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

SHANNON PEREZ, *et al.*, *Plaintiffs,* v. STATE OF TEXAS, *et al.*, *Defendants.*	CIVIL ACTION NO. SA-11-CA-360-OLG-JES-XR [Lead case]

JOINT REPORT OF RULE 26(f) CONFERENCE AND DISCOVERY PLAN

Pursuant to the Court's Scheduling Order of October 18, 2013, and Rule 26(f) of the Federal Rules of Civil Procedure, the parties conducted a Rule 26(f) conference by telephone on November 4, 2013.

A. Parties

In attendance at the telephonic conference were: David Richards for Shannon Perez, et al. ("Perez Plaintiffs"); Jose Garza for Mexican American Legislative Caucus ("MALC"); Nina Perales and Karolina Walters for Texas Latino Redistricting Task Force, et al. ("TLRTF Plaintiffs"); Gerry Hebert for Margarita Quesada, et al. ("Quesada Plaintiffs"); Luis Vera for League of United Latin American Citizens, et al. ("LULAC Plaintiffs"); Rolando Rios for Congressman Henry Cuellar; Renea Hicks for Eddie Rodriguez, et al. ("Rodriguez Plaintiffs");

Allison Riggs for Texas State Conference of NAACP Branches, et al. ("NAACP Plaintiffs") and Congresspersons Eddie Bernice Johnson, Sheila Jackson Lee, and Alexander Green ("Congresspersons"); Timothy Mellett, Bryan Sells, and Jaye Sitton for the United States; Chad Dunn for Texas Democratic Party and Gilberto Hinojosa; John T. Morris, *pro se*; and Patrick Sweeten, Angela Colmenero, Adam Aston, Summer Lee, Michael Neill, and Adam Bitter for Defendants State of Texas, Rick Perry, David Dewhurst, Joe Straus, and John Steen (collectively, the "State Defendants").

B. Discussion

The parties conferred regarding the topics set forth in Rule 26(f) and report as follows:

(1) The parties discussed the nature and basis of their claims and determined that there is currently no possibility of settlement.

(2) The parties will make their initial disclosures on November 22, 2013, pursuant to the Court's Scheduling Order of October 18, 2013. The State Defendants requested that each plaintiff's initial disclosures identify, with specificity, the districts that the disclosing party is challenging under the 2011 and 2013 redistricting plans.

(3) The parties agreed that service of written discovery and other non-filed documents would be effective if served on the parties via e-mail.

(4) The State Defendants stated that there were several attorneys listed as counsel of record in this case who needed to be removed from the service list

because they are no longer employed by the Office of the Attorney General. The parties agreed to submit a joint motion to the Court listing any counsel for Plaintiffs or the State Defendants to be removed from the e-mail service list.

(5) The State Defendants noted that the LULAC Plaintiffs, Rodriguez Plaintiffs, Perez Plaintiffs, NAACP Plaintiffs, and Congresspersons had asserted claims in their amended complaints against Texas House of Representatives Speaker Joe Straus and Lieutenant Governor David Dewhurst, both of whom were dismissed from this lawsuit by Order of this Court on September 2, 2011. *See* Order dated September 2, 2011 (Doc. 285). The plaintiffs agreed to dismissal of claims against Speaker Straus and Lieutenant Governor Dewhurst.

(6) The parties discussed the timing and scope of written discovery.

a. Interrogatories: Pursuant to Federal Rule of Civil Procedure 33(a)(1), each party in this litigation "may serve on any other party no more than 25 written interrogatories, including all discrete subparts." Notwithstanding this limitation, the State Defendants proposed that each party be permitted to propound thirty (30) written interrogatories on any other party as to the 2011 and 2013 redistricting plans collectively, inclusive of any interrogatories that a party previously served on another party in this litigation. The United States is in agreement with this proposal. The NAACP Plaintiffs, Congresspersons, and Quesada Plaintiffs did not agree to

the 30-interrogatory limitation if inclusive of 2011 interrogatories previously made.

b. Requests for Admission: In this litigation, requests for admission are governed by Western District of Texas Local Civil Rule 36, which provides that each party is limited to serving thirty (30) requests for admission on any other party. Consistent with Local Rule 36, the State Defendants proposed that each party be permitted to serve no more than thirty (30) requests for admission on any other party as to the 2011 and 2013 redistricting plans collectively, inclusive of any requests for admission that a party previously served on another party in this litigation. The United States is in agreement with this approach. The NAACP Plaintiffs, Congresspersons, and Quesada Plaintiffs did not agree to the 30-request limitation if inclusive of 2011 requests previously made.

c. The parties agreed that any written discovery could begin to be served prior to the November 22 deadline for the parties' initial disclosures.

(7) The parties discussed the scheduling of depositions. The parties agreed to hold depositions from January 15, 2014 through May 14, 2014. The State Defendants also proposed that each party be limited to a total of 15 hours of corporate/agency representative depositions under Federal Rule of Civil Procedure

30(b)(6). The United States does not agree to the proposed limitation on corporate/agency representative depositions.

(8) The parties discussed assertions of legislative privilege in depositions. As previously asserted in the State Defendants' Motion for Protective Order (Doc. 62), the State Defendants advised the parties during the conference that some legislative witnesses who may be deposed in this action could choose to assert legislative privilege, during the course of their deposition as to the 2013 challenges and as to witnesses who had not previously waived privilege. Previously, the Court entered a protective order on August 1, 2011 (Doc. 102)—with depositions and trial imminent—that provided: "The deponents may invoke the privilege in response to particular questions, but the deponent must then answer the question subject to the privilege." During the Rule 26(f) conference, the State Defendants proposed a modification of the Court's August 2011 Order to allow for contemporaneous assertions of privilege at depositions with accompanying instructions to refrain from disclosing privileged testimony. The State Defendants asserted this method would allow the Court to address the specific assertion of privilege following the deposition in an appropriate motion filed with the Court, and would prohibit the disclosure of potentially privileged testimony from witnesses entitled by law to assert those privileges. This method would reflect the usual practice of privilege assertion, and a modification of the Court's prior order is warranted as the scheduling concerns and exigencies that existed on August 1, 2011 are no longer present. The plaintiffs did not agree to this proposal. Because the parties could not reach agreement on

this issue at the conference, the State Defendants proposed that the parties submit briefing on the issue pursuant to the following schedule:

a. State Defendants' motion shall be filed by November 22, 2013.

b. Plaintiffs' responses to the State Defendants' motion shall be filed by December 6, 2013.

c. State Defendants' reply shall be filed by December 13, 2013.

The State Defendants' proposed modification would apply only to witnesses who had not previously asserted legislative privilege and as to depositions regarding the 2013 challenges. The United States takes no position on the proposal as it relates to 2013 witnesses but opposes the proposal to the extent it relates to 2011 witnesses. The remaining plaintiffs were not opposed to the State Defendants' proposed briefing schedule, although counsel for the Rodriguez Plaintiffs indicated that he did not believe that briefing was necessary at this time.

(9) The parties discussed the deadlines provided in the Court's Scheduling Order of October 18, 2013 for the filing of dispositive motions. The State Defendants indicated that they would not oppose the parties seeking an amendment to these deadlines to allow for responses to be filed up to 21 days (rather than 14 days) after the filing of any dispositive motions; replies would be due 7 days after the filing of a response, consistent with the Court's Scheduling Order.

(10) The parties discussed production format for any electronic discovery. The State Defendants indicated their preference for producing electronic documents to the parties via an FTP site and/or Secure Share method. The United States expressed concerns about the production of electronic documents using this method.

On November 12, the United States provided a draft ESI Agreement to the parties, except for Mr. Morris, who was inadvertently not included. The State Defendants are providing the opposing parties with modified language to the proposed agreement suggested by the United States. Mr. Morris is still considering the proposed ESI Agreement. The United States has advised that all of the other parties have agreed to the ESI Agreement.

Dated: November 18, 2013

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that, on November 14, 2013 and November 18, 2013, I circulated by e-mail a draft Joint Report of Rule 26(f) Conference and Discovery Plan to counsel for all parties, as well as John T. Morris. Counsel for the United States, NAACP Plaintiffs, Congresspersons, and Quesada Plaintiffs commented on the draft report and proposed certain revisions that are reflected in the report being filed herein. Counsel for the Perez Plaintiffs, MALC, TLRTF Plaintiffs, LULAC Plaintiffs, Congressman Cuellar, Rodriguez Plaintiffs, Texas Democratic Party, and Mr. Morris have not commented on the draft report as of time of this filing.

/s/ Patrick K. Sweeten
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this filing was sent on November 18, 2013, via the Court's electronic notification system and/or email to the following counsel of record:

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