

In The
Supreme Court of the United States

—◆—
EDDIE JACKSON, *et al.*,

Appellants,

v.

RICK PERRY, *et al.*,

Appellees.

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

—◆—
**BRIEF FOR AMICUS CURIAE
FORT WORTH-TARRANT COUNTY BRANCH
NAACP IN SUPPORT OF APPELLANTS**

—◆—
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INTEREST OF THE *AMICUS CURIAE*

Amicus Curiae Fort Worth-Tarrant County Branch NAACP is a local chapter of the National NAACP. It shares the mission of the national NAACP: to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination.¹

**SUMMARY OF ARGUMENT**

Before the Texas Legislature enacted a mid-decade congressional redistricting plan in 2003, Texas Congressional District 24 performed as an effective minority district with African-American voters providing the controlling voice. CD24 leaned strongly Democratic in its pre-2003 configuration and the vast majority of African-Americans in Fort Worth vote Democratic. Texas State House Representative District 95, now held by Marc Veasey, lay almost entirely within Congressional District 24. In 2003, the Texas Legislature splintered Congressional District 24 among five new overwhelmingly Anglo or white districts. This muffled to a meaningless whisper the previously dominant voice of African-Americans, especially those residing in State Representative District 95, in electing their congressional representative, leaving them no impact at all on Congressional elections.

¹ This brief is filed with the written consent of all parties. No counsel for any party authored this brief in whole or in part, nor did any person or entity other than the *amicus* or their counsel, make a monetary contribution to the preparation or submission of this brief.

We submit this brief to demonstrate the following points:

- African-American community leaders in Fort Worth strongly voiced their opposition to the mid-decade congressional redistricting imposed by the Texas Legislature in 2003;
- Texas state officials, under pressure from national political leaders in Washington, knowingly dismantled the 24th Congressional District as an effective minority opportunity district anchored by African-American voters in Fort Worth;
- A team of U.S. Justice Department professionals, as well as experts representing the State of Texas, correctly determined that the 24th Congressional District was an effective African-American opportunity district under the pre-2003 plan (plan 1151C), and further correctly concluded that African-American voters would not be able to elect their candidate of choice under the new plan enacted in 2003 (plan 1374C);
- Fort Worth African-American control over congressional elections was reduced to the extent that even if all of the registered voters in the Fort Worth African-American precincts cast their ballots for the same candidate, they would still not be able to elect their candidate of choice to Congress and would have no meaningful impact on congressional elections.

ARGUMENT

I. African-American Leaders In Fort Worth Strongly Voiced Their Opposition To The Mid-Decade Redistricting Of 2003.

Fort Worth African-American leaders joined other Texans statewide in voicing their opposition to mid-decade redistricting. At redistricting hearings held by the Texas Legislature across the state in 2003, Texans overwhelmingly opposed redrawing congressional district lines. The Dallas Morning News reported, “. . . at seven meetings the Senate held across the state, 89 percent of the 2,620 witnesses opposed any change in the congressional maps drawn by federal judges two years ago, after the Legislature failed to produce a plan.” (Robert T. Garrett and Gromer Jeffers Jr., *Will Third Time Be Remap Charm?* Dallas Morning News, July 26, 2003).

Fort Worth African-American leaders, sharing the interest of the *amicus curiae*, joined in this opposition and testified before the Legislature as well. Long-time civil rights activist and community leader Deralyn Davis, for example, told the Legislature: “I feel like a nonperson. I feel like I don’t matter, because I was taken from where I had some input and put where I’m nobody.” (Robert T. Garrett and Pete Slover, *Input Given At Remap Hearings Ignored*, Dallas Morning News, December 18, 2003). Similarly, Roy Brooks, a long-time African-American community leader and current County Commissioner in Tarrant County, testified at trial that including the southeast Fort Worth community into new CD26 would result in black voters having “virtually no chance to have any impact on who the Congressperson is in that district.” (Tr., Dec. 12, 2003, 3:00 p.m., at 43-44 (Brooks)).

In addition, former State Representative Garfield Thompson and then Fort Worth City Councilman Ralph McCloud, both African-American, testified against redistricting and raised fears that African-American voting strength in Fort Worth would be lost in the 2003 map. Ultimately, 53 of 55 minority legislators in Texas agreed and voted against the redistricting map.

II. Republican Legislative Leaders And Political Operatives Knowingly Dismantled The 24th Congressional District As An Effective African-American Opportunity District Anchored By African-American Voters In Fort Worth.

Republican legislative leaders in the Texas State House and State Senate were aware that redrawing congressional district lines could threaten the voting strength of Fort Worth African-American voters and would violate their rights under the Voting Rights Act. In fact, both the Texas House and the Texas Senate passed redistricting plans that Department of Justice professionals, who reviewed the map pursuant to the preclearance provisions of the Voting Rights Act, 42 U.S.C. §1973c, concluded there were “non retrogressive alternatives.” (United States Department of Justice “Section 5 Memorandum.” Online Posting December 2, 2005. <<http://www.washingtonpost.com/wp-srv/nation/documents/texasDOJmemo.pdf>> at 35, December 12, 2003.) However, under intense lobbying from Washington, DC, particularly Congressman Tom DeLay’s emissary, Jim Ellis, the House and Senate Republican leadership collapsed under the pressure and, in conference, agreed upon the current plan.

Republican State Representative Phil King was the author of the congressional plan that was passed by the

Texas State House and sent to conference (H.B. 3 PLAN 1268C). In constructing his House plan, Rep. King emphasized the need to retain the 24th Congressional District as a minority opportunity district in order to avoid violating the Voting Rights Act. The Fort Worth Star Telegram reported:

Rep. Phil King, R-Weatherford, said he probably goofed when he redrew the district represented by U.S. Rep. Martin Frost, D-Arlington. The map that King had proposed would take predominately minority areas in southeast and north Fort Worth and put them into a Republican district dominated by Denton County. King had hoped to have the map approved by the House Committee on Redistricting on Wednesday, with a vote by the full House as early as Monday. But he withdrew the map from consideration until it is modified.

(Jay Root and Jack Douglas, Jr., *Redistricting Map Goes Back To Drawing Board*, Fort Worth Star Telegram, July 3, 2003.)

Rep. King instead abandoned his plan to dismantle CD24 and chose instead to withdraw his map and submit a new map. The new King map maintained CD24 as an effective opportunity district for African-American voters. King did this, he said, “just to make sure that there was no possibility that we were in any way violating or going against the spirit of the Voting Rights Act.” (Jay Root and Jack Douglas, Jr., *Map’s New Lines Would Spare Frost*, Fort Worth Star Telegram, July 4, 2003.)

King’s concerns were also detailed in a decisional memorandum prepared by Department of Justice professionals

conducting a preclearance review of the Texas plan under the Voting Rights Act. Their memorandum stated:

“Some Anglo Republican legislators also appear to view Benchmark 24 as a district where African-American voters have an ability to elect. State Rep. Phil King (A), a member of both the House Redistricting Committee and the conference committee, expressed concern for decreasing minority electoral strength in Benchmark 24. In his recent deposition, he characterized the district as a “minority district” which legal counsel had advised him to approach “with caution” due to concerns for Voting Rights Act compliance. King Dep. at 79, 112-17. In a statement made to the redistricting committee, he commented on why he had withdrawn his original plan: “[I]n the hopes of trying to respond to the concerns that [Rep. Richard Raymond (Hispanic)] and others voiced and in the hope of trying to expedite the DOJ preclearance process, I moved [District] 24 back into its original district.”

(United States Department of Justice “Section 5 Memorandum.” Online Posting December 2, 2005. <<http://www.washingtonpost.com/wp-srv/nation/documents/texasDOJmemo.pdf>> at 15-16, December 12, 2003.)

The DOJ memorandum also referenced the concerns of former Republican Senator and Lt. Governor Bill Ratliff. The report stated that Ratliff “recall[ed] concerns expressed during the redistricting process for the preservation of the ability that Benchmark 24 provided to minority voters to elect a candidate of choice.” (*Id.* at 35.)

However, the state legislators, including Rep. Phil King, were pressured by then U.S. House Majority Leader

Tom DeLay to abandon both the House and Senate alternatives and, instead, enact a plan eliminating CD24 as a minority district. In memos to Congressman DeLay written by Jim Ellis, his representative in Austin, Ellis made it clear that he and DeLay were aware of the voting rights risks involved in eliminating CD24. In an October 5th, 2003 memo to DeLay, Ellis wrote, "The pre-clearance and political risks are the delegation's and we are willing to assume those risks but only with our map." (Jackson Plaintiffs' Ex. 136.)

III. U.S. Justice Department Analysts, As Well As The Expert Representing The State Of Texas, Determined That The 24th Congressional District Was An Effective African-American Opportunity District Under Plan 1151C, But That African-American Voters Would Be Ineffective Under The 2003 Plan (1374C).

On December 2nd, 2005, The Washington Post made public a previously unreleased memorandum prepared by a unanimous team of eight Department of Justice voting rights experts assigned to evaluate the 2003 redistricting plan approved by the Legislature. They reviewed the plan under the authority of Section 5 of the Voting Rights Act. (Dan Eggen, *Justice Staff Saw Texas Districting As Illegal*, The Washington Post, December 2, 2005 at A1.) The DOJ professional staff determined that the State's 2003 redistricting plan reduced the number of effective minority opportunity districts from eleven to nine and specifically determined that the 24th District had been eliminated as an effective African-American opportunity district. In their analysis, the career professionals determined "In the benchmark [plan 1151C], black voters have the ability to

elect the candidates of their choice in 18, 24, 25, and 30. In the proposed plan [plan 1374C] black voters can no longer elect their candidate of choice in proposed 24. The loss of Benchmark 24 has not been offset.” (United States Department of Justice “Section 5 Memorandum”. Online Posting December 2, 2005. <<http://www.washingtonpost.com/wp-srv/nation/documents/texasDOJmemo.pdf>> at 31, December 12, 2003.)

Also, the expert retained by the State of Texas to evaluate its map in 2003, Professor Keith Gaddie, determined that African-American voters had an effective opportunity to elect the candidate of their choice in Congressional District 24 under the pre-2003 plan, but concluded that they lost that opportunity under its new configuration. During his deposition, Professor Gaddie testified:

Q. And did you, on occasion, advise Mr. Taylor [State’s attorney] that the version [1374C] of District 24 drawn on a map would not perform [for minority voters]?

A. Yes

* * *

Q. And did you comment of the effect on minorities of the elimination of District 24 as a Democratic-leaning district?

A. Yes.

Q. What did you say about that?

A. Well, my commentary at that time was the same as my comment to the State Senate Committee, which is that District 24 was a district

where minority voters were in control of the Democratic party primary. . . .

* * *

Q. Anything else you recall about that subject that you said?

* * *

A. That if District 24 were eliminated, compensation would have to occur somewhere else in the map for minority opportunities.

* * *

Q. Is it also your understanding that the African-American candidate of choice in that district is consistently elected in the general election?

A. Yes. The Democratic nominee is consistently elected in the general election.

(Jackson Plaintiffs' Ex. No. 140 (Deposition of Keith Gaddie, pp. 12, 16-19, 32. November 22, 2003)).

These remarks by the state's own expert were also noted in the Department of Justice Section 5 Recommendation Memorandum, allowing the DOJ staff to conclude:

Evidence from all sources indicates that blacks currently constitute a majority of the electorate in the Democratic primary in Benchmark 24. Black voters generally vote cohesively and therefore, can elect the candidate of their choice in the primary. Anglo crossover voting allows black candidates of choice to win consistently in the general election. All experts, including the one retained by the state, agree that black voters control the Democratic primary and can elect their candidate of choice.

(United States Department of Justice "Section 5 Memorandum." Online Posting December 2, 2005. <<http://www.washingtonpost.com/wp-srv/nation/documents/texasDOJmemo.pdf>> at 33-34. December 12, 2003.)

The analysis by nonpartisan voting rights experts at the Department of Justice, as presented in their December 12, 2003 memorandum coupled with the statements by Keith Gaddie, the State's own expert, plainly shows that the 2003 Texas redistricting plan destroyed the 24th Congressional District as an effective minority opportunity district, thus violating the Voting Rights Act. See *Thornburg v. Gingles*, 478 U.S. 30, 67-68 (1986) and *Johnson v. DeGrandy*, 512 U.S. 997, 1006-1009 (1984).

IV. Fort Worth African-American Control Of Congressional Elections Was Dismantled To The Extent That Even If Every Single One Of The Registered Voters In The Heavily African-American Fort Worth Precincts Turned Out To Vote In An Election And All Cast Their Ballots For The Same Candidate Of Choice, That Candidate Would Still Lose.

The negative impact upon Fort Worth African-American voters of the 2003 Texas congressional redistricting map can be dramatically demonstrated by analyzing the 2004 congressional results in current Congressional District 26, which now includes the Fort Worth African-American community. While African-American voters in Fort Worth comprised the controlling force in congressional elections in CD24 under the previous plan, their vote had absolutely no impact whatsoever in the 2004 elections under the current plan. In fact, while precincts in Fort Worth from old district 24 gave the 2004 Democratic

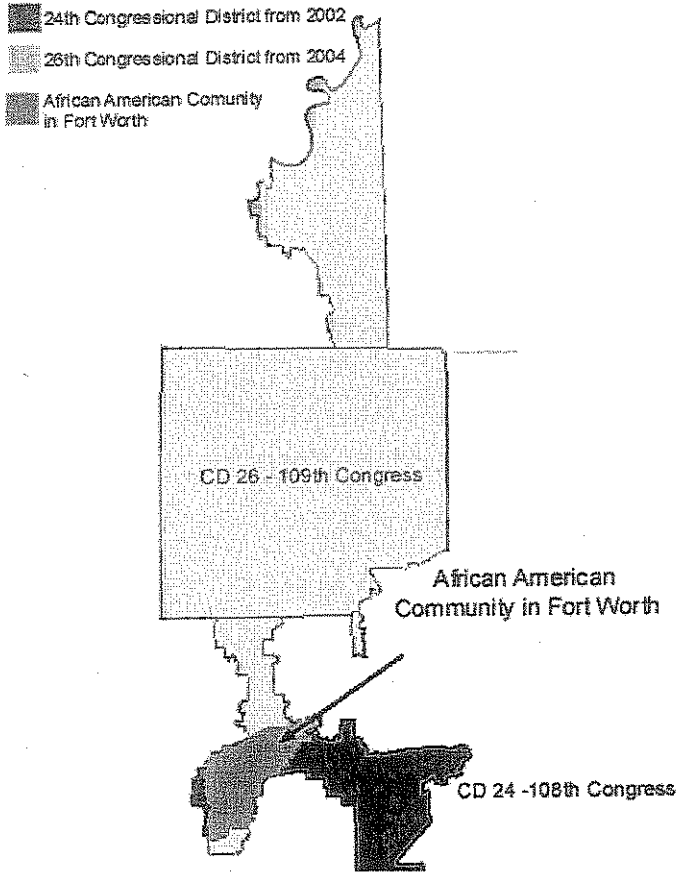
nominee in CD26 (see map below) an overwhelming 72.78% of their vote, the Democratic candidate Reyes lost the election to Republican Michael Burgess 33.22% to 66.78%. There was a similar result in the Presidential race. Democrat John Kerry received 71.59% of the vote in the Fort Worth African-American precincts, but Kerry lost district-wide to George Bush 35.4% to 64.6%.

The table below demonstrates the profound loss of voting strength by Fort Worth African-American voters. It shows that even if every single person who is registered to vote in the Fort Worth African-American precincts currently within CD26 but previously within CD24 (80 common precincts) had cast their ballot in 2004 for Democratic candidate Lico Reyes, they still would have failed to elect their candidate of choice. In fact, the Republican candidate for Congress, Michael Burgess, would have received 56.48% of the vote district wide. Additionally, George Bush would have still carried the district over John Kerry 54.83% to 45.17%. In sum, the 2003 re-districting of the congressional districts in Texas eliminated the effective opportunity that African-American voters in Fort Worth had to elect a candidate of their choice. (Table developed from data *available at* www.tlc.state.tx.us)

U.S. Congressional District 26 Election Demonstration			
	Votes Outside the 80 Common Precincts cast in 2004 in the 26 CD	All Registered Voters in the 80 Common Precincts vote for the Democrat	Demonstration Totals
Democratic Candidate	55,840	73,446	129,286
Republican Candidate	167,815	0	167,815
			43.52%
			56.48%

Texas Legislative Council

(graphic compiled from maps *available at*
www.tlc.state.tx.us, shading and labeling added)



Recently, Marc Veasey, the current representative of State District 95, anchored by the African-American community in Fort Worth, spoke on behalf of his constituents by stating, "If every African-American in southeast Fort Worth voted, they would still be overwhelmed by the Denton County voters in the district," (Jeff Mosier, *East FW Is Lined Up vs. GOP's Redistricting Remap Leaves Area At Mercy Of Northern Suburbs, Residents Say*, The Dallas Morning News, December 18, 2005.)

In sum, Congressional district lines were redrawn in Texas in 2003 against the wishes of African-American leaders in Texas and particularly African-American leaders in Fort Worth. Prior to 2003 congressional redistricting, African-American voters in Fort Worth comprised the political core of the 24th Congressional District which nonpartisan analysts at the Department of Justice determined was an effective minority opportunity district. Republican legislative leaders, under pressure from then House Majority Leader Tom DeLay, disregarded concerns about violating the voting rights of minority voters in Fort Worth and enacted a plan that reduced the voting strength of African-Americans in Fort Worth to effectively zero.

Amicus herein, whose membership includes African-American voters in Fort Worth, wonders why CD24, a district in which they had an effective opportunity to elect their preferred candidate, could be dismantled by the Texas Legislature in 2003 because it was not over 50 percent black, when the three-judge court *properly* gave Voting Rights Act protection to other congressional districts in the state (e.g., CDs 18 and 30) that were not majority black.

We respectfully urge this court to conclude that the Texas Legislature illegally and unconstitutionally eliminated the effective minority opportunity district controlled by Fort Worth African-American voters, as well as any meaningful political impact these voters exercised on congressional races. We also respectfully urge the Court to order that the 2003 congressional redistricting plan passed by the Texas Legislature be voided and that the State of Texas be instructed to implement the pre-2003 plan (Plan 1151C) in the upcoming 2006 elections.



CONCLUSION

For the reasons stated above, the judgment below should be reversed.

Respectfully submitted,
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