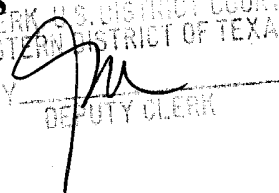


FILED

2008 MAY 22 PM 12:39

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY  DEPUTY CLERK

LULAC OF TEXAS, MEXICAN §  
AMERICAN BAR ASSOCIATION §  
OF HOUSTON, TEXAS (MABAH), §  
ANGELA GARCIA, ELVIRA RIOS, §  
ROGER ROCHA, ROSARIO VERA, §  
and RAYMUNDO VELARDE, §  
PLAINTIFFS §

SA 08 CA 0389 FB

v. §

STATE OF TEXAS and TEXAS §  
DEMOCRATIC PARTY §  
DEFENDANTS §

IN THE INTEREST OF AFRICAN- §  
AMERICAN VOTERS, TEXAS §  
STATE CONFERENCE OF NAACP §  
BRANCHES §  
DEFENDANT-INTERVENOR §

PLEA IN INTERVENTION OF  
TEXAS STATE CONFERENCE OF NAACP BRANCHES

1. The Texas State Conference of NAACP Branches, on behalf of African-Americans and African-Americana voters across Texas and in direct accordance with the mission of the organization, files this its opposition to the Plaintiffs' request for declaratory judgment relief, injunctive relief and its Original Answer as its Plea in Intervention in association with its motions to intervene, as of right and permissively, alleging that the acts proposed undertaken by the Plaintiffs are unconstitutional and/or in violation of the Voting Rights Act of 1965 as amended.

**I. JURISDICTION AND VENUE**

2. Plaintiff's action for declaratory and injunctive relief is authorized by 28 U.S.C.

§§2201, 2202, 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).

## II. INTERVENOR PARTY

3. Defendant-Intervenor, Texas NAACP, is part of the National Association for the Advancement of Colored People. The NAACP is a non-profit membership corporation, chartered by the State of New York, tracing its roots to 1909. The NAACP has in excess of 500,000 members and over 2,200 units in the United States and overseas. As the nation's oldest and largest civil rights organizations, its principal aims and objectives are clearly set forth for it to ensure political, educational, social and economic equality of African-Americans and minority citizens. The Texas NAACP has been an active proponent of civil rights, to include voting rights issues, in Texas since 1936. The NAACP and its State Conference and units were involved in landmark litigation to address discrimination by the Texas Democratic Party and its exclusion from voting in its primary.

## III. FACTS

4. LULAC, et. al filed this suit seeking to change the allocation of delegates in the Democratic Primary, an action which would undermine the voting interests of African-American voters in Texas. The Plaintiffs' proposed relief would undermine the ability of African-Americans to participate equally in the political process and elect the candidate of their choice.

5. The injury to African-American voters would directly result from such a proposed change. The proposed plan is unnecessary since the current plan in place is more

consistent with the one-person, one-vote requirements of *Baker v. Carr*, 369 U.S. 186 (1962) and *Reynolds v. Sims*, 377 U.S. 533 (1964) than the proposed plan.

6. The proposals to either disregard the caucuses or change the method of calculation resulting from them both violate Section 2 of the Voting Rights Act because they decreases the opportunities for African-Americans to participate in the political process and to elect Presidential Candidates of their choice.

7. The proposals to either disregard the caucuses or change the method of calculating delegates from them would both have a retrogressive effect on African-American voters. The proposed plan to change the method of calculating delegates from them is not consistent with the one person one vote doctrine contained in the extant plan.

8. The Democratic Party has taken the position that political parties are not required to seek Section V preclearance and this is not correct. LULAC et. al. have contended that Section V preclearance is required. However, not all actions of political parties are covered by the Voting Rights Act, which only covers changes that affect voting for candidates for public office.

9. The Texas NAACP supports the continued rights and interests of Mexican-American citizens and maintains that those are best served by permitting the current plan to go forward which is consistent with one-person, one-vote and equal protection principles.. The Plan was adopted by a diverse Democratic Party organization which had proportional representation of Mexican-Americans. Mexican-American or Latino voters were free to vote in this primary election and did so. They should have voting strength based on their turnout and the rules that have been in place for 20 years with the Texas

Democratic Party.

#### IV. ANSWERS and DEFENSES

10. Defendant-Intervenors responds to Plaintiff's Original Complaint as follows:
  - i. Defendant-Intervenors deny Paragraph 1 to the extent that it alleges that the practice of allocating delegates based on raw voter turnout results in restricting participation in high concentrated Latino Senatorial districts and rewarding Districts with high Anglo population, and high Republican participation. Defendant-Intervenors deny that the system does not allow Latino voters an equal opportunity to participate in the electoral process or select candidates of their chose in violation of Section 2 of the Voting Rights Act. Defendant-Intervenor is unable to admit or deny if preclearance has been sought.
  - ii. Defendant-Intervenors admit paragraphs 2 regarding the appropriateness of jurisdiction and what the Plaintiffs are seeking.
  - iii. Defendant-Intervenors admit paragraphs 4, 5, 6,7, 8, 9, 10, 11 and 12.
  - iv. Defendant-Intervenors are unable to admit or deny Paragraph 13.
  - v. Defendant-Intervenors deny Paragraph 14 of the Original Complaint.
  - vi. Defendant-Intervenors admit Paragraph 15 and 16.
  - vii. Defendant-Intervenors are unable to admit or deny Paragraph 17.
  - viii. Defendant-Intervenors deny Paragraph 18.
  - ix. Defendant-Intervenors admit Paragraph 19.
  - x. Defendant-Intervenors admit Paragraph 20.

- xi. Defendant-Intervenors are unable to admit or deny Paragraph 21.
- xii. Defendant-Intervenors admit Paragraph 22 of the Original Complaint.
- xiii. Defendant-Intervenors are unable to admit or deny Paragraph 23.
- xiv. Defendant-Intervenors deny the parts of Paragraph 24 indicating that the process punishes Latino voters and that their loyalty to Democrats is not properly provided for.
- xv. Defendant-Intervenors deny the portions of Paragraph 25 alleging that the process of delegate allocation fails to prove Latino voters with an equal opportunity to participate in the nominating process and to elect candidates of their choice. Defendant-Intervenors are unable to admit or deny the remainder.
- xvi. Defendant-Intervenors admits that elections in Texas are racially polarized.
- xvii. Defendant-Intervenors admit paragraph 27.
- xviii. Defendant adopts the above denials, admissions, etc. to apply in Paragraphs 28 and 31.
- xix. Defendant-Intervenors are unable to admit or deny preclearance but otherwise denies Paragraph 29.
- xx. Defendant-Intervenors are unable to admit or deny preclearance in Paragraph 30 or the other aversions contained therein.
- xxi. Defendant-Intervenors deny Paragraph 32.
- xxii. Defendant-Intervenors deny Paragraphs 33 and 34.
- xxiii. Defendant-Intervenors are unable to admit or deny the status of the

attorney's in the case or their entitlement to fees. Otherwise Defendant denies the requests sought in the Prayer.

11. Defendant Intervenors incorporate Paragraphs 1-8 as set forth above in this Answer. The pre-clearance requirement of Section 5 of the Voting Rights Act only covers changes that affect voting for candidates for public office, though they do include changes that are made by political parties. The Department of Justice, through its website, provides the following guidance to the public concerning what must be submitted under Section 5:

While reaffirming *Allen* [*Allen v. State Board of Elections*, 393 U.S. 544, 565 (1969)] in *Presley v. Etowah County Com'n*, 502 U.S. 491, 492 (1992), the Supreme Court emphasized that changes covered under Section 5 must have a direct relation to voting. The court provided a nonexclusive list of four categories in which voting changes covered under Section 5 would normally fall:

- i. changes in the manner of voting;
- ii. changes in candidacy requirements and qualifications;
- iii. changes in the composition of the electorate that may vote for candidates for a given office; and
- iv. changes affecting the creation or abolition of an elective office.

In the cases consolidated before the Court in *Presley*, the changes involved the transfer of authority over road maintenance and construction between elected officials and from elected officials to an appointed official. The Court found these types of transfers not directly related to voting and, therefore, not subject to Section 5. Some transfers of authority between government officials, however, clearly have a direct relation to voting if they concern authority over voting procedures, such as a change in who has authority to adopt a redistricting plan, conduct voter registration, or select polling place officials.

12. The official guidelines regarding the Section 5 submission process states that:

Certain activities of political parties are subject to the preclearance requirement of Section 5. A change affecting voting effected by a political party is subject to the preclearance requirement: (a) If the change relates to a public electoral function of the party and (b) if the party is acting under authority explicitly or implicitly

granted by a covered jurisdiction or political subunit subject to the preclearance requirement of Section 5. For example, changes with respect to the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms are not subject to the preclearance requirement. Changes with respect to the conduct of primary elections at which party nominees, delegates to party conventions, or party officials are chosen are subject to the preclearance requirement of Section 5. Where appropriate the term "jurisdiction" (but not "covered jurisdiction") includes political parties. 28 C.F.R. § 51.7

13. Even if the Texas Democratic Party's delegate selection process is covered by Section 5 of the Voting Rights Act, there is no submission required because the plan in place for 2008 is essentially the same as the plan that has been used since the enactment of the Voting Rights Act in 1965. There has been no meaningful change that needs to be submitted for preclearance.

14. Defendant Intervenor incorporates Paragraphs 1-9 as set forth above in this Answer. Enjoining the use of the process currently selected will undermine the interests of African-Americans. The suit is untimely to warrant an injunction. The "harm" alleged by the plaintiffs would pre-exist the start of the primary, if not from the very implementation of the process, twenty years ago. Further, the suit is filed so close to the State Democratic Convention that it will cause an enormity of problems and this is not necessary to protect the interests of persons covered under Section V. Therefore, the costs and equities weigh against an injunction of the process at this time. In short, the Plaintiff's challenge is facial, and not directed to the manner of its implementation. As such, the Plaintiffs have been aware of the extant process for twenty years and rather than bring a suit timely with their challenge when the alleged harm was known to them, the Plaintiffs waited until they did not like the result of the application of the process and

then decided to sue to alter that result.

15. Defendant Intervenor incorporates Paragraphs 1-11 as set forth above in this Answer. The manner proposed to allocate delegates by LULAC violates one person one vote and undermines the interests of African-American Voters under Section 2 of the Voting Rights Act, 42 U.S.C. §1973. That is, the Plaintiff's plan proposes to operate using percentages which are not related to each other such that actual numerical votes are discounted thus drastically impinging on the one person one vote doctrine. There is no precedent or legal justification for this proposal. Additionally, given the finite resource of delegates, to alter the current structure of assigned delegates would have a direct and negative impact on African Americans.

16. If the Texas Democratic Party's delegate selection plan is subject to preclearance under Section 5 of the Voting Rights Act, then the change proposed by Plaintiffs would also have to be submitted for preclearance. The change proposed by Plaintiffs would be retrogressive and should not be precleared, because it would make African-American voters worse off.

#### **V. PRAYER**

Defendant Intervenor respectfully prays that this Court deny Plaintiff's requested relief and enter the following Orders:

- a. Denial of the Plaintiff's motion for injunctive relief as untimely and inequitable;
- b. Declaratory Judgment the current procedure used by the Texas Democratic Party is valid and does not violate the Voting Rights Act or the Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution; and

c. Such other and further relief as the Court determines justice so requires.

Respectfully submitted by,

/s/ Robert Notzon

Gary L. Bledsoe

LAW OFFICES OF GARY L. BLEDSOE

SBN: 02476500

316 W. 12<sup>th</sup>, Suite 307

Austin, Tx. 78701

(512) 322-9992

(512) 322-0840 Fax

ROBERT NOTZON

Law Office of Robert Notzon

SBN: 00797934

1507 Nueces Street

Austin, Tx. 78701

(512) 474-7563

(512) 474-9489 Fax

ATTORNEYS FOR Texas-NAACP

Of Counsel:

Angela Ciccolo

NAACP – National Interim General Counsel

4805 Mount Hope Drive

Baltimore, Maryland 21215-3297

Anita S. Earls

Southern Coalition for Social Justice

115 Market Street, Ste. 470

Durham, N.C. 27701

919-606-8473

N.C. Bar No. 15597

### CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the above and foregoing instrument was served via electronic delivery on May 22, 2008, to all counsel of record.

/s/ Robert Notzon

Robert Notzon