

In the United States District Court
for the Eastern District of Texas

Marshall Division

2003-CV-354
CIVIL ACTION
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League of United Latin American
Citizens, *et al.*

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v.

Civil No. 2:03-CV-354
Consolidated

Rick Perry, Governor of Texas, *et al.*

**REMEDIAL PROPOSAL OF A. J. PATE ON REMAND,
with Remedial Maps, Related Statistics,
and Supporting Brief**

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OVERVIEW OF THE TWO REMEDIAL PLANS PROPOSED BY A. J. PATE

The first plan, styled "Pate Remedial Plan: Minimalist (20/23/28)", is a least-changes plan, which corrects the violation of § 2 of the Voting Rights Act in Congressional District 23 as decided by the Court. The revisions in the Minimalist Plan were primarily limited to Districts 23 and 28, with minor changes on the margins of District 20.

The most important revision in this plan, Plan 1407C, was restoring Webb County whole to District 23. The streets of Laredo had never been split in a Congressional district since Texas joined the Union until the current Congressional Plan 1374. This revision necessitated District 28 absorbing some population from District 23, primarily in southern and northern Bexar County. District 28 also interchanged population along the margins of District 20, which retained over 91% of the population in its current district. No other district lines were changed.

The second plan, styled "Pate Remedial Plan: Expansionist (21/23/25/28)", is a more extensive revision involving four districts in and around Bexar. This plan, Plan 1408, restores Webb County intact in District 23. District 25 is withdrawn from the Rio Grande Valley and takes in District 21's portion of Travis County. District 28 takes Starr County and the portion of Hidalgo County vacated by District 25. Districts 21 and 25 are pulled more compactly into the Austin-San Antonio nexus.

This plan not only corrects the violations found by the Court in District 23, but also remedies the lack of compactness and the combining of disparate Hispanic communities of interest noted by the Court in District 25.

These remedial plans offer this court two choices in their remedial response to the Court's remand. Both plans were drawn without splitting any VTDs, including the 2006 VTD changes. Whole VTDs will provide minimal disruption for election authorities and provide a more orderly transition for affected areas.

For practicality and expediency, though opposed conceptually on principle, the plans were drawn so that no incumbents were paired in the same district. However, Congressmen Cuellar and Bonilla exchange district numbers in both of these plans.

As a result of VTDs being maintained intact, the plans have *de minimis*

population deviations. The Minimalist Plan 1407C had a total deviation of 0.09% (611 persons), and the Expansionist Plan 1408C had a total deviation of 0.10% (637 persons).

There is a state interest in no VTDs being split to avoid unnecessary administrative expense for local governments and to reduce voter confusion.

The deviations noted above are very minor compared to those in the last remedial plan drawn for Texas in 1996 in similar circumstances now facing this court. The precedent established by that three-judge federal court, Judge Edith Jones presiding, was a remedial plan which had a total deviation of 4637, or 0.82% of an ideal district. This remedial plan was used in Texas elections from 1996 through 2000. *Vera v. Bush*, 933 F. Supp. 1341, 1348 and n. 9 (S.D. Texas 1996); *Vera v. Bush*, 980 F. Supp. 251, 253 (S.D. Texas 1997).

ANALYSIS OF MINIMALIST PLAN 1407C

Plan 1407C was drawn as a least-changes plan to meet the Court's specific finding of illegality in District 23.

It does not take into account the more generalized objections to District 25. Justice Kennedy's presumption of required change in that district cannot control, since the Constitutional questions raised by him were not properly adjudicated by the Court and judicial assumptions are no remedy for the lack.

The plan provides this court with the opportunity to fulfill its responsibility to the letter of the opinion of the Court, while causing minimal disruption to the State's election process already ongoing.

This would also properly defer more extensive revisions, if deemed necessary, to the State Legislature when its next regular session convenes in January 2007 and prior to beginning a new election cycle.

This plan left Districts 21 and 25 completely unchanged from the current Congressional Plan 1374C. The major revisions were between Districts 23 and 28, primarily to increase the Hispanic population of District 23, specifically the Hispanic citizen voting-age population (CVAP). In Minimalist Plan 1407C, Hispanic CVAP was

increased in District 23 to 55.6%, compared to only 46.1% in current Plan 1374C. Further, the Anglo CVAP decreased from 49.9% in current Plan 1374 to only 41.7% in Plan 1407C.

This remedy for District 23 was basically achieved along the Rio Grande border by making Webb County whole and adding Zapata County. Some relatively minor changes were made by District 28 taking approximately 40 VTDs from District 23 along the mid-western border of Bexar County and then a narrow band above the northern lines of District 20 to reach the home of Congressman Bonilla.

In District 28, Hispanic CVAP is 51.6%, with current Plan 1374C at 56.2%. District 28 was withdrawn from the border, giving up Zapata County and the eastern portion of Webb County. In Bexar County, it gave up population to District 20 in eastern Bexar, while taking some back along the southern lines of District 20 (approx. 25 VTDs). The northern border of District 20 was smoothed somewhat by expanding it slightly (9 VTDs). Consequently, District 28 became a more compact district, although the upper extremities are vestigial remainders of current Plan 1374.

In Plan 1407C, District 23 has come much closer to its ideal as a rural Hispanic community of interest along the Rio Grande border for the first time (as proposed in Pate Statewide Plan 1160C). This is a community that has never had exclusive representation, often being dominated by extensions into Bexar County. In this Plan 1407C, only 12.7% of its total population comes from Bexar County.

Only three counties were affected by Minimalist Plan 1407C -- Webb, Zapata, and Bexar. District 23 retained 82.8% of its population in current Plan 1374, while District 28 and District 20 retained 76.8% and 91.2%, respectively.

Analysis of Election Results in Minimalist Plan 1407C

In current Congressional Plan 1374C, statewide general election averages, as calculated by the Texas Legislative Council (TLC), showed large Republican majorities in District 23 for 1998 through 2004 (average 60.5%), while District 28 had more competitive margins for the Democrats (54.6% average). In the Lt. Governor elections of 1998 and 2002, the Republican candidates won by narrow margins in District 23 (51.4% average), while losing by 62.1% average in District 28.

In Minimalist Plan 1407C, while the statewide election results for 1998 through 2004 are somewhat mixed, the Democratic candidate for Lt. Governor in 1998 and 2002 won by similar margins in both districts -- averages of 53.8% in District 23 and 55.8% in District 28. In statewide elections for 1998 through 2004, Republicans won by averages of 55.9% in District 23 and 51.0% in District 28. The year 2002 was the only year in both districts that statewide elections were carried by Democrats, when Sanchez was the Democratic candidate for Governor.

The comparison of statewide average elections to the Lt. Governor elections indicates a remarkable level of ticket-splitting. Therein lie opportunities for both political parties.

In the 2002 Democratic Primary and Runoff Elections, there were several high-profile statewide races with Hispanic candidates --- Morales for U. S. Senator, Madrigal for Land Commissioner, and DeLeon for Agriculture Commissioner --- with almost all winning over 60% of the votes in both districts.

In the 2002 General Elections, Sanchez was the Democratic candidate for Governor against the incumbent Perry. In the very expensive and hotly-contested race, Sanchez lost in District 28 with 49.5% of the vote, while winning District 23 with 52.1%.

In elections for positions on the State Supreme Court, both Hispanic candidates carried both districts, in all four races exceeding Sanchez' vote for Governor. For Position 2, Yanez carried Districts 23 and 28 with votes of 52.8% and 53.5%, respectively. For Position 4, Mirabel carried Districts 23 and 28 with votes of 54.1% and 54.9%, respectively.

In the 2004 General Election for the Court of Criminal Appeals Position 6, Molina won District 28 with a vote of 50.3%, and lost District 23 with 44.8%. But, in both districts, he ran over 6 points higher than Democratic presidential candidate, John Kerry.

From an analysis of the voting patterns in this plan, it is obvious to a discerning and judicious observer that Hispanics are very sophisticated voters who make choices between competing candidates which often transcend ethnicity or political party, indicating less polarization than some suggest.

ANALYSIS OF EXPANSIONIST PLAN 1408C

Plan 1408C was drawn as an alternative to the least-changes Minimalist Plan 1407C. This plan not only resolves the illegality of District 23, but also makes District 25 much more compact by withdrawing it completely from the Rio Grande Valley, thus meeting the Court's objections to its lack of compactness and the joining of disparate Hispanic communities of interest.

In the process of changing Districts 23 and 25, changes also became necessary in Districts 21 and 28, resulting in both becoming much more compact. District 21 is now even more representative of the community of interest in the corridor between Bexar and Travis counties. District 28 comes more directly from the border to its terminus in Bexar County.

In this Plan 1408C, District 20 was left completely unchanged from current Plan 1374C.

District 23 took the eastern half of Webb County and Zapata, La Salle, Frio, and Medina counties from District 28. No other counties were changed to create District 23, except Bexar. In Bexar County, it gave territory to District 28 along the western border and in the northwest part of the county gave territory to Districts 21 and 28.

As previously mentioned, District 23 basically becomes a *sui generis* district for a group historically under-represented, a rural Hispanic community of interest, as long advocated by A. J. Pate (see Pate Statewide Plan 1160C). In Plan 1408C, it draws only 12.7% of its total population from Bexar County.

District 25 withdraws completely from the Rio Grande Valley, giving all its territory south of Karnes County to District 28. Then, its only change was to extend its portion of Travis County into the area previously held by District 21.

District 28 was shifted eastward, taking Live Oak, Duval, Jim Hogg, and Starr counties, as well as the incursion into Hidalgo County, from District 25. Its extension into northeast Bexar County was ceded to District 21, but took in VTDs in mid-western Bexar and along the northern border of District 20 to reach Congressman Bonilla's home. It gave Wilson County to District 25. Guadalupe County went to District 21, as well as District 28's appendages in Comal and Hays counties.

District 21 was pulled completely out of Travis County, but picked up Wilson and Guadalupe counties from District 28. It also took in territory in eastern Bexar County formerly held by District 28, and territory in north Bexar from District 23.

Analysis of Election Results in Expansionist Plan 1408C

In current Congressional Plan 1374C, statewide general election averages (as calculated by TLC) showed large Republican majorities in District 23 for 1998 through 2004 (average 60.5%), while District 28 had more competitive margins for the Democrats (54.6% average). In the Lt. Governor elections of 1998 and 2002, the Republican candidate won by narrow margins in District 23 (51.4% average), while losing by 62.1% average in District 28.

In Expansionist Plan 1408C, while statewide election results for 1998 through 2004 are somewhat mixed, the Democratic candidate for Lt. Governor in 1998 and 2002 won by large margins in both districts -- averages of 55.4% in District 23 and 60.8% in District 28. In statewide elections for 1998 through 2004, Republicans won by an average of 54.1% in District 23, and Democrats won by an average of 54.7% in District 28. Democrats won statewide elections in both districts in 2002 when Sanchez was the Democratic candidate for Governor.

In the 2002 General Elections, Sanchez was the Democratic candidate for Governor against the incumbent Perry. In the very expensive and hotly-contested race, Sanchez won in both districts, winning District 23 with 54.3% and District 28 with 58.5%.

In elections for positions on the State Supreme Court, both Hispanic candidates carried both districts, in all four races exceeding Sanchez' vote for Governor. For Position 2, Yanez carried Districts 23 and 28 with votes of 55.0% and 61.8%, respectively. For Position 4, Mirabel carried Districts 23 and 28 with votes of 56.0% and 62.2%, respectively.

In the 2004 General Election for the Court of Criminal Appeals Position 6, Molina won in District 28 with 56.3% and lost District 23 with 46.9%. He beat the vote for John Kerry, the Democratic presidential candidate, by a 7.7% higher vote in District 23 and 6.9% in District 28.

Again, the consistent ticket-splitting in candidate choices by Hispanics indicates a significant number of independent voters who incline to vote for Hispanics but clearly will support those whom they perceive to be the superior candidate of either party.

**PARTICIPATION OF A. J. PATE IN *BUSH v. VERA* IN 1996
AND ITS REMEDIAL PHASE**

In 1996, *Vera v. Richards* was a racial gerrymandering case which was heard by a three-judge federal court, Judge Edith Jones presiding. In that trial, the Owens-Pate Plan C606, drawn by A. J. Pate and William C. Owens in 1991, was entered into evidence, and testimony was given regarding the plan by State Representative Kent Grusendorf of Arlington. Pate and Owens were private citizens who drew the plan entirely on their own initiative, time, and expense, and were also the only private citizens in Texas to do so. In the opinion of the court written by Judge Jones, she refers to the plan several times in her comments (*Vera v. Richards*, 861 F. Supp. 1304, 1329, 1330, 1342). The court declared three districts as unconstitutional racial gerrymanders.

The case was then appealed to the U. S. Supreme Court as *Bush v. Vera*. A. J. Pate wrote and filed a brief in the case as an *amicus curiae*, pleading for the Court to declare gerrymandering *per se* unconstitutional. The Court upheld the lower court's decision. In opinions written by Justices O'Connor and Kennedy, references were made to the Owens-Pate Plan. *Bush v. Vera*, 517 U. S. 952, 956, 995, 998.

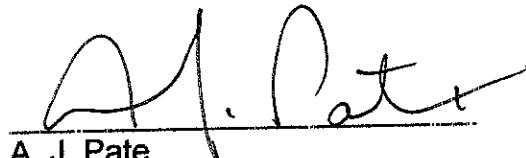
In his opinion, Justice Kennedy stated that Districts 18 and 29 in Harris County as minority districts for Blacks and Hispanics, respectively, were not compact in the Owens-Pate Plan. His statement was difficult to reconcile without a reference point as a standard of compactness (*i. e.*, compared to what?). The districts were unquestionably more compact than the "scrambled-eggs" unconstitutional districts in the official State plan produced by the Legislature, and even the districts later drawn by the federal court on remand. The districts as drawn by the Owens-Pate Plan were functionally compact to unite communities of interest using neutral and objective principles of redistricting.

After remand to the three-judge court from the Supreme Court, the Hispanic defendant-intervenors, in a motion to the court, "urge[d] that the Court designate either Mr. A. J. Pate or Mr. A. J. Pate and Mr. Bill Owen[sic] as the Court's masters or representatives in the drafting of the Court's interim Congressional plan should that become necessary." Their motion further stated that Pate and Owens "have been involved on an entirely non-partisan manner in the Congressional redistricting" and, although not always agreeing with their approach, "know them to be persons who understand the process and be entirely fair and impartial." (Copy of motion in Appendix.) However, the court decided to do its own drafting of the remedial plans.

In hearings subsequent to the remand, in the remedial phase, Judge Edith Jones requested A. J. Pate and William Owens to participate in two in-chamber hearings with the parties in the case.

There are many obvious parallels between this present case and the remand in 1996, including the remedial hearings taking place at almost the same time ten years later and in another election year. This court would be well-advised to follow the excellent procedures established by the 1996 court in response to the Supreme Court's remand.

Respectfully submitted,



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EPILOGUE

A Retrospection of Pate Statewide Plan 1160C

Pate Statewide Plan 1160C was the first redistricting plan made public after the 2000 Census data was made available on REDAPPL by the TLC. (See copy in the Appendix, but showing only the South Texas districts.)

It is believed that A. J. Pate was one of only two private citizens to draw a statewide plan solely on his own initiative, time, and expense. Plan 1160C was drawn on a non-partisan basis to maximize representation for communities of interest by basing districts on publicly-available independent, apolitical, and self-defined communities of interest: Councils of Governments, counties, and census tracts. The districts were drawn using neutral and objective redistricting principles, which were applied logically, consistently, and conscientiously. The plan was drawn in its entirety absolutely without reference to partisan voting data or location of incumbents' homes.

It is enlightening to reflect on what today's circumstances would be if the Texas Legislature had adopted Plan 1160C as the State's official plan in 2001, and even at some later dates:

- It is highly unlikely that the plan would be before this court today.
- Millions of Texas taxpayers' hard-earned dollars would not have been wasted.
- Much political venom would not have been spilled, poisoning the waters of civil discourse.
- Texas would have set a standard of model redistricting principles for other states to emulate.
- Racial and ethnic minorities would have fared at least as well, if not better.
- Rural areas of Texas would have been better represented with far less impact on their districts from large urban areas.
- Hispanics would have had an influence district in central Dallas County.
- The city of Austin would have had its own district, its city limits containing about the required population for a district. (And if Austin is not a community of interest, then that term has no rational meaning.)

- Tom DeLay would still be in Congress in a powerful position of national influence, poised to become Speaker of the U. S. House and ultimately perhaps the most powerful Speaker in U. S. history.
- Martin Frost would still be in Congress (from the Hispanic influence district), as one of the Democrats' most powerful members.
- And the Republicans would still have likely captured 21 seats, as indicated by a post-election analysis of projected results in 2004 under Plan 1160C, although there would have been more competitive races.

But most importantly, all the people of Texas would have had fair and effective representation for their communities of interest in our representative republic.

The structural integrity of our republican form of government remains endangered through unimpeded assaults by self-interested parties.

And five years "full of sound and fury" have now brought us to this court.

Meanwhile, politicians and special interests have games to play and axes to grind and lawyers have money to make, so who cares?