



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

R. TED CRUZ
SOLICITOR GENERAL

(512) 936-1700
TED.CRUZ@OAG.STATE.TX.US

January 23, 2006

VIA FACSIMILE AND UPS OVERNIGHT DELIVERY

Hon. William K. Suter, Clerk
Supreme Court of the United States
One 1st Street, N.E.
Washington, D.C. 20543

Re: No. 05-204, *League of United Latin American Citizens, et al. v. Rick Perry, et al.*
No. 05-254, *Travis County, Texas, et al. v. Rick Perry, Governor of Texas, et al.*
No. 05-276, *Eddie Jackson, et al. v. Rick Perry, et al.*
No. 05-439, *GI Forum of Texas, et al. v. Rick Perry, et al.*

Dear General Suter:

At the request of the Clerk's office, the State of Texas; Rick Perry, Governor of Texas; Roger Williams, Secretary of State of Texas; David Dewhurst, Lieutenant Governor of Texas; and Tom Craddick, Speaker of the Texas House of Representatives (collectively the "State Appellees") file this supplemental letter detailing the reasons for the request to file one single consolidated brief of 125 pages.

In these cases, the State Appellees are defending against four consolidated appeals that have been allotted two hours for argument, twice the customary time. On January 10, the four sets of Appellants filed four separate merits briefs, totaling 165 pages. Those briefs, in turn, presented argument on eleven separate questions presented:

1. Whether a redistricting plan drawn with "the single-minded purpose" of gaining additional partisan advantage, using three year old census data that overpopulates Latino districts, violates the one person one vote rule?
2. Whether a redistricting plan drawn with "the single-minded purpose" of gaining additional partisan advantage, using three year old census data that overpopulates Latino districts, eliminates a Latino majority district, Congressional District 23 (CD23), and eliminates all competitive districts in which the minority vote had been the deciding vote under the pre-existing legal redistricting plan, is an impermissible political gerrymander in violation of the First and Fourteenth Amendment[s]?

3. Whether partisan gerrymandering and partisan voting can be used as a subterfuge to discount evidence of minority vote dilution such as the elimination of a Latino majority district and racially polarized voting, to defeat a minority community's claim of violation of the Voting Rights Act and the First and Fourteenth Amendment[s]?
4. Does the Texas legislature's 2003 replacement of a legally valid congressional districting plan with a statewide plan, enacted for the "the single-minded purpose" of gaining partisan advantage, satisfy the stringent constitutional rule of equipopulous districts by relying on the 2000 decennial census and the fiction of inter-censal population stability?
5. Whether the Equal Protection Clause and the First Amendment prohibit States from redrawing lawful districting plans in the middle of the decade, for the sole purpose of maximizing partisan advantage.
6. Whether Section 2 of the Voting Rights Act permits a State to destroy a district effectively controlled by African-American voters, merely because it is impossible to draw a district in which African-Americans constitute an absolute mathematical majority of the population.
7. Whether, under *Bush v. Vera*, 517 U.S. 952 (1996), a bizarre-looking congressional district, which was intentionally draw as a majority-Latino district by connecting two far-flung pockets of dense urban population with a 300-mile-long rural "land bridge," may escape invalidation as a *racial* gerrymander because drawing a compact majority-Latino district would have required the mapmakers to compromise their *political* goal of maximizing Republican seats elsewhere in the State.
8. Whether an assertion of political partisanship is sufficient justification, under section 2 of the Voting Rights Act and the Constitution, to dismantle a Latino-majority congressional district to elect the Anglo-preferred candidate.
9. Whether section 2 permits a state to offset the elimination of a majority-minority district located in one area of the state by creating another majority-minority district in a different area of the state.
10. Whether section 2 demonstrative districts must be more compact and offer greater electoral opportunity to minority voters than the corresponding districts in the challenged redistricting plan.
11. Whether the number of majority-minority districts that can be created in the state functions as the upper limit of permissible political opportunity when assessing proportionality under *Johnson v. DeGrandy*, 512 U.S. 997 (1994).

At the same time, three additional plaintiffs for whom probable jurisdiction was not noted filed an additional 120 pages of merits briefing on substantially the same questions.

Moreover, these consolidated appeals are also unusual in that the Court noted probable jurisdiction without first requesting responses from the State Appellees. Thus, the four sets of Appellants had previously presented 108 additional pages of briefing in their Jurisdictional Statements, along with another 98 pages of Jurisdictional Statements from other plaintiffs for whom the Court did not note probable jurisdiction.

Therefore, the four Appellants in these consolidated appeals have presented an aggregate of 268 pages of briefing on eleven questions presented, without the Court's having yet received any arguments in response to Appellants' claims. And, Appellants' briefing has been supported by another 218 pages of briefing from affiliated plaintiffs who are also challenging the lower court's judgment.¹

Under the ordinary course of proceedings, the State Appellees would be allocated four 50-page merits briefs, comprising 200 total pages, to respond to these appeals. SUP. CT. R. 33.1(g). Nevertheless, the State Appellees do not believe that the Court would be well served by four separate merits briefs. Rather, the State Appellees believe that a single comprehensive brief would be of greater utility in assisting the Court in resolving these four consolidated appeals.

Accordingly, the State Appellees have filed this application to file one single consolidated brief not to exceed 125 pages. In so doing, and in the interest of brevity (to the extent reasonably attainable), the State Appellees have voluntarily relinquished 75 of the 200 pages allocated by the Rules. The State Appellees hope to be able to focus the argument even more and reduce the length of the consolidated merits brief even further, but at this stage in the expedited briefing schedule could not responsibly commit to addressing all eleven questions presented in fewer than 125 pages.

For these reasons, the State Appellees request permission to file one single consolidated brief of no more than 125 pages in these four consolidated cases.

Thank you for your assistance.

Sincerely,



R. Ted Cruz

RTC/sl

cc: Rolando Rios
George Korbel
Renea Hicks
Paul M. Smith
Sam Hirsch
Nina Perales
J. Gerald Hebert

¹These totals do not include the additional 213 pages of briefing from the 10 *amici* supporting Appellants.