

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259
(DCG-JES-JVB)
(consolidated cases)

THE UNITED STATES' UNOPPOSED MOTION TO CLARIFY ORDER

The United States of America moves for clarification of this Court's May 23 Memorandum Opinion and Order Granting in Part and Denying in Part Defendants' Motions to Dismiss, ECF No. 307. The United States has alleged that Texas's 2021 Congressional plan is intentionally discriminatory on the basis of race, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, with respect to the Dallas-Fort Worth configuration and Congressional District 23. *See* U.S. Compl. ¶¶ 39-75, *United States v. Texas*, No. 3:21-cv-299 (W.D. Tex. Dec. 6, 2021), ECF No. 1. This Court's Opinion and Order states that the United States' "allegations are sufficient to state a plausible claim for discriminatory intent, and so we do not dismiss the United States' complaint on that ground." Op. at 29. Later, however, the Opinion and Order states that the United States' "Cause of Action is dismissed for failure to state a claim except insofar as it brings an effects-based vote-dilution claim requiring a new opportunity state House district near El Paso." Op. at 60.

Given the apparent tension in the discussions at pages 29 and 60 of this Court's May 23 Opinion and Order, the United States respectfully requests that this Court provide clarification as

to whether the United States' intentional discrimination claims regarding the 2021 Congressional Plan have been dismissed.¹ A proposed order is attached hereto.

Dated: May 25, 2022

PAMELA S. KARLAN
Principal Deputy Assistant Attorney General
Civil Rights Division

/s/ Jasmin Lott
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¹ Defendants do not oppose the United States' request that the Court clarify its ruling, but they maintain that the United States' claims should be dismissed.

CERTIFICATE OF CONFERRAL

I hereby certify that on May 25, 2022, counsel for the United States met and conferred with counsel for the State of Texas concerning the subject of this motion.

/s/ Jasmin Lott _____

Jasmin Lott

Voting Section

Civil Rights Division

U.S. Department of Justice

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2022, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ Jasmin Lott _____

Jasmin Lott

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[PROPOSED] ORDER OF CLARIFICATION

Upon consideration of the United States' Motion for Clarification, the Motion is GRANTED. This Court clarifies its May 23 Memorandum Opinion and Order Granting in Part and Denying in Part Defendants' Motions to Dismiss, ECF No. 307, at page 60, as follows:

- In *United States*, No. 3:21-cv-233:
 - The Cause of Action is dismissed for failure to state a claim except insofar as it brings intent-based claims related to Congressional districts in the Dallas-Fort Worth area configuration and Congressional District 23 as well as an effects-based vote-dilution claim requiring a new opportunity state House district near El Paso.

So ORDERED and SIGNED on this _____ day of ____ 2022

DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

And on behalf of:

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals
Fifth Circuit

-and-

Jeffrey V. Brown
United States District Judge
Southern District of Texas