

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

LA UNIÓN DEL PUEBLO ENTERO, *et al.*,

*Plaintiffs,*

V.

STATE OF TEXAS, *et al.*,

*Defendants.*

HARRIS COUNTY REPUBLICAN PARTY, *et al.*,

*Intervenor-Defendants.*

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Case No. 5:21-cv-00844-XR  
[Lead Case]

**LUPE PLAINTIFFS' UNOPPOSED MOTION FOR VOLUNTARY DISMISSAL  
WITHOUT PREJUDICE PURSUANT TO FED. R. CIV. P. 41(a)(2)**

Pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiffs La Unión Del Pueblo Entero, *et al.* (“LUPE Plaintiffs”),<sup>1</sup> by and through counsel in the above-captioned action, hereby move to voluntarily dismiss without prejudice their remaining claims alleging intentional racial discrimination.<sup>2</sup> All other claims remain live and unaffected by this Motion.

## I. BACKGROUND

This case is a challenge to restrictions that were placed on Texans’ right to vote by Senate Bill 1 (“SB1”) enacted in the 87th Legislature, Second Called Session. LUPE Plaintiffs filed suit

<sup>1</sup> LUPE Plaintiffs are La Unión del Pueblo Entero, Friendship-West Baptist Church, Southwest Voter Registration Education Project, Texas Impact, Mexican American Bar Association of Texas, Texas Hispanics Organized for Political Education, Jolt Action, William C. Velasquez Institute, FIEL Houston Inc., and James Lewin.

<sup>2</sup> The Second Amended Complaint alleges that various provisions of SB1 were enacted with a racially discriminatory purpose in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution (Counts II and III) and Section 2 Voting Rights Act (Count IV). This Motion does not affect the remaining challenges raised in Count IV of the Second Amended Complaint—namely, that the challenged provisions have a discriminatory result in violation of Section 2 of the VRA.

on September 3, 2021, alleging that various provisions of SB1 violate the U.S. Constitution, the Voting Rights Act, and the Americans with Disabilities Act. The Court entered LUPE Plaintiffs' Second Amended Complaint on January 25, 2022. ECF No. 208. The various Defendants filed answers to LUPE Plaintiffs' Second Amended Complaint in February, March, and April 2022. The Court consolidated several other challenges to SB1 with LUPE Plaintiffs' case, and held a bench trial in the consolidated cases over the course of several weeks in September and October 2023 ("Phase I Trial"), with the caveat that the trial court record would remain open for additional evidence in support of Plaintiffs' intentional racial discrimination claims pending the U.S. Court of Appeals for the Fifth Circuit's resolution of *LUPE v. Bettencourt*, Case No. 23-50201. Since the conclusion of the Phase I Trial, this Court has issued Findings of Fact and Conclusions of Law resolving some of LUPE Plaintiffs' claims. *See* ECF No. 1157; ECF No. 1173.

LUPE Plaintiffs have filed, and the Court has granted, two prior unopposed motions for voluntary dismissal, which resulted in a narrower scope of disputes between LUPE Plaintiffs and Defendants. *See* ECF No. 613; ECF No. 624; ECF No. 766; ECF No. 771. In order to further narrow the remaining issues to be decided by this Court, LUPE Plaintiffs respectfully move this Court to grant their motion to voluntarily dismiss without prejudice their remaining claims alleging intentional racial discrimination under Fed. R. Civ. P. 41(a)(2).

## II. ARGUMENT

Rule 41(a)(2) permits voluntary dismissal of claims at any time "by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2); *see also id.* ("Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice."). As the language of the rule suggests, this Court has broad discretion to grant a motion for voluntary dismissal under Rule 41(a)(2). *See, e.g., Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 318 (5th Cir. 2002); *Bechuck v.*

*Home Depot U.S.A., Inc.*, 814 F.3d 287 (5th Cir. 2016). “[A]s a general rule, motions for voluntary dismissal should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit.” *Elbaor*, 279 F.3d at 317. Even if the Court concludes that granting the motion will cause plain legal prejudice, it need not deny the motion outright. Rather, the Court may “craft conditions that will cure the prejudice.” *Id.* at 317-18.

Defendants will not suffer plain legal prejudice as a result of the dismissal that LUPE Plaintiffs seek in this motion. Legal prejudice is characterized as “prejudice to some legal interest, some legal claim, [or] some legal argument.” *JMC Const. LP v. Modular Space Corp.*, No. 3:07-CV-01925-B, 2008 WL 4791562, at \*1 (N.D. Tex. Oct. 30, 2008) (citing *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996)); *see also Robles v. Atl. Sounding Co.*, 77 Fed. App’x 274, 275 (5th Cir. 2003) (“Plain legal prejudice often occurs where the grant of a motion for voluntary dismissal causes the non-movant to be stripped of an otherwise available defense.”) (collecting cases). As explained in LUPE Plaintiffs’ prior motions for voluntary dismissal, ECF No. 613; ECF No. 766, Defendants will have a full opportunity to present all available defenses in any future suit relating to the claims that LUPE Plaintiffs now seek to dismiss. *Crosby v. La. Health Serv. & Indem. Co.*, 647 F.3d 258, 262 (5th Cir. 2011) (noting that a party may obtain discovery regarding any matter involved in the pending action related to a claim or defense of a party). Dismissal without prejudice is also appropriate at this juncture because LUPE Plaintiffs have not suffered an adverse legal decision but rather are simply seeking to narrow the issues that remain in dispute. *See Robles*, 77 Fed. App’x at 275 (concluding that “[t]hese timing cases are inapposite here because they involve situations where the movant suffered an adverse legal decision *prior* to moving for voluntary dismissal” (emphasis in original)); *Manshack v. Sw. Elec. Power Co.*, 915

F.2d 172, 174 (5th Cir. 1990) (affirming a district court’s approval of voluntary dismissal on the day before trial but suggesting that voluntary dismissal after an adverse trial court ruling could “[i]n some circumstances . . . inflict ‘legal prejudice’”); *Davis v. Huskipower Outdoor Equip. Corp.*, 936 F.2d 193, 199 (5th Cir. 1991) (affirming a district court’s denial of a motion for voluntary dismissal “after the magistrate had considered the case and issued a comprehensive recommendation that was adverse to [the plaintiffs’] position”).

In sum, granting LUPE Plaintiffs’ motion for voluntary dismissal is consistent with the requirements of Rule 42(a)(2) and would not cause Defendants to suffer legal prejudice. Accordingly, the motion should be granted.

### **III. PRAYER FOR RELIEF**

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order granting Plaintiffs’ Motion and dismissing without prejudice their remaining claims alleging intentional racial discrimination in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution (Counts II and III) and the portion of Count IV that claims intentional racial discrimination in violation of Section 2 of the Voting Rights Act.

Dated: January 24, 2025

Respectfully submitted,

/s/ Nina Perales

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**CERTIFICATE OF CONFERENCE**

I certify that on January 23 and 24, 2025, I conferred with counsel for State Defendants and counsel for Defendant Intervenors Harris County Republican Party, *et al.* regarding the relief requested in this motion. Counsel for State Defendants and Defendant Intervenors Harris County Republican Party, *et al.* responded that they are unopposed.

/s/ Nina Perales  
Nina Perales

**CERTIFICATE OF SERVICE**

I certify that on January 24, 2025, a true and accurate copy of the foregoing document was filed electronically with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ Nina Perales  
Nina Perales

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