

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
RICK PERRY, GOVERNOR OF TEXAS, §
ET AL. §

GI FORUM BRIEF IN RESPONSE TO REMEDIAL PROPOSALS

NOW COMES the American GI Forum of Texas, *et al.* (“GI Forum”) and files, pursuant to the Court’s June 29, 2006 Scheduling Order, its Brief in Response to Remedial Proposals submitted in the remand of this case.

I. INTRODUCTION

The purpose of a remedial order in this case is to ensure that the Texas congressional redistricting plan does not illegally dilute Latino voting strength. In its opening brief on remand, GI Forum urged this Court to adopt neutral redistricting criteria for its remedy and to focus on restoring District 23 as a Latino opportunity district. *See* American GI Forum Brief in Support of a Remedial Order at 1-5. GI Forum also suggested that: Webb County be included whole in District 23; the plan overall contain at least six Latino opportunity districts in South and West Texas; the Court reconfigure District 25; and that the Court limit its remedy to South and West Texas.

Each of the proposed remedial plans (submitted by the parties, intervenors and *amici*) share certain traits in common. All ensure that there is a district in the general geographic area

of District 23 that contains a majority of Spanish surnamed registered voters. In addition, all of these proposed remedies place District 25 in the Central or South Texas region. These proposed plans each make changes to seven or fewer congressional districts and strive to maintain at least six districts in South and West Texas with a Latino citizen voting age over 50%.

The more specific details of (and differences among) the plans turn largely on the political advantage sought by these parties, including enhancing regional political strength, partisan advantage and incumbency protection. In the quest for political advantage, however, many of the plans sacrifice fairness to Latino voters or consistency with the Supreme Court's opinion in this case.

II. THE BONILLA PLAN VIOLATES SECTION 2 IN SOUTH AND WEST TEXAS

Because the restoration of District 23 is at the heart of the remedy in this case, GI Forum first addresses redistricting plans that do not restore District 23. Foremost among them is the remedial proposal offered by Congressmen Smith, Bonilla and Cuellar (the Bonilla Plan).

The Supreme Court ruled that the State's Plan 1374 violated the voting rights of Latinos living in District 23. *LULAC v. Perry*, 126 S. Ct. 2594 (2006). 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 the majority of citizen voting age population and "the Latino majority in old District 23 did possess electoral opportunity protected by §2." *Id.* at 2615. The Court further found that voting in District 23 was severely racially polarized. *Id.* Thus the Court concluded that, under the totality of circumstances, the State violated the §2 rights of Latinos when it redrew District 23. *Id.* at 2623.

In order to remedy the violation in District 23, the new District 23 must be an opportunity

district, *i.e.*, meet or exceed the level of electoral opportunity for Latino voters that District 23 offered in 2002 in the *Balderas* court-drawn plan. The Bonilla Plan does not meet this goal and suffers from the same defects that doomed Plan 1374 at the Supreme Court.

The Bonilla Plan maintains the split of Webb County despite the fact that 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 2621 (“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 Webb County split is simply not necessary to a remedy in this case. It is not justified by respect for communities of interest or respect for county boundaries. In the Bonilla Plan, the Webb County boundary of District 23 once again zig zags through the City of Laredo and does not follow Interstate 35 or any other major thoroughfare.

The Bonilla Plan cannot invoke “legislative intent” to justify its split of Webb County. Although the Bonilla Plan takes care to avoid pairing Congressmen Bonilla and Cuellar, District 23 in the State’s illegal plan featured the homes of both Congressmen in District 23. Quite simply, the Legislature made the decision to avoid pairing incumbents in District 23 when it created Plan 1374.

After making an unnecessary split in Webb County, the Bonilla Plan is forced to hunt for Latino population elsewhere in an attempt to restore District 23 to its former status as an opportunity district. For this reason, the Bonilla Plan sends a completely unnecessary prong into

the South Side of San Antonio to grab Latino population. San Antonio's South Side, itself a community of interest, was not joined with far West Texas in Plan 1374 or the Legislative redistricting plan of the 1990's; thus this move is not motivated by respect for legislative intent. Instead, the Bonilla Plan is doing what the Supreme Court criticized – grabbing up areas of high Latino population and joining them for the sole purpose of creating a majority district under Section 2. As a result of its foray into San Antonio's South Side, District 23 in the Bonilla Plan is less compact than District 23 in 1374.

Most importantly, District 23 in the Bonilla Plan includes fewer Spanish surnamed registered voters (53.6%) when compared to District 23 in the *Balderas* court drawn plan (54.2%) and features poorer performance for Latino-preferred candidates when compared to District 23 in the *Balderas* court drawn plan. The Supreme Court found that District 23 as configured in the *Balderas* court drawn plan was a Latino opportunity district; it did not state that any district with fewer Latino voters and worse election performance for Latino-preferred candidates would be an opportunity district. The configuration of District 23 in the Bonilla Plan aims for the same result as the State's illegal plan – a sham Latino majority district that ensures the re-election of the Anglo-preferred candidate.

The Bonilla Plan does not provide any other district to offset its ineffective configuration of District 23 and avoid liability under Section 2 of the Voting Rights Act. District 25 in the Bonilla Plan, with only 28.6% Latino citizen voting age population and 25.4% Spanish surnamed registered voters, does not approach the majority status required by the Fifth Circuit to satisfy Section 2. *See Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 852-53 (5th Cir. 1999), *cert. denied*, 528 U.S. 1114 (2000).

For these reasons, the Bonilla plan does not remedy the Section 2 violation in South and West Texas, fails to provide six Latino opportunity districts in the region and should be rejected by the Court.¹

| District 23 Comparison for Bonilla and GI Forum Plans: | | |
|---|--|---------------------|
| Percent Vote Share for Latino-Preferred Statewide Candidate in the 2002 General Election | | |
| Candidate | GI Forum (<i>Balderas</i> 2002) | Bonilla Plan |
| Sanchez (Governor) | 54.3 | 51.3 |
| Yanez (SCT 2) | 55.5 | 53.5 |
| Mirabal (SCT 4) | 56.8 | 54.9 |
| Molina (CCA 1) | 52.6 | 50.2 |

III. OTHER PLANS CONFINE LATINO ELECTORAL INFLUENCE

The counties in South/Central Texas contain substantial Latino population: Bexar (54%); Caldwell (40%); Comal (22%); Guadalupe (33%); Hays (29%) and Travis (28%).²

¹Similarly, the Pate Plan 1407 fails to remedy the Section 2 violation in South and West Texas and does not comply with the Voting Rights Act. Plan 1407 does not restore Latino voting strength in District 23 to the level of District 23 in the *Balderas* court-drawn plan. Because District 25 in the Pate Plan is unchanged from 1374C, it cannot satisfy the Section 2 requirement to provide a Latino opportunity district. District 28 in the Pate Plan lacks a majority of Latino registered voters and the 2002 Latino-preferred candidates in racially contested statewide elections only won half of the time. However, even if one were to consider District 28 as an opportunity district, this plan only provides 5 opportunity districts for Latinos, the very violation of Section 2 identified by the Supreme Court with respect to Plan 1374. The alternative Pate Plan 1408 provides six Latino-majority district but is not compact, relying, among other things, on an arching hook in District 28 to connect colonias in Hidalgo County on the U.S. Mexico border with a strip of upper middle class suburbs of Northwest San Antonio.

²Census data available at:
http://factfinder.census.gov/servlet/DTGeoSearchByListServlet?ds_name=DEC_2000_SF3_U&_lang=en&_ts=171577862328

Nevertheless, by concentrating Latino voters into two districts in South and West Texas, a number of proposed remedial plans unfairly constrain Latino political influence in this region.

For example, the Perry Plan increases the Spanish surnamed voter registration its West Texas district from 44% to 70%, pulling disparate Latino communities from West Texas, Webb County and the South Side of San Antonio into a district with far more Latino voters than necessary to elect the Latino preferred candidate. The Perry Plan's other Latino majority district, District 25, contains 60% Spanish surnamed voter registration. Both Latino majority districts in the Perry Plan elect the Latino preferred candidate in 2002 statewide elections with vote totals of greater than 60 %. As a result, the non-Latino Districts 21 and 23 in the Perry Plan contain only 22.8% and 15.4% Spanish surnamed voter registration respectively.

The Texas Legislature's Plan 1374 included seven districts in South and West Texas with substantial Latino voter populations. Despite this clear manifestation of legislative intent, most remedial plans now before the Court offer six Latino-majority districts in South and West Texas and then divide the Latino community in South/Central Texas so that the seventh district does not reflect the substantial Latino political presence of this region. Thus, what should naturally be a Latino influence district in South/Central Texas is made into a district in which Latinos either have no voice or can only "chime in" with the result in the general election. As demonstrated below, most other remedial proposals pending before the Court do not provide a district in South/Central Texas that accurately reflects Latino political influence in the region:

| Plan Comparison: Remedial District in South/Central Texas | | | |
|--|-------------|-----------------|--|
| Party | Plan | District | Percent Latino Voter Registration |
| GI Forum | 1417 | 25 | 41.5 |
| Perry | 1418 | 21 | 22.8 |
| Bonilla | 1425 | 25 | 25.4 |
| Travis 1 | 1414 | 25 | 22.2 |
| Travis 2 | 1413 | 25 | 22.2 |
| Jackson | 1406 | 25 | 19.5 |
| Overstreet | 1421 | 25 | 27.5 |

III. GI FORUM’S REMEDIAL PROPOSAL IS THE BEST OPTION

GI Forum urges the Court to adhere to the neutral redistricting principles set out in GI Forum’s Brief in Support of a Remedial Order and adopt a redistricting plan that does not inject partisan politics into the remand of this voting rights case.

None of the other plans pending before the Court restores District 23 to its configuration in the *Balderas* court-drawn plan. GI Forum notes however that the Supreme Court specifically found the *Balderas* version of District 23 offered Latino voters the opportunity to elect their preferred candidate. It is safe to say that returning District 23 to its *Balderas* shape will cure the violation of Section 2 in South and West Texas.

Restoring District 23 to its configuration in the *Balderas* court-drawn plan does require making slight adjustments to Districts 11 and 20. Contrary to the State Defendants’ overheated charges with respect to GI Forum’s alterations to Districts 11 and 20, these districts are only changed to bring their boundaries back in line with the boundaries of the *Balderas* District 23.

Thus, District 11 in the GI Forum proposed plan retains 98.8% of the people that it had in Plan 1374. Similarly, District 20 retains 97.3% of the people that it had in Plan 1374. *See* Exhibit 1 to GI Forum Brief on Remand at 34-35.

Similarly, the State's charge that GI Forum seeks to create seven Latino voter majority districts misses the mark completely. *See* State Defendants' Response Brief in the Remedial Phase at 9-12. On the contrary, GI Forum does not ask this Court to create District 25 as a Latino opportunity district (pursuant to Section 2 or any other legal theory). For this reason, GI Forum's proposed District 25 contains neither a majority of Latino registered voters or voting age citizens. Instead, GI Forum proposes that with the territory remaining to complete the final (and non-majority Latino) district in South/Central Texas, the Court consider maintaining the communities of interest in Southeast Austin, San Antonio's South Side and the towns along the I-35 corridor and create a Latino influence district that accurately reflects the substantial Latino population in the area.

V. CONCLUSION

For the foregoing reasons, GI Forum respectfully requests the Court follow the principles outlined in its Brief in Support of a Remedial Order and adopt Plan 1417.

