

LONE STAR PROJECT

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Department of Justice Brief Signals a Rollback of the Voting Rights Act

DOJ support for DeLay's Texas Redistricting plan puts nearly half of nation's African American districts in legal jeopardy

In an amicus ("friend of the court") brief to the Supreme Court filed on Wednesday, February 1, 2006, the Bush Justice Department signaled that it will no longer aggressively defend congressional districts effectively controlled by minority voters, if the controlling minority group comprises less than 50 percent of the voting age population. Further, the brief actually encouraged other challenges to existing minority districts by suggesting that the Court should look for another future case to determine whether minority voters need to comprise a particular rigid percentage in a district in order to be protected under the Voting Rights Act.

Key Excerpts from DOJ Supreme Court Amicus Brief

- "Permitting Section 2 vote-dilution claims when, as here, a minority group is substantially less than a majority of the voters in an alternative district raises a number of potentially significant concerns." (Source: DOJ Amicus Brief - *Sessions v. Perry*, February 1, 2006, page 21)
- "The Court should therefore defer passing on that issue until it is faced with a case in which the resolution of the question would likely be dispositive, such as a case in which the plaintiff minority group was only slightly less than a majority in the demonstration district." (Source: DOJ Amicus Brief - *Sessions v. Perry*, February 1, 2006, page 24)

Note: The DOJ brief was filed in conjunction with State of Texas brief and others who are defending the controversial Tom DeLay-imposed Texas redistricting plan. All briefs filed in the case can be viewed and/or downloaded at (www.lonestarproject.net/tx.html).

DOJ Abandons Past Defense of Minority Districts

The Department of Justice brief represents a reversal of more than three decades during which the U.S. Justice Department political appointees deferred to experts in its Voting Rights section, allowing the Department to aggressively defend all districts effectively controlled by minority voters even if the populations did not meet a 50 percent threshold.

- “In our view, Section 2 and Gingles do not impose an absolute requirement that a minority be shown to constitute a majority in a single-member district. Rather, because a Section 2 plaintiff must show that the challenged system impairs the minority community's ability to elect representatives of its choice, such a plaintiff may rely on evidence showing that, under a different election system, the minority community would be able to elect representatives of its choice, even if it would not constitute an absolute majority of the population (by any particular measure) in a single-member district.” (*Source: DOJ Amicus Brief - Valdespino v. Alamo Heights ISD, December 1999, page 6*)
- “The Court did not state in Gingles, however, that minority voters could have the potential to elect representatives of their choice only when they constitute the majority of an election district.” (*Source: DOJ Amicus Brief - Valdespino v. Alamo Heights ISD, December 1999, page 10*)

Experts Ignored, Arbitrary Standard Adopted

One of the central issues of the Texas voting rights controversy involves the 24th District formerly represented by Martin Frost. Both Democratic and Republican experts have provided sworn testimony that, prior to being dismantled by DeLay supporters in the Texas Legislature, congressional elections in the 24th District were effectively controlled by African American voters. In fact, voting rights experts in the Department of Justice itself determined in a formal memo analyzing the Texas plan that the pre-DeLay 24th District performed effectively as an African American district. In its Amicus brief, the Department of Justice provides no expert testimony or election analysis to reinforce its support for the DeLay plan. **The DOJ ignores statements by both plaintiff and state experts, empirical election results and even the voting rights experts within its own Department.**

- “All experts, including one retained by the state, agree that black voters control the Democratic Primary and can elect the candidate of their choice” in benchmark district 24. (*Source: DOJ Texas Section 5 Recommendation Memorandum, December 12, 2003, page 34*)
- “Blacks do control the primary in (benchmark) District 24 and the candidate of choice usually prevails.” (*Source: Testimony of Dr. Keith Gaddie, the State's expert witness, to the Senate Committee on Jurisprudence, July 22, 2003*)
- “Gaddie also admits that there is no occasion where black voters' candidate of choice has lost in the general election in Benchmark 24.” (*Source: DOJ Texas Section 5 Recommendation Memorandum, December 12, 2003, page 34*)

- “Thus, African-American voters consistently could nominate and elect their preferred candidates within the 2001 plan’s District 24.” (*Source: Jackson Pls. Ex. 1 - Alan Lichtman, plaintiff’s expert report*)

DOJ Reversal Puts Dozens of Minority Districts At Risk

The Department of Justice argues the arbitrary notion that because the 24th District is less than 50 percent African American, it is excluded from further review or protection under the Voting Rights Act. Nineteen current African American Congressional districts – comprising almost half of the membership of the Congressional Black Caucus – contain African American voting age populations under 50 percent. In fact, Texas districts now represented by Eddie Bernice Johnson (TX-CD30), Sheila Jackson Lee (TX-CD18) and Al Green (TX-CD9), are all less than 50 percent African American. None of the nineteen, including all of the current Texas African American districts, warrant protection under the Bush Justice Department’s rationale.

Respected civil rights organizations have plainly stated opposition to requiring a 50 percent rule. In its January 10, 2006 appellant brief to the U.S. Supreme Court, the Texas NAACP noted the inaccuracy of adopting an arbitrary 50 percent threshold.

- “...opinions make clear that a minority group’s share of a district population is, standing in isolation, an extremely poor predictor of its “potential to elect.” (*Source: Texas NAACP Appellant Brief - Sessions v. Perry, January 10, 2006, page 28*)
- “...the problem with a 50% cutoff is not that there is no principled or functional difference between districts slightly above or below the line – a problem with any cutoff – but rather that the statistics do not do even a passable job of “weeding out” districts in which minority voters are more or less likely to elect candidates of choice ...” (*Source: Texas NAACP Appellant Brief - Sessions v Perry, January 10, 2006, page 33*)

Actions Speak Louder Than Words

Attorney General Alberto Gonzales is frequently quoted touting the Bush Administration’s strong support for the Voting Rights Act. Gonzales recently said, “This administration looks forward to working with Congress on the reauthorization of this important legislation” (*Source: The Houston Chronicle, August 03, 2005*). In the same article, the Chronicle reported that he (Gonzales) also called it one of the most successful pieces of civil rights legislation ever enacted. However, the formal brief, filed by DOJ before the U.S. Supreme Court in support of Tom DeLay’s redistricting plan, signals to the Court and to the country that the Department of Justice can no longer be relied upon to defend the rights of minority voters. Further, it cues States that they can aggressively dismantle effective minority districts without fear of opposition or reversal by the Department of Justice.

- Summing up the potential impact of the Department of Justice's argument, if accepted by the Supreme Court, Plaintiffs attorney and Voting Rights expert, J. Gerald Hebert said, "Filings like this should send a strong signal to those interested in renewal of the VRA that the Bush Administration will not only be of no help, they will undermine principles of equal opportunity. Make no mistake: today's filing makes clear that this Administration is attempting to turn back the clock on minority voters and the VRA." (Source: statement of J. Gerald Hebert, February 1, 2006)

Current Minority Districts Put At Risk By the Department of Justice

African American Members of Congress Whose Districts are less than 50% African American	
District	Name
GA02	SANFORD BISHOP
FL03	CORRINE BROWN
NC01	G.K. BUTTERFIELD
IN07	JULIA CARSON
MO01	LACY CLAY
MO05	EMANUEL CLEAVER
TX09	AL GREEN
FL23	ALCEE HASTINGS
TX18	SHEILA JACKSON LEE
TX30	EDDIE BERNICE JOHNSON
CA09	BARBARA LEE
GA04	CYNTHIA MCKINNEY
CA37	JUANITA MILLENDER-MCDONALD
WI04	GWEN MOORE
NY15	CHARLIE RANGEL
GA13	DAVID SCOTT
CA35	MAXINE WATERS
CA33	DIANE WATSON
NC12	MEL WATT

(Source: National Committee for an Effective Congress)

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