan 1417 reconfigures District 25 to respect communities of interest. Plan 1417 creates a District 25 that is limited to San Antonio, Austin and the small cities along the I-35 corridor, mirroring legislatively-created District 21 to the north. The South Side of San Antonio and Southeast Austin share many socio-economic characteristics that allow them to form a

community of interest. Each area is firmly working-class to poor, as San Antonio's South Side is home to "a disproportionate share of [the] economically disadvantaged," while Austin's Southeast Side has seen a sharp rise in "apartment homes and low-income housing projects... especially since the City... began offering intense subsidies on those types of structures." Juanita Firestone, *et al.*, CIS Report, Population Patterns and Trends, 2002, UTSA Institute of Policy and Research, available at <http://mrpi.utsa.edu/content/cispopul.htm>; Austin American Statesmen Online, available at http://www.statesman.com/classifieds/content/classifieds/realestate/neighborhoods/neighborhood_stories/78744.html. As such, both are characterized by average household incomes below \$40,000, and an average home value falling below \$70,000. *See, e.g.*, American Factfinder, U.S. Census Bureau, available at <http://factfinder.census.gov> (demographic descriptions culled from 2000 Census data for zip codes 78214, 78221, 78744 and 78741). This concentration is also evident in the educational attainment of the residents; roughly 55%-65% are high school graduates. *See id.*

It is important to note that once the cost of living is taken into account, these differences are even less significant. *See, e.g.*, Council for Community and Economic Research, *Cost of Living Index for the First Quarter 2005, Texas Metro Urban Areas*, available at http://www.houstontx.gov/police/pdfs/hr_accra05.pdf.

District 25 is also ethnically diverse, containing 43% Latino citizen voting age population, 13.6% African American citizen voting age population and 40.6% Anglo citizen voting age population.

Finally, Plan 1417 changes six districts from Plan 1374C -- the fewest number of districts

possible after restoring District 23 and modifying District 25 to respect communities of interest.

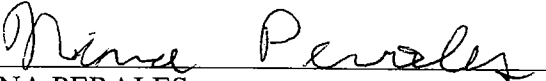
IV.
CONCLUSION

For the foregoing reasons, GI Forum respectfully requests that this Court adopt the principles outlined above and that the Court also create or adopt a remedial redistricting plan that utilizes these principles.

DATED: July 13, 2006

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE &
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CERTIFICATE OF SERVICE

I hereby certify that an electronic form of this _____ was provided to counsel in this case through the Court's electronic filing system, and a courtesy copy has also been provided to the following counsel on this 13th day of July, 2006:

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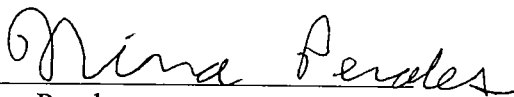
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