

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

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL.	§	
	§	
vs.	§	CIVIL NO. 2:03-CV-354
	§	CONSOLIDATED
RICK PERRY, GOVERNOR OF TEXAS, ET AL.	§	
	§	

**MEMORANDUM OF INTERVENORS
BONILLA AND SMITH REGARDING
PROPOSED REMEDIAL REDISTRICTING PLANS**

Congressmen Henry Bonilla and Lamar Smith, Intervenors herein, state the following regarding the plans submitted by the various parties to this proceeding:

**I.
THE “LEAST CHANGE” APPROACH**

As did the lawyers for the Jackson Plaintiffs and others at the 2001 trial, we argue that the Court should fashion a remedy while altering the Texas Legislature’s policy decisions, as reflected in the congressional districts it adopted, as little as possible. *Upham v. Seamon*, 456 U.S. 37 (1982) sets the basic parameters to be followed when a court fashions a remedy for a legal defect in a legislatively enacted redistricting plan. *Upham v. Seamon* dealt with an objection to Texas’s 1980s congressional redistricting plan. The Attorney General objected to the construction of Districts 15 and 27. A three-judge district court redrew the two affected districts in South Texas but also applied the standards for court drawn maps to the rest to the state, resulting in the reconfiguration of the districts in Dallas County, in particular Districts 3, 5, 24, and 26.

On appeal, the United States Supreme Court unanimously held that:

Whenever a district court is faced with entering an interim reapportionment order that will allow elections to go forward it is faced with the problem of “reconciling the requirements of the Constitution with the goals of state political policy.” *Connor v. Finch*, supra, at 414, 97 S.Ct., at 1833. An appropriate reconciliation of these two goals can only be reached if the district court’s modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect. Thus, in the absence of a finding that the Dallas County reapportionment plan offended either the Constitution or the Voting Rights Act, the District Court was not free, and certainly was not required, to disregard the political program of the Texas State Legislature.

Upham v. Seamon, 456 U.S. 37, 43 (1982).

The *Upham* Court quoted from another Texas case to illustrate its point:

just as a federal District Court, in the context of legislative reapportionment, should follow the policies and preferences of the state, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the federal Constitution, we hold that a District Court should similarly honor state policies in the context of congressional reapportionment. In fashioning a reapportionment plan or in choosing among plans, a District Court should not preempt the legislative task nor “intrude upon state policy any more than necessary.” *White v. Weiser*, 412 U.S. 783, 794-95 (1973).

Upham v. Seamon, 456 U.S. at 41.

As the Court noted in *Upham v. Seamon*,

Weiser itself presents a good example of when such an intrusion is not necessary. We held [in *Weiser*] that the District Court erred when, in choosing between two possible court ordered plans, it failed to choose that plan which most closely approximated the state proposed plan. The only limits on judicial deference to state apportionment policy, we held, were the substantive constitutional and statutory standards to which such state plans are subject. *Id* at 797.”

Upham v. Seamon, 456 U.S. at 42.

This Court applied the standards of *Upham v. Seamon* when it drew its interim court-ordered congressional map in 2001.¹ Because it followed those standards, the court-ordered plan inevitably largely perpetuated the main features of the gerrymandered districts put in place in the 1990s, when Democrats had political control in Texas. So, now, the policy decisions of the

¹ We recognize that one member of the panel was not part of the panel in 2001.

Texas Legislature must be changed only to the extent necessary to remedy just the violation found by the Supreme Court.

Furthermore, in 2001, the Court made an effort to avoid adversely affecting Congressmen of either party holding unique, major leadership posts. Likewise, the Court sought to ensure that “no incumbent was paired with another incumbent.” *Balderas v. State of Texas*, Civ. Action No. 6:01cv158 (Nov. 14, 2001). These principles should govern here.

Despite the plethora of legal allegations made by the plaintiffs in this case, the Supreme Court found only one legal defect in the 2003 plan. The flaw found by the Supreme Court concerned the level of Hispanic citizen voting age population (“HCVAP”) in District 23. Therefore any remedial plan should be tailored to affect only those districts that must be changed to remedy that problem while not creating another potential violation.

II.
THE BIPARTISAN COMPROMISE PLAN
IS AN APPROPRIATE REMEDIAL PLAN

The Bipartisan Compromise Plan establishes that it is not necessary to place Webb County entirely in District 23 in order to raise District 23’s HCVAP to the benchmark established by this Court’s 2001 redistricting plan. Placing Webb County entirely in District 23 unnecessarily violates an important criterion -- not pairing incumbents, particularly those in leadership posts, with one another. This is so because placing all of Webb County in one district would pair Congressman Cuellar, a Webb County resident who serves District 28, with Congressman Bonilla of the 23rd Congressional District.

This pairing could have the perverse effect of leaving Webb County without a resident congressman, something the county sought to obtain for years. As will be shown by documentary evidence, many Webb County leaders are concerned that placing Webb County

wholly inside District 23 would work against both Hispanic representation and the interests of the county. By following the “least change” approach embodied in the Bipartisan Compromise Plan, the basic shapes of the districts, in particular that of District 23, are maintained, thereby protecting the policy preferences of the 2003 Legislature.

III.
PROBLEMS WITH PROPOSED
REMEDIAL PLANS

A. The Jackson Plaintiffs’ Plan 1406.

The Jackson Plaintiffs’ Plan 1406 unnecessarily pairs the incumbents in Districts 23 and 28. That alone should leave the dogs hunting dead when it comes to this plan.

The Jackson Plaintiffs’ plan also violates the principles taught in *Upham* and in this Court’s 2001 opinion, and contravenes the policy preferences of the Texas Legislature established in its 2003 plan in critical ways. First, it completely eliminates the 21st Congressional District from Travis County. The 21st Congressional District contained part of Travis County in the 2001 court-drawn map. In its 2003 plan, the Legislature significantly increased the portion of Travis County contained in Congressional District 21. In particular, the Legislature chose to place the University of Texas in the 21st District.

The Jackson Plaintiffs’ proposal destroys the legitimate political choices made by the Texas Legislature, even though it is not necessary to do so in order to remedy the violation in District 23. Moreover, the Jackson plaintiffs (and the Travis County parties) attempted to overturn these choices in litigation but lost. Clearly, then, they now attempt to obtain through the side door of remedy what they were unable to obtain through the front door of substantive litigation. This is not an appropriate scheme in a remedial phase of a redistricting case and should be rejected.

The Jackson Plaintiffs' map also alters the division of Hays County unnecessarily. This alteration apparently is meant to appease the political desire of Congressmen Doggett to eliminate Congressman Smith from Travis County and represent the University of Texas. If the 21st District is not totally removed from Travis County, then it becomes unnecessary to alter the division of Hays County. Again, the Jackson Plaintiffs' seek to make unnecessary changes to further the goals of political plotters.

Their blatant political gamesmanship also extends to Bexar County. Instead of simply attempting to raise District 23's HCVAP to an appropriate level, either by making Webb County whole within District 23 or by the method used in the bipartisan compromise map, the Jackson Plaintiffs place all of Webb County inside District 23 but gratuitously remove virtually all the Congressman Bonilla's home neighborhood from the district and replace it with territory from southern and southwestern Bexar County that was not in District 23 in either the Court's 2001 map or the legislatively enacted map of 2003. This is a transparent attempt to undermine Congressman Bonilla, a senior member of the House Republican leadership. This sort of blatant political gamesmanship has no place here. The Jackson Plaintiffs' cannot obtain under the guise of a remedial plan the political outcomes they could not achieve in the Legislature or on the merits in this case. Again, the teachings of *Upham* and this Court's prior rulings counsel that the Court should not adopt a map that is but an attempt to use the remedial process to overturn lawful political policy choices made by the Legislature.

B. The Travis County Plans 1413 and 1414.

The first proposal of the Travis County Plaintiffs (Plan 1413), like the Jackson Plaintiffs' map, removes University of Texas from the 21st District and places it in the 25th District. Plan 1413 also greatly reduces the portion of Travis County contained within the 21st District, albeit

without totally removing the 21st District from Travis County. As does the Jackson Plaintiffs' proposal, this plan uses a strained configuration in Congressman Bonilla's neighborhood to remove virtually his entire home neighborhood from the 23rd District without removing his home. As in the Jackson Plaintiffs' map, these configurations are a blatant political manipulation that has no place in a court-ordered map.

Moreover this map contains several other features that are unacceptable in a court-ordered map. First and foremost, this map unnecessarily alters the 10th Congressional District. There is no legal basis, nor any necessity, for affecting the 10th District in order to remedy the problem in the 23rd District. This is done solely for the political convenience of the incumbent in the 25th District, and baldly flies in the face of the Supreme Court's holding in *Upham*.²

Travis County's second proposal (Plan 1414) suffers from all of the defects listed above with the exception of the division of Gonzales County. In addition, Plan 1414 also pairs the current incumbent in District 28 with the current incumbent in District 23 by placing Webb County entirely within District 23. This would make District 28 an open seat. Since the pairing of incumbents is unnecessary in order to affect a remedy, any plan that pairs incumbents should be rejected by the court.

C. The Overstreet Coalition Of Black Democrats Plan 1421.

The Overstreet Coalition of Black Democrats Plan 1421 pairs the current incumbent in Congressional District 23 with the current incumbent in Congressional District 28. Amazingly, this map actually is more egregious than those proposed by the Jackson Plaintiffs and Travis County in its attempt to remove Henry Bonilla's neighborhood from District 23. As the bipartisan coalition map reveals, it is not necessary to do this in order to increase the HCVAP in

² Plan 1413 also unnecessarily divides Gonzales County which would be totally unnecessary but for the blatant political manipulations in Travis and Bexar counties.

District 23. The fact that these plans repeatedly tamper with Congressman Bonilla's home turf lays bare the political agendas that underlie them. These parties seek political gain, not a true remedy for a Voting Rights Act violation.

Like the Travis County proposals, Plan 1421 also unnecessarily alters Congressional District 10 and removes the University of Texas from District 21. All of these changes are unnecessary alterations in the policy choices embodied in the legislatively enacted map of 2003.

This map would also make Congressional District 28, with a Hispanic voting age population of roughly 75%, the most heavily Hispanic district in the state. The Court might deem this district to be packed.. In any case, several proposals submitted to the Court, including the Bipartisan Compromise Plan, have altered the division of Hidalgo County in order to avoid this result.

D. The GI Forum Plan 1417.

The proposal of the GI Forum (Plan 1417) replicates the 23rd District contained in this Court's 2001 map. While this assures that District 23 meets the benchmark contained in that map at this point in time, this district unnecessarily involves the 11th District in the remedial map. It is extremely important to limit the number of districts involved in any remedy, since changes at this time will alter both the timing of the election and the manner in which it will be held.

Like others, this map unnecessarily pairs the current incumbent in the 23rd District with the incumbent in the 28th District. Moreover, this map attempts to create a seventh majority Hispanic congressional district of exactly the same type that this plaintiff successfully argued to the United States Supreme Court was ineffective in District 23. Plan 1417 attempts to build this district by driving a narrow corridor from Travis County to Bexar County and by dividing Hays

and Comal counties. This proposed 25th District, in its complete reconstruction of the I-35 corridor, clearly violates the policy choices reflected in the Legislature's 2003 map. Moreover, the district is not required to be drawn since it violates the rule that the Supreme Court enunciated in this case requiring that section 2 Voting Rights Act districts contain a majority HCVAP.

While the drafters of the Bipartisan Compromise Plan do not suggest that the Supreme Court's decision prevents the creation of a seventh Hispanic majority district, it certainly does not require the creation of such a district. Unlike the prior 25th District, which was a collection of whole counties except for the two counties divided at either end, the ends of this proposed 25th District are composed of a narrow corridor created by creating new divisions of two counties. Remediating District 23 by raising the HCVAP to an acceptable level clearly does not require or compel the creation of this form of a 25th District.

E. The Pate Plans.

The Pate remedial plans (Plans 1407 and 1408) are yet more radical. These maps do not pair Congressman Bonilla and Congressman Cuellar, but they effectively cause them to exchange districts. The map accomplishes this by driving a narrow finger around Congressional District 20 all way to Congressman Bonilla's home and extracting his home without bringing along the surrounding neighborhood. Such a radical change is obviously an unnecessary violation of state policy preferences which *Upham* was intended to prevent. Plan 1407 also appears to retrogress Congressional District 20.

F. The LULAC Plans.

The two LULAC proposals (Plans 1415 and 1416) rely on a different theory of what is required and allowed in terms of HCVAP in the remedial maps before the court. These two

proposals both retrogress the HCVAP in existing districts, principally Congressional District 20, in order to raise the HCVAP in District 23.

In contrast, the drafters of the Bipartisan Compromise Plan specifically sought to reach this court's benchmark in its 2001 court ordered map for District 23. It is not clear from the Supreme Court's decision that this benchmark must be achieved. Nonetheless, the drafters of the Bipartisan Compromise Plan decided to err on the side of caution and achieve the benchmark. If the benchmark does not have to be achieved in all districts, then a great deal of flexibility enters the drafting process and perhaps the court should consider receiving additional maps geared to this new benchmark.

LULAC's Plan 1416 would pair Congressman Cuellar of District 28 with Congressman Bonilla of District 23, because it moves all of Webb County, where Congressman Cuellar lives, into District 23. This is unnecessary, as is demonstrated by LULAC's proposed Plan 1415, which at least does not pair these two incumbents. That plan, however, would not be acceptable because it would cause retrogression in District 20, Congressman Gonzalez's district. It is not necessary to alter District 20 to remedy the problem in District 23, and thus this proposal goes too far.

Plan 1415 also greatly extends District 21 into West Texas. This is not necessary and should be avoided.

G. The State's Proposal.

The map of the State Defendants (Plan 1422) pairs the current incumbent in District 21, Lamar Smith, with the current incumbent in District 25, Lloyd Doggett.³ As stated earlier, the pairing of incumbents is completely unnecessary to remedy the deficiency in District 23 and

³ In fact, this plan could cause heavily Democratic Travis County to be represented by three Republican congressmen. That hardly would be consistent with the idea that a district's representative ought to reflect its political demographics.

therefore, in keeping with this Court's decision in 2001, no remedial proposal that requires the pairing of incumbents should be accepted, particularly since plans that do not do so while remedying the problem in District 23 have been set forth.⁴

This map also removes the University of Texas from District 21 and essentially switches District 21's portion of Travis County from the west side of Travis County to the southeastern portion of Travis County, virtually none of which is currently in District 21. By placing southeastern Travis County in District 21, the proposal would submerge its residents in a district largely populated by people with very different socio-economic backgrounds. While this is a perfectly legal thing to do in a legislatively enacted map, it would be inappropriate in a court-ordered map.

IV. CONCLUSION

Most of the maps currently before the Court show telltale signs of the partisan agendas that drove their design. Accepting any of these proposals would make the Court party to the pursuit of broader political agendas, most of which seem driven by a desire to "get Bonilla." These proposals thus abandon the principles underlying *Upham* and this Court's past decision, which require the fashioning of a narrow legal remedy for the precise violation that was found.

By including all of the affected parties in a bipartisan manner in the construction of the Bipartisan Compromise Plan, and by operating within relatively strict parameters, the drafters of the Bipartisan Compromise Plan limited and moderated any partisan effects it might otherwise

⁴ The Bipartisan Compromise Plan increases the number of Mr. Doggett's Travis County constituents by 133,000, so that a majority of constituents are in Travis County. This is consistent with the position taken by the City of Austin, one of the original plaintiffs. The City has suggested that one congressional district should be "anchored" in Austin, which the Bipartisan Compromise Plan accomplishes.

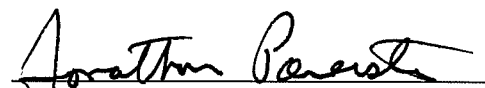
have had. This effort to avoid creating partisan advantage under the guise of proposing a remedy sets the Bipartisan Compromise Plan apart from the other proposals.

Fashioning and implementing a new map prior to the November 2006 election is a daunting task. As we stated earlier, the submission of the Bipartisan Compromise Plan is not a suggestion that we believe that a new plan must or should be put in place prior to the 2006 election. The fervent pace of this process already has had effects, as is plain from the fact that several of the proposed plans do not have zero population deviations.⁵

We also note that RedAppl does not have HCVAP data in its system. The drafters of the Bipartisan Compromise Plan have had access to this data through Maptitude. Nonetheless, we express some considerable concern about the construction of a remedial map on a system which does not have HCVAP after the Court clearly stated that this data is the touchstone of a majority minority district under section 2 of the Voting Rights Act.

These circumstances may combine to cause a remedial plan to have unforeseen consequences hiding beneath the surface. The Court thus should consider not fashioning a remedial plan at this time, and permitting the upcoming elections to go forward under the existing plan. Alternatively, we submit that the Bipartisan Compromise Plan is a “least change” remedy that cures the violation that was found without seeking to yield collateral political benefits for either party. We therefore ask the Court to consider it as an appropriate remedy.

Respectfully submitted,


Jonathan D. Pauerstein
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⁵ Indeed, we discovered an error in transmission of the Bipartisan Compromise Plan from the Maptitude redistricting program to the RedAppl program, which (although it affected fewer than 25 people) required submission of a corrected plan.

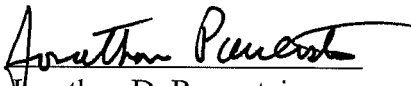
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CERTIFICATE OF SERVICE

This is to certify that on the 21st 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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