

# LONE STAR PROJECT



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To: Interested Parties  
From: Matt Angle  
Re: Texas Congressional Redistricting  
Date: February 23, 2006

*The US Supreme Court will hear oral arguments on the Texas Congressional redistricting case next Wednesday, March 1, 2006. In anticipation of the hearings, I have been asked to again provide a summary of the major issues in dispute and the likely fallout should the Court reverse the current Tom DeLay-imposed plan.*

*The **Lone Star Project** will sponsor a pre-hearing media availability on Wednesday morning and will host a hearing debriefing following the hearing on Wednesday afternoon. Details on these events will be available on Monday, February 27, 2006.*

## **Overview**

On December 12, 2005, the U.S. Supreme Court agreed to hear the Texas redistricting case and review the unprecedented mid-decade redistricting plan forced through the Texas Legislature in 2003 by Tom DeLay. The Court will determine whether:

- The plan and the process used to enact it constitutes an illegal partisan political gerrymander;
- The plan violates the Voting Rights Act by diluting the voting strength of both African American and Hispanic voters; and

- Mid-decade redistricting is illegal when done using out of date census figures or for the sole purpose of maximizing one party's partisan advantage.

DeLay was straight forward about his motives for demanding a new map when he said, "I'm the Majority Leader, and I want more seats." (The Washington Post, May 19, 2003) The DeLay plan resulted in the loss of six senior Texas Democrats in the 2004 elections (five through loss or retirement, and one by switching parties). As it turns out, he needed every one of them. Had the Texas map not been redrawn and the six senior Texas Democrats remained in place, Democrats would have picked up a net two seats nationally in the 2004 congressional elections. The decision by the Court on the Texas case will have a direct impact on the national political balance of power, as well as the relevance of the Voting Rights Act itself.

### **Plaintiffs (Lawyers)**

[Jackson appellants](#) (Paul Smith, Sam Hirsch, Gerry Hebert)

[Travis County appellants](#) (Renea Hicks)

[GI Forum appellants](#) (Nina Perales)

[LULAC appellants](#) (Rolando Rios, Jose Garza)

[Texas NAACP](#) (Gary Bledsoe, David Goldberg, Sean Donahue)

### **Timeline**

- **January 10, 2006** – Appellants briefs and Amicus briefs supporting Appellants were filed.
- **February 1, 2006** – Appellee briefs and Amicus briefs supporting Appellees were filed.
- **February 22, 2006** – Reply briefs by Appellants were filed.
- **March 1, 2006** – Oral arguments will be heard before the Court, with one hour assigned to Appellants and one hour assigned to Appellees.
- **Late June/Early July** – Decision expected from the Court.

All briefs filed before the Court can be viewed and/or downloaded at: <http://www.lonestarproject.net/tx.html>

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To view copies of the Maps click on the links below

[2002 Map \(Pre-DeLay\)](#)

[2004 Map \(Current Map\)](#)

## Attorneys Presenting Oral Arguments

- **Appellants (Plaintiffs)**

- **Paul Smith** is a partner in the Washington, D.C. office of Jenner & Block, where he concentrates on Supreme Court and appellate practice, as well as constitutional, civil rights, and communications law. Mr. Smith has argued six cases in the United States Supreme Court and has been substantially involved with dozens of other argued cases, as well as many petitions for certiorari and amicus briefs. Mr. Smith graduated in 1976 from Amherst College and received a J.D. from Yale Law School in 1979, after serving as Editor-in-Chief of the *Yale Law Journal*. The following year, Smith was a law clerk to Judge James L. Oakes of the United States Court of Appeals for the Second Circuit. In 1980-81, he was a law clerk to Supreme Court Justice Lewis F. Powell, Jr.
- **Nina Perales** is Regional Counsel for the Mexican American Legal Defense and Educational Fund (MALDEF). Ms. Perales specializes in voting rights litigation, including redistricting and vote dilution challenges. She served as lead counsel for Latino plaintiffs in congressional redistricting in Texas in 2001 and in both Texas and Arizona in 2003. Ms. Perales received a Bachelor's degree from Brown University and earned her J.D. from Columbia University School of Law in 1990.

- **Appellees (Defendants)**

- **R. Ted Cruz** is the Solicitor General of the State of Texas. He was appointed by Texas Attorney General Greg Abbott in January 2003 and is the chief appellate lawyer for the state. Prior to his appointment, he served as Domestic Policy Advisor to the Bush-Cheney campaign and served as a law clerk to former Supreme Court Chief Justice William Rehnquist. Cruz is a graduate of Princeton University and Harvard Law School.
- **Gregory Garre** was named principal deputy solicitor general of the United States, which is a political

appointment. Formerly, he headed the appellate section at Hogan & Hartson's Washington office. Mr. Garre clerked for the late Supreme Court Chief Justice William H. Rehnquist. He earned a Bachelor's Degree at Dartmouth College in 1987 and his law degree at The George Washington University Law School in 1991.

## **“What ifs” on Texas Supreme Court Review**

### **If the Supreme Court upholds the map**

- Texas congressional elections will proceed under current lines in 2006.
- Other states will consider partisan mid-decade redistricting efforts and legal experts will attempt to determine which voting rights protections may no longer apply under the Texas precedent.

### **If the Supreme Court rules the plan is illegal based on the fact that the mid-decade redistricting plan was solely motivated by partisan gain, or that the mid-decade plan violates the one-person vote rule:**

- The previous Court-drawn plan used under the 2002 elections would almost certainly be reinstated because the subsequent 2003 map would have been found illegal.

### **If the Supreme Court invalidates the map due to violation of the Voting Rights Act:**

- The Court will almost certainly remand the case to the three-judge court to provide a remedy consistent with the Supreme Court ruling.
- Given that the Supreme Court's accelerated schedule allows time for a remedy prior to the 2006 elections, a new plan would have to be devised to fix whatever voting rights problem the Court finds.
- Normally, courts defer to the legislature to craft new lines to correct a violation, but the court may also impose its own plan to take effect in the 2006 elections. Consistent with the precedent established by the federal court in the Bush v. Vera congressional redistricting case in 1996, the Court could order that the March primary results be abandoned and that special congressional elections be held in new and legal

districts.

- The most likely scenario for the 2006 elections and beyond would be the reinstatement of the 2002 court-drawn plan, because it is a legal plan based on the 2000 census that was upheld by the Supreme Court of the United States, and it is the logical default plan in the event the Supreme Court declares the 2003 plan illegal.

### Who Might Run?

The seats lost under the DeLay plan were: District 1 (Sandlin), District 2 (Turner), District 4 (Hall switched parties), District 9 (Lampson), District 17 (Stenholm) and District 24 (Frost). If the map is reversed, Democrats would almost certainly reclaim Districts 9 and 24. It is also possible to reclaim Districts 1 and 2, assuming the former Members return or other very strong candidates are recruited. Obviously, District 4 is lost, and District 17 is strongly Republican and would not likely be reclaimed.

### Who is Paired Within their Party?

District	2002 Incumbent	Likely pair	Probable Outcome
District 4	Hall (R)	Gohmert (R)	Hall the easy winner
District 18	Shelia Jackson Lee (D)	A. Green (D)	A. Green expected to run in CD25 to avoid pairing
District 19	Neugebauer (R)	Conaway (R)	Neugebauer the likely winner
District 21	Smith (R)	McCaul (R)	Smith the likely winner

District 23	Bonilla (R)	Cuellar (D-R)	Bonilla the probable winner
District 32	Sessions (R)	Marchant (R)	Winner uncertain

### Open Seats Under 2002 (pre-DeLay) Map

District	2002 Incumbent	After redistricting
District 1	Sandlin (D)	Available for Sandlin, if he chose to run
District 2	Turner (D)	Available for Turner, if he chose to run
District 9	Lampson (D)	Available for Lampson or likely won by another Dem if Lampson doesn't run
District 17	Stenholm (D)	Available for Stenholm, however Stenholm has publicly said wouldn't run, making this a likely GOP seat ( <i>Source: Fort Worth Star-Telegram, December 26, 2005</i> )
District 24	Frost (D)	Available for Frost or won by another Dem if Frost doesn't run
District 25	Bell (D)	Available for Al Green
District 28	Rodriguez (D)	Available for Rodriguez or by another San Antonio area resident if Rodriguez doesn't run

## Unpaired Incumbents Under 2002 (pre-DeLay) Map

District	District Incumbent
District 3	S. Johnson (R)
District 5	Hensarling (R)
District 6	Barton (R)
District 7	Culberson (R)
District 8	Brady (R)
District 11	Edwards (D)
District 12	Granger (R)
District 13	Thornberry (R)
District 14	Paul (R)
District 15	Hinojosa (D)
District 16	Reyes (D)
District 22	DeLay (R)
District 26	Burgess (R)
District 27	Ortiz (D)
District 29	G Green (D)
District 30	Eddie Bernice Johnson (D)
District 31	Carter (R)

### Notes/Lone Star Project Opinion on 2002 (pre-DeLay) Districts:

- **District 1** – If Max Sandlin returned to run, he would have an excellent chance to win. If not, then a very strong, well funded candidate would have to be recruited.
- **District 2** – Jim Turner would likely return to claim his seat. If he does, he will likely win. If not, it would be considerably harder to reclaim this seat.
- **District 4** – This is a safe Republican seat. Hall is now a Republican.
- **District 9** – Lampson would have the option to switch from CD22 and run in his old seat. Assuming he does so, he will likely win.

- **District 11** – While the seat is tough, Chet Edwards would run and win
- **District 17** – Stenholm has already publicly said he will not run (*Source: Fort Worth Star-Telegram, December 26, 2005*). Barring an unusual circumstance, Republicans will likely claim this seat.
- **District 22** – This is the old DeLay seat. Lampson could decide to withdraw from CD22 and run in the 9<sup>th</sup> District. DeLay, given his continuing legal troubles and the loss of his leadership post, might decide not to file at all, leaving the seat available to a new Republican Member.
- **District 24** – This seat would revert to a minority opportunity district anchored by the African American community in Fort Worth. If Frost runs, he would likely reclaim the seat.
- **District 25** – This seat was formerly held by Chris Bell. It is controlled by African American voters. Current Congressman Al Green is widely respected and by all accounts done an outstanding job in Congress. Al Green would almost certainly run and win the seat.
- **District 28** – Cuellar's political base is Laredo, which is NOT included in the 2002 district making it very unlikely that Cuellar could remain in Congress. The likely winner would be Ciro Rodriguez or some other resident of the San Antonio area.
- **District 32** – Given Sessions' connection to the Abramoff scandal ([see LSP Report](#)), he could lose a tough election to Kenny Marchant.

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