

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

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS, et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

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

**THE UNITED STATES AND PRIVATE PLAINTIFFS’
STATUS REPORT REGARDING CASE PROGRESS**

This consolidated litigation challenging Texas’s decennial statewide redistricting plans began in October 2021. In August 2023, this Court ordered the parties to identify all outstanding motions and other relevant pending matters. *See* Order, ECF No. 729; *see also* Jnt. Status Rep., ECF No. 730. Although this Court has since resolved several pending discovery disputes, this matter does not currently have a trial date.¹ To facilitate resolution of the underlying claims, the United States and the Private Plaintiffs now file this status report to (A) identify pending motions, (B) specify pretrial proceedings that will require scheduling, and (C) seek guidance on possible trial dates.

¹ This Court initially scheduled trial to begin in September 2022 but vacated that setting in light of unresolved discovery disputes. *See* Order, ECF No. 569; *see also* Jnt. Advisory, ECF No. 566. In December 2022, the Court directed the parties to file a notice regarding their availability for a trial in the first half of 2023. *See* Notice and Order, ECF No. 665; *see also* Pls. Jnt. Notice, ECF No. 680; State Defs. Advisory, ECF No. 679. However, the Court did not ultimately set trial during 2023. *See also* Jnt. Mot. for Guidance, ECF No. 693 (requesting information regarding trial dates under consideration); Order, ECF No. 696 (denying motion).

(A) Pending Motions

In December 2023 and June 2024, the Court issued four orders resolving many of the parties' discovery disputes. *See* Legis. Priv. Order, ECF No. 746; Kincaid Order, ECF No. 782; Cardwell Order, ECF No. 783; Dave's Redistricting Order, ECF No. 790; *see also* Legis. Priv. Diss. Op., ECF No. 771. Nonetheless, several fully submitted motions remain pending:

- (1) United States' First Motion to Enforce Document Subpoenas (Legislators), ECF No. 35;²
- (2) United States' Second Motion to Enforce Document Subpoenas (Chris Gober and The Gober Group), ECF No. 442;
- (3) LULAC Plaintiffs' First Motion to Enforce Document Subpoenas (Legislators), ECF No. 447;³
- (4) LULAC Plaintiffs' Motion to Reopen Sen. Joan Huffman Deposition, ECF No. 580;
- (5) LULAC Plaintiffs' Third Motion to Enforce Document Subpoenas (Legislators), ECF No. 582;⁴
- (6) United States' Renewed Motion to Compel Eric Wienckowski and Thomas Bryan Documents, ECF No. 634;

² The Court has ruled on assertions of the legislative privilege, *see* Legis. Priv. Order 17, but the Legislators asserted only the attorney-client privilege and the work-product doctrine over 13 contested documents, *see* U.S. 1st Mot. to Enforce Chall. Docs. Index 25-26, 51, 72, 150-51, 154, 212-13, 216, 256 & 259, ECF No. 351-7 (DOC_0353008, DOC_0353009, and DOC_0012507 to DOC_0012517). Although this motion is reflected as resolved on the docket sheet, the Court has not yet ruled on these documents. *See* Legis. Priv. Order 54, 56 & 96-97.

³ The Court has ruled on assertions of the legislative privilege, *see* Legis. Priv. Order 17, but the Legislators asserted only the attorney-client privilege and the work-product doctrine over 11 contested documents, *see* LULAC Pls. 1st Mot. to Enforce Docs. Sought 3-4, ECF No. 447-2 (DOC_0012507 to DOC_0012517). Although this motion is reflected as resolved on the docket sheet, the Court has not yet ruled on these documents. *See* Legis. Priv. Order 162-63.

⁴ The Court has ruled on assertions of the legislative privilege, *see* Legis. Priv. Order 17, but the Legislators asserted only the attorney-client privilege and the work-product doctrine over two contested documents, *see* LULAC Pls. 3d Mot. to Enforce Docs. Sought 19, 35, ECF No. 582-2 (DOC_0001229 and DOC_0001474). Although this motion is reflected as resolved on the docket sheet, the Court has not yet ruled on these documents. *See* Legis. Priv. Order 345, 352.

- (7) State Defendants' Motion to Dismiss Fair Maps Plaintiffs' Supplemental Complaint, ECF No. 779; and
- (8) State Defendants' Motion to Dismiss Abuabara Plaintiffs' Supplemental Complaint, ECF No. 785.

(B) Pretrial Proceedings

Given the reenactment of redistricting plans for the Texas Senate and Texas House, the occurrence of intervening elections, the release of new data from the U.S. Census Bureau, the release of intervening Supreme Court decisions, and the passage of time, the parties will need to conduct limited additional discovery prior to trial. Since previous pretrial deadlines have been vacated, the pretrial proceedings that will require scheduling in this case include:

- (1) Supplementing initial disclosures and discovery responses;
- (2) Conducting limited fact discovery and depositions of newly disclosed witnesses, witnesses likely to testify on newly disclosed subjects, and witnesses implicated by newly disclosed documents;
- (3) Disclosing supplemental expert reports;
- (4) Conducting depositions of experts who have disclosed supplemental reports;
- (5) Filing pretrial materials, including Rule 26(a)(3) disclosures and objections, motions in limine, and a joint pretrial order; and
- (6) Holding a final pretrial conference.

To complete these proceedings, the United States and the Private Plaintiffs estimate that they will need at least 120 days between the reopening of discovery and the commencement of trial.

(C) Trial Guidance

The United States and the Private Plaintiffs submit that scheduling trial would facilitate the resolution of this litigation. The United States and the Private Plaintiffs agree that holding trial at the end of this year is reasonable, should pending motions be resolved with sufficient time

to complete pretrial proceedings.⁵ Accordingly, the United States and the Private Plaintiffs respectfully request guidance from the Court as to the dates on which it is available for trial. Upon receiving the Court's availability, the United States and the Private Plaintiffs agree to meet and confer with Defendants and submit a proposed scheduling order or alternative proposals.

Dated: July 26, 2024

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⁵ The LULAC Plaintiffs have appealed the Court's December 2023 and June 2024 orders involving the legislative privilege. *See* LULAC Pls. 1st Notice of Appeal, ECF No. 755; LULAC Pls. 2d Notice of Appeal, ECF No. 784. Although the parties have not yet briefed the consolidated appeals, *see* Notice Letter, Doc. No. 49, *LULAC v. Abbott*, No. 24-50128 (5th Cir. July 18, 2024) (setting August 27, 2024 as the deadline for the LULAC Plaintiffs to file their opening brief), the LULAC Plaintiffs are willing to proceed to trial even as the appeals remain pending. In the event that the LULAC Plaintiffs obtain additional discovery after trial, a brief supplemental hearing could be appropriate.

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CERTIFICATE OF CONFERRAL

I hereby certify that, from July 9 to 24, 2024, counsel for the United States met and conferred with counsel for the State Defendants concerning the subject of this status report. Counsel for the State Defendants indicated that the State Defendants “will be unable to join the [s]tatus [r]eport absent considerable modification.” Accordingly, counsel for the State Defendants suggested, and counsel for the United States agreed, that the State Defendants “will file a separate [s]tatus [r]eport.”

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CERTIFICATE OF SERVICE

I hereby certify that, on July 26, 2024, 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/ Jaywin Singh Malhi

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