No. 05-276; No. 05-204; No. 05-254; No. 05-439

In The Supreme Court of the United States

EDDIE JACKSON, *et al.*,

Appellants,

v.

RICK PERRY, Governor of Texas, *et al.*,

Appellees.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*,

Appellants,

v.

RICK PERRY, Governor of Texas, *et al.*,

Appellees.

TRAVIS COUNTY, TEXAS, *et al.*,

Appellants,

v.

RICK PERRY, Governor of Texas, *et al.*,

Appellees.

GI FORUM OF TEXAS, *et al.,*

Appellants,

v.

RICK PERRY, Governor of Texas, *et al.*,

Appellees.

On Appeal From The United States District Court For The Eastern District Of Texas

BRIEF OF *AMICUS CURIAE* RON WILSON IN SUPPORT OF APPELLEES

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Ron Wilson is an African-American Democrat who served the state of Texas for 27 years as a member of the Texas House of Representatives and, as is shown below, has a unique perspective on this appeal that may assist this Court. *See* Clay Robinson, *Wilson Resigns Seat With Five Months Left; House Democrat With A 27-year Run Was Defeated In March's Primary*, The Houston Chronicle, August 5, 2004, at B1. In 1997, Mr. Wilson was named as one of the state's top ten legislators by Texas Monthly Magazine, which described him as a "revolutionary." *See* Paula Burka, Patricia Kilday Hart, John Spring, & Tania Krebs, *The Best & Worst Legislators 1997*, Texas Monthly Magazine, July 1997, at 96.

Representative Wilson owes no allegiance to Tom Delay. Rather, he has been an active, outspoken Democrat his entire life. Wilson was first introduced to state politics in 1973, while a student at the University of Texas in Austin, where he was an aid to African-American Democratic State Representative Mickey Leland of Houston, Texas. *See Texas House of Representatives District 131; Democrats; Ron Wilson*, The Houston Chronicle, March 1, 1998, at Voter's Guide, pg. 7; *see also* Ken Herman, *Wilson Pays A Price For Siding With GOP*, Austin American Statesman, March 11, 2004, at A1; *see also* Scott S. Greenberger, *Wilson Happy To Be Austin's Antagonist: Houston Legislator Derides Idea That Developer Is Behind His*

[1] Pursuant to Rule 37.6 of this court, *amicus curiae* states that no party had any role in writing this brief and that no one other than *amicus* or his counsel made a monetary contribution to the preparation or submission of this brief. This brief is filed with the written consent of the parties.

Bills, Austin American Statesman, March 14, 1999, at A1. Three years later, when he was only 23 years old, Wilson was elected to the Texas House of Representatives for the 131st District, in Houston, Texas. *See* Ken Herman, *Wilson Pays A Price For Siding With GOP*, Austin American Statesman, March 11, 2004, at A1. At the time he left his seat in the Texas House in 2004, Wilson ranked fifth in seniority among Texas' 150 House members. *See* Clay Robinson, *Wilson Resigns Seat With Five Months Left; House Democrat With A 27-year Run Was Defeated In March's Primary*, The Houston Chronicle, August 5, 2004, at B1.

During Representative Wilson's long career in the Texas House, he served on[2] and chaired a variety of committees and was responsible for numerous pieces of significant legislation. In fact, Wilson chaired the following committees: Public School Finance Select Committee on Tax (2001-2003); Ways and Means (2001-2003); Licensing and Administrative Procedures (1991-2001); Liquor Regulations (1985-1991); Rules, Select (1989-1991); Health Services (1979-1981); Junior College Funding, Select (1977-1979). *See* Committee Information for Ron Wilson, Slip File for Texas Congressman Ron Wilson at the Texas Legislative Reference Library. In addition, Texas Speaker of the House, Tom Craddick, appointed Wilson to be in charge of the Texas House tax-writing panel. *See* William

[2] Representative Wilson served on these committees and others: Judicial Affairs, Public School Finance, Election, Teacher Health Insurance, Energy Resources, Revenue and Public Education Funding, Pensions and Investments, State Affairs, Department of Human Resources Audits, Human Services, Public Health, Calendars, Texas Department of Mental Health and Mental Retardation. *See* Committee Information for Ron Wilson, Slip File for Texas Congressman Ron Wilson at the Texas Legislative Reference Library.

McKenzie, *New Alliances In House Turning Heads*, The Dallas Morning News, February 11, 2003 at 15A.

Through these key leadership positions, Wilson fought to enact legislation that advanced minority interests. *See* Ron Nissimov, *Ron Wilson: A Man of Contradictions, Controversy*, The Houston Chronicle, January 11, 2004. For example, Wilson advocated the creation of an independent, civilian review of the police force to end racial profiling. *See For Wilson: Democratic Incumbent In Texas House District 131*, The Houston Chronicle, January 31, 2002, at A24. To improve education for African-Americans and minorities, Wilson supported legislation to provide private school vouchers to low-income students from six of the state's largest urban districts. *See* Janet Elliott, *Wilson Proposes Voucher Program; Bill Aims To Help Poor Schoolkids*, The Houston Chronicle, December 18, 2002, at A41.[3] In an effort to cure the dramatic decrease in minority enrollment at public universities, Wilson supported House Bill 484, which allowed the top ten percent of graduates from state-supported universities to receive automatic admission to public university graduate or professional schools. *See Higher Education Agencies and Institutions Present 2004-2005 Budget Building Blocks to House Appropriations Subcommittee on Education*, http://www.ktcinet.com/aaup/Wanda/feb_28_2003.htm. Additionally, to protect minority business interests, Wilson supported legislation to open to the public the contents of the files related to businesses in the state's racial and gender contracting quota program. *See Texans Seek to End Use of Racial Quotas and*

[3] Nationally, school vouchers enjoy support by a considerable majority of African-Americans, especially low-income African-Americans. *See*, *e.g.*, Straight Talk on Vouchers, Washington Post, at A18, May 12, 2003.

Racial Preferences: Ward Connerly Lends His Support to Texas Battle, http://www.adversity.net/texas/initiative.htm (last visited on January 19, 2005).

Furthermore, Representative Wilson's experience includes the subject of this appeal – congressional redistricting. Wilson was one of the ten legislators chosen to be a member of the Texas House-Senate panel on redistricting. *See* John Moritz, *House-Senate Panel To Seek Compromise*, Fort Worth Star Telegram, September 26, 2003, at 6B. After reviewing the evidence presented to the Committee on the plan at issue, Wilson supported the Republican-drawn redistricting map because he believed that it provided the best opportunity to add an additional African-American Congressman from Texas. *See* John Moritz, *Legislator: Remap Targeted Frost*, Fort Worth Star Telegram, at 1B. This belief was founded on Wilson's experience. Wilson's long experience also leads him to believe that minorities' voting rights are better served by the creation of "safe" minority-majority districts, which ultimately send more Black and Hispanic representatives to Congress. Wilson believes this result is desirable, even if it costs incumbent white Democrats their seats, because he believes African-Americans initiate bills on minority issues far more often than white Democrats with black constituents. He also believes that holding actual seats gives blacks the power of the incumbency and other similar benefits. *See id*. According to Wilson, minority influence districts (an alternative to minority-majority districts) are nothing more than "begging and pleading, step-and-fetch-it districts" which do little, if anything, to really promote minority interests. *See id.* Although Wilson lost his legislative seat after supporting this

Plan,[4] he still believes his support of the plan was the right decision because an African-American ultimately unseated a Caucasian incumbent, in the Democratic primary for the redrawn 9th Congressional District, giving the district an African-American representative. *See* Clay Robinson, *Wilson Resigns Seat With Five Months Left; House Democrat With A 27-year Run Was Defeated In March's Primary*, The Houston Chronicle, August 5, 2004, at B1.

Wilson's insight into the instant dispute is unique – not only is he one of the few Democrats who supported a Republican redistricting plan – he is also an experienced African-American legislator familiar with Texas' voting patterns and with the redistricting process who is licensed to practice law and to practice before this Court. According to the Republican Speaker of the Texas House, Tom Craddick, Wilson "probably knows more about redistricting than most of the people on the House floor." *See* Associated Press, *Maverick Democrat Part of GOP Team Negotiating Redistricting*, Tyler Morning Telegraph, September 29, 2003. Thus, former Congressman Wilson respectfully submits this *amicus curiae* brief for the Court's consideration.

SUMMARY OF THE ARGUMENT

This Court should affirm the decision of the court below because the Texas Legislature properly exercised its authority to re-draw the Texas Congressional District map. Texas'

[4] The Texas Democratic Party, angered by his support for the Republican-backed congressional map, successfully worked to remove Wilson from his seat. *See*, *e.g.*, Clay Robinson, *Wilson Resigns Seat With Five Months Left; House Democrat With A 27-year Run Was Defeated In March's Primary*, The Houston Chronicle, August 5, 2004, at B1.

choice, to draw "safe" minority-majority districts to ensure that minorities are fairly represented in Congress, met the requirements of the Voting Rights Act and the Constitution and this Court should not interfere in the inherently legislative task of redrawing Congressional maps.

ARGUMENT

I. This Court Should Affirm the Decision Below Which Found that Plan 1374C Did Not Violate Section 2 of the VRA.

Even if the Jackson Plaintiffs could meet the preconditions[5] necessary to bring a claim under Section 2 of the Voting Rights Act ("VRA"), this Court should still affirm the decision below because, in passing Congressional Redistricting Plan 1374C, the Texas Legislature properly exercised its prerogative to create additional minority-majority districts to increase minority Congressional seat opportunities in proportion to the percentage of minority members in the Texas population.[6] Thus, this Court should

[5] The test developed in *Thornburg v. Gingles*, 478 U.S. 30 (1986) requires a plaintiff to meet a three-pronged test, in order to state a claim under Section 2 of the Voting Rights Act: "First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a *majority* in a single-member district." 478 U.S. at 50 (emphasis added). "Second, the minority group must be able to show that it is politically cohesive." *Id.*, at 51. "Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it – in the absence of special circumstances, such as the minority candidate running unopposed . . . usually to defeat the minority's preferred candidate." *Id.*

[6] For example, Plan 1374C's three "safe" African-American districts comprise 9.4% (3/32) of the available districts which is comparable to the percentage of the black Texas voting-age population: 11.7%.

affirm the Texas Legislature's choice to create "safe" minority-majority districts, as opposed to coalition districts, to meet Section 2 of the VRA, in its redistricting map.

The Elections Clause[7] of the United States Constitution expressly delegates the power to create and modify Congressional districts to the state legislatures. U.S. CONST. art. I, § 4. As this Court held in *Ashcroft* (in a Section 5 context), the states are also given, as a part of this power, the flexibility to choose one theory of effective representation (a smaller number of safe minority-majority districts) over another (a greater number of influence or coalition districts). *Georgia v. Ashcroft*, 539 U.S. 461, 574, 123 S.Ct. 2498, 2511-12 (2003). This holding reflects the fact that a state must be allowed to select the form of representation that is most effective for that particular state, given its political realities, as long as the selection meets the requirements of the Equal Protection Clause and Section 2 of the Voting Rights Act. There was ample evidence below that Plan 1374C met those requirements and effectively implemented this Court's "one man, one vote" rule in Texas.

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[7] "The Times, Places and Manner of holding Elections for Senators and Representatives, *shall be prescribed in each State by the Legislature thereof*; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. CONST. art. I, § 4, cl. 1 (emphasis added). This Court has long held that the power delegated to States includes the power to draw congressional districts. *See Smiley v. Holm*, 285 U.S. 355, 366-67 (1932) (evaluating redistricting power through Article I, § 4); *State ex rel. Davis v. Hildebrandt*, 241 U.S. 565, 569 (1916) (same). And, the Court has repeatedly held that, "the Constitution leaves with the States *primary responsibility* for apportionment of their federal congressional . . . districts." *Growe v. Emison*, 507 U.S. 25, 34 (1993) (emphasis added); *see also White v. Weiser*, 412 U.S. 783, 795 (1973) ("[S]tate legislatures have 'primary jurisdiction' over legislative reapportionment."); *Branch v. Smith*, 538 U.S. 254, 261 (2003) ("[Redistricting] is primarily the duty and responsibility of the State through its legislature.").

A. The fight for equal voting rights.

As a young man, *amicus curiae* was actively involved in the fight to end voting discrimination in Texas. *Amicus curiae* was elected to the state legislature in 1973 and served for 14 terms. Tr. 12/18/03 AM at 65:8.[8] During his political career, *amicus curiae* gained expertise in the areas of Texas' voting patterns and redistricting rules and participated in the effort to enforce voting rights. Tr. 12/18/03 AM t 65:9-11.

As the Court will recall, the American effort to enforce minority voting rights developed in three stages. First came the battle for the ballot box. *See*, *e.g.*, Alexandar Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (2000); Marchette Chute, *The First Liberty: A History of the Right to Vote in America*, 1619-1850 (1969); Chilton Williamson, *American Suffrage: From Property to Democracy, 1760-1860* (1960). Yet, even after gaining the right to vote and an initial increase in black voters during Reconstruction, the level of Southern black political participation dropped dramatically and remained low and stagnant until passage of the Voting Rights Act of 1965. Grant M. Hayden, *Resolving the Dilemma of Minority Representation*, 92 Calif.L.Rev. 1589, 1594 (2004).

The Act, which was designed to address the second stage of the battle to enforce the Fifteenth Amendment's guarantees, became one of the most successful pieces of civil-rights legislation in history. Hayden, *supra*, at 1595-96. Section 2 of the Act tracked the language of the Fifteenth Amendment to prohibit the use of voting qualifications or practices that

[8] When citing the transcript of the trial below, *amicus* will use "Tr.," followed by the date, whether the evidence was heard in the morning or afternoon, and then the page: and line.

denied or abridged the right of any citizen to vote on account of race or color and contained several provisions that swept aside many of the facially race-neutral devices that had previously been used to keep minority voters from the polls. *Id.*

The Voting Rights Act's effects were immediately evident. In covered jurisdictions, the percentage of eligible blacks that were registered to vote rose from 29% to over 52%. *Id.* Over succeeding decades, the level of minority voter participation continued its upward climb, slowly reducing the gap between minority and white voter registration. *Id.* This success, though, was somewhat limited, because mere access to the polls still did not guarantee equal voting rights. *Id.*

As a result, the second stage of the battle was over the right to cast a quantitatively undiluted vote and was addressed in this Court's mal-apportionment cases of the 1960s. Grant M. Hayden, *Law and Democracy: A Symposium on the Law Governing Our Democratic Process: Refocusing on Race*, 73 Geo. Wash. L. Rev. 1254, 1261 (2005). Census data showed that, over time, there had been significant demographic shifts from rural areas to cities, largely driven by the migration of rural blacks to the cities and the immigration of Europeans to American cities. Hayden, *Resolving the Dilemma*, *supra*, at 1596-1602. As a result, the votes of people living in urban areas, who were disproportionately members of minority groups, were numerically diluted when compared to the votes of rural voters. *Id.* These urban voters had few options for dealing with the problem because state legislators were not inclined to redistrict themselves out of power. *Id.* at 1598. Then, in *Reynolds v. Sims*, this Court held that one's right to vote for state legislators was unconstitutionally impaired when "its weight is in

a substantial fashion diluted" as compared to voters in other parts of the state. *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

The "one person, one vote" standard soon became the rule in redistricting decisions, meaning that rural-controlled state legislatures could no longer allow the disparities between districts to grow. Hayden, *supra*, at 1599. Quickly, the inequalities in district populations were eliminated from the political landscape. Minority voters now had both the right to cast ballots as well as the right to have their votes assigned the same weight as those of other voters. *Id.*

Even though African-Americans and members of other minority groups had made tremendous strides in securing the right to vote, there was still work left to be done because it remained possible for minority votes to be qualitatively diluted. Hayden, *supra*, at 1602. This situation resulted in the third stage in the voting rights battle (and the one implicated in this dispute). Even with access to the voting booth, minority voters could still find their rights compromised by more subtle discrimination techniques, such as racial gerrymandering, which qualitatively diluted minority voting strength. *Id.* Such techniques prevent minority voters from combining their votes with the votes of other members of the same minority group in ways that would allow the group to elect a representative of its choice. Voting rights advocates used Sections 2 and 5 of the Voting Rights Act to attack this type of vote dilution. *Id.* The creation of minority-majority districts[9] became a critical solution to qualitative vote dilution. *Id.*

[9] Minority-majority districts are those districts in which the majority of the voters are from a racial minority. *Johnson v. DeGrandy*, 512 U.S. 997, 1023 (1994).

B. The creation of minority-majority districts is a critical remedy for qualitative vote dilution.

As has been shown above, Texas has the power to choose the method by which it complies with Section 2 of the Voting Rights Act to eliminate qualitative vote dilution. Texas' solution to Section 2 dilution concerns was the creation of minority-majority districts that gave minority groups a number of "safe" congressional seats roughly proportional to the percentage of its minority population. *Session v. Perry*, 298 F. Supp. 2d 480-81 (E.D. Tex. 2004).

Nationally, to end qualitative vote dilution, the Congressional Black Caucus also pushed for the creation of minority-majority districts in order to bolster its ranks. *See* Hayden, *Resolving the Dilemma*, *supra*, at 1602-03. Likewise, civil-rights lawyers and the press pressed state legislatures to create minority-majority districts. *See* Hayden, *Resolving the Dilemma*, *supra*, at 1603. The Department of Justice ("DOJ"), through its preclearance power, has long attempted to increase the number of minority-majority districts as a way to end qualitative vote dilution. *See Miller v. Johnson*, 515 U.S. 900, 909, 917-18, 921, 925-26 (1995); Hayden, *Resolving the Dilemma*, *supra*, at 1603. Similarly, Section 2 lawsuits (or the threat thereof) were also factors in increasing the creation of minority-majority districts. *See* Hayden, *Resolving the Dilemma*, *supra*, at 1603. Finally, under the test that this Court articulated in *Gingles*, 478 U.S. 30 (1986), the remedy for vote dilution was presumptively the creation of minority-majority districts because, given the ubiquity of racial bloc voting, the test essentially gave rise to a cause of action wherever there was a sufficiently large minority

population to constitute a majority in a redrawn, single-member district.[10] All of these factors combined to result in the creation of more minority-majority districts in the 1990s. *See* Hayden, *Resolving the Dilemma*, *supra*, at 1603.

Nationally, the creation of minority-majority districts had an immediate effect on the electoral success of minority candidates. Hayden, *Resolving the Dilemma*, *supra*, at 1604. The number of African-Americans in Congress increased by 13 in 1992, which was the largest, single-year increase, in absolute numbers, in U.S. history. *Id.*; Richard L. Engstron, *Voting Rights Districts: Debunking the Myths, Campaigns & Elections*, Apr. 1995, at 24. All 13 representatives came from new minority-majority districts and all of these districts elected black candidates in both the 1992 and 1994 congressional elections. *See* Hayden, *Resolving the Dilemma*, *supra*, at 1604. Overall, there was a 50% increase in the size of the Congressional Black Caucus and a 38% increase in the size of the Hispanic Caucus as a result of redistricting after the 1990 census. *Id.* Minority-majority districting was, therefore, an effective remedy to vote dilution from the vantage point of minority candidates. *Id.*

In addition to increased numbers of minority representatives, there are other benefits to the creation of minority-majority districts. For example, minority officeholders are more likely than their white, liberal counterparts to lead efforts to introduce initiatives to help

[10] While the *Gingles* test was created in response to vote dilution within a multimember district, it soon was used to attack other single-member districting plans that did not, in the view of minority plaintiffs, afford them the ability to fully participate in the political system. Hayden, *Resolving the Dilemma*, *supra*, at 1604.

minority communities. *See* Hayden, *Resolving the Dilemma*, *supra*, at 1604-05. While white Democrats may vote "the right way" on matters of importance to their minority constituents, they are less likely to take the lead on these issues. *Id.* Minority-majority districts also serve as important minority "ports of entry" into pluralist politics. *Id.* Through the use of minority-majority districts, minority candidates also gain the benefits of incumbency and are thereby given the chance to earn reputations that might bring additional white crossover support to their campaigns. *Id.* Thus, the creation of minority-majority districts brings many benefits to both minorities and society at large, in addition to producing more minority officeholders.

C. Minority-majority districts are the best way to address qualitative vote dilution issues in Texas and the Texas Legislature's choice of this method must be respected.

The benefits of minority-majority districts described above are also evident in Texas. The creation of such districts in Texas, in Representative Wilson's judgment, is by far the best way for Texas to comply with Section 2 of the Voting Rights Act.

As the Court will recall, the Texas Plan (1374C) was a Republican-dominated map; nevertheless, *amicus curiae*, an African-American Democrat, voted for the Plan. Tr. 12/18/03 AM at 72:14-73:15. As the Court will recall, the Republicans had won control over both houses of the state legislature and all the high-level state-wide offices in 2002, so Democrats would not have a lead role in creating the redistricting plan. *Session*, 298 F. Supp. 2d at 458. *Amicus curiae* supported the Republican-sponsored plan in large part because it offered,

through District 9, an additional "safe" seat in Congress for an African-American Democrat from the Houston, Texas area[11] and offered African-Americans the best plan available, given the political situation. *See*, *e.g.*, Tr. 12/18/03 AM at 68:19-24; 73:13; 77:9-78:5; 82:12-16; 98:1-4.

In fact, because the African-American population of Houston would support it, *amicus curiae* had previously tried to secure an additional African-American congressional seat when his party controlled the Texas Legislature and the governor's mansion, but the Democrats would not draw one. *See*, *e.g.*, Tr. 12/18/03 AM at 89:11-15. Thus, the Republican Plan offered something for his community that *amicus curiae* had sought for some time.[12] Tr. 12/18/03 AM at 104:18-21.

Not only did Plan 1374C increase African-American representation in the United States Congress, it also created additional seats for other ethnic minorities. In fact, Plan 1374C was referred to by members of the Texas Legislature as an "8-3" plan. The "8" refers to the number of districts containing 50% or greater HVAP, without regard to performance of the districts. Of these 8 districts, CD 25 was a newly-created majority Hispanic district. The "3" refers to the 3 African-American districts in this plan,

[11] As *amicus curiae* testified below, "the train was on the track," that the "majority rules" and that he wanted to try to "get some of my folks on the train." *See* Tr. 12/18/03 AM at 72:21-73:10.

[12] Representative Wilson's support for more African-American representation is not new. In fact, 20 years before this dispute arose, Representative Wilson introduced legislation that would have provided for an additional "safe" African-American seat, from the Harris County area, in the Texas Senate.

two of which have 40% or greater BVAP (CD 18 and CD 30), and the third district being a newly-created CD 9 with BVAP at 36.5%. Because of the lower citizenship rate of Hispanics in CD 18, 30 and 9, the effective percentages of African-American voters allow them to dominate the primaries in these three districts.

The plan proposed five open seats, three of which were minority-majority districts: CD 9, CD 25 and CD 29. This fact increased the likelihood that a candidate of the minority communities' choice would be elected from these districts.

Although politics predominated in the drawing of Plan 1374C, the legislature also had to remain conscious of how particular changes might affect compliance with the Voting Rights Act. For example, CD 23 was reconfigured to increase the Republican index in that district so that incumbent Henry Bonilla's chances of reelection were improved. In order to avoid potential retrogression under Section 5 of the Voting Rights Act, a new Democratic-majority Hispanic opportunity district (CD 25) was created. The creation of CD 25 in turn affected old districts 27, 28 and 15. Furthermore, CD 24, held by a white Democrat, Martin Frost, was dismantled and made into several Republican-leaning districts. In order to avoid potential retrogression, a new Democratic performing African-American opportunity district (CD 9) was created in Harris County. Tr. 12/18/03 AM at 67:11-24; 72:1-25; 81:14-25; 82:1-16.

While the creation of additional "safe" minority-majority districts in Plan 1347C did reduce African-American influence in other districts, *amicus curiae* felt that the Plan was, overall, advantageous to African-Americans. African-Americans did not comprise a majority

of the votes in the districts from which minority voters were taken to create the "safe" districts, and, even in "coalition" with other minority groups, blacks could not control the elections in those areas, given the polarity of the black/hispanic voting patterns in those districts. Tr. 12/18/03 AM at 118:4-11.

While the Jackson Plaintiffs characterize District 24 as a district that must be protected under the VRA, the evidence is to the contrary: it was really just a Democratic-controlled district, not an African-American district. *Session*, 298 F. Supp. 2d at 484.

The record showed that African-American voters constituted 21.4% of the voting-age population in District 24. *Id.* at 482. Hispanics made up 33.6% of the voting-age population and 23% of the citizen voting-age population, and Anglos were the largest ethnic group in the district, making up a plurality of the voting-age population and a majority of the citizen voting-age population. *See* J.S. App. at 51a.

The record also showed that no black candidate ever filed in a District 24 Democratic primary against Frost, so there was no measure of what the Anglo turnout would be in a Democratic primary if Frost were opposed by a black candidate. J.S. App., at 55a. The fact that African-Americans voted for Frost in the primaries (when they had no other choice), does not prove that they could elect their candidate of choice. *Session*, 298 F. Supp. 2d at 484.

The conclusion that District 24 was not a performing district for blacks is also supported by the testimony of Congresswoman Eddie Bernice Johnson, an African-American Democrat who holds a seat in a nearby largely African-American district. J.S. App., at 55a. Congresswoman

Johnson testified that District 24 "was drawn for an Anglo Democrat." *Id.* Minority voters were deliberately split in 1991, with Martin Frost as the architect of that redistricting plan, in order to elect Frost, a white Democrat to District 24:

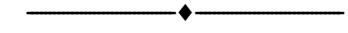
> "Q. What type of problems was the Dallas African-American population encountering in terms of being able to create [District 30]?
>
> A. It was split up, of course, to elect white Democrats. . . .
>
> Q. . . . wanted just to ask whether it's your opinion that the Hispanic population is divided across Congressional District now in the current plan?
>
> A. To – yes, to a certain degree.
>
> Q. And what would you say is the motivation for the division?
>
> A. I'll have to answer that the same way I answered to my attorney. It's to accommodate others.
>
> Q. And, in particular, white Democrats?
>
> A. Martin Frost."

See Tr. 12/17/03 PM, at 154:18-155:1; Tr. 12/17/03 PM, at 165:17-25.

In his trial testimony, *amicus curiae* called districts like the former District 24, "step 'n fetch it" districts because the African-Americans in those districts had to beg and plead, with their "hat[s] in their hand[s]," to the white congressmen in those seats to try to secure support for issues of importance to African-Americans. *See*, *e.g.*, Tr.

12/18/03 AM at 86:16-87:25. Often, these pleas were ignored. Tr. 12/18/03 AM at 68:9-11; 86:1-5; 87:15-25. Further, districts drawn for white Democrats do not give African-Americans real access to politics and cannot confer the benefits of incumbency on minorities. Thus, *amicus curiae* believes that districts, like former District 24, that are designed to be occupied by a white Democrat, do not best represent the interests of African-Americans.

While this Court has recognized that, as with anything, neither the minority-majority district model nor the influence/coalition district model is without flaws, it has also recognized that the choice between these models is for the states to make. *Ashcroft*, 539 U.S. 461, 482; 123 S.Ct. at 2498, 2512. Texas made its choice: the addition of new "safe" minority-majority districts. This Court should refrain from stepping into this inherently legislative role.



CONCLUSION

For the foregoing reasons, *amicus curiae*, Ron Wilson, requests that the Court affirm the judgment of the Court below.

Respectfully submitted,

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