

**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
CONSOLIDATED**

**MOTION FOR LEAVE TO INTERVENE
AND
SUBMISSION OF
PROPOSED REMEDIAL REDISTRICTING PLAN**

Congressmen Henry Bonilla, Henry Cuellar, and Lamar Smith hereby request leave to intervene in this action and to submit the remedial redistricting plan attached hereto. In support of their request, Intervenors state the following:

**I.
PRELIMINARY STATEMENT**

Intervenors are the incumbent congressmen for the 28th, 21st, and 23d Congressional Districts of Texas. Their interests thus will be affected directly by any remedial plan adopted by this Court.

In addition, Intervenors and a number of their counterparts from other Texas districts, both Democrat and Republican, worked to develop a bipartisan remedial plan. A map of that plan and supporting documentation is attached hereto as Exhibit A. Intervenors seek leave to intervene so they can advance this bipartisan plan as a remedy.

Intervenors have an interest in the subject matter of this action and the disposition of this action may as a practical matter impair or impede their ability to protect their interests. Moreover, their interests are not adequately represented by the existing parties to this action, in

that the various actors are subject to different considerations and pressures. Under these circumstances, Intervenors should be permitted to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a). Alternatively, Intervenors request leave to intervene pursuant to Federal Rule of Civil Procedure 24(b).

Intervenors have not attached a proposed pleading setting forth a claim for relief hereto. Since this case is in its remedial phase, and Intervenors seek only to have a voice in that phase, Intervenors believe this pleading adequately states their position.

II. **THE PROPOSED BIPARTISAN REMEDIAL PLAN**

The remedial plan submitted by Intervenors is the only map submitted to the Court that has bipartisan support. It meets all of the criteria announced by the Court its recent decision in *LULAC v. Perry*, as well as the criteria set forth by the United States Supreme Court in *Upham v. Seamon*, 456 U.S. 37 (1982). Furthermore, it meets the criteria previously applied by this Court in its decision in 2001, which emphasized the maintenance of existing districts and the avoidance of incumbent pairings.

This map has the support of the two congressmen who currently represent Webb County, including Congressman Cuellar, who resides in that county. In addition, the map should be supported by local elected officials and community leaders in that county who believe that continued representation by two congressmen, particularly when one of them is located in their community, is better than having their county whole in a single congressional district.

Intervenors' proposed map alters a minimal number of districts and most importantly minimizes the changes in the number of split precincts in order to aid in the ease of election administration. Changes in the map from the prior map have also been made in such a way as to hopefully ease election administration.

This map was prepared in an attempt to obtain agreement from both the Democratic and Republican members of the Texas congressional delegation. While the two delegations have been unable to reach complete agreement, all of the Republican members of the delegation as well as Congressman Cuellar from the Democratic delegation have agreed to the compromise bipartisan map. While Congressman Hinojosa and the rest of the Democratic delegation have not agreed to the bipartisan map the drafters of the map have attempted to take into account Congressman Hinojosa's concerns regarding the territorial integrity of cities in Hidalgo County. Congressman Doggett also has been actively involved in negotiations on the map and has agreed that it is a suitable compromise but has refrained from endorsing the map and has informed drafters that he will announce his ultimate decision on Friday.

The map drawers attempted to minimize the number of districts affected by the changes to the 2004 map in order to comply with the Supreme Court's decision in *Upham* as well as this court's 2001 decision in this same case. The map submitted to the Court changes only five congressional districts from the 2004 map.

While the map's drafters attempted to incorporate compromises in order to ameliorate partisan contentiousness, they did so within some strict parameters. The most important of these was the attempt to use whole counties or to divide counties as they were divided in the prior map. When this could not be done the drafters attempted to use whole precincts wherever possible in order to ease election administration. Only four counties have had the division of their counties altered by this map. Those counties are Bexar, Travis, Webb, and Hidalgo. All other counties are either whole or the division of the county has remained exactly the same even if that county is now in a different congressional district.

Obviously some precincts must be divided in order to satisfy the “one person, one vote” requirement. The drafters attempted to keep the number of divided precincts to a minimum. If requests for specific geographic features by congressmen could be honored without splitting a precinct or violating the geographic parameters described above, the drafters attempted to honor the request. If a request would require splitting a precinct, it was honored only if that same split could also be used to reduce the deviation between the congressional districts to zero. Otherwise the request was not honored since, given the strict time constraints caused by this Court’s apparent desire to implement a new congressional district map prior to the 2006 election, the election administrators of the State of Texas will have great difficulty executing an election for 2006 under any map other than the 2004 congressional district map. The drafters were extremely conscious of that fact and wanted to create the simplest map for the election administrators to execute.

The primary requirement that the drafters had to achieve in this map was to raise the Hispanic citizen and voting age population (“HCVAP”) in Congressional District 23 to the benchmark embodied in the plan imposed by this court in 2001. This can be achieved by adding Hispanic population from Webb County, or by adding Hispanic population from Bexar County. No matter which county this Hispanic population is taken from, it must be removed from Congressional District 28, which then must acquire more Hispanic population from Congressional District 25 in order to maintain its benchmark. Since the United States Supreme Court determined that Congressional District 25 cannot be considered to be a district either required under the Voting Rights Act or a majority minority district, Congressional District 25’s Hispanic benchmark does not have to be maintained. Indeed, Justice Kennedy’s opinion clearly

anticipated that Congressional District 25 would be reconstructed as something other than a majority minority district.

Also in accord with this Court's 2001 decision, *Upham*, and bipartisan compromise, the drafters of the map attempted to avoid the pairing of any current congressmen. As a result, the drafters raised Congressional District 28's HCVAP by including additional Hispanic population from Bexar County. This population was acquired from the south side of Bexar County. The bipartisan compromise map raises congressional District 23's HCVAP in excess of 57.4 percent which is greater than the HCVAP in District 23 as drawn by this Court in 2001. Since HCVAP is the figure identified by Justice Kennedy as the critical number, this district and either District 23 or majority minority District 28 encompassing all of the significant Hispanic population in the area, these two districts should be a sufficient remedy for the Voting Rights Act violation found by Justice Kennedy.

A number of whole counties are placed in different districts in this map. Kendall, Kerr, Bandera, and Real counties were moved from District 23 and placed in District 21. Gonzales, Karnes, Live Oak, Duval, Jim Hogg and Star counties were moved from District 25 and placed in District 28. Fayette, Colorado, and Lavaca counties were moved from District 15 and placed in District 28. Guadalupe County was moved from District 28 and placed in District 25. Frio County was moved from District 28 and placed in District 23. The portion of Bastrop County which was previously in District 15 has been moved to District 25. The portions of Hays and Comal Counties which were previously in District 28 have been moved to District 25.

The division of Webb County has been altered from the 2004 congressional map. Congressman Cuellar requested that the hospital, the airport and his home be placed in his congressional district. While this required the division of a precinct, this same area could be

used to resolve the population deviations therefore this request was honored. Both Congressmen Cuellar and Congressman Bonilla, as well as several local leaders, are in agreement that this is an appropriate division that will generally benefit Webb County.

The division of Travis County changed in response to requests by Congressman Doggett and the need for District 21 to lose population as a result of the addition of Kendall, Kerr, Bandera and Real counties to District 21. Congressman Smith wanted to continue to represent large portions of Travis County including the University of Texas and the area where his Travis County congressional office is located. Congressman Doggett wanted many of the same areas as well as the federal building in downtown Austin.

Congressmen Smith and Doggett reached a compromise which allowed Congressman Doggett to substantially increase the amount of Travis County in District 25 and while the inclusion of the federal building required the division of a precinct, this precinct was used to resolve population deviations and therefore the request was honored. Despite his earlier representation of assent he has now reserved judgment until Friday.

Congressmen Cuellar and Hinojosa were unable to reach agreement regarding the division of Hidalgo County, and Congressman Hinojosa has not endorsed the bipartisan compromise map. However, the drafters still attempted to incorporate a number of the Congressman Hinojosa's concerns. Congressman Hinojosa principally was concerned about the division of municipalities in Hidalgo County. Hidalgo County has extraordinarily large precincts which do not conform to the municipal boundaries of the area. As a result the need to avoid precinct division conflicted with maintaining municipal boundaries.

However, the drafters did attempt to generally keep municipalities whole inside of Hidalgo County to the extent which the precinct lines allowed this. In particular the city of

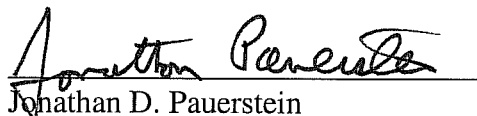
McAllen is largely whole, unlike the current map, the small cut that was made through McAllen was made in the location which Congressman Hinojosa suggested. The drafters are not unsympathetic to the concerns of Congressman Hinojosa or municipal leaders in generally keeping their municipalities whole but the need to file this map in a timely fashion required that the drafters proceed without Congressman Hinojosa's approval however the drafters are hopeful that something might be resolved prior to resolution of this case.

Bexar County has more changes than any of the other divided counties. This is because of the significant changes required in Districts 23 and 28 as well as the fact that District 20 is untouched and is situated in the center of the county, which means all the other districts must turn around it. Furthermore, since it is located in a place in the state where most of the districts involved were contiguous it was easier to resolve large population differences within Bexar County. Because of the impact which this could have on election administration, the drafters were particularly careful to minimize the number of divided precincts in this County. Only 3 additional precincts were divided in Bexar County in order to resolve population deviations. While a relatively large number of precincts have been moved from one district to another the drafters have attempted to minimize the difficulties of election administrators by limiting the number of divided precincts.

The drafters of this map have constructed it with a careful eye to the peculiar difficulties of running an election in the extremely abbreviated timeframe which is currently being contemplated by this court. By proposing this map the drafters are not suggesting that an election held in such an abbreviated timeframe is either feasible or wise. However, if the Court seeks to implement a new congressional districting map for the 2006 general election, then we believe it should be one which is designed to minimally impact election administration, complies

to the greatest extent possible with the policy goals embodied by the elected representatives of the people in the prior legislative map, and attempts to execute the required changes in a fair and bipartisan manner which is respectful of both the voters and their elected representatives. The map attached hereto accomplishes those goals.

Respectfully submitted,

A handwritten signature in black ink, reading "Jonathan Pauerstein", written over a horizontal line.

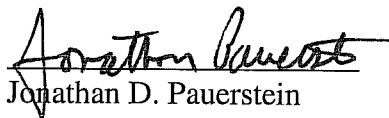
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CERTIFICATE OF SERVICE

This is to certify that on the 14th day of July, 2006, a true and correct copy of the foregoing document was served on the following counsel of record via electronic mail:

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Jonathan D. Pauerstein

District	Population	% CHPOP fixed	% CHVAP fixed	% AP Blk	% Hispanic Origin	% NH Wht	% 18+ AP Blk	% H18+ Pop	% NH18+ Wht	% SPNO0G
5	651619	76.04%	70.09%	1.68%	78.70%	18.82%	1.91%	74.43%	22.74%	44.93%
1	651620	18.05%	15.76%	4.76%	19.14%	72.26%	4.15%	17.13%	74.78%	9.94%
3	651620	62.68%	57.43%	1.97%	65.62%	30.79%	2.02%	61.91%	34.31%	40.50%
5	651620	34.00%	28.57%	12.30%	38.95%	45.89%	11.55%	34.50%	50.57%	16.58%
8	651619	68.89%	62.18%	3.28%	73.01%	23.28%	3.45%	68.56%	27.45%	40.87%