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U.S. DISTRICT COURT
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EASTERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

OCT 12 2003

DAVID MALAND, CLERK
By *[Signature]*
Deputy

EDDIE JACKSON, BARBARA MARSHALL,)
GERTRUDE FISHER,)
HARGIE FAYE JACOB- SAVOY, AND)
EALY BOYD,)

Plaintiffs,)

vs.)

STATE OF TEXAS; RICK PERRY, Governor)
of the state of Texas; GEOFFREY S. CONNOR,)
Secretary of State for the State of Texas,)

Defendants.)

Civ. Action No. 03-03C v - 356

[Handwritten initials]

COMPLAINT

Plaintiffs allege that:

I. INTRODUCTION

1. On or about October 10, 2003, the State of Texas enacted a new Congressional redistricting plan (the "2003 Redistricting Plan"). It is the State's intention to use this plan for elections to be held beginning in 2004.
2. Plaintiffs file this action seeking declaratory and injunctive relief to prevent the Defendants from using the 2003 Redistricting Plan in any future elections. Plaintiffs bring this action pursuant to 42 U.S.C §1983, as well as 42 U.S.C. §1973 (Section 2 of the Voting Rights Act of 1965, as amended). The plan significantly harms minority voters, including plaintiffs, by reconfiguring districts throughout the State, including the First Congressional District. The injury to

African American and Hispanic voters throughout the State is neither necessary nor justified.

3. The new plan violates Section 2 of the Voting Rights Act, 42 U.S.C. §1973, by significantly decreasing the opportunities for African-American and Hispanic voters to participate in the political process and to elect Representatives of their choice.
4. The 2003 Redistricting Plan was drawn, among other things, to insure that that the following Anglo Democratic Representatives would be defeated in the 2004 elections: Congressman Sandlin (District 1), Congressman Turner (District 2), Congressman Hall (District 4), Congressman Lampson (District 9), Congressman Doggett (District 10), Congressman Edwards (District 11), and Congressman Stenholm (District 17). Minority voters in each of these districts “play a substantial, if not decisive, role in the electoral process.”
5. The 2003 Redistricting Plan also targets for defeat Congressman Frost (District 24). The current 24th district, which has a primary electorate that is roughly 2/3 African-American, provides minority voters with an opportunity to participate effectively in the political process and to elect a candidate of their choice to congressional office. Minority voters from the current 24th District are fractured and fragmented by the 2003 Redistricting Plan into several districts where they will have no voice or impact in the political process. The dismantling of the existing 24th congressional district will deprive minority voters of an effective opportunity to participate in the political process and to elect their preferred

candidate to office in violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973.

6. The 2003 Redistricting Plan is a blatant partisan gerrymander that is designed to thwart majority rule, is an affront to basic democratic values, and is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
7. The Redistricting Plan violates Article I of the United States Constitution because the State of Texas lacks authority to enact a new congressional redistricting plan in mid-decade after a legally valid congressional plan is in place and has been used in the post-2000 redistricting cycle.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1357; and pursuant to 42 U.S.C. § 1973j(f). Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201, 2202, and 2284, as well as by Rules 57 and 65 of the Federal Rules of Civil Procedure. Venue is proper pursuant to 28 U.S.C. §§ 1391(b).

III. PARTIES

9. Plaintiffs are citizens and registered voters residing in the current First, Ninth, and Twenty-Fourth Congressional Districts. Plaintiffs have standing to bring this action under 42 U.S.C. § 1983 to redress injuries suffered through the deprivation, under color of state law, of rights secured by the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, the Fourteenth Amendment

10. Plaintiff EDDIE JACKSON is an African-American citizen above the age of eighteen who is registered to vote. He is a resident of the current First Congressional District and is a registered voter in the new reconfigured First Congressional District under the 2003 Redistricting Plan.
11. Plaintiff BARBARA MARSHALL is an African-American citizen above the age of eighteen who is registered to vote. She is a resident of the current First Congressional District and is a registered voter in the new reconfigured First Congressional District under the 2003 Redistricting Plan.
12. Plaintiff GERTRUDE FISHER is an African-American citizen above the age of eighteen who is registered to vote. She is a resident of the current First Congressional District and is a registered voter in the new reconfigured First Congressional District under the 2003 Redistricting Plan.
13. Plaintiff HARGIE FAYE JACOB- SAVOY is an African-American citizen above the age of eighteen who is registered to vote. She is a resident of the current Ninth Congressional District and is a registered voter in the new reconfigured 2nd Congressional District under the 2003 Redistricting Plan.
14. Plaintiff EALY BOYD is an African-American citizen above the age of eighteen who is registered to vote. He is a resident of the current Twenty-Fourth Congressional District and is a registered voter in the new reconfigured 26th Congressional District under the 2003 Redistricting Plan.
15. Defendant STATE OF TEXAS, acting through the Texas Legislature, is the entity that has redistricted the State's congressional districts in 2003.

16. Defendant RICK PERRY is Governor of the State of Texas and is the chief executive officer of the Defendant State of Texas. Defendant Perry called the Texas Legislature into special session three times in 2003 for the specific purpose of enacting a new congressional plan and he has authority to sign the 2003 Redistricting Plan into law. He is sued in his official capacity.
17. Defendant GEOFFREY S. CONNOR, Secretary of State for the State of Texas, is responsible for the administration and supervision of election laws in the State of Texas, and has the responsibility for the administration and supervision of the election of members to the United States House of Representatives from the State of Texas. He is sued in his official capacity.

IV. FACTUAL ALLEGATIONS

18. On November 14, 2001, a three-judge court, based on findings that the 30 existing congressional districts in Texas were unconstitutionally malapportioned, imposed on the Defendant State of Texas a new 32-district congressional redistricting map. *Balderas v. Texas*, Civil No. 6:01-CV-158, slip op. at 1 (E.D. Tex. Nov. 14, 2001) (three-judge court) (*per curiam*). The three-judge court's map was designated as Plan 1151C and was determined by the three-judge court to be "the remedial congressional redistricting plan for the State of Texas." Final Judgment, at 1.
19. Only the *Balderas* Plaintiffs appealed. Neither the State of Texas, nor Defendant Perry, nor any other Defendant appealed the three-judge court's decision. The Supreme Court summarily affirmed on June 17, 2002. 536 U.S. 919 (2002). The three-judge court's plan (Plan 1151C) was used in the 2002 elections.

20. Under the three-judge court's plan, 20 of the congressional districts leaned Republican in varying degrees and 12 others leaned Democratic in varying degrees. The November 2002 general elections generated a congressional delegation with 15 Republicans and 17 Democrats. Six Democratic candidates (Sandlin, Turner, Hall, Lampson, Edwards, and Stenholm) prevailed in districts even though voters in their districts voted for senatorial, gubernatorial, and other statewide candidates of the *opposite* party. Similarly, one Republican candidate (Bonilla) prevailed in a district that voted for senatorial, gubernatorial and other statewide candidates who were Democrats. Obviously, these seven current Members of Congress won election because they attracted split-ticket voters.
21. In the 2002 elections, Republicans also captured control of the Texas House of Representatives, giving them total control of State government for the first time since Reconstruction.
22. The Texas Legislature met in 2003 but did not enact any congressional redistricting legislation. The Legislature did enact a bill (HB 2496) moving the date of the 2004 primary elections forward to the first Tuesday in March (*i.e.*, March 2, 2004). Defendant Perry announced shortly after the 2003 regular session ended that he was calling the Texas Legislature into special session to take up congressional redistricting. Prior to 2003, the Texas Legislature had never been convened for the purpose of enacting a new congressional redistricting plan to replace a map that was legally valid.
23. Just prior to the start of the first special session, Committees of the Texas House and Senate went around the state and conducted field hearings for the stated

purpose of soliciting the views of the general public on congressional redistricting. Over 5000 persons attended the hearings. Over 90% of those who appeared at the hearings expressed the view that the State of Texas should not take any action to change the current congressional redistricting plan. In addition, more than 130 newspaper editorials from across the State have expressed the view that congressional redistricting should not be undertaken by the State of Texas.

24. Despite this overwhelming and broad-based opposition to congressional redistricting legislation, and the lack of any support for the State to enact a new map, the Republican leadership in the Texas House and Senate, with prodding from the defendant Governor and House Majority Leader Tom DeLay, among others, proceeded to consider congressional redistricting legislation. During the first special session of 2003, however, the Texas Legislature failed to enact a new congressional map. Although the House passed a bill providing for new congressional districts, the Senate failed to do so. The Senate's failure to adopt a new map was based on the fact that more than a third of the senators notified the Senate's presiding officer that they would not support congressional redistricting legislation. Under the Texas Senate's long-honored tradition and practice of requiring a two-thirds vote in order to bring up a bill on the Senate floor (known widely in Texas as "the 2/3 Rule"), notification by at least a third of the Senate that they would not support a congressional redistricting bill effectively killed congressional redistricting legislation in the first special session.

25. As the first session drew to a close, and the defendant Governor announced his intention to call another special session, the presiding officer of the Texas Senate

(Lieutenant Governor David Dewhurst) stated that he would abandon the 2/3 Rule in the Senate so that a congressional bill could be enacted. Dewhurst's decision to abandon the 2/3 Rule broke an earlier promise he had made to certain Democratic members of the Texas Senate that, as Lieutenant Governor, he would honor the 2/3 Rule. Near the end of the first special session, eleven Democratic members of the Texas Senate learned that the first special session would abruptly adjourn sine die and that a second special session would start within minutes thereafter. Without the 2/3 Rule being in effect, these eleven state senators knew that they would be unable to defend themselves and their constituents against congressional redistricting legislation that was being forced upon them. Consequently, they broke quorum and left the State for the entire second session, again effectively killing redistricting legislation, in keeping with the overwhelming public opposition that no congressional redistricting legislation should be considered.

26. As the second special session was drawing to a close, defendant Governor Perry announced that he would call special session after special session until redistricting legislation was enacted. As the Second Special Session came to a close, one of the eleven state senators who had broken quorum (Sen. John Whitmire) announced that he would no longer stay outside of Texas and that he would help establish a quorum for a Third Special Session. The Texas Legislature convened in a third special session on September and took up congressional redistricting legislation. On October 10, 2003, the Texas

Legislature enacted the 2003 congressional map, designated map 1372C on the website of the Texas Legislative Council.

27. The 2003 redistricting map violates Section 2 of the Voting Rights Act, 42 U.S.C. §1973, in that, under the totality of the circumstances, plaintiffs and minority voters are denied an equal opportunity to participate effectively in the political process and to elect candidates of their choice to the U.S. House of Representatives. The 2003 redistricting map also violates Section 2 of the Voting Rights Act, 42 U.S.C. §1973, because, under the totality of the circumstances, plaintiffs and minority voters are denied an equal opportunity to participate effectively in the political process and to have any meaningful or significant influence in elections for Members of Congress in Texas.

COUNT II

28. Plaintiffs reallege the facts set forth in paragraphs 1 through 26, above.
29. The 2003 redistricting map is an intentional partisan gerrymander that thwarts majority rule and is an affront to basic democratic values in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

COUNT III

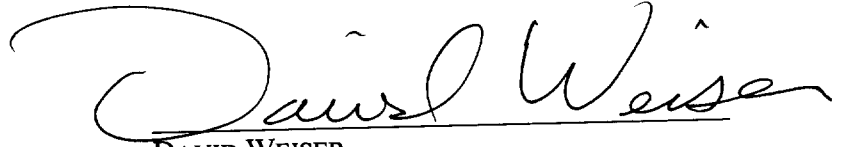
30. Plaintiffs reallege the facts set forth in paragraphs 1 through 26, above.
31. The 2003 redistricting map violates Article I of the United States Constitution because the State of Texas lacks the authority to revise the lawful congressional districting plan that was imposed in 2001 after that plan was used in the 2002 elections and before the next census in 2010.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

1. Assume jurisdiction of this action.
2. Issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57, declaring that the 2003 Redistricting Plan for the State of Texas: dilutes the voting strength of minority voters in violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973; is an unconstitutional political gerrymander in violation of the Fourteenth Amendment to the United States Constitution; and is unconstitutional under Article I of the United States Constitution because the State of Texas lacks constitutional authority to enact a new congressional map in mid decade to replace a legally valid map that has already been used in the post-2001 redistricting cycle.
3. Issue preliminary and permanent injunctions enjoining the defendants, their agents, employees, and those persons acting in concert with them, from enforcing or giving any effect to the proposed district boundaries as drawn in the 2003 Redistricting Plan in Texas, including enjoining the Defendants from conducting any elections for the U.S. House of Representatives, based on the 2003 Redistricting Plan.
4. Make all further orders as are just, necessary, and proper to ensure complete fulfillment of this Court's declaratory and injunctive orders in this case.
5. Issue an order requiring the defendants to pay plaintiffs' costs, expenses and reasonable attorneys' fees incurred in the prosecution of this action, as authorized by the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. § 1988.
8. Grant such other and further relief as it deems is proper and just.

Respectfully submitted by,

A handwritten signature in black ink that reads "David Weiser". The signature is written in a cursive style with a large, looping initial "D".

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