IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,

Plaintiff,

v.

UNITED STATES OF AMERICA; ERIC H. HOLDER, JR., in his official capacity as Attorney General of the United States,

Defendant,

WENDY DAVIS *et al.*

Defendant-Intervenors,

MEXICAN AMERICAN LEGISLATIVE CAUCUS,

Defendant-Intervenor,

GREG GONZALES *et al.*

Defendant-Intervenors,

TEXAS LEGISLATIVE BLACK CAUCUS,

Defendant-Intervenor,

TEXAS LATINO REDISTRICTING TASK FORCE,

Defendant-Intervenor,

TEXAS STATE CONFERENCE OF NAACP BRANCHES *et al.*

Defendant-Intervenors,

LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

Defendant-Intervenor.

Civil Action No. 1:11-cv-01303 (RMC-TBG-BAH)

RESPONSE OF CERTAIN DEFENDANT-INTERVENORS TO THE TEXAS LATINO REDISTRICTING TASK FORCE'S BRIEF RELATING TO CONGRESSIONAL DISTRICT 25

I. Introduction

Defendant-Intervenors, the League of United Latin American Citizens (LULAC), the Texas Legislative Black Caucus, the Texas State Conference of NAACP Branches, the Gonzales Intervenors, and the Davis Intervenors, submit this response to correct the record with respect to three assertions in the Texas Latino Redistricting Task Force's Response to the Court's Order of March 6, 2012 (ECF Doc. No. 219) ("Task Force Response"). Defendant-Intervenors recognize the Court is faced with a deluge of paper in this case and do not act lightly in asking for leave to file this limited response. Because of the obvious importance of Congressional District 25 to the Court's decision on preclearance of Texas's proposed congressional plan, Defendant-Intervenors believe it is essential to clarify several assertions in the Task Force's brief. Although Defendant-Intervenors disagree with large portions of the brief, this response is limited to a small number of core points that deserve particular emphasis.

The opening point is simply reminding the Court of whom these Defendant-Intervenors are. The Task Force's brief attempts inaccurately to portray us as a group largely dedicated to the parochial interest of preserving CD 25 to ensure re-election of a single Anglo congressman. Thus, its brief is mostly addressed to the Gonzales Intervenors and ignores the fact that our group includes leading organizations from the Texas Hispanic and Black communities – LULAC, the Texas Legislative Black Caucus, and the NAACP – who believe passionately that CD 25 must be preserved to avoid retrogression and to remedy the intentional discrimination that their constituents have suffered through Texas's dismantling of this minority-ability district. And these Defendant-Intervenors do not seek to preserve CD 25 at the expense of creating another minority-ability district in Central Texas, as the Task Force disingenuously asserts. The record in this case contains multiple proposed congressional plans – such as Plan C164 and Plan C220 (the Texas's Court's original plan) – that prove the feasibility of preserving CD 25 while still creating a new minority-ability district in Central

Texas and also remedying the Texas Legislature's egregious dilution of minority voting strength in CDs 23 and 27. That is the result that is called for under the Voting Rights Act and that Defendant-Intervenors ultimately seek. A ruling by this Court that gives effect to the wealth of evidence establishing CD 25 as a minority-ability is essential to that result.

II. Argument

A. There is no clash between preserving CD 25 as a minority-ability district and creating a new Hispanic-ability district in Central Texas

The Task Force's claim that Defendant-Intervenors seek to preserve CD 25 at the expense of creating another minority-ability in Central Texas is false. In both the legislative session leading up to the enactment of the Texas Legislature's plan, Plan C185, and in the Texas district court litigation, multiple parties and the Texas court itself developed maps that preserve CD 25 as a minority-ability district while also creating a new Hispanic ability-to-elect district in Central Texas. These submissions included maps from a broad array of constituencies, including MALC's Plan C164, NAACP's Plan C193, LULAC's Plan C208, LULAC-NAACP Plan C218, and Quesada plaintiffs' Plan C205.

Consistent with these proposals, the map the Texas court initially adopted – Plan C220 – also preserved CD 25 while creating another a South San Antonio-based new Hispanic opportunity district in Central Texas. The Task Force defended that map in Texas's appeal to the Supreme Court, never suggesting to the Court that CD 25 was not a minority-ability district or that protecting the district would preclude another minority-ability district in Central Texas. The fact is that the Task Force has now created that argument in an attempt to justify the deal it cut with Texas, just as it has conjured up the claim that Defendant-Intervenors are seeking to preserve CD 25 at the expense of diluting Hispanic voting power in other districts.

Relatedly, Defendant-Intervenors are not, as the Task Force now asserts, arguing that a new South-Central Texas Hispanic ability district "would violate Section 5 . . . by including Latinos who currently reside in benchmark" CD25. Task Force Response at 1-2. The

Defendant-Intervenor's position is much more straightforward than that, and the Task Force knows it. Our position is simply that dismantling CD 25 violates Section 5, and that a new Hispanic-ability should be – and can be – created in Central Texas without causing that unlawful result. Instead of choosing that course, the Texas Legislature broke apart CD 25, dismantled CD 27, and severely weakened CD 23. Disappointingly, the deal the Task Force cut with Texas perpetuates that unlawful result.

II. The Task Force's own Exhibit 2 confirms that CD 25 is a minority-ability district

Defendant-Intervenors recognize that the Court has been flooded with data relating to elections in CD 25 and Travis County, and it is not our intention to pour more water into the flood. Our only additional point on this issue is to demonstrate that the Task Force's Exhibit 2, filed with its brief earlier this week, provides compelling evidence that minorities are able to elect the candidates of their choice in CD 25.

First, the Task Force's exhibit provides the results of 16 general elections in CD 25 and shows clearly that the minority-preferred candidates prevailed in 13 of them. The minority-preferred candidates are listed in one column under the heading "HVAP, HCVAP, SSVR Candidate," and the percentage of the total vote each candidate received is listed under the other column. The Task Force's own calculation shown on the exhibit results in a scorecard of 13-3 in favor of the minority-preferred candidates (*i.e.*, in 13 of the elections, the minority-preferred candidate received more than 50% of the vote). And, of greatest importance for evaluating CD 25, the Task Force recognizes in the exhibit: (1) that Congressman Lloyd Doggett was the minority-preferred candidate in the 2006, 2008, and 2010 general elections; and (2) that Congressman Doggett won each of those elections. There is thus no dispute that minorities are able to elect their preferred candidates in CD 25;

under the established principle that general elections are highly relevant to determining minority-ability districts – as previously briefed by the Gonzales Intervenors – the Task Force's exhibit confirms that CD 25 is a minority-ability district.

Second, while the results of the general elections in CD 25 are enough to settle the matter, the Task Force follows the lead of Texas by heading down the path of analyzing primary elections, no doubt because it does not like what the general elections indisputably prove. But Exhibit 2 shows that the Task Force fares no better by entering into that thicket. The exhibit lists results in CD 25 for eight primaries held between 2004-2010. Even using the Task Force's incorrect identifications of who the minority-preferred candidates were in those elections, the candidates preferred by minorities won four of the eight primaries (Uribe, Noriega, Yanez, and, in 2004, Carillo). In addition, Defendant-Intervenors have shown that in 2010, neither Chavez-Thompson nor Carrillo was a minority-preferred candidate. Making those corrections increases the count to six of eight primaries in 2000-2010 which minority-preferred candidates prevailed. Also, as Defendant-Intervenors explained in their March 13 filing, there is no basis for including in the count the 2002 primaries that the Task Force lists again on Exhibit 2 – no expert in this case has evaluated those primaries to determine who the minority-preferred candidates were and the enormous changes in population and demographics over the last decade make results from 2002 results unreliable for determining minority-ability districts in 2012.

In sum, while the Task Force has presented a selective and incomplete list of results from elections in CD 25, even those results show that minorities have the ability to elect candidates of their choice in that district.*

III. Conclusion

For the reasons stated here and Defendant-Intervenors other briefs relating to CD 25, the Court should find that CD 25 is a minority-ability district and that Texas violated the Voting Rights Act by dismantling it.

RESPECTFULLY SUBMITTED: March 15, 2012

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* The Task Force's discussion (Task Force Response at 4) of the CD 24 that was addressed in the Supreme Court's *LULAC v. Perry* fails to note that it was in the context of Section 2 issues, not the Section 5 issues presented here. The Supreme Court was careful to point out that the issues are handled differently under the two provisions. *LULAC v. Perry*, 548 U.S. at 446. This is the same point this Court made about crossover districts and Section 5 in its December 22 memorandum opinion.

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2012, I electronically filed the foregoing Motion for Leave and accompanying Response of Certain Defendant-Intervenors Relating to the Texas Latino Redistricting Task Force's Brief Relating to Congressional District 25 with the Clerk of the United States District Court for the District of Columbia by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

DATED: March 15, 2012

Respectfully submitted,

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