No. ___ 05-204

IN THE

Supreme Court of the United States

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

v.

RICK PERRY, *et al.*,
Appellees.

On Appeal from the United States District Court for the Eastern District of Texas

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JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether the 2003 Texas Congressional Redistricting Plan (Plan 1374C), adopted and developed using outdated, inaccurate 2000 Census data and resulting in malapportioned districts, in violation of one person, one vote when measured against 2003 Census data, and when "the single-minded purpose of the Texas Legislature in enacting Plan 1374C was to gain partisan advantage" and when such purpose is realized, is an unconstitutional political gerrymander.

2. Whether proof of racially polarized voting is overcome by evidence of partisan affiliation of minority voters in the analysis of the second prong of *Gingles* in a minority vote dilution claim.

PARTIES TO THE PROCEEDING

Appellants are the "LULAC Plaintiffs" the League of United Latin American Citizens (LULAC). Appellees are Rick Perry, Governor of Texas; Geoffrey S. Connor, Secretary of State of Texas; David Dewhurst, Lieutenant Governor of Texas; Tom Craddick, Speaker of the Texas House of Representatives; Charles Soechting, Chairman of the Texas Democratic Party; Tina Benkiser, Chairman of the Republican Party of Texas; and the State of Texas. All individual Appellees were sued in their official capacities.

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OPINIONS BELOW

The three-judge District Court's majority and specially concurring opinions are reported at ____ F. Supp. 2d ___ and reprinted at pages 1a to 50a of the Appendix to this Jurisdictional Statement ("J.S. App."). The District Court's final judgment is reprinted at J.S. App. A. This case was heard on Remand and decided on June 9, 2005. The District Court's prior decision is reported at *Sessions v. Perry*, 298 F. Supp. 2d 451 (E. D. Tex. 2004). The District Court's 2004 opinion was vacated and remanded by this Court, *Sessions v. Perry*, ___ U.S. ____ (2004).

JURISDICTION

The District Court denied Appellants' claims for injunctive relief and entered judgment on June 9, 2005. J.S. App. A. Pursuant to 28 U.S.C. § 2101(b), Appellants filed timely notices of appeal on June 10, 2005. J.S. App. B. This Court's jurisdiction is invoked under 28 U.S.C. § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . nor deny to any person within its jurisdiction the equal protection of the laws." LULAC asserts that its associational rights and its right to equal protection of the law have been violated by the adoption and enforcement of the challenged redistricting plan in that the plan violates the one person, one vote principal and is an unconstitutional political gerrymander.

The statutory provision involved in this case is Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. LULAC asserts that the challenged redistricting plan has a discriminatory impact on the ability of Latino voters of Texas to participate in the political process and to elect candidates to the United States House of Representatives of their choice.

STATEMENT OF THE CASE

Appellants seek reversal of a ruling of a three-judge district court that upheld the congressional redistricting plan that the State of Texas enacted in October 2003. The District Court made three key errors.

First, the District Court erroneously upheld the constitutionality of the State's decision to redraw a perfectly lawful congressional districting plan, in the middle of the decade, for the sole purpose of achieving maximum partisan advantage

while using outdated census data and thus failing to comply with the requirements of the one person, one vote rule, as has been required by this Court, *Cox v. Larios*, 124 S.Ct. 2806 (2004).

Second, the majority misread this Court's treatment of the Voting Rights Act in *Thornburg v. Gingles*, 478 U.S. 30 (1986), in ruling that evidence of racially polarized voting can be "explained away" by proof of partisan voting in its analysis of plaintiff's claim of minority vote dilution as prohibited by Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

Third, the majority improperly evaluated the impact of reducing the Latino political strength in the 23rd Congressional District, and elimination of a minority voting majority in the 24th Congressional District, and the elimination of all competitive Congressional Districts in which minority voters had previously supplied the voting difference in elections, in its analysis of plaintiff's minority vote dilution claim under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

Factual History

1. After the 2000 federal decennial census, Texas became entitled to 32 seats in Congress. The task of replacing the 30 old malapportioned districts from the 1990s with 32 new equipopulous ones fell initially to the Texas Legislature. *Session v. Perry* 298 F. Supp. 2d. 451, 457-58 (E. D. Tex. 2004) In 2001, the Governor and the leaders of the Texas Senate were Republicans and the leaders of the Texas House of Representatives were Democrats. The Legislature failed to agree on a new congressional map in its 2001 regular session, and Governor Rick Perry refused to call a special session. The State's default ultimately left the three-judge federal district court to reluctantly prepare a new, constitutional Congressional redistricting plan. *Session*, 298 F. Supp. 2d at 458. On November 14, 2001, the *Balderas* court, based on findings that Texas' 30 existing congressional districts were uncon-

stitutional, and adopted a new 32-district congressional map known as "Plan 1151C" or the "2001 Plan." *Id.*; *see also* Appendix E (color map of 2001 Plan).

The *Balderas* court plan reflected the growing strength of the Republican Party in Texas with 20 of the 32 districts offering a Republican advantage. *Session*, 298 F. Supp. 2d. at 471. Neither the State of Texas nor any other defendant appealed the court's decision. When Hispanic voters appealed, the State of Texas asked this Court to summarily affirm the district court's judgment, which it did on June 17, 2002. *Balderas v. Texas*, 536 U.S. 919 (2002). The court-drawn 2001 Plan governed the 2002 congressional elections in Texas.

2. Although the 2001 Plan, drawn by the *Balderas* court, was developed in part to recognize the growing strength of the Republican Party in Texas with 20 of the 32 seats offering Republican advantage, the plan offered no new Latino majority districts in recognition of the growing Latino population. *Session*, 298 F. Supp. 2d at 471; *Balderas v. Texas*, No. 6:01-CV-158, slip op. (E. D. Texas, Nov. 14, 2001), *summarily affirmed*, 536 U. S. 919 (2002). However, the November 2002 elections generated a congressional delegation with 15 Republicans and 17 Democrats.[1] The two new congressional districts that Texas gained from reapportionment elected Republicans, while the other 30 districts re-elected 28 incumbents and elected one freshman from each party (each of whom replaced a retiring member of the same party).

Seven of the incumbents—six Democrats and one Republican—prevailed even as their districts were voting for senatorial, gubernatorial, and other statewide candidates of the opposite party. Each of the Democrat winners in these

[1] When District 4's Congressman Ralph Hall switched parties in January 2004, Texas's House delegation became evenly divided, with 16 Democrats and 16 Republicans.

districts received overwhelming support from the minority voters of their districts. LULAC Trial Exhibit No. 17. Without that support, each would have lost to a challenger from the district's dominant political party. *Id.* These seven Congressmen (most of whom represent relatively rural districts) had the closest contests of any incumbents in the State. Three of them won with less than 52% of the total vote. Fourteen of the new districts voted consistently Republican and 11 voted consistently Democratic. But because six of the seven incumbents who won the relatively competitive seats were Democrats, Texas's congressional delegation had more Democrats and fewer Republicans than the statewide balance of power alone would have suggested.

At the same time that Republicans were picking up two new congressional seats, they also were making gains at the state-legislative level. As a result, Republicans won a majority of seats in the Texas House of Representatives and, with it, unified control of the state government for the first time in decades. *See Session v. Perry*, 298 F. Supp. at 458.

3. In 2003, the newly elected 78th Legislature convened and the House Redistricting Committee took the unprecedented step of considering congressional redistricting in the middle of a decade. As a critical deadline approached for passing legislation in the regular session, a group of Democratic House Members left the State and broke quorum for a week, effectively killing the redistricting measure for that session.[2] *Session*, 298 F. Supp. 2d. at 458.

Governor Perry called the Texas Legislature into special session to take up congressional redistricting. During that session, the Texas House, which had refused to hold public field hearings on redistricting in the regular session, reversed itself and decided to hold hearings across the State.[3] The

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[2] Tr., Dec. 15, 2003, 1:00 p.m., at 76-77 (Rep. Richard Raymond).

[3] *Id.* at 73-75, 78-79 (Rep. Richard Raymond).

Texas Senate also scheduled a series of field hearings. At these public hearings, thousands of Texas voters appeared and gave their views on the propriety of mid-decade congressional redistricting. The vast majority opposed it.[4]

During the first special session, Representative Phil King, the legislation's chief sponsor, initially asked the Redistricting Committee to pass a map dismantling District 24 (in the Dallas-Fort Worth area) as a minority district.[5] The next day, he reversed course and supported a plan that left intact all 11 majority-minority districts.[6] He stated at the time that he was doing so to improve the chances of winning preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.[7]

The Senate Jurisprudence Committee also took up congressional redistricting in the first special session. But the Senate failed to pass a map in that session when 11 state senators (more than a third of the 31-member chamber) announced that they were opposed to taking up congressional redistricting legislation. It has been a long-standing tradition of the Texas Senate to require that a measure receive support of a two-thirds supermajority before the full Senate will consider it.[8]

When Lieutenant Governor David Dewhurst then announced that he would abandon the two-thirds rule in any future special session on congressional redistricting, 11 Texas senators left the State to deprive the Senate of a quorum.[9] But when one of them returned to the State a month later, Governor Perry called a third special session.

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[4] Tr., Dec. 17, 2003, 1:00 p.m., at 115 (Sen. Royce West).

[5] Tr., Dec. 18, 2003, 1:00 p.m., at 149 (Rep. Phil King).

[6] *Id.* at 149-51 (Rep. Phil King).

[7] *Id.* at 148-50 (Rep. Phil King).

[8] Tr., Dec. 15, 2003, 8:30 a.m., at 7-8 (Sen. Bill Ratliff).

[9] Tr., Dec. 17, 2003, 1:00 p.m., at 119 (Sen. Royce West).

In that session, each house passed a map that preserved all 11 minority districts.[10] But the conference committee instead produced a map that dismantled as minority districts both District 24 in the Dallas-Fort Worth area and District 23 in South Texas, while adding a new Hispanic majority district running from McAllen (on the Mexican border) 300 miles north to Austin.[11] The House and Senate passed this new map, known as "Plan 1374C" or the "2003 Plan," on October 10 and 12, 2003. *See* J.S. Appedix E (color map of 2003 Plan). Every Hispanic and African-American Senator and all but two of the minority Representatives voted against the 2003 Plan.[12]

4. The new map shifted more than eight million Texans into new districts and split more counties into more pieces than did the court-drawn 2001 Plan.[13] And the 32 districts in the new map were, on average, substantially less compact than their predecessors, under either of the two quantitative measures of compactness that the Legislature uses.[14]

The 2003 Plan was designed to protect all 15 Republican Members of Congress and to defeat at least 7 of the 17 Democratic Members.[15] Among those targeted for defeat were the six Democrats who had won in November 2002 on the strength of cohesive minority voter support. Each of them was "paired" with another incumbent, placed in a substantially more Republican district, or given hundreds of thousands of new, unfamiliar (and heavily Republican) constituents.

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[10] Tr., Dec. 15, 2003, 1:00 p.m., at 83 (Rep. Richard Raymond).

[11] Tr., Dec. 18, 2003, 1:00 p.m., at 148-49, 157 (Rep. Phil King).

[12] Tr., Dec. 15, 2003, 1:00 p.m., at 85 (Rep. Richard Raymond).

[13] Jackson Pls. Ex. 141 (Gaddie expert report) at 5-6; Jackson Pls. Ex. 89.

[14] Jackson Pls. Ex. 141 (Gaddie expert report) at 6-7.

[15] Jackson Pls. Ex. 44 (Alford expert report) at 30.

The seventh Democrat targeted for defeat was Congressman Martin Frost, an Anglo Democrat who represents District 24 in the Dallas-Fort Worth area. Under the court-drawn 2001 Plan, District 24, a majority-minority district whose total population is roughly 23% black, 38% Hispanic, 35% Anglo (*i.e.*, non-Hispanic white), and 4% Asian or "Other" was drawn in a way that increased the Latino voting strength in the district. *Balderas v. Texas*, No. 6:01-CV-158, slip op. (E. D. Texas, Nov. 14, 2001), *summarily affirmed*, 536 U.S. 919 (2002). In general elections, the district is reliably Democratic. And in the Democratic primary elections, where the ultimate winners are nominated, blacks typically constitute more than 60% of the electorate, because the district's Anglo voters are much more likely to participate in the Republican primary and because of low Hispanic voter turn-out.[16] Thus, African-American voters can consistently nominate and minorities consistently elect their preferred candidates within the 2001 Plan's District 24.[17] But the new 2003 Plan dismantled District 24 and splintered its minority population into five pieces, each of which is then submerged in an overwhelmingly Anglo Republican district.

The one Republican incumbent who had won narrowly in November 2002—District 23's Congressman Henry Bonilla (the only Mexican-American Republican in the House of Representatives)—had his district made substantially safer for a Republican candidate, as nearly 100,000 Latinos from the Laredo area—who are roughly 87% Democratic—were removed and replaced with a similar number of "Hill Country" residents—who are heavily Anglo and roughly 79% Republican.[18] The changes to District 23, shifting significant

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[16] Tr., Dec. 11, 2003, 1:00 p.m., at 73-75 (Prof. Allan J. Lichtman); Jackson Pls. Ex. 140 (Gaddie expert deposition) at 32-33.

[17] Jackson Pls. Ex. 1 (Lichtman expert report) at 23-26.

[18] Jackson Pls. Ex. 44 (Alford expert report) at 15.

Anglo Republican voters into the district and shifting out significant Latino Democratic voters, intentionally resulted in eliminating District 23 as a Latino majority voting age population district in order to make Congressional District 23 **more** Republican. *Sessions,* 298 F. Supp. 2d at 496 ("Congressional District 23 is unquestionably not a Latino opportunity district under Plan 1374C. . . . the Hispanic citizen voting age population is 46%, reduced from 57.5% in Plan 1151C; the percentage of Spanish-surnamed registered voters is 44% under Plan 1374C, reduced from 55.3% in Plan 1151C.")

In an attempt to "offset" that loss of electoral opportunity for Hispanics, the Legislature drew a new, bizarrely shaped majority-Hispanic district stretching from the Rio Grande Valley, along the border with Mexico, all the way to the Hispanic neighborhoods of Austin in Central Texas. This new District 25 is more than 300 miles long and in places less than 10 miles wide. The two ends of the district are densely populated and contain more than 89% of its Hispanic population, as the six intervening rural counties serve primarily to "bridge" the two population centers. This district elected an Anglo Democrat over Latina candidates in the primary and the general election.

5. Faced with this plan, several dozen individual voters and officeholders, as well as the NAACP, the League of United Latin American Citizens (LULAC), and other minority and civil-rights organizations filed suits in the District Court for the Eastern District of Texas, asking the court to invalidate the 2003 Plan and to place the 2001 Plan into effect. The court consolidated the cases (including the 2001 *Balderas* lawsuit) and set an expedited discovery schedule, culminating in a trial in December 2003. The court held the expedited trial in mid-December, and the Department of Justice precleared the 2003 Plan under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, after the parties had rested but before closing arguments.

On January 6, 2004, the District Court issued a divided opinion upholding the 2003 Plan. The dissenting judge explained that he would have held the 2003 Plan in violation of Section 2 of the Voting Rights Act and ordered elections to be held under the 2001 Plan, "a plan that is beyond dispute a legal one." *Session*, 298 F. Supp. 2d at 528.

6. The District Court's 2004 opinion was vacated and remanded by this Court with instructions that the case be evaluated in light of *Veith v. Jubelirer*, 541 U.S. 267, 124 S. Ct. 1769, 158 L. Ed. 2d 546 (2004).

After receiving briefing and exhibits, the District Court held a hearing on January 21, 2005. The principle focus of the evidence and argument concerned the question of whether the Texas 2003 Congressional redistricting plan was a political gerrymander when evaluated in light of *Veith v. Jubelire* and its progeny. Plaintiff LULAC argued that use of outdated 2000 Census data to develop a new redistricting plan, whose sole purpose was to gain additional partisan advantage, violated the one person, one vote principle and was a political gerrymander. LULAC submitted briefing, argument and exhibits that demonstrated that between 2000 when the census was conducted and 2003 when the new redistricting plan was adopted the State had grown by over 6% and the Latino population of Texas had increase from 32% to 34% of the total. Individual districts had changed so that the difference in population between the largest and smallest districts exceeded 88,000 persons. LULAC Remand Exhibit No. 2. Moreover, as noted by the concurring opinion of Judge Ward, the failure to account for the change in population in development of the 2003 plan weigh most heavily on the Latino population. Memorandum Opinion, Ward, J., specially concurring at pp. 5-6; Appendix A, pp. 45a-46a.

The District Court discounted the arguments of LULAC and the similar positions of the Plaintiffs City of Austin and Travis County and the *amicus* of the University Law Pro-

fessors. The District Court felt that whatever population disparities existed in the challenged plan, would also be prevalent in the previously drawn plan and in any remedy plan almost immediately after its adoption. Memorandum Opinion, pp. 41-42. However, the District Court misstates the requirements of *Cox* and the argument advanced by LULAC. Only when the challenged plan was developed for no legitimate state purpose and instead developed with "the single minded purpose" of gaining partisan advantage would the plan lose the presumption of validity it would otherwise receive using the last available decennial census.

The District Court also expressed doubts that reliable replacement population data existed to use in any new redistricting thus foreclosing entirely mid-decade redistricting or that if such data could be developed it would lead to more not fewer mid-decade challenges to plans that had relied on the decennial census. Memorandum Opinion pp. 40-43. Again, the District Court ignores the core of the one person, one vote argument advanced by LULAC. A strict adherence to one person, one vote as advocated by LULAC, the Law Professors and Travis County/City of Austin, and required by *Cox* would only give rise when there was no justification for the voluntary redistricting except to secure additional political gain. Finally, with regard to whether replacement data could have been developed, the courts in Texas and the 5th Circuit have already determined that in fact replacement data can be developed and used to redistrict when census data has become outdated as was the case here. *See Valdespino v. Alamo Heights Independent School District*, 168 F. 3d 848 (5th Cir. 1999). Here, the State simply made no effort to insure compliance with one person, one vote except to use out dated census data that would facilitate the political gerrymander it intended. The District Court, therefore, simply refused to "apply an established doctrine in a novel way" and thus failed to apply the requirements of *Cox v. Larios*, 124 S. Ct. 2806,

159 L. Ed. 2d 831 (2004) to the facts of this case. Memorandum Opinion, p. 44; Appendix A, p. a.

The specially concurring opinion of Judge Ward differed from the majority in that he expressed the opinion that *Cox* would have required a finding of unconstitutionality except that he felt such an analysis was outside the appellate mandate and therefore could not be addressed. Memorandum Opinion, Ward, J., specially concurring at pp. 9-10; Appendix A, pp. a.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The growth of the Latino population in Texas accounted for a significant portion of the total growth in the State during the 1990's and therefore for the concomitant gain by the State of two additional Congressional seats after the release of the 2000 Census. Between April 2000 and July of 2003 the State's population continued to grow at a substantial rate due again in large part to the growth of the Latino population. In 2003 Texas congressional redistricting was revisited for the "single minded purpose" of securing commanding partisan advantage of the Texas Congressional delegation. The fact that this "single-mined purpose" was accomplished with outdated census data; that facilitated securing the partisan advantage; that resulted in significant deviations between districts when measured against updated data; when a legal plan already existed (which had been itself drawn purposefully to favor the dominant party); and when securing the partisan advantage was accomplished in large part at the expense of Latino voters, presents the Court with an opportunity to at long last establish at least one standard of evaluating the Constitutionality of a severe partisan gerrymander that is manageable and objective.

Texas's state government was mired for months in partisan fights over passage of a map that was drawn for only one purpose—to replace a legal, more competitive map with a

severely biased, noncompetitive one. Although it soon became clear that full achievement of that partisan goal would require depriving minority voters of an equal opportunity to participate in the political process and to elect their preferred candidates, Appellees not only plowed ahead but sought to transform their avowed partisanship into a justification for diluting minority rights.

The majority below endorsed this strategy at every turn. It denied liability for mid-decade redistricting designed to lock in partisan control. It then pointed to the map-drawers' partisanship as a reason for denying liability for their intentional elimination of minority districts. It went on to severely limit the protections of Section 2 of the Voting Rights Act. And finally, it refused to evaluate the partisan gerrymander in light of the malapportionment that resulted from the use of outdated census data.

This combination of rulings, if upheld, will unleash an orgy of partisan gerrymandering without limits. Even the rights of racial and ethnic minorities will be at risk if they get in the way of partisan goals. The resulting maps will resemble Texas's 2003 Plan, which takes racial and political balkanization to new depths.

As we show, a partial answer to these problems would be to put some meaningful limit on partisan gerrymandering such as a bar to unnecessary mid-decade line changes unless strict adherence to one person, one vote requirements. But regardless of how the Court addresses that issue, it must correct the erroneous rulings below rejecting claims of racial vote dilution. Those rulings not only leave minority voters unprotected from the kind of deliberate mistreatment shown in this record but will actually encourage line-drawers to continue to segregate our society along racial lines unnecessarily in the service of a nakedly partisan agenda.

Finally, the lower court essentially eviscerated application of the § 2 of the Federal Voting Rights Act in Texas by holding that racially polarized voting could be "explained away" by partisan voting. Essentially, even though the minority plaintiffs proved the existence of high degrees of racially polarized voting as required by this Court in *Thornberg v. Gingles*, 478 U.S. 30 at 63, Texas was able to rebut the evidence by "offering evidence that the divergent racial voting patterns may be explained in part by causes other than race." Justice O'Connor specifically stated that statistical evidence of divergent racial voting offered solely to establish the minority group's political cohesiveness **may not be** rebutted by evidence indicating that there is "an underlying divergence in the interests of minority and white voters.' *Id.* at 100. [Emphasis added]

I. WHETHER THE STATE OF TEXAS VIOLATED THE ONE PERSON ONE VOTE RULE BY USING OUT-DATED CENSUS DATA TO CONDUCT A MID-DECADE REDISTRICTING OF CONGRESSIONAL DISTRICTS FOR PURELY PARTISIAN PURPOSES, *COX V. LARIOS*, 124 S. CT. 2806 (2004).

Article I, § 2 of the United States Constitution requires congressional districts to be of equal population. *Wesberry v Sanders*, 376 U. S. 1 (1964). The fundamental principle of representative government is one of equal representation for equal numbers of people, one-person, one-vote. *Id.* The principle of population equality assures that, regardless of the size of the whole body of constituents, political power is equalized between districts by equalizing the number of people in each district. In fact, Congressional districts are held to a zero deviation standard, even while state and local districting plans with maximum deviations of 10% or less have been held presumptively valid.

The one person, one vote rule is a principled and well-accepted rule of fairness that governs districting and formulates the legislator's duty in drawing district lines. *Cox v. Larios*, 159 L. Ed. 2d 831, 833 (2004)("the equal population principle remains the only clear limitation on improper districting practices . . . ."). To dilute its strength at the altar of a partisan gerrymander would result in an unconstitutional redistricting plan. *Id.* ("had the Court in *Vieth* adopted a standard for adjudicating partisan gerrymandering claims, the standard likely would have been satisfied in this case"). The facts of this case establish quite clearly that the one person, one vote principle was indeed sacrificed, even used, to further a radical political gerrymander.

First, there is truly no question but that the motivation and result of the 2003 Congressional redistricting plan was to make a substantial change in the partisan alignment of the Texas delegation to the United States House of Representatives. As the District Court thoroughly documented, "[t]here is little question but that the single-minded purpose of the Texas Legislature in enacting Plan 1374C was to gain partisan advantage". *Sessions v. Perry*, 298 F. Supp. 2d 451, 470 (E. D. Tex. 2004) (vacated and remanded *Sessions v. Perry*, __ U.S. __ (2004). The District Court recognized the intent of the partisan gerrymander was to achieve a quota of electing 22 Republican Texans to the U. S. House of Representatives. *Sessions*, 298 F. Supp. 2d at 471. In fact, the 2004 election results show a gain from 15 to 21 Republican members of the Texas delegation to the U. S. House of Representatives. (Affidavit of Dr. John Alford, Jackson Plaintiffs' Remand Brief, herein after "Alford Affidavit"). In addition, the District Court recognized the very strong affiliation between Latinos and African Americans in Texas with the Democratic Party and the political influence achieved by these groups as a result of this affiliation. *Sessions* 298 F. Supp. 2d at 471, 483, 484, 488-89. Therefore, any misuse of Census data by

Texas to gain Republican Party partisan advantage would also clearly disadvantage Latino and African American voters.

Second, the 2003 plan violates the "one person, one vote" rule in a substantial way. As the District Court determined, after the publication of the 2000 census the State of Texas was initially unable to fashion a redistricting plan for the Texas Congressional delegation. *Sessions* 298 F. Supp. 2d at 471. Therefore, the District Court was compelled to develop a congressional redistricting plan for Texas. *Id.* The plan developed by the District Court "reflected the growing strength of the Republican Party in Texas, with 20 of the 32 seats offering Republican advantage." *Id.* Nevertheless, after Republicans gained control over both houses of the Texas Legislature, as well as control over all prominent Executive Branch positions, redistricting was revisited in 2003. *Id.*

According to the United States Census Bureau, in 2003 the population of Texas had increased from 20,851,820 to 22,118,509, an increase of over 6% since April of 2000.[19] In addition, the population of Texas Latinos had increased from 32% to 34% of the total. Yet, the 2003 redistricting plan adopted by the State of Texas was based the outdated, inaccurate 2000 census. No effort was made by the State to secure more accurate data even though the State's own demographers had data that showed the State's growth over the three years since the conduct of the 2000 census count. [20] By using

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[19] Although the decennial census data is generally presumed accurate figures that have a high degree of accuracy and are clear, cogent and convincing override the prior decennial census numbers. The methodologies used by the Census Bureau to update its 2000 numbers exceed the accuracy of the numbers approved by the Fifth Circuit in *Valdespino v. Alamo Heights Independent School District* 168 F. 3d 848, 854 (5th Cir. 1999) to overcome this presumption of accuracy.

[20] *See* http://txsdc.utsa.edu/download/pdf/estimates/2003_txpopest_county.pdf (Table 1). According to the state's demographer, by July of

the outdated 2000 census data the Defendants were able to have the 2003 plan manipulate the one person, one vote principle to political advantage. By overpopulating Democratic leaning inner city districts and Democratic leaning minority rural districts the State was able to minimize the influence of Democratic voters and minority Democratic voters in particular. On the other hand, by underpopulating Republican leaning suburban and Republican leaning Anglo rural districts the State was able to maximize the political advantage of Republican and primarily Anglo Republicans. By using the inaccurate 2000 census data, all this was achieved even while appearing to achieve equal population between districts.

The reality is quite different when measured by 2003 population data however. For example the predominately Republican and Anglo west Texas district in Lubbock, District 19, appears to have equal population with all other districts in the plan when measured by the outdated 2000 Census data. However, according to the United States Census Bureau, in 2003 District 19 had a population of 651,316 persons or—5.8% below the 2003 ideal of 691,203. (LULAC Remand Exh. 2) By contrast District 27 a predominantly Latino and Democratic district in South Texas, in 2003 had a population of 696,692 persons or +.79% above the 2003 ideal population. *Id.* The total population disparity between just these two districts is well over 6%, hardly the zero population deviation required of Congressional districts. In addition, in Congressional District 23, the State's 2003 plan purposefully removed half of a high growth Latino County (Webb County is over 90% Latino, grew by over 22,000 persons between 2000 and 2003 and half its population was removed from

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2003, when the legislative redistricting effort was underway, the state had added 1,266,689 people to its official 2000 census population. Harris County alone had added 190,343 people. Bexar County had added 70,606; Hidalgo County had increased by 66,388; and Jefferson County had lost 1,344 people.

District 23 by the State's 2003 plan) and replaced with three moderate growth, predominantly Anglo Counties (Bandera, Kerr and Kendall Counties have a combined Latino population of 18.7%, and had a combined population growth of 6,856 people between 2000 and 2003) to form a safe Republican District.

This sort of manipulation of population created disparity in population between districts that necessarily fell most prominently on the fast growing Latino population of Texas, but was done nevertheless because it facilitated the goal of achieving partisan advantage and therefore violates the equal protection and associational guarantees of the United States Constitution. *Cox v. Larios*, 159 L. Ed. 2d 831, 833-34. The District Court was wrong in refusing to apply the *Cox* requirements to the analogous facts of this case.

A. The Elimination of Virtually All Competitive Districts Violates Plaintiffs' Associational and Free Speech Constitutional Rights.

The elimination of all competitive districts, whether Democratic or Republican leaning, from a redistricting plan and replacing them with overwhelmingly safe districts for the dominant political party would assure that future elections would burden the disfavored party's rights to fair and effective representation even into the future and thus violate the constitutional protections from unfair political gerrymanders. *Vieth v. Jubelirer* 158 L. Ed. 2d 546, 579 (2004) (Kennedy concurring) ("If a State passed an enactment that declared 'All future apportionments shall be drawn so as most to burden Party X's rights to fair an effective representation, though still in accord with one-person, one-vote principles,' we would surely conclude the Constitution had been violated").

The facts concerning the influence of minority democrats on competitive districts under the 2000 court ordered plan was well documented at the initial trial and was recognized

by the District Court. *See: Sessions*, 298 F. Supp. 2d at 485-86, 488-89. LULAC Trial Exh. 17. The elimination of that influence in the 2003 redistricting plan is established by the 2004 elections.

The record of this case establishes that Latino and/or African American Democratic voters had significant influence in the outcome of Congressional elections in districts 1, 2, 4, 9, 10, 11, 17, and 23. *Id.* In the Districts 1, 2, 4, 9, 10, 11, and 17 the minority vote was the deciding factor in the outcome (LULAC trial Exh. 17) and in District 23 the Latino vote made the election close *Sessions*, 298 F. Supp. 2d at 487-89. Although the Latino vote in District 23 had shifted with each successive election away from the Republican incumbent, (in 2002 only 8% Latino support), Mr. Bonilla continued to win. Therefore, the intent of the changes to District 23 in shifting significant Anglo republican voters into the district and shifting out significant Latino democratic voters was to "make Congressional District 23 **more** Republican." *Sessions*, 298 F. Supp. 2d at 488 (emphasis added). In each of these districts, the 2003 plan not only diminished the influence of the minority democratic vote, but rather it devastated that influence to the level of making it inconsequential. (LULAC Exh. 17). These changes were meant to further the State's efforts to reach its partisan quota of 22 permanent Republican Congressional districts. *Sessions*, 298 F. Supp. 2d at 485-86, 488-89. This result was largely achieved. By transforming each of these competitive Republican leaning districts, where the normal course of political discourse could alter the results, to super-safe Republican districts, the changes result in permanently eliminating the ability of minority democrats from any political influence outside safe Democratic districts. Such a devaluation of associational and free speech rights where democratic voters' (minority democratic voters in particular) influence is relegated to 10 safe democratic districts and one competitive district out of 32 total districts

rises to the level of unconstitutionality. *Veith*, 158 L. Ed. 2d 546, 579. When these facts are taken together with the fact that such a result was achieved with the use of inaccurate 2000 census data, which undervalued the population of minority voters, the 2003 plan fails violates the constitutional protections against partisan gerrymanders. *Cox v. Larios*, 159 L. Ed. 2d 831, 833 (2004).

The District Court's treatment of these issues is inconsistent with this Court's teachings in both *Veith* and *Cox*.

II. THE DISTRICT COURT'S HOLDING THAT PARTISIAN VOTING NEGATES RACIALLY POLARIZED VOTING EFFECTIVELY REPEALS THE VOTING RIGHTS ACT IN TEXAS.

The court below dispatched the claims of racial and ethnic discrimination brought by the NAACP, the League of Latin American Citizens (LULAC) and the American GI Forum in what must be a record in such a case using only ninety-nine (99) words. (App p. 45) No evidence was discussed, no cases were cited and no statutes or constitutional provisions were mentioned. Rather the court found that these issues were "beyond the scope of the mandate" on remand. In the earlier action by the district court that was vacated, the Voting Rights Act § 2 claims were ignored because of a Fifth Circuit precedent which is at odds with the other circuits[21] and the legislative history of the changes to the Section 2 of the act in 1981.

[21] *Sanchez v State of Colorado*, 97 F. 3d 1303, 1311 (10th Cir. 1996).

What the district court in *Session* found was that because minority voters support Democratic Candidates by overwhelming margins and because White or Anglo voters support Republican candidates in similar levels, racially polarized voting could not be shown. Rather, the district court, along with the Fifth Circuit require minority plaintiffs "to disprove partisanship as the driving force behind racial [block] voting." *Sessions v Perry*, 298 F. Supp. 2d 451, 478 n. 88 (E.D. Tex. 2004). [22] In doing so, the District Court along with the Fifth Circuit has voided the application of § 2 of the Voting Rights Act to Texas.[23] In Texas, Hispanics, Blacks and Whites consistently vote along partisan lines; overwhelmingly, Hispanics and Blacks vote Democrat and Whites vote Republican. Evidence in this case demonstrated severe racially polarized voting as required by this Court in *Gingles* to prove a violation of § 2 of the Voting Rights Act. The District Court disregarded the evidence as explained by partisan voting, *Id.* The facile response to this is that Hispanics and Blacks would do well to abandon the Democratic Party and become Republicans. But that would effectively void their First Amendment Rights to Associate Politically.

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[22] The decision that is the subject of this appeal adopted the prior opinion, *Sessions v Perry*, 298 F. Supp. 2d 451 (E.D. Tex. 2004) that had been vacated by this court. The three judge court states: "Ultimately, we will adhere to our earlier judgment that there is no basis for us to declare the plan invalid." See page 1 of **Appendix A**

[23] In *League of United Latin American Citizens Council (LULAC)l No. 4434 v. Clements*, 999 F. 2d 831, 853-54 (5th Cir. 1993), *cert. denied*, 510 U.S. 1071, 114 S. Ct. 878 (1994) the Fifth Circuit, on an *en banc* hearing empanelled *sua sponte*, reversed a three judge panel opinion that upheld a § 2 Voting Rights Act claim against at large judicial elections. In that case, the three judge panel held, consistent with *Gingles*, that evidence of racially polarized voting cannot be rebutted by evidence of partisan voting, *LULAC*, 986 F. 2d 728, 738. *See also Sanchez v State of Colorado*, 97 F. 3d 1303, 1311 (10th Cir. 1996) for the same interpretation as asserted by LULAC in this case.

According to a majority of the Justices in *Gingles*, to satisfy the second threshold factor minority voters need not prove the **reason** they vote for the same candidates. Justice Brennan, writing for three other Justices, would have held that "the reasons [minority] and white voters vote differently have no relevance to the central inquiry of § 2." *Gingles*, 478 U.S. at 63 (Brennan, J, joined by Marshall, Blackmun, and Stevens, JJ.). Although not entirely agreeing with Justice Brennan, Justice O'Connor, writing on behalf of three other Justices, agreed that defendants cannot rebut statistical evidence of a minority group's political cohesiveness by "offering evidence that the divergent racial voting patterns may be explained in part by causes other than race." *Gingles*, 478 U.S., at 100 (O'Connor, J., joined by Burger, C.J., Powell and Rehnquist, JJ., concurring in the judgment). Justice O'Connor specifically stated that statistical evidence of divergent racial voting offered solely to establish the minority group's political cohesiveness may not be rebutted by evidence indicating that there is "an underlying divergence in the interests of minority and white voters.' *Id.*

While it is true that *Session* was remanded for further consideration in light of *Veith*, this Court vacated *Session* and no part of it was affirmed. We will detail some of the problems faced by minority Texans because of the dead serious fight between Republicans and Democrats.

Intentional Discrimination

No one denies and the district court found in *Session* that "the single-minded purpose of the Texas Legislature in enacting Plan 1374C was to gain partisan advantage." *Session v. Perry*, 298 F. Supp. 2d 451, 470 (D. Tex., 2004) By even the most charitable descriptions this special redistricting session that produced the Texas Congressional reapportionment of 2003 was a concerted intentional effort by Republicans to defeat Democratic candidates by gerrymandering districts so that they could not win. Gerrymander is a word that

was coined to describe intent and over the years, it has become probably the most recognizable icon of intent in the area of redistricting.

Foreseability

The possibility of illegal or unconstitutional adverse effect on minority voting interests was entirely foreseeable. In the redistrictings after the 1970 Census, the 1980 Census and the 1990 Census, all or significant parts of what the district court refers to as Democratic gerrymanders were found to violate either the Constitution or the Federal Voting Rights Act. This was because of the consequent effect that those plans had on minority voting interests. As recently as the 2001 redistricting of the Texas House of Representatives by the all Republican State Legislative Redistricting Board, a similar attempt to reduce democratic elected officials was the subject of a Department of Justice Objection because of the effect it had on minority voting interests.

This intentional discrimination was aided by the mid-decade nature of the apportionment. The gerrymanders had access to the 2002 election results which demonstrated the strengths and weaknesses of the candidates. It was like having the opponent's play book.

In this desperate fight between the Democratic and Republican parties, the minority interests were savaged.

District 24 becomes District 32 in Dallas County: Not usually thought of as Democratic, Dallas County has actually become one of the most Democratic Counties in Texas. This is due, in large part because it has one of the fastest growing Latino populations in the country. Currently Hispanics and Blacks outnumber Whites in the county.

In the 2004 presidential election the President Bush carried only 50.3% of the Dallas County vote.[24] In addition, the County elected a Democratic Sheriff, a State Appellate Judge and more than half of the contested District Court positions. Yet, Dallas County was carved up into five congressional districts, four (80%) of which are locked up for Republican candidates. This was accomplished for three congressional districts (3, 24 and 5) by running them into surrounding suburban areas. District 30, the "Black District" established in the 1990 redistricting and located entirely in Dallas County was left pretty much in tact presumably to avoid problems with Section 5 of the Federal Voting Rights Act. District 32, located entirely within the County was gerrymandered to appear to be a hand extending from the point where Collin, Denton and Dallas Counties come together. It curves around to enclose Highland park, University Park and the North Dallas County suburbs[25] with the heavily minority and blue collar Oak Cliff and Cockrell Hills. These two areas have almost nothing in common. The so called "park cities" have virtually no black and just 3% Hispanic population The Oak Cliff/Cockrell Hills area of Dallas contains the County's most heavily concentrated and fastest growing Hispanic population. This was conceded to be a district drawn to defeat Congressman Frost (the chief Democratic fund raiser for the Democratic Congressional effort and a long time nemesis of Congressman Delay). The former district in this area was District 24. Instead of tying the minority Oak Cliff area of Dallas to Highland Park, it in-

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[24] http://www.dalcoelections.org/archivedresults/nov22004/Final_Cumlative.html All references to voting in Dallas County are from this official Dallas County source.

[25] The state expert Dr. Gaddie's studies showed that Martin Frost received considerable less than half of the White vote in 2002 election but won only because of the minority vote that Dr. Gaddie's studies showed voted almost entirely for him Frost.

cluded the heavily minority Southeast part of neighboring Fort Worth which is the fastest growing Hispanic area of Fort Worth. As a result District 24 which had a Hispanic and Black population of more than 60% was reduced to just above 44% in District 32. This changed a district which was currently electing an incumbent White Democrat,[26] but clearly on the way to becoming a minority district into one in which a democrat let alone a minority democrat would have no chance for election.

District 1 in East Texas: In the former plan and for as long as records have been kept, this has been a district representing East Texas. Over the years, Blacks and Whites have had serious problems but recently have been able to create coalitions to elect members of Congress. In the 2002 elections, as shown by the studies of the State's expert, longtime Congressman Max Sandlin lost among White voters but was elected by carrying almost all of the Black vote. The plan at issue here carved eight of the East Texas Counties out of the district replacing them with suburban Dallas fast growing areas in Collin and Rockwall Counties. In the 2004 Election Congressman Sandlin was not only defeated but able to garner less than 40% of the vote. When a party or a candidate wins with such overwhelming margins, the possibility to form meaningful coalitions is negligible. This changed what had been a real minority impact district—one in which the Black vote accounted for the victory into one in which the Black voters are observers in a district dominated by overwhelmingly White suburban Dallas Voters.

District 9 becomes District 2: In the former District 9, Congressman Lampson was elected with only 45% of the White vote and virtually all of the Black vote. This district was composed of the Costal Counties of Jefferson, Chambers

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[26] This and all other references to the November 2004 General Election are from the official records maintained by the Texas Secretary of State at http://elections.sos.state.tx.us/elchist.exe

and Galveston Counties together with a portion of Harris County. In the plan at issue, this became District 2 and Galveston and Chambers Counties were removed and replaced with virtually all the suburban Houston area contained in the Northeastern portion of Harris County. In this District Congressman Lampson lost with just over 40% of the vote. Again, this changed what had been a real minority impact district—one in which the Black vote accounted for the victory into one in which the Black voters are observers in a district dominated by overwhelmingly White suburban Houston Voters.

District 10 is Split in Half: In the former plan District 10 was an almost perfect square area containing half of Travis County. It was a District that elected a long time White Congressman Lloyd Doggett. Although it has functioned as a Hispanic Impact District it is at a level in which Hispanics have been able to elect candidates in Travis County. In fact, State Senator Gonzalo Barrientos which is slightly larger but otherwise almost identical to that which elected Congressman Doggett. The northern half of old District 10 was tied into suburban Houston which is more than 200 miles away through a series of rural counties. The balance of the former congressional District is tied into a portion of Hidalgo County located on the Rio Grande River again through a series of rural counties more than 200 miles away. Travis County has almost nothing to do with suburban Harris or Hidago counties.

District 23: Dr. Gaddie testified that former District 23 was on the cusp of being controlled by Hispanic voters. The District 23 in the plan at issue is very close in appearance to the old 23 but it splits Webb County (Laredo) Texas in half. Webb County is not only almost entirely Hispanic but also contains the most politically active Hispanic community in the state. The predominantly Hispanic voters in Webb County were exchanged for predominantly Anglo Voters in the

Northside of San Antonio and in three suburban San Antonio counties. As a result, the Spanish Surnamed voters were reduced from 55% in the former District 23 to 44% in the District 23 in the plan at issue. This move was described by Dr. Gaddie as an effort to prevent losing a Republican Congressman. The balance of the Webb County split was added to a heavily Hispanic district anchored by the Southwest side of San Antonio and Bexar County. In other words, the splitting of Laredo moved half of the voters into a district in which Hispanics would be unable to elect the representatives of their choice and the other half into a district which was already heavily Hispanic.

District 17 becomes District 19: This is another loss of a Hispanic impact district. In many ways it very much resembles District 1 in East Texas. Dr. Gaddie, the state's expert indicated that Congressman Stenholm, the dean of the Texas Congressional Delegation Congressman Stenholm was elected in 2002 with less than half of the Anglo vote but virtually all of the Hispanic vote. District 17 was a West Texas District which was logically shaped contained comparatively homogenous West Texas Counties. Its replacement, District 19 is a 59 sided snake shaped monstrosity that wanders from the Panhandle around West Texas and is at one point only a few miles wide. Congressman Stenholm lost with only 40% of the vote.

The district court bemoans the fact that computers have given gerrymanders the power to create districts that are intended to and actually do discriminate. The district court does nothing because it claims it can do nothing. But the district court is wrong on this point. As this Court can see from the maps of what happened here, the gerrymandering that was done is simple and straight forward. It always is. There are no new or novel tricks here. It could have been done on the backs of old envelopes using adding machines the way we use to do it. Computers are simply adding ma-

chines. The gerrymandering is done by the people operating the adding machines or the computers. The solution is not to shrink from intentional discrimination but to eliminate it root and branch. Luckily the remedy is easy, districts can be drawn which are regular in shape and contain relatively homogenous populations. Fairness cannot be accomplished through gerrymandering. Intentional discrimination

In some districts, the impact of inner city areas is diluted with suburban area such as Districts 24/30 and 23. In any parlance, inner city translates into minority and suburban translates into White.

In other districts, incumbents who have been reelected with coalitions between minority voters and some white groups are split apart and either diluted with suburban voters as in District 1 or drawn and split into crazy quilts such as in Districts 19 and 10/10 and 25.

In still others where minority voters were in a good position to elect members of Congress when the current ones move on or retire, the districts have been radically redrawn so that will be extremely unlikely.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted,

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August 9, 2005

APPENDICES

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APPENDIX A

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

[Filed June 9, 2005]

CIVIL ACTION NO. 2:03-CV-354
Consolidated

FRENCHIE HENDERSON, *et al.*

v.

RICK PERRY, *et al.*

Before HIGGINBOTHAM, *Circuit Judge*, and WARD and ROSENTHAL, *District Judges*.

PATRICK E. HIGGINBOTHAM, *Circuit Judge*:

We are asked to examine again, in light of the Supreme Court's decision in *Vieth v. Jubelirer*,[1] the claims that the redistricting plan fox the election of the thirty-two members of Congress from Texas, adopted by the Texas legislature in 2003, is unconstitutionally tainted by excessive partisan purpose. Ultimately, we will adhere to our earlier judgment that there is no basis for us to declare the plan invalid.

We conclude that claims of excessive partisanship before us suffer from a lack of any measure of substantive fairness, The claims accept that some partisan motivation is inevitably present in the political enterprise of redistricting, but urge that at some point it can become unconstitutional, presumably a denial of equal protection. No party before us states with clarity the precise constitutional deficit. Although the lead

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[1] 541 U.S. 267 (2004).

plaintiffs invoke the structure of equal protection analysis, they identify no suspect criterion or impinged fundamental interest in insisting that if the state acts with the "sole purpose of partisan advantage in drawing legislative districts, regardless of its effects, the state must offer a "compelling explanation" for its effort, The conduct that plaintiffs condemn is offered only in unstructured form; their condemnation of practices such as targeting incumbent members and ignoring "communities of interest" and other "traditional" principles of redistricting comes untethered to constitutional texts.

The most frequently invoked image of the evil resulting from excessive partisanship in drawing congressional districts is the non-competitive district, a product of a member choosing his constituents. We are asked to recognize this as anti-democratic and implored to find a means to curb it. The vision of the House of Representatives controlled by members who do not face serious opposition to reelection is urged as a stain upon its historical image as an institution embracing the teaching of Cincinnatus. The argument ignores a historical fact; the Texas delegation has enjoyed noncompetitive districts for at least the past four and one-half decades, long before there were two political parties with any strength in the state. The emergence of Texas as a two-party state has not altered this reality, although it has given rise to forces that have caused the Texas delegation now to approximate the relative statewide voting strength of the two parties. As we will explain, theme is little to suggest that taking up the tools plaintiffs offer in attacking the 2003 Texas plan will in fact remedy this awkward reality.

After addressing the claims of excessive partisanship, we will turn to a narrower and seemingly more plausible contention that does not attempt to measure how much partisanship in redistricting is constitutionally excessive, but instead uses the requirement. of one-person, one-vote as a tool to limit how often redistricting can occur., This contention aims

only at "voluntary" mid-decade redistricting that occurs when a legislature replaces a valid existing plan put into place after the last census; it does not attempt to set a standard for direct judicial supervision over partisan influence in redistricting, but instead proposes a rule that is intended to prevent the specific type of redistricting that occurred in Texas in 2003, The argument is that a legislature seeking to displace a valid extant plan may not rely on decennial census figures to meet, the stringent demands of one-person, one-vote, but must instead prove that its proposed plan distributes population in an equipopulous manner by use of actual current figures. While its relative simplicity is seductive and avoids the need to measure how much partisanship is constitutionally excessive, we are not persuaded that it is appropriate for this court to endorse this application of the one-person, one-vote requirement as a means to the end of limiting political influences on redistricting.

I

The history of this case and of the efforts of the Texas legislature to draw lines for its thirty-two congressional districts is set out in our previous opinion, and we will not repeat it here.[2] While the appeal from our judgment upholding the plan adopted by the Texas legislature was pending before it, the Supreme Court decided *Vieth v. Jubelirer.* In *Vieth*, the Court affirmed the decision of a three-judge court rejecting claims by three registered Democrats who vote in Pennsylvania that a redistricting plan for congressional districts adopted by the Pennsylvania legislature should be set aside because it constituted an impermissible political gerrymander, in violation of Article I and the Equal Protection clause of the Fourteenth Amendment. Their complaint, in addition to other claims, alleged that the districts were "meandering and irregular" and "ignored all traditional redistricting criteria . . .

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[2] *See Session v. Perry*, 298 F. Supp. 2d 451 (E.D. Tex. 2004).

solely for the sake of partisan advantage."[3] The three-judge court granted defendants' Rule 12 motion to dismiss for failure to state a claim, and the Supreme Court affirmed.

Shortly thereafter, in *Cox v. Larios*,[4] the Court summarily affirmed the judgment of a three-judge court that had rejected a redistricting plan of the Georgia legislature as failing to conform to the principle of one-person, one-vote. The district court held that because the legislature sought to give advantage to certain regions of the state and to certain incumbents in an effort to help Democrats and hurt Republicans, Georgia was not entitled to the 10% deviation toleration normally permitted when a state is drawing lines for its legislature.[5]

Then, after the summer recess, the Court remanded the present case "for further consideration in light of *Vieth*,"[6] making no reference to its decision in *Larios*. Responsive to the remand order, we received briefs and heard oral argument from all parties and amici.

Although in our prior opinion we turned back many attacks upon the legislative plan for electing members of the Texas congressional delegation, we read the remand order to be a directive to reexamine only our rejection of the claim that the Texas plan is an illegal political gerrymander, This mandate does not include consideration of other attacks, with the possible exception of the claim that the Texas plan failed to abide the command of one-person, one-vote. Variations of this one-person, one-vote claim have been in the case from its inception, but came to the fore only in the arguments following the remand to this court. The Court made no mention of one-

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[3] *Id.* at 272-73 (internal quotation marks and brackets omitted).

[4] 124 S. Ct 2806 (2004).

[5] *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga.) (three-judge panel), *summarily aff'd*, 124 S. Ct. 2806 (2004).

[6] *Jackson v. Perry*, 125 S. Ct. 351 (mem.) (Oct. 18, 2004).

person, one-vote in its remand order, nor was it at issue in *Vieth*. However, this issue was present in the Court's examination of Georgia's plan in *Larios* in a way arguably related to the present case. Any examination of compliance with one-person, one-vote thus faces the threshold hurdle of whether the claim is within the mandate of the remand. We will treat this question in due course.

II

The light offered by *Vieth* is dim, and the search for a core holding is elusive. This observation is not a criticism, but a recognition that *Vieth* reflects the long and twisting historical narrative of political gerrymanders in the United States.

The most recent chapter in this history of partisan influence upon the drawing of legislative districts involves the federal judiciary's effort to play the role it claimed for itself in *Davis v. Bandemer*.[7] Judicial reluctance to surrender this role is understandable. The move to the one-person, one-vote principle in *Reynolds v. Sims*[8] both answered some of the critics of *Baker v. Carr*[9] and fulfilled the predictions of others who warned against entering the political thicket.[10] While hardly analogous to the quest for standards for reining in partisan gerrymanders, the relatively quick two-year process culminating in *Reynolds* encourages those reluctant to concede the futility of finding an effective standard for *Bandemer*. And as we will suggest, we have yet to calculate the full costs of achieving the clear and easily administered standard of *Reynolds*.

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[7] 478 U.S. 109 (1986) (finding political gerrymandering claims justiciable).

[8] 377 U.S. 533 (1964) (applying one-person, one-vote principle to malapportionment claims).

[9] 369 U.S. 186 (1962) (finding malapportionment claims justiciable).

[10] *See, e. g., Colegrove v. Green*, 328 U.S. 549, 556 (1946) (opinion of Frankfurter, J.).

In addition, there is hesitation to concede that any solutions must come from legislatures and other political players whose critics say lack the ability to restrain themselves. This fear is fueled by the advent of computer-driven redistricting, which has taken this hoary practice to a new level.[11] There is wariness of lines that fall precisely where the draftsmen intend—an absence of randomness or sufficient extraneous forces that the draftsmen must accept. At bottom it is a concern that the power to draw lines is inadequately checked, an implicit accusation that the political process is inadequate to the task. There is also the reality that many members of the House of Representatives enjoy a more secure tenure than members of the Senate fox the simple reason that Senators run statewide, while their colleagues in the House may run in districts

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[11] *See Vieth*, 541 U.S. at 345-46 (Sauter, J., dissenting), citing Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 HARV. L. REV. 593, 624 (2002) ("[I]ncumbent entrenchment has gotten worse as the computer technology for more exquisite gerrymandering has improved and political parties have ever more brazenly pursued incumbent protection,"); Pamela S. Karlan, *The Fire Next Time: Reapportionment After the 2000 Census*, 50 SIAN, L. REV. 731, 736 (1998) ("Finer-grained census data, better' predictive methods, and more powerful computers allow for increasingly sophisticated equipopulous gerrymanders."); Richard H. Pildes, *Principled Limitations on Racial and Partisan Restricting*, 106 YALE L.J. 2505, 2553-54 (1997) ("Recent cases now document in microscopic detail the astonishing precision with which redistricters can carve up individual precincts and distribute them between districts with confidence concerning the racial and partisan Consequences.")

Even before the computer enhanced the ability to draw precise lines, the politicians were hardly without their own devices. At the same time, these perceived legislative line-drawing failures are distant from the state legislature's six-decade gridlock that the Court faced in *Baker v Carr*. *See* 369 U.S. at 187-95 (Tennessee General Assembly had not been reapportioned since 1901, despite the Tennessee Constitution's decennial requirement); *see also Reynolds*, 377 U S at 583 (same, in Alabama).

crafted to their advantage.[12] Answers to such questions do not come easily.

The Founders were no strangers to the self-interest afflicting legislators charged with drawing the lines for their own seats. Nor were they blind to the need to locate the power to curb potential abuses With Article I, Section 4, they gave to the legislatures of each state authority to prescribe the times, places and manner of holding elections for Senators and Representatives.[13] The Founders also insisted upon a superintending of the exercise of this power granted to the states. They gave that assignment to Congress by granting it the power to "make or alter" such regulations.[14] Congress has exercised this power from time to time, as justice Scalia recounted in his opinion in *Vieth*.[15] While not directly speaking to the difficulties of gerrymandered state legislatures, this explicit placement in the Congress of the power to supervise the authority granted to states, coupled with the difficulty faced by judges of divining rules or standards adequate to

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[12] One commentator has noted:

> For the most part, redistricting appears to be done by barons dividing up fiefdoms, not by democratically accountable representatives. . . . The gerrymandered House contrasts with elections the same day for nongerrymandered Senate seats and governorships. About half of all gubernatorial and U.S. Senate elections were competitive in 2002, compared with fewer than 10% of House elections

Richard H. Pildes, *The Supreme Court 2003 Term—Foreward: The Constitutionalization of Democratic Politics*, 118 HARV. L REV. 28, 63-64 (2004) (footnotes omitted).

[13] U.S. CONT. art. I, § 4 ("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.").

[14] *Id.*

[15] 541 U.S. at 275-77 (plurality opinion).

distinguish a judicial decision resolving issues of partisanship in redistricting from a legislative act, has to date left the courts in the indefensible position of undertaking a task they cannot perform.

In upholding the Texas plan for congressional districts, we followed an unbroken line of cases declining to strike down a redistricting plan as an illegal partisan gerrymander.[16] We left any change in direction to the Supreme Court, making only brief observations about our own years of work in this case and in drafting plans with the feared computers.[17] We observed that the Court could make an honest case of *Bandemer* by either setting a standard or concluding that the issue was not justiciable. We expressed deep reservations over any approach that would dilute the critical Voting Rights Act by deploying it in name only or by borrowed concepts. We were and remain wary of employing metrics to determine how much is too much partisan motive or effect in redistricting, convinced that such an approach could not move the Court from its stasis under *Bandemer*. We need not further recount these observations.

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[16] *See, e.g., O'Lear v. Miller*, 222 F. Supp. 2d 850, 859 (E.D. Mich.) (three-judge panel), *summarily aff'd*, 537 U.S. 997 (2002); *Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F. Supp. 1022, 1043 (D. Md. 1994) (three-judge panel); *Terrazas v. Slagle*, 821 F. Supp. 1162, 1172-75 (W.D. Tex. 1993) (three-judge panel); *Pope v. Blue*, 809 F. Supp. 392, 397 (W D.N.C.) (three-judge Panel), *summarily aff'd*, 506 U.S. 801 (1992); *Ill. Legislative Redistricting Comm'n v. La Paille*, 782 F. Supp. 1272, 1275-76 (N.D. Ill. 1992); *Badham v. March Fong Eu*, 694 F. Supp. 664, 671 (N.D. Cal. 1988) (three-judge panel), *summarily aff'd*, 488 U.S.. 1024 (1989); *see also Vieth*, 541 U.S. at 280 n.,6 (collecting cases); Samuel Issacharoff & Pamela S. Karlan, *Where to Draw the Line?: Judicial Review of Political Gerrymanders*, 153 U. PA. L. REV. 541, 543 (2004) ("In the ensuing eighteen years [since *Bandemer*], not a single challenge to a congressional or state legislative reapportionment managed to satisfy this standard.").

[17] *Session*, 298 F. Supp. 2d at 457, 474-75.

In *Vieth*, the four Justices in the plurality voted to end the search for a workable standard, concluding that the legality of partisan gerrymanders is not justiciable and should be left to the political arena.[18] Four dissenting Justices offered various possibilities for a standard that might serve a judicial role.[19] Justice Kennedy cast the pivotal fifth vote to affirm the dismissal of the partisan gerrymandering claim.[20] Although Justice Kennedy found each of the standards offered in the dissents deficient, he declined to abandon the search for a standard and, presumably, provided the fifth vote necessary to remand the present case.

Upon our reading of *Vieth*, then, our mandate requires us to look at this record again, with the message that the Court is unpersuaded by contentions that it can never properly locate a standard adequate to a judicial role in policing partisan gerrymanders, but that the standards the plurality rejected in Vieth were inadequate to that task. In their arguments on remand, the plaintiffs have offered various approaches for adjudicating claims of partisan gerrymandering. While the State's contention that most, if not all, of these arguments have been rejected by a majority of the Court is strong, we decline to stop there, given the unusual fracture of the Court in *Vieth*. We can only fairly read the remand to suggest that the Justice providing the fifth vote sees the possibility of a workable standard emerging from this case, the rejected allegations of the complaint in *Vieth* aside. We turn then to the various solutions offered on remand.

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[18] 541 U.S. at 305-06 (plurality opinion).

[19] *Id.* at 317-41 (Stevens, J., dissenting); *id.*, at 343-55 (Souter, J., joined by Ginsburg, J., dissenting); *id.* at 355-68 (Breyer, J., dissenting).

[20] *Id.* at 305-17 (Kennedy, J., concurring).

III

We first address the argument of the Jackson Plaintiffs[21] that the current. redistricting map is unconstitutional because it was driven solely by a partisan agenda. Before reaching the merits of this claim, however, we find it illuminating briefly to recount some of the events leading up to the passage of the redistricting plan now under attack.

A

The history of electoral politics in Texas during the latter half of the twentieth century can be described as the story of the dominance, decline, and eventual eclipse of the Democratic Party as the state's majority party. From Reconstruction until approximately the beginning of the 1960's, the Democratic Party dominated the political landscape in Texas.[22] In 1961, John Tower became the first Republican Senator elected from Texas since 1875.[23] Throughout the 1960's, and for much of the 1970's, Republican voting strength on a statewide basis hovered near 35%.[24] During this time, Republicans never held more than four congressional seats at one time.[25]

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[21] Our reference to "Jackson plaintiffs" includes the following: all plaintiffs included in the Amended Complaint filed on November 7, 2003, on behalf of the existing Jackson, Mayfield, and Manley plaintiffs; additional plaintiffs included there for the first time; and the Democratic Congressional intervenors.

[22] *See* Mike Kingston, *John Tower: The GOP's Godfather, in* TEXAS ALMANAC 1992-1993 (1991), at 438 ("For most of the 20th century, Republicans were more a party of patronage than a legitimate political force in Texas. The action was within the ranks of [the] Democratic party where conservatives battled liberals, and the Democratic nomination was tantamount to election.").

[23] *Id.*

[24] *See* Appendix.

[25] *See* Mike Kingston, *Republican Party in Texas, in* TEXAS ALMANAC 1982-1983 (1981), at 490.

In 1978, William Clements, Jr., was elected Governor of Texas, becoming the first Republican to hold that office since 1874.[26] In the 1978 election, Democrats won twenty out of twenty-four congressional seats and captured 56% of the vote in statewide races, while Republicans' statewide strength stood at 43%.[27] Republican strength grew throughout the 1980's such that by 1990, the Republican Party had nearly achieved parity with the Democratic Party, garnering 47% of the statewide vote compared to the 51% for the Democrat.[28] Nonetheless, Democrats still held the lien's share of congressional seats, with nineteen compared to the Republican's eight.

No doubt aware of the growing strength of the Republican Party, the Texas legislature, controlled by Democrats, enacted a redistricting plan in 1991.[29] Under this plan, Democrats won twenty-one congressional seats in the 1992 election compared to nine won by the Republicans, even though the "tipping-point" had been reached with the Democratic and Republican parties capturing an equal share of the vote in statewide races.[30]

Throughout the 1990's, Republican strength continued to grow, while the Texas congressional delegation remained firmly in the hands of Democrats. By the end of the decade, Republicans were consistently winning every statewide race on the ballot, including the offices of governor, lieutenant governor, attorney general, and seats on both the Supreme Court and Court of Criminal Appeals.[31] Yet with the 1991

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[26] *See* Mike Kingston, *Politics and Elections, in* TEXAS ALMANAC 1982-1983 (1981), at 491.

[27] *See* Appendix.

[28] *Id.*

[29] *See infra* note 48.

[30] *See* Appendix.

[31] *See* Office of the Secretary of State, 1992-2005 Election History, at http://elections sos.state.tx.us/elchist.exe (last visited Apr. 1, 2005).

Democratic Party gerrymander still in place, Democrats captured seventeen congressional seats to the Republicans' thirteen in the 2000 election, despite Republicans garnering 59% of the vote in statewide elections to the Democrats' 40%.[32]

Following the 2000 census, the Texas legislature was unable to pass new lines for the Texas congressional delegation, and the task eventually fell to this court.[33] For reasons that we will discuss, the plan produced by this court perpetuated much of the 1991 Democratic Party gerrymander. In the 2002 elections, the number of congressional seats held by Democrats remained unchanged, with Republicans gaining the two seats added by the census. In 2003, the Texas legislature, now controlled by Republicans, passed the redistricting plan that we upheld in *Session* and now review again in light of *Vieth*. Under this plan, Republicans captured twenty-one congressional seats in the 2004 election compared to eleven for the Democrats.[34] In this election, Republicans carried 58% of the vote in statewide races compared to 41% for Democrats.[35] It is against this backdrop that we now consider the Jackson Plaintiffs' arguments on remand.

B

The Jackson Plaintiffs urge that we "distill from the *Vieth* opinions the principle that a decision to revise a districting map, along with particular features of the map, become unconstitutional when the evidence makes clear that the legislature was driven solely by a partisan agenda." Invoking equal

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[32] *Id.*

[33] *See Balderas v. Texas*, No. 6:01-CV-158, slip op. (E.D. Tex. Nov 14, 2001), *summarily aff'd*, 536 U.S. 919 (2002).

[34] *See* Appendix.

[35] *Id.* By way of comparison, when the statewide voting strength was roughly reversed in 1982, Democrats took twenty-two congressional seats to the Republicans' five. *Id.*

protection analysis, the Jackson Plaintiffs contend that sorting voters for the sole purpose of gaining partisan advantage can serve no rational or legitimate purpose. This approach focuses on voluntary legislative redistricting—"voluntary" in the sense that it sets out to replace a valid extant plan. By definition, this approach would tolerate efforts to gain partisan advantage when the legislature is compelled to redistrict because the extant plan is invalid, such as when new decennial census figures require redistricting to comply with one-person, one-vote or to accommodate changes in the numbers of legislative members. This is so because efforts to gain partisan advantage in involuntary redistricting do not constitute the sole reason for the undertaking. Rather, the Jackson Plaintiffs' approach takes aim at mid-decade (or "mid-cycle") efforts to replace a valid extant plan, drawing on the observation in *Session* that structural or process-based constraints may have more purchase because they avoid the difficulties attending efforts to gauge how much is too much partisan motive or gain.

In support, of their argument, the Jackson Plaintiffs point to Justice Kennedy's opinion in *Vieth*, in which he observes that a "determination that a gerrymander violates the law rests on something more than the conclusion that political classifications were applied. It must rest instead on a conclusion that the classifications, though generally permissible, were applied in an invidious manner or in a way unrelated to any legitimate legislative objective."[36] Justice Kennedy, the argument continues, pointed to the Court's denial in *Baker v. Carr* that it needed to "enter upon policy determinations for which judicially manageable standards are lacking . . . if on the particular facts . . . a discrimination reflects no policy, but simply arbitrary and capricious action."[37] It is suggested that

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[36] 541 U.S at 307 (Kennedy, J., concurring).

[37] *Id.* at 310 (Kennedy, J., concurring) (quoting *Baker*, 369 U.S. at 226) (internal quotation marks omitted).

redistricting for purely partisan purposes is an example of such arbitrary and capricious action. It is further suggested that this "sole reason" approach by its own terms would not apply in *Vieth* because the Pennsylvania legislature had to redistrict for multiple reasons, including the legal requirement of redrawing the lines after the 2000 decennial census in ways that created equipopulous districts based on that census, as well as satisfying the Voting Rights Act and accounting for "traditional" districting criteria, such as incumbent protection and minimizing split precincts.

Finally, the Jackson Plaintiffs parse the opinions of the four dissenting Justices, noting that all sought to locate a principle that would identify plans lacking a rational basis. The Jackson Plaintiffs urge that condemning efforts undertaken solely to gain partisan advantage is such a principle. They add as a final implementing principle the proposition that when a legislature controlled by a single party replaces a legal redistricting plan in the middle of the decade, the effort should be presumptively unconstitutional. They conclude that this presumption could be overcome only by a "compelling explanation."[38]

In response, the State urges that *Vieth* "squarely rejected the notion that 'sole,' 'predominant,' or 'only' partisan intent suffices to state a claim," In *Vieth*, the Court found insufficient allegations that the Pennsylvania districts "ignore[ed] all traditional redistricting criteria, including the preservation of local government boundaries, solely for the sake of partisan advantage."[39] The Court noted that the plaintiffs had alleged that when the Pennsylvania legislature turned to redistricting after the 2000 census, "the Republican Party con-

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[38] This ignores, as it must, the reality that even with an overarching objective of feathering the party nest, the various cuts and turns of a redistricting plan with its reverberating impacts are infused with myriad mixtures of local politics and accommodation, inevitably producing lines drawn for a variety of reasons and objectives, often inconsistent with the overall objectives of partisan gains.

[39] 541 U S at 272-73 (plurality opinion).

trolled a majority of both state Houses and held the Governor's office. Prominent national figures in the Republican Party pressured the general Assembly to adopt a partisan redistricting plan as a punitive measure against Democrats for having enacted pro-Democrat redistricting plans elsewhere.[40] The Court in *Vieth* had before it allegations that the Pennsylvania map was drawn "solely" and "exclusively" for political ends by a single-party-controlled legislature. These allegations were insufficient to overcome the motion to dismiss the political gerrymandering claim. Justice Stevens argued for a test based on such factors.[41] The State points out that the contention by the Jackson Plaintiffs mirrors the dissent of Justice Stevens, or is at least functionally identical to it, and that Justice Kennedy expressly rejected the "standards proposed . . . by our dissenting colleagues."[42]

We are persuaded that the Jackson Plaintiffs offer a standard for measuring an excessively partisan redistricting plan that is functionally equivalent to the standard offered in Justice Stevens's dissent, a view rejected by five Justices. This similarity aside, the Jackson Plaintiffs' equal protection analysis, assertedly a structural approach, fails on its merits Specifically, they are unable to locate a substantive right or suspect criterion to trigger strict scrutiny. Rather, they claim to rely upon the most deferential standard of review under the Equal Protection Clause, the absence of rationality.[43] Even more, they would alter rationality review to insist that justification for the plan require proof that a legislature that voluntarily engages in redistricting have purposes other than

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[40] *Id.* at 272 (plurality opinion).

[41] *Id.* at 317-19 (Stevens, J., dissenting).

[42] *Id.* at 308 (Kennedy, J., concurring).

[43] *See, e.g., Williamson v. Lee Optical of Okla.*, 348 U.S. 483 (1955); *cf. Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (O'Connor, J., concurring) ("When a law exhibits such a desire to harm a politically unpopular group, we have applied amore searching form of rational basis review to strike down such laws under the Equal Protection Clause.").

partisan advantage by offering a "compelling explanation." That is, of course, not rationality review.

The fact that the Texas legislature's redistricting plan replaced the court-drawn plan put into place after the 2000 census does not make the legislative plan invalid in light of *Vieth* because it was "solely" motivated by political motivation. As noted, the *Vieth* plurality rejected a "sole" motivation test as a basis for measuring when partisan influences on redistricting are impermissibly excessive, Although *Vieth* did not involve mid-cycle redistricting to replace an existing plan, there is no constitutional or statutory prohibition on mid-decade redistricting, as we explained in our earlier' opinion rejecting plaintiffs' contention that Texas lacked the authority to draw new district lines to replace the court-drawn map put into place after the last census. In that opinion, we noted that "innumerable decisions have either assumed that a state legislature may draw new lines mid-decade or have invited a state to do so after the court has drawn a map in a remedial role."[44] For example, in *Wise v. Lipscomb* the Supreme Court observed:

> Legislative bodies should not leave their reapportionment tasks to the federal courts; but when those with legislative responsibilities do not respond, or the imminence of, a state election makes it impractical for them to do so, it becomes the "unwelcome obligation" of the federal court to devise and impose a reapportionment plan *pending later legislative action*.[45]

We also pointed to the practical solutions that Congress has available to prevent or limit such mid-cycle redistricting.[46]

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[44] *Session*, 298 F. Supp. 2d at 460; *see id.*, at 460 n.14, 461.

[45] 437 U.S. 535, 540 (1978) (emphasis added) (citation omitted); *see also Branch v. Smith*, 538 U.S., 254, 265-66 (2003); *Upham v. Seamon*, 456 U.S. 37, 44 (1982); *Connor v. Finch*, 431 U.S. 407, 411-12 (1977); *White v. Regester*, 422 US, 935, 935-36 (1975) (per curiam).

[46] *Session*, 298 F. Supp., 2d at 474-75.

As those on whose shoulders we stand, we suffer no illusion of commission or ability to cleanse the air of partisan politics and self-interest, ox to otherwise make angels of men. Rather, we accept the common-sense understanding that any voluntary redistricting would not have been undertaken unless a majority of the legislature thought it would advance their interests. That is, the self-interest of members of the legislative body will inevitably be a "but-for" cause of voluntary redistricting, the only activity the Jackson Plaintiffs would now condemn. This condemnation is driven by the assumption that the self-interest of members is a. proxy of partisan interest. Putting aside limited amendments to cure some inadvertent error made in adopting an extant legal plan, if the initiating force of partisan ambition is sufficient to strike down all that follows, the principle contended for forbids mid-cycle redistricting by judicial fiat, when neither Congress nor the State of Texas has done so. This would contradict the long-standing assumption by courts that a state may replace existing court-imposed redistricting plans with plans enacted by the state's legislature.

Further, considering self-interest as a proxy of partisan purpose is forced. It does not accommodate the reality that a representative may act out of self-interest to secure a less competitive district—conduct that may or may riot be beneficial to her party, Indeed it may be executed by a trade with a member of the opposite party equally actuated by the instinct of political survival.

In addition to making tendentious use of the equal protection standard and conflating the personal ambition of party members with partisan intent, the Jackson Plaintiffs' approach is question-begging in a more fundamental way. It does not escape, because it cannot, the absence of a substantive measure of fairness It ends the inquiry into legality with a finding that the State acted with the sole purpose of obtaining partisan advantage for the controlling party, pre-

suming that such action is irrational and impermissible regardless of its actual effects,. This approach discounts the possibility that there may be rational justifications for attempting to redistrict to improve a party's position. For example, it is not clear that acting to *undo* a perceived *dis*advantage imposed previously by an opposing party is irrational in the sense that it admits of no salutary or constitutionally acceptable result.

In concept, the Supreme Court could announce a constitutional principle that acting solely with partisan purpose has no place in the drawing of district. In implementing this principle, the Court could then adopt a prophylactic rule forbidding voluntary mid-cycle redistricting by state districting bodies controlled by one party—a bold but candid pronouncement, the *Miranda* of redistricting jurisprudence. The Jackson Plaintiffs shy from this step. Rather, they urge a "process," albeit one that admits of a single conclusion; that mid-cycle redistricting is unconstitutional. The inability to formulate an enforceable principle except one that gathers its normative content from an implementing rule both raises the question of justiciability and draws into question the legitimacy of the announced principle. After all, it is a much smaller step from the two underlying building blocks of *Miranda*—the due process and Sixth Amendment-based right to not be convicted upon an involuntary confession and an experience-based factual judgment of the inherently coercive environment of the station house—to the implementing prophylactic of *Miranda's* warning requirement. The baseline in *Miranda* was a settled constitutional principle, not an elusive condemnation of conduct that some would say is antithetical to American ideals and others would say is politics as old as the Republic itself.

The articulation of a constitutional principle here-such as condemning as irrational the drawing of district lines with the purpose (colored "sole," "dominant," "voluntary," or other-

wise) of partisan gain—must face the facts of this case, While the present plan, drawn by a Republican Party majority in 2003, has been decried as egregious, the story must begin with the earlier map drawn by a Democratic Party majority in 1991 That plan, put in place following the 1990 census, was cited in the political science literature as an extreme example of what one party can do in drawing a redistricting map to the detriment of the other.[47] In 2000, the Democratic Party gerrymander was still in place and, although Republicans now enjoyed substantial statewide majority strength, the results of the congressional elections favored Democrats by a seventeen to thirteen margin.[48]

The map drawn by this court in 2001 perpetuated much of this gerrymander.[49] It did so because this court was persuaded that it could not achieve "fairness" to political parties without some substantive measure of what is "fair." Simply undoing

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[47] See, e.g., MICHAEL BARONE, THE ALMANAC OF AMERICAN POLITICS 2004, at 1510 (2003) (hereinafter BARONE 2004] ("The plan carefully constructs democratic districts with incredibly convoluted lines and packs heavily Republican suburban areas into just a few districts."); MICHAEL BARONE, THE ALMANAC OF AMERICAN POLITICS 2002, at 1448 (2001) (describing it as the "shrewdest gerrymander of the 1990s").

Another commentator describes it as follows:

> The impact of political gerrymandering on the competitiveness of elections has not been given the attention it deserves. For example, following the 1990 census, Texas experienced what is sometimes referred to as "the great partisan gerrymander of '91." The Democrat-controlled legislature carefully created conservative districts around the Republican incumbents. This "packing" strategy helped the Democrats in the 1992 election to win 21 of the other 22 districts.

Brian P. Marron, Doubting America's Sacred Duopoly: Disestablishment Theory and the Two-Party System, 6 TEX. ON C.L. & C.R. 303, 337 (2002) (footnotes omitted).

[48] *See* Appendix.

[49] *See Balderas*, No 6:01-CV-158, slip op.

the work of one political party for the benefit of another would have forced this court to make decisions that could not be defended against charges of partisan decision-making—again, for the lack of a substantive standard. As the panel explained, it would follow only "neutral" redistricting standards.[50] Once the panel had left majority-minority districts in place and followed neutral principles traditionally used in Texas—such as placing the two gained seats in the areas of growth that produced them, following county lines, avoiding the pairing of incumbents and the splitting of voting precincts, and undoing transparent offsetting movements of the same number of residents between districts—the drawing ceased, leaving the map free of further change except to conform it to one-person, one-vote. Make no mistake, this undertaking, while shorn of partisan motive, had political impact in the placement of every line.[51] The results of this court's plan did ameliorate the gerrymander and placed the two districts gained by Texas in the census count; however, doing more necessarily would have taken the court into each judge's own notion of fairness. The practical effect of this effort was to leave the 1991 Democratic Party gerrymander largely in place as a "legal" plan.[52]

Plaintiffs seize upon the targeting of certain incumbents in the present plan, Democrats who had been reelected even as

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[50] *Id.* at *5.

[51] The difficulties of partisan decision-making do not go away as dominance by one party over the other is diminished. Non-competitive districts allocated among incumbents perfectly reflecting party strength as measured by their numbers of representatives are the likely outcome. This reality alone raises questions of the aptness of rules indexed by controlling parties acting in mid-cycle. Even if this foray were to enjoy some modicum of success, it leaves untouched the most common occurring occasion for partisan redistricting—the effort following the decennial census.

[52] Indeed, the 2002 congressional election totals were identical to the 2000 results, with the exception of the two now seats *See* Appendix.

their constituents voted for Republicans with increasing frequency. This was one of its most controversial features-egregiously wrong in the eyes of Democrats In the eyes of Republicans, however, this feature was justified because the effect of the court plan was to perpetuate incumbency that was itself the product of a partisan gerrymander. Under the legislative plan, twenty-one Republicans and eleven Democrats were elected in November 2004.[53] While this was a substantial swing, the State urges that it actually better reflected the statewide voting strength of the parties than did the court plan; that the size of the swing only reflected the distortion caused by the gerrymandered plan it replaced.[54] That is, the displaced judicially-crafted plan of 2001, while easing the partisan outcome of the 1991 gerrymander, nonetheless left the minority party (Democrats) in control of the majority of the congressional seats.[55]

The State urges that the legislative purpose of the current plan was to remedy this unfair drawing—that its line-drawing was hardly "invidious." The State does not suggest that there is a constitutional right to proportionality,[56] or that one constitutional wrong justifies another. Rather, the State argues that this outcome is relevant to the Jackson Plaintiffs' contention that the present legislative plan is irrational as a matter of law. As Justice White explained in *Gaffney v. Cummings*,

> judicial interest should be at its lowest ebb when a State purports fairly to allocate political power to the parties in

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[53] *Id.*

[54] *See id.*

[55] *See id.; see also* BARONE 2004, *supra* note 48, at 1508 ("In U.S. House races, as they have since 1994, Republicans won more votes than Democrats, but fewer seats, thanks to a 1991 Democratic redistricting plan which was closely followed by a court in 2001.").

[56] *See Vieth*, 541 U.S. at 288 (plurality opinion) (noting that "the Constitution contains no such principle" of proportional representation).

> accordance with their voting strength . . . [We do not] have a constitutional warrant to invalidate a state plan, otherwise within tolerable limits, because it undertakes, not to minimize or eliminate the political strength of any group or party, but to recognize it and, through districting, provide a rough sort of proportional representation in the legislative halls of the State.[57]

In other words, the suggestion is not that escaping from one impermissible partisan gerrymander is a license to replace it with another, and we do not understand the State to argue as much here. Rather, it is that even by the "irrationality" measure proposed by the Jackson Plaintiffs, the current Texas plan is not an impermissible gerrymander at all.

It is instructive to compare the results of the Texas legislature's redistricting effort with the results of the redistricting plan enacted by the Pennsylvania legislature that the Court upheld in *Vieth*. In the 2000 general election, Pennsylvania voters elected eleven Republicans and ten Democrats to represent them in Congress.[58] In that same election, Republican

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[57] 412 U.S. 735, 754 (1973).

[58] The following is a summary of the results of the last three election cycles in Pennsylvania:

Year	Statewide Strength		Pennsylvania Congressional Seats		
	R	D	R	D	Total
2004	36%	51%	12 (63%)	7 (37%)	19
2002	47%	50%	12 (63%)	7 (37%)	19
2000	49%	48%	11 (52%)	10 (48%)	21

See Bureau of Commissions, Elections and Legislation, Pennsylvania Department of State, 2004 General Election Returns, at http://www.electionreturns.state.pa.us/ (last visited Apr, 1, 2005); Bureau of Commissions, Elections and Legislation, Pennsylvania Department of State, Archived Election Result Selections, at http://web.dos.state.pa.us/cgi-bin/ElectionResults/elec_archive.cgi?which=Archive (last visited Apr. 1, 2005).

"Statewide Strength" was calculated by averaging the percentage of vote received by each party in all of the following races that occurred in

Party statewide candidates captured an average of 4B% of the statewide vote against 47% by Democratic Party candidates.[59]

Following the 2000 census, Pennsylvania's allotment of congressional seats was reduced from twenty-one to nineteen.[60] Pennsylvania's General Assembly then took up the task of drawing a new districting map. Under the plan that the Assembly produced, and which the Court ultimately upheld in. *Vieth*, Pennsylvania voters elected twelve Republicans and only seven Democrats to Congress in the 2002 general election.[61] These results were repeated in the 2004 general election, giving Republicans control of 63% of Pennsylvania's congressional seats despite the fact that Republican statewide candidates captured an average of only 46% of the statewide vote against 51% for the Democrats.[62] In short, under the plan passed by the Pennsylvania General Assembly and upheld by the Court in *Vieth*, the party that garnered, on average, less than half the vote in statewide races was able to capture nearly two-thirds of Pennsylvania's congressional seats, In contrast, the plan passed by the Texas legislature resulted in the election of twenty-one Republicans and eleven Democrats to the House of Representatives in 2004, when the Republican Party carried 58% of the vote in statewide races and the Democratic Party carried 41% of the vote.[63]

The State's description of the 2003 Texas legislative plan as dismantling a prior partisan gerrymander that had entrenched a minority party, in order to allow a party with

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Pennsylvania in a given year: Governor, Attorney General, Auditor General, and U.S. Senator. This provides a rough approximation of a party's general appeal statewide. Cf. Appendix.

[59] *See* table, supra note 60.

[60] *See id.*

[61] *See id.*

[62] *See id.*

[63] *See* Appendix.

overwhelming statewide voting strength to capture two-thirds of Texas's congressional delegation, is a characterization that the record support. Under the Jackson Plaintiffs' analysis, with its keystone declaration that partisan line drawing is *per se* irrational, if the Democrats in Pennsylvania were to obtain control of the state legislature, they could not then voluntarily undertake to undo the present map—even to bring Pennsylvania's congressional delegation more in line with the parties' apparent statewide strength—because they would be acting solely for partisan advantage. However, as we have explained, saying it is irrational, even saying it many times, does not make it so. And if the effects of the Pennsylvania plan did not provide a basis to find excessive partisanship in redistricting, it is hard to see how the effects of the Texas plan make it constitutionally offensive.

In short, the plaintiffs' contentions on remand are conspicuous for want of any measure of substantive fairness, one that can sort plans as "fair or unfair" by something other' than a judge's vision of how the judiciary ought to work—more precisely, how the judiciary ought to run this show. We are persuaded that the inability of any plaintiff to conquer these difficulties, even when supported by able lawyers with an army of advisors, is explainable by the reality that this effort, has been to give a legislative task to a court.[64]

C

Beyond the plaintiffs' inability to articulate a measure of substantive fairness, we are unable to locate in any of the proposals offered a clear articulation of the failures in governance to which courts are asked to direct their supervisory efforts. The plaintiffs persist in advancing claims that rest

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[64] Of course, to paraphrase Justice Harlan, the fact that a standard for justiciability is not precisely definable does not mean that it is ineffable, *See Poe v. Ullman*, 367 U.S. 497, 524 (1961) (Harlan, J, dissenting). However, if such a standard simply *is* ineffable, we should not be surprised by the inability of numerous talented individuals to define it.

upon the perceived loss of individual rights by voters who, they allege, are victimized by impermissible classifications. The plaintiffs are unable to locate and address structural defects and conspicuously fail to connect their claims with the most visible awkwardness in today's electoral structure: the absence of competitive districts.[65]

"Safe seats" protecting incumbent legislators flourish regardless of whether political parties are fighting for advantage, and appear even when "neutrals," not the legislators, are drawing the lines.[66] Indeed, as Justice O'Connor has observed, the rough and tumble of partisan politics may work against the proliferation of safe seats, Her prescient observation bears emphasis:

> Indeed, there is good reason to think that political gerrymandering is a self-limiting enterprise In order to

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[65] *See* Issacharoff Karlan, *supra* note 16, at 544 n.17 ("[O]ne person, one vote's individualistic rhetoric may have come to obscure its original purposes of combating entrenchment and safeguarding majority rule,"), This absence of competitive districts reflects the inversion of which Judge Ward wrote when he decried the phenomenon of representatives selecting their constituents. *See Session*, 298 F Supp. 2d at 516 (Ward, J., concurring in part and dissenting in part) ("As in other contexts, extreme partisan gerrymandering leads to a system in which the representatives choose their constituents, rather than vice-versa."); *see also* Issacharoff & Karlan, *supra* note 16, at 574 ("One way of thinking about this in terms of the constitutional structure of representation is that in the original Constitution, the Senate was picked by the state legislatures and the House was chosen by 'the people,' but that after a process of amendment and political adaptation, the houses have been inverted: now, the people pick the Senate and the state legislatures, through gerrymandering, pick the House." (footnotes omitted)); *supra* note 12 and accompanying text. Fox a delineation of the number' of "safe seats" in each Congressional election between 1962 and 2004, *see* Appendix.

[66] That a judicially-approved plan could result in a majority of non-competitive districts is not surprising given that turning over the line-drawing process to independent commissions, as some states have done, does not necessarily avoid this result. *See* Steven Hill, Editorial, *Schwarzenegger vs. Gerrymander*, N.Y. TIMES, Feb. 19, 2005, at A29.

> gerrymander, the legislative majority must weaken some of its safe seats, thus exposing its own incumbents to greater risks of defeat—risks they may refuse to accept past a certain point. Similarly, an overambitious gerrymander can lead to disaster for the legislative majority: because it has created more seats in which it hopes to win relatively narrow victories, the same swing in overall voting strength will tend to cost the legislative majority more and more seats as the gerrymander becomes more ambitious.[67]

Further, the creation and perpetuation of non-competitive districts can be facilitated by cooperation across the political aisle, as incumbents from each party negotiate to protect as much of their political turf as possible.[68] It is much like the oft-cited observation about the marketplace that when two or more competitors come together, the conversation will inevitably turn to price.

There are other forces that disconnect Texas voters from their "representatives," including one-person, one-vote. Texas is an increasingly urbanized state, with over 60% of its population concentrated in the large metropolitan areas of Houston, Dallas-Fort Worth, San Antonio, and Austin.[69] In drawing a

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[67] *Bandemer*, 478 U.S. at 152 (O'Connor, J., joined by Burger, C.J., and Rehnquist, J., concurring).

[68] *See* Gaffney, 412 U.S. at 738-39 (addressing cooperative efforts by the two parties in Connecticut to carve up the landscape).

[69] *See* U.S. Census Bureau, U.S. Dep't of Commerce, Ranking Tables for Metropolitan Areas: 1990 and 2000, at http://www.census.gov/population/cen2000/phc-t3/tab03.pdf (Apr. 2, 2001), at tbl. 3. The concentration of the Texas population can also be illustrated by comparing the census figures for the most populous and least populous counties in the state. According to the 2000 census, 45% of Texans live in five of the state's 254 counties. *See* U. S. Census Bureau, U.S. Dep't of Commerce, Census 2000 Summary File 1 (SF 1) 100-Percent Data, Geographic Area: Texas—County (8,458,627 out of total population of 20, 851,820 live in Harris, Dallas, Tarrant, Bexar, and Travis Counties), available at http://www.

map, the districts covering West Texas must reach eastward across hundreds of miles to gather sufficient population to meet the equipopulous requirement. These "reaches" must extend far beyond genuine communities of interest and come with a real risk here that West Texas farmers and ranchers will be represented in Congress by a person residing in one of the large metropolitan areas, creating a substantial disconnect between voters and their representatives. Again, this disconnect is facilitated in part by one-person, one-vote and the Voting Rights Act, both of which require map drawers to reach out for voters, departing from local communities tied by common economic pursuits and local tradition and creating opportunities for self-interested line drawing.[70] Specifically, in reaching out, the drawers are invited to select voters favorable to their own electoral chances—a temptation driven primarily by the self-interested desire to gain safe seats, not the secondary and more remote goal of achieving "partisan purposes." In effectuating this goal of safe seats, map drawers may choose to pull certain populations into their districts for a host of reasons: some areas may produce low voter-turnout; others may be dominated by agrarian interests; and yet others may be populated by several generations of the drawer's extended family.

Although plaintiffs argue that the districts under the 2003 Texas plan are non-competitive as a result of partisan gerry-

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census.gov/census2000/states/tx.html. By comparison, only 2.6% of Texans live in the state's 100 least populous counties. *Id.*

[70] *See* Michael W. McConnell, *The Redistricting Cases: Original Mistakes and Current Consequences*, 24 HARV. J.L. & PUB. POL'Y 103, 112 (2000) ("Both as a matter of state constitutional law and as a matter of custom, legislators used to be extremely reluctant to violate city, county, and township lines. Now, under 'one person, one vote,' they are required to do so. And once that constraint is lifted, they are liberated to snake lines all over the map to achieve their own purposes. The result, as Justice Harlan warned back in *Reynolds*, is an invitation to gerrymandering." (citing *Reynolds*, 377 U. S. at 622 (Harlan, J., dissenting))).

mandering, their argument and evidence assumes, but does not show, a necessary or actual correlation between partisan line drawing and an increase in the number of non-competitive Texas congressional districts. Again, the historical record is instructive. Texas has not held a congressional election for at least the past four and one-half decades in which more than a handful of districts were "competitive."[71] For most of this time, Texas was dominated by the Democratic Party at both the statewide and local levels. In many congressional races held during this time, the incumbent had no opponent.[72] Self-interest of incumbents controlled. As the Republican Party came to strength during the late 1980's and 1990's, the Democratic Party continued to hold a large majority of the congressional seats.[73] Even with the growing competitiveness between the parties, the number of non-competitive districts remained relatively constant.[74] The Democrats resisted the statewide growth in the number of Republican voters with its redistricting plan following the 1990 census.[75] It is important to understand that this partisan effort was greatly aided by the Voting Rights Act, in combination with the introduction in 1964 of the one-person, one-vote principle. The redistricting plan drawn following the 1990 census was the fruition of these requirements. By the time the plan now under attack was first proposed, the Voting Rights Act had effectively taken six Democratic Party seats off the table, rendering them untouchable and largely non-competitive. That is, only twenty-six of the thirty-two congressional seats allocated to Texas could be pursued by the Republican line drawers, who began their task with fifteen existing seats. To

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[71] *See* Appendix.

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *See supra* note 48 and accompanying text.

adhere to the goal of taking a share of the Texas delegation that, at a minimum, approximated its then-current state voting strength, the Republican Party had to hold its fifteen seats and pick up at least three or four of the remaining eleven seats. In sum, the 2003 Texas map drawn by the Republicans effectively achieved their goals during the 2004 election, but effected little change in the number of competitive districts. Texas has not had a significant number of competitive House races for at least the past four and one-half decades. The cases that guide our way do not provide a basis for us to hold that a redistricting plan's failure to change this long course of events is a basis to invalidate that plan.

D

The point is simple. It is difficult to set upon a course of treatment until the illness is diagnosed, and broad-spectrum responses have no place here—or should not. The Texas plan is not more partisan in motivation or result, including the impact on the number of competitive districts, than the Pennsylvania plan upheld in *Vieth*. The Jackson Plaintiffs have not identified a way to invalidate the Texas plan under the standards they urge as surviving *Vieth*. Yet, as the dissents and Justice Kennedy's concurrence in *Vieth* make clear, the disquiet with the role of partisan politics in redistricting persists, despite the difficulties in expanding the judicial role. The search for some judicial means to limit political gerrymandering takes us to the University Professors' suggestion that the principle of one-person, one-vote can serve this end. We now turn to that contention.

IV

The *Amicus Curiae* Brief of University Professors, which was supported in the main by all plaintiffs, seeks to apply the one-person, one-vote principle as a brake against excessive partisan redistricting by reducing the frequency of redistricting efforts. This argument, while present in various forms

throughout this litigation, was brought, to the fore by the Professors' brief, taking its place alongside the contentions of the Jackson Plaintiffs.

The argument is easily stated. Each new decennial census immediately places many legislative bodies in clear, violation of one-person, one-vote, requiring the drawing of new districts.[76] The process leading to a new plan may be extended for several years by court challenges and multiple legislative efforts, sometimes resulting in a court-promulgated plan. Although decennial census data is by that time no longer accurate, it is still used to draw the map. The use of this otherwise inaccurate data is sometimes described as a "legal fiction."[77] The Professors urge that this fiction is supported by the necessity of allowing courts and legislative bodies to rely on the census figures without any demonstration of their

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[76] *See Georgia v, Ashcroft*, 539 U.S. 461, 489 n.2 (2003) ("When the decennial census numbers axe released, States must redistrict to account for any changes or shifts in population . . . . After the new enumeration, no districting plan is likely to be legally enforceable if challenged, given the shifts and changes in a population over 10 years. And if the State has not redistricted in response to the new census figures, a federal court will ensure that the districts comply with the one-person, one-vote mandate before the next election."); *see also Reynolds*, 377 U.S. at 584 ("[I]f reapportionment were accomplished with less [than decennial] frequency, it would assuredly be constitutionally suspect.").

[77] *See, e.g., Georgia v. Ashcroft*, 539 U.S. at 489 n.2 ("[B]efore the new census, States operate under the legal fiction, that even 10 years later, the plans are Constitutionally apportioned,"); *Johnson v, Miller*, 922 F. Supp. 1556, 1563 (S.D. Ga. 1995) (three-judge court) ("In the calculus of district population deviation, our only measure of the state's demographics is the decennial census. Since the population is not static, we adhered to the fiction that the census block figures are accurate to the exclusion of all others"), *aff'd, Abrams V. Johnson*, 521 U.S. 74 (1997); *see also people ex rel Salazar v. Davidson*, 79 P.3d 1221, 1233 (Colo. 2003) ("The United States Supreme Court has recognized the legal fiction that these figures remain accurate for the entire ten years between censuses.").

present accuracy. This fiction, the argument continues, should not be enjoyed by a legislative body that voluntarily redistricts—that is, acts to replace a legal existing plan. In other words, dilution of the powerful command of one-person, one-vote should not be allowed when redistricting is not required by law. Pointing to the observation in our *Session* opinion of the practical values of a congressional prohibition of such voluntary redistricting efforts, the Professors urge that while that decision belongs to the Congress, not the courts, the enforcement of this constitutional principle is the obligation of the courts. They argue that it may be an alternative structural brake on partisan gerrymandering, conceding the present absence of a meaningful metric of substantive fairness—of how much partisan gain is too much—and declining to offer one.

The argument as presented comes unadorned with supporting case citations, relying upon the exacting principle of one-person, one-vote and the observation that, the limit on partisan gerrymanders the Supreme Court, is seeking is lying at its feet.[78] The simple logic of denying the benefit of the fiction that decennial census figures remain accurate throughout the decade to those who indulge in mid-cycle redistricting, together with the belief that here lies the most inviting ground for regulation, has given life to this argument.

The State replies that injecting one-person, one-vote at this juncture is beyond the scope of the mandate; that it has a tangential tie at best to the directive to reconsider in the light of *Vieth*; and in any event would be attended by its own coterie of practical problems of application.

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[78] The Court has only recently demanded exactitude in the population of districts drawn by the Georgia legislature for partisan gain. *See Larios*, 124 S. Ct. at 2008 (Stevens, J., concurring). It did so in *Larios* by denying it the 10% toleration of deviation in the drawing of lines for state legislative seats.

In oral argument, Professor Scot Powe was modest in the claims he made concerning the effects of applying one-person, one-vote here, observing that even if requiring the State to demonstrate compliance with current numbers would offer only a small brake, it should be required. Viewed from this perspective, the strength of the argument does not rest upon its utility in curbing partisan excesses, although it might do so. Rather, the strength lies with the power of the proposed rule itself. It asks why a state legislative body under no legal requirement to redistrict should face anything less than the full reach of the constitutional strictures of one-person, one vote—that is, why it should benefit from a fiction born of necessity.

The University Professors deny that their rule would constitute a bar on a legislature that wants to replace a court-ordered plan before the next census is conducted. At the same time, they concede that their proposed rule would, by design, make it very difficult because only the decennial census figures provide sufficiently detailed and reliable data for redistricting.[79] They also acknowledge that "there is effectively no alternative" to decennial census data.[80] The State agrees,

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[79] Tr. at 164.

[80] Univ. Prof. Br. at 4; *see id.* at 3 ("[U]se of population enumerations from the most recent federal, decennial census is essential . . . because such recent census data is the most comprehensive, precise, and objectively attainable enumeration data available."). They point out that some "[m]ore current, but incomplete information, such as population estimates . . . or minority voter registration or turn-out" exists. *Id.* at 5. These data, however, would be "unacceptable as a basis for actually drawing district boundaries on a systematic, statewide basis." *Id.* Although other parties attempted to argue that they could rely on data showing county and city population trends since the census to show that the 2003 Texas plan was not equipopulous as of 2005, the University Professors as well as the State recognized that such data would not meet the legal requirements for drawing district boundaries. *See id.*; State Reply Br. at 41; Tr. at 69, 133, 137; *see also Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 853-854 (5th Cir. 1999).

noting that "*Wesberry v. Sanders* requires essentially perfect equality between congressional districts. In practice, that high degree of mathematical precision would be all but impossible using any data other than decennial block-level data."[81] Judge Ward suggests in his concurrence that if a state wanted to pursue a mid-decade redistricting effort, it could perform a special state-wide census to provide the necessary numbers. Such a suggestion goes beyond what the parties recognized as within the realm of the practical or feasible. In their briefs and at oral argument, the litigants conceded that such data do not exist and could not practically be obtained. The proposed rule is intended to, and would, serve as a means to the end of preventing what Texas did here, to redistrict mid-decade to replace a court-imposed plan with one crafted by the legislature.

The practical effect of the rule would be to bar what courts have stated was within the prerogative of the state legislatures: to draw their own map to replace one imposed by a court. In none of these cases has a court suggested that the state legislature could not use the data from the last census, but instead had to conduct a special, statewide census, in order to replace a court-drawn map with a legislatively-drawn map.[82] The departure from what courts have assumed is the

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[81] State Reply Br. at 41 (citation omitted).

[82] The courts have assumed that legislative plans replacing court-imposed plans are expected to rely on the data from the last census, despite the passage of time. *See Johnson*, 929 F. Supp. at 1563 (upholding the Georgia State Senate redistricting plan that the legislature drew in 1995 using 1990 census data and acknowledging that "[a]t this point in the decade," the data for one-person, one-vote purposes "is largely theoretical. The real data, known only to providence, would doubtlessly lead us to another result."), *aff'd, Abrams v. Johnson*, 521 U.S. 74 (1997) ; *Terrazas v. Clements*, 537 F. Supp. 514, 516 (N.D. Tex. 1982) (implementing a temporary reapportionment plan based on 1980 census figures that would remain "in effect for all elections through December 31, 1983, unless valid apportionment plans are enacted sooner"); *Bush v. Martin*, 251 F.

proper relationship between court-imposed plans and legislatively-enacted plans signals caution in endorsing the University Professors' proposed rule.

The University Professors assert that their proposed rule merely protects the fundamental right of people to elections conducted under maps that provide equal representation to equal numbers of persons. Yet it is difficult to discern how their proposed rule actually protects or furthers the one-person, one-vote principle, as opposed to the one-person, one-vote fiction. The Supreme Court has frequently observed that the decennial census is only briefly accurate, rioting on one occasion that "the well-known restlessness of the American people means that population counts for particular localities are outdated long before they are completed."[83] One of the University Professors has described

> [o]ne of the odder features of the one-person, one-vote doctrine, when applied to the population of electoral districts, . . . that it seemingly applies only in the first election cycle out of the (usual) five in any ten-year period. That is, the practical dynamics of population growth and mobility in the United States operate to assure that mathematically identical districts (by whatever measure) in the first election are almost certainly going to be different, often dramatically so, by the third or fourth election. Indeed, as a practical matter, this differentiation might be present even by the actual occurrence of the first election, which takes place two years

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Supp. 484, 488 n.3 & 517 (S.D. Tex. 1966) (tentatively approving a 1965 legislative redistricting plan based on 1960 census data, but noting that the Texas Legislature could adopt a plan before the next decennial census).

[83] *Karcher v. Daggett*, 462 U.S. 725, 732 (1983); *see also Gaffney*, 412 U.S. at 745.

> after the enumeration on which the reapportionment will have been base.[84]

The University Professors do not explain how, in an election held in 2004, 2006, or 2008, the districts drawn in 2001 using 2000 census numbers are more equipopulous if measured against current actual population data than districts drawn in 2003 using 2000 census numbers. If the University Professors' application of one-person, one-vote is adopted, the virtually certain result would be to have the next elections conducted under the court-ordered plan drawn in 2001, using 2000 census numbers. Yet all recognize that the 2001 plan is no more a reflection of today's actual population distribution than the 2003 legislative plan; both are based on the 2000 census numbers. Neither plan would produce equipopulous districts for elections held in 2006, if those districts could be measured against current data. The difficulty in discerning how the University Professors' proposed rule in fact promotes one-person, one-vote underscores its actual purpose, of limiting mid-decade "voluntary" redistricting in order to limit political gerrymandering.

The University Professors' argument would insist on current population data only for voluntary mid-cycle efforts to redistrict. It is not clear, however, whether insistence on current population figures for voluntary redistricting could be so cabined. The combined effect, of such a rule and the incentives of politics are difficult to predict. Indexing liability to voluntary redistricting could create large incentives to seek a judicial invalidation of an existing plan as violative of equipopulous requirements. If, as Judge Ward posits, a state can feasibly and practically obtain mid-decade census data that is sufficiently detailed and reliable to use in drawing district lines, the proposed rule may have the perverse effect

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[84] Sanford Levinson, *One Person, One Vote: A Mantra in Need of Meaning*, 80 N.C. L. REV. 1269, 1278 (2002).

of breeding more efforts to redistrict. Such data could provide not only a means to defend a "voluntary" re-redistricting plan, but also a basis to attack valid extant plans drawn using the decennial population data.[85] If one-person, one-vote is applied as the University Professors advocate, and the ability to obtain reliable and detailed mid-decade census information does or will exist, then would mid-decade re-redistricting be required to meet the demand of one-person, one-vote applied in this fashion? Despite the assertions of its proponents, the actual bite of a rule denying reliance on decennial data to redistricting efforts voluntarily undertaken is both -important and uncertain.

We recognize, with Judge Ward, the potential benefits of precluding mid-decade re-redistricting efforts. Judge Ward's citation to the legislative history of the 1976 Census Act amendments, noting that "constantly changing representative districts" is "bad politics, resulting in bad government," is instructive, Providing states with an incentive to obtain their own mid-decade census data to use in redistricting does not appear consistent with Congress's decree that federally-funded mid-decade data could not be used in redistricting

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[85] *Reynolds v. Sims* speaks generally about the frequency of legislative efforts to reapportion and the use of decennial census data toward the end of the decade. 377 U.S. at 583-84. Chief Justice Warren observed that "[r]eallocation of legislative seats every 10 years coincides with the prescribed practice in 41 of the States, often honored more in the breach than the observance, however." *Id.* at 583 (footnote omitted). He noted that, while acting only at the end of a decennial period leads to some imbalance in the population of districts, limitations on the frequency of these efforts are justified by the need for stability and continuity in the legislative system *Id*. The Court's eye was, of course, on failures to reapportion, finding no difficulty with reapportioning *more frequently* than every ten years, while finding less frequent efforts to be suspect. *Id*. at 583-84; *id*. at 583 n.65 ("[T]he constitutions of seven . . . States either require or permit reapportionment of legislative representation more frequently than every 10 years."). Of course, the allocation of seats among the states rests on the decennial count. *See* 2 U.S.C § 2a.

because mid-decade redistricting was "bad politics." This history underscores Congress's authority to prohibit or limit discretionary redistricting efforts by the states.

The rule the University Professors and other plaintiffs propose would require us to apply an established doctrine in a novel way, with uncertain basis and effect. We add to these concerns the question of whether the entire contention is outside the mandate of the remand order. While it is true that *Larios* is relevant to this contention, the Court's order makes no reference to it. We do not wish to overstate any of these concerns viewed singly. Cumulatively, however, they counsel caution. We choose to abide that counsel and decline to adopt the University Professors' proposed rule.

V

The G.I. Forum, Congresswomen, and Texas-NAACP on remand return to their claims that the Texas plan impermissibly burdens minority voters in violation of the Voting Rights Acts and the Equal Protection Clause of the Fourteenth Amendment. Each would tie these claims to partisan gerrymandering. The contention is that these violations occurred in the effort to gain partisan advantage, however else the effort may be flawed. We examined and rejected all of the claims in detail in our previous opinion.[86] As these claims are beyond the scope of the mandate we are not persuaded that we should revisit them.

VI

Having reconsidered, we respectfully adhere to our judgment. We deny all relief requested by Plaintiffs and judgment is entered for Defendants.

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[86] *Session*, 290 F. Supp. 2d at 469-516 judge Ward dissented from the panel's rejection of the claims that focused on changes made in Congressional District 23. *See id.* at 516-17 (Ward, J. dissenting), The panel was otherwise in full agreement.

APPENDIX

The following table was compiled from data provided by the Texas Secretary of State's Office as well as from the Texas Almanac, volumes 1962-1963 through 1992-1993.[87]

Year	Statewide Strength		Congressional Seats				
	R	D	R	D	Total	Comp.	Unopposed
2004	58%	41%	21 (66%)	11 (34%)	32	3	7
2002	57%	41%	15 (47%)	17 (53%)	32	6	9
2000	59%	40%	13 (43%)	17 (57%)	30	2	9
1998	56%	43%	13 (43%)	17 (57%)	30	1	11
1996	55%	44%	14 (47%)	16 (53%)	30	9	1
1994	52%	47%	11 (37%)	19 (63%)	30	5	5
1992	49%	49%	9 (30%)	21 (70%)	30	3	5
1990	47%	51%	8 (30%)	19 (70%)	27	2	13
1988	47%	52%	8 (30%)	19 (70%)	27	2	13
1986	43%	56%	10 (37%)	17 (63%)	27	2	10
1984	51%	49%	10 (37%)	17 (63%)	27	5	9
1982	40%	59%	5 (19%)	22 (81%)	27	4	9
1980	45%	54%	5 (23%)	19 (79%)	24	6	4
1978	43%	56%	4 (17%)	20 (83%)	24	6	4
1976	38%	60%	2 (8%)	22 (92%)	24	4	6
1974	28%	70%	3 (13%)	21 (88%)	24	3	8
1972	45%	51%	4 (17%)	20 (83%)	24	2	11
1970	34%	66%	3 (13%)	20 (87%)	23	2	13
1968	31%	69%	3 (13%)	20 (97%)	23	0	12
1966	32%	67%	3 (13%)	20 (87%)	23	4	17
1964	29%	71%	0 (0%)	22 (100%)	22	2	0
1962	37%	63%	2 (9%)	20 (91%)	22	3	5

We calculated "Statewide Strength" by averaging the percentage of votes garnered in all statewide elections occurring in a given year, including Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Commissioner of the General Land Office, Commissioner of Agriculture, Railroad Commissioners, Texas Supreme Court, Texas Court of Criminal Appeals, U.S. Senator, and U.S. Congress-

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[87] *See* Office of the Secretary of State, 1992-2005 Election History, at http://elections.sos.state.tx.us/elch.st.exe (last visited Apr. 1, 2005) and, *e.g.*, TEXAS ALMANAC 1992-1993 (1991).

man-at-Large.[88] For our purposes, this provides a rough approximation of a party's general appeal. statewide.[89] We excluded the results for President from these figures.

The "Competitive" column tallies those seats that were competitive either in the general election or in the primary. We considered a seat to be "competitive" if it was won with less than 55% of the vote.[90] We first looked to the results of the general election, separating competitive from non-competitive races For those races deemed non-competitive, we looked to the primary of the party whose candidate prevailed in the general election, and separated competitive and non-competitive races at the primary level.[91] We then tallied all competitive races identified at both the general and primary levels to arrive at an overall measure for a given electoral cycle.[92]

The "Unopposed" column tallies those races in the general election with only a single party candidate—regardless of any third--party candidates.

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[88] After 1964, Texas no longer elected a Congressman-at-Large.

[89] *Cf. Vieth*, 541 U.S. at 288-89.

[90] *See* Richard H. Pildes, *supra* note 12, at 63 (defining competitive districts as those won with less than 55%) (citing David Mayhew, *Congressional Elections: The Case of the Vanishing Marginals*, 6 POLITY 293,. 304 (1974); GARY C. JACOBSON, THE ELECTORAL ORIGINS OF DIVIDED GOVERNMENT: COMPETITION IN U.S. HOUSE ELECTIONS, 1946-1988, at 26).

[91] If a primary race—or a general race in 1996—went to a runoff, we used the figures from the runoff to determine competitiveness. However, were we to consider the presence of a runoff to be per se "competitive" the number of competitive seats would increase by 2 in 2004, 1 in 2002, 1 in 2000, 1 in 1998, 2 in 1996, 2 in 1984, 2 in 1982, 2 in 1978, and 1 in 1964.

[92] In 1996, thirteen of the districts were redrawn by a court, following a previous decision that some of those districts were the product of racial gerrymandering.. *See Vera v. Bush*, 933 F. Supp. 1341 (S.D. Tex. 1996) Special elections open to all candidates were held and a number of runoffs resulted.

The table below sets forth in further detail the data on competitiveness, broken down by party in the primary and general elections.

Year	General Election			Primary	
	Total Seats	Competitive		Competitive	
		R	D	R	D
2004	32	1	1	0	1
2002	32	1	3	2	0
2000	30	1	1	0	0
1998	30	0	1	0	0
1996	30	2	5	0	2
1994	30	1	4	0	0
1992	30	0	2	0	1
1990	27	0	2	0	0
1988	27	0	2	0	0
1986	27	1	0	1	0
1984	27	3	0	2	0
1982	27	0	2	0	2
1980	24	2	2	0	2
1970	24	1	4	0	1
1970	24	0	3	0	1
1974	24	1	1	0	1
1972	24	1	0	0	1
1970	23	0	0	1	1
1968	23	0	0	0	0
1966	23	0	1	0	3
1964	22	0	1	0	1
1962	22	1	1	0	1

Ward, J., specially concurring:

I concur in the result reached by the majority on the question whether any of the plaintiffs have set forth a standard for judging partisan gerrymandering claims which survived the holding of *Vieth v. Jubelirer*, 124 S.Ct. 1769 (2004) I write separately to explain in somewhat more detail why, if unconstrained by the scope of the Supreme Court's mandate, I would adopt the "one-person, one-vote" arguments initially presented by the Travis County parties and now urged on remand by the University Professors,

I

Justice Harlan warned that the Supreme Court's "one-person, one-vote" rulings might lead to more partisan gerrymandering efforts He predicted that the Court's holdings requiring mathematical exactitude might encourage more drawing of district lines to maximize the political advantage of the party temporarily in control of the state legislatures. He also observed that "[a] computer may grind out district lines which can totally frustrate the popular will on an overwhelming number of critical issues." *Wells v Rockefeller*, 394 U.S. 542, 551 (1969) (Harlan, J. dissenting). Those concerns have been realized. *See Vieth*, 124 S.Ct. at 1816 (Souter, J., dissenting) (*citing, inter alia*, Pamela S. Karlan, *The Fire Next Time Reapportionment After the 2000 Census*, 50 Stan. L. Rev. 73.1, 736 (1998) (noting that "[f]iner-grained census data, better predictive methods, and more powerful computers allow for increasingly sophisticated equipopulous gerrymanders.")).

In Justice Breyer's dissenting opinion in *Vieth*, he noted that "[b]y redrawing districts every 2 years, rather than every 10 years, a party might preserve its political advantages notwithstanding population shifts in the State" *Vieth*, 124 S.Ct. at 1827 (Breyer, J. dissenting). By incorporating data from election cycles which post-date the most recent census

data, a State under the control of a single political party may repeatedly fine-tune gerrymanders at the expense of the constitutional promise of one person, one-vote. In *Session*, the court expressed a similar concern, stating: "[o]ur point is that if the judiciary must rein in partisan gerrymanders, limitations that focus upon the time and circumstance of partisan line-drawing and less upon the 'some but not too much' genre of strictures offer the best of an ugly array of choices *Session. v. Petty*, 298 F. Supp. 2d 451, 475 (E.D. Tex. 2004). The rule advocated would require the State to demonstrate that a new redistricting plan does not worsen any population deviations existing among the current districts, denying the benefit of the fiction that the population reflected by the census remains accurate throughout the decade.

The rule is not a blanket prohibition on mid-cycle redistricting, as urged by the State. *See* State Defendants' Response Brief on Remand at 36 ("Plaintiffs' claims fail because they are an undisguised attempt at a backdoor judicial prohibition on 'mid-decade' redistricting, and this Court has already correctly concluded that 'mid-decade' redistricting is legal and permissible"), The rule proposed involves a balancing of the State's authority to redistrict mid-decade with the voters' rights to equal representation in the Congress The court is therefore correct to recognize implicitly that the "one-person, one-vote" and "mid-decade" arguments are distinct creatures, To be sure, the rule proposed in this case would make it more difficult for a State to exercise its authority to alter congressional districts repeatedly over the course of a decade, but it would not preclude it.

A.

The majority questions whether the proposed rule (designed to curb the frequency of mid-cycle efforts) might breed even more efforts to gerrymander. The court is surely correct to raise that issue. But the majority does not explain why the *rule* as distinct from *politics* might encourage more

redistricting. For my part, I am reminded of the practical observations of one court that politicians are not interested in redistricting "because of their innate attachment to mathematical exactitude." *Daggett v. Kimmelman*, 811 F. 2d 793, 801 (11th Cir. 1987). Thus, it is unlikely that a State would engage in mid-cycle redistricting unless the party in power thought it could gain partisan advantage by doing so Moreover, as a legal matter, the Supreme Court has held that initial plans adopted with the most recent census data comply with one-person, one-vote throughout the decade:

> When the decennial Census numbers are released, States must redistrict to account for any changes or shifts in population. But before the new census, States operate under the legal fiction that even 10 years later, the plans are constitutionally apportioned.

Georgia v. Ashcroft, 123 S.Ct 2498, 2515 n.2 (2003). This legal principle would doom lawsuits directed toward invalidating initial plans drawn with the decennial data. The rule urged by the University Professors does not require states to take any action above what is already mandated by existing Supreme Court precedent.

B.

The majority also suggests that the rule might not serve as a sufficient brake and that this counsels against adoption of the rule: "Despite the assertions of its proponents, the actual bite of a rule denying reliance on decennial data to redistricting efforts voluntarily undertaken is both important and uncertain." The majority is being bashful. No rule designed to police partisan gerrymandering could have less bite than *Bandemer*. As Justice Scalia noted in *Vieth*, the one case that upheld preliminary relief under *Bandemer* did not involve the drawing of district lines. In all cases involving the drawing of district lines, relief under *Bandemer* was refused. *Vieth*, 124 S.Ct. at 1778-1778 & nn. 5-6 (collecting eases). Contrary to

the majority's suggestion, I am convinced that a requirement that a State demonstrate current population figures to comply with one-person, one-vote when replacing a valid plan would serve as a structural brake on partisan redistricting efforts.

The gerrymanderer's paraphernalia is the decennial census data, election results, and a powerful computer.. Although the par ties do not explicate on the difficulty of deriving more accurate population data, the University Professors suggest (and the State recognizes) that such data do not currently exist. *See* University Professors' Brief at 4 ("After all, there is effectively no alternative."); State Defendants' Response Brief on Remand at 37 (". . . it requires the State to show an up-to-date data set that the Professors say does not exist . . .") Neither the State nor the Professors explain that such data *could not* exist, only that it does not The burden is, of course, on the State to make a good faith effort to achieve population equality among the districts, and it is unlikely that proof of such equality could be met solely with estimates or statistical sampling. *See Karcher v. Daggett*, 462 U.S. 725, 736 (1983) ("[T]he census data provides the only reliable-albeit less than perfect indication of the districts' 'real' relative population level."); *Department of Commerce v. United States House of Representatives*, 525 U.S. 316 (1999)(holding that Census Act prohibits use of statistical sampling methods to compensate for undercounting).

A State seeking to replace a valid plan in the middle of the decade might choose to conduct a special statewide census. Properly conducted, this effort would accommodate both the State's constitutional prerogative to redistrict mid-cycle and the voters' rights to districts that comply with one-person, one-vote principles. The State offers no principled reason for subordinating the latter to the former, and I can perceive none. What the State wants in this case is the right to rely on the federal census data to *facilitate* its efforts at partisan gerrymandering while railing to update the enumeration. This

seems to me a perverse use of the data sanctioned by the Supreme Court for use in efforts to *avoid* the dilution of individual votes cast in congressional elections.

C.

There are practical reasons to require the State to update the census data before embarking on mid-cycle redistricting efforts. Legislators know their districts, and cartographers are aware of what is happening on the ground in terms of demographics. Although the State asserts that "[t]he record does not show that the legislators took into account any post-Census population changes that had already occurred," State Defendant's Brief at p 44 n. 30, the evidence cited by the Travis County parties from one of the architects of the map demonstrates that new CD4 was designed with an eye toward what was happening on the ground so that it could "grow into" a Republican district during the decade. Brief of Travis County and the City of Austin at p. 10; Tr. December 18, 2004, Afternoon Session, at pp.177-178, Testimony of Phil King ("So this District 4, I think will grow Republican. That's one reason we drew it that way. Grayson and Collin counties are fast-growing Republican areas, so we felt like if we didn't win 4 now we'd grow into it"). This is one of the primary dangers of mid-cycle redistricting predicted by Justice Breyer in his dissent in *Vieth*. The rule proposed by the University Professors would require that districts designed with an eye toward what is happening on the ground be accompanied by proof that those districts were created in a good faith effort to achieve equal population.

In addition, cartographers in Texas who are either unable an unwilling to develop more current data risk diluting the strength of the fastest-growing segment of the population, the Latino population LULAC's brief, for instance, illustrates a comparison of the estimated populations of District 19, a predominately Anglo district, to District 28, a predominately Latino district. District 19 is growing at a much slower pace

than District 28. To indulge the fiction of the accuracy of the census data under these circumstances encourages cartographers to use their knowledge of current demographics as well as voting trends exhibited through election cycles when drawing new maps That legislators in some states might be disposed to use their knowledge of population shifts occurring after the release of the decennial numbers while gerrymandering during the initial round of redistricting is not a sufficient reason to shy away from the rule in this case. As Justice Sauter explained in defending his effort to limit extreme gerrymanders: "[t]he most the plurality can show is that my approach would not catch them all." *Vieth*, 124 S.Ct. 1769 (Souter, J., dissenting).

III.

Although a rule denying the use of the decennial data is rooted in the Constitution, that rule enjoys the benefit of being consistent with what little statutory authority touches on the subject. The 1976 amendments to the Census Act authorized amid-decade census for use in administering public benefit programs. *See* 13 U.S C. § 141(d)-(g). One of the statutory provisions provides that:

> Information obtained in any mid-decade census shall not be used for apportionment of Representatives in Congress among the several States, nor shall such information be used in prescribing congressional districts.

13 U.S.C. § 141(e)(2).

The purpose of the second clause of this provision was explained by its sponsors, who noted that the overall goal of the legislation was:

> to provide timely statistical information to assist the Federal Government in administering the allocation of funds under its various programs, assist States and local government in planning, and to assist the business community and the general public.

H.R. Report No. 94-944, at 17-18 (Supplemental Views of Representatives Edward .J. Derwinski and Trent Lott). Representatives Derwinski and Lott explained that any issues that were extraneous to the legislation should be removed. *Id.* One of these extraneous issues was the possibility that some might use the federally-funded mid-decade data in redistricting efforts. Citing a 1971 paper prepared by the American Law Section of the Library of Congress, Representatives Detwinski and Lott recognized that Congress had the constitutional power to prohibit discretionary redistricting efforts attempted by the States. *Id.* In reliance on the 1971 paper, the Representatives concluded:

> Therefore, there appears to be a sound basis for the legislative action proposed in out amendment, but it also has the practical effect of avoiding the confusion to the public of having constantly changing representative districts. It is bad politics, resulting in bad government, to promote the continual shifting and drifting of congressional district lines.

Id. Representatives Derwinski and Lott therefore sponsored the amendment enacted as part of section 141(e)(2), which prohibited any reliance on mid decade census data for redistricting purposes The obvious assumption underlying this amendment was that congressional redistricting would have already occurred once in the decade by the time the mid-decade census was conducted.

Carried to its extreme, the State's logic in this ease is that it has the Article I power to alter its congressional districts throughout the decade and it may rely exclusively on the decennial census data to discharge its one person, one-vote obligations at any time during that period. But it makes little sense for the courts to permit a State to rely on federal decennial data throughout a decade when Congress has explicitly banned reliance on more current data that might be assembled in the middle of that decade. A rule denying reli-

ance on the decennial data for voluntary redistricting efforts is therefore consistent with the Congressional policies embodied in section 141(0(2) of the Census Act.

IV.

The State questions as "bizarre" any holding that would reinstate Plan 1151C over 1374C on the grounds that the former might be more equipopulous than the latter if used in the remaining elections. The State observes that the two plans rely on the exact same census data, and the State's population has shifted equally since the 2000 Census, regardless of whether Plan 1151C or Plan 1374C is in place. The State misses the point, however, of the argument. The former plan was born of necessity to bring the State into compliance with one-person, one-vote principles. The latter statute was born of a "single-minded purpose" of the Legislature to achieve partisan political gain *Session*, 298 F. Supp 2d at 470, The Supreme Court requires States to utilize the census data to facilitate the constitutional voting rights guaranteed by *Wesberry*. That the data can be manipulated to other ends when used *in conjunction* with an effort to create equipopulous districts at the beginning of a decade is no justification for extending the protection afforded by the data to state legislatures which voluntarily embark on the task of redistricting for partisan political purposes.

V.

Although I concur in the result reached by the Court with respect to the question whether the plaintiffs' proposed tests survived the holding in *Vieth*, I respectfully disagree with the court's suggestion that partisan gerrymandering is not to blame for the decreased competition in congressional races. To be sure, *bi*-partisan gerrymandering is also a culprit. *See* Samuel Issacharoff and Pamela S. Karlan, *Where to Draw the Line? Judicial Review of Political Gerrymanders*, 153 U.Pa.L.Rev. 541, 570-71 (2004). But surely one of the mili-

tary goals of Plan 1374C is to elect and entrench Republican congressmen, whatever the voting trends of the state's population might be.

Dr. Alford's declaration explains how gerrymanders of the sort presented in this case contribute to the lack of competitive elections. That declaration, tendered in support of the Jackson Plaintiffs' brief on remand, recounts the utter non-competitiveness of most of the districts under Plan 1374C. As readily admitted by the State, the design of Plan 1374C was to produce a 22-10 Congressional delegation in favor of the Republican Party. As Dr. Alford explains, the one surprise from the 2004 election cycle was how close the map came to producing those numbers in the very first election conducted wider the plan. Dr. Alford predicts that in the upcoming 2006 elections, one of the districts won by a Democrat, District 17, will be one of only a dozen or so truly competitive congressional districts in the country. As Dr. Alford has observed, Plan 1374C is not only a partisan gerrymander, but it is a very effective one, no doubt enabled in part by the architects' knowledge of the most recent election returns. Nevertheless, despite my disagreement with some of the language in the court's opinion, I am persuaded that the plaintiffs have not articulated a test which survived the holding of *Vieth*. I therefore concur in the result reached by the court that *Vieth* does not compel us to reach a different conclusion in this case

VI.

In conclusion, I note that the majority and I agree on some very important points. First, the court's opinion observes that the University Professors' argument is a "narrower and seemingly more plausible contention" when compared to other efforts which attempt to measure the elusive concept of the fairness of redistricting plans. I agree. Second, the language of the majority opinion ("[w]e do not wish to overstate any of these concerns viewed singly") can hardly be construed as an endorsement of the State's arguments on the merits of this

issue. With that view, I also agree. What tips the scale is the scope of the mandate.

The courts have marked time since *Bandemer*, while the partisan rancor exhibited in the redistricting process has grown to new levels. Justices Stevens and Breyer recently observed that:

> After our recent decision in *Vieth v. Jubelirer*, 541 U.S. ___, 124 S.Ct. 1769, 158 L Ed.2d 546 (2004), the equal-population principle remains the only clear limitation on improper districting practices, and we must be careful not to dilute its strength

Cox v, Larios, 124 S. Ct 2806, 2808 (2004) (Stevens, J. concurring). As the Travis County parties suggest in their brief on remand, this court's prior opinion did not give due consideration to theft argument. Nevertheless, an inferior court's desire to end (or at least limit) this "bloodfeud," *Balderas v State of Texas*, 6:01-CV-158, slip op., at 10 (E.D. Tex. Nov. 14, 2002), does not justify the exercise of judicial power arguably outside the scope of a higher court's directive.

It has not escaped my notice that the remand order in this case was issued after Larks hut instructs this court to reconsider in light of only *Vieth*. The rule proposed by both the Travis County parties and the University Professors is grounded on principles of one-person, one-vote and is therefore more closely aligned with the holding in *Larios*. Given free reign to reconsider in light of the court's affirmance in *Larios*, I would not indulge the legal fiction that the census data remain accurate under "these circumstances. I am persuaded that any shortcomings of the rule suggested by the majority are more perceived than real. Respect, however, for the scope of the mandate causes me to concur in the judgment denying relief 'at this time.[1]

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[1] I continue to adhere to the remaining views expressed in my original opinion concurring in part and dissenting in part.

APPENDIX B

U.S. DISTRICT COURT [LIVE]
EASTERN DISTRICT OF TEXAS LIVE

Notice of Electronic

The following transaction was received from Rios, Rolando entered on 6/10/2005 at 3:55 PM CDT and filed on 6/10/2005

Case Name: Session, et al v. Perry, et al
Case Number: 2:03-cv-354
Filed: League of United Latin American Citizens-Statewide

WARNING: CASE CLOSED on 06/09/2005
Document Number: 269

Docket Text:
NOTICE by League of United Latin American Citizens-Statewide re [266] Memorandum & Opinion, [267] Judgment, *Notice of Appeal* (Rios, Rolando)

The following document(s) are associated with this transaction:

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APPENDIX C

LULAC REMAND EXHIBIT NO. 2

State of Texas)

) SS

Bexar County)

Affidavit and Affirmation

Dr. Thankam Sunil Ph.D. and Dr. Bill Spears Ph.D. affirm and state under oath:

1. That they are both Demographers and familiar with the use of census information and statistics, Copies of their vietae are attached as Exhibit 1 to this Affirmation and Affidavit.
2. That at the request of the League of Latin American Citizens, they have examined the 2000 Census and the updates to that census as are available from the Texas State Data Center, the Texas State Demographer and the U.S.. Bureau of the Census.
3. That these data all indicate that the State of Texas is undergoing a rapid increase in population and that this increase is uneven in various areas of the State. In general, urban areas are growing much faster that rural areas some of which are actually declining in population. The Hispanic increasing much faster that the Anglo or White population. The African American of Black population is growing at a expanding at a rate slower that the Hispanic population but faster than the Angle or White population.
4. That they have examined the current Congressional plan C-1374. It was drawn in late 2003 based upon the 2000 Census data with no provision to recognize that the Census Data from 2.000 had changed considerably because of the growth in population.
5. In light of the fact that we are unaware of the use in the apportionment of any effort by the State of Texas

to conduct an intercensual enumeration or otherwise consider the changes in population that have occurred after the 2000 Census, the population estimates and projections developed by the Texas State Demographer (Dr. Steve Murdock) provide the best source of information about the size of the current State population by county and race-ethnicity. Dr. Murdock's estimates and projections are developed using demographic methods established by the US Bureau of the Census and the Texas State Data Center. The State of Texas has been using estimates developed by the State Data Center for over twenty years.

6. We have examined the Congressional Districts established in Plan 1374 using the current populations provided by the Texas State Data Center. Until the 2003 population data available from Dr. Murdock and the Texas State Data Center, we estimate that when the District were adopted in late 2003, the largest and smallest districts differed from one another by upwards of 88,000 persons and using 2004 population projections the difference approaches 100,000 persons.
7. The population estimates and projections shown on the attached pages provide a more up-to-date and therefore accurate description of the actual population in 2003 and 2004 in the Congressional districts than that available using only the information from the 2000 census.

Further in this matter affiants sayeth not.

_____ _____

Dr. Thankam Sunil Ph.D. Dr. Bill Spears Ph.D.

On this 14th day of January, 2005 before me a notary public in the State of Texas came on to appear Tankam Sunil and Bill Spears personally known to me, who after first being duly sworn on oath affirmed the forgoing.

_____Dr. Bill Spears Ph.D.

CURRICULUM VITAE

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Community Assessment, Demography, Social Research Methods, Medical Sociology

AREAS OF PROFESSIONAL INTEREST

Community health policy, health informatics, geographic information systems, vital statistics, maternal and child health, small area analysis

EDUCATION

The University of Texas School of Public Health, Ph.D., Behavioral Sciences, 1991

Ohio State University, 1976-1977

Texas Tech University, MA, Sociology, 1977

Texas Tech University, BA, Sociology, 1974

MILITARY EXPERIENCE

U.S. Army Signal Corps, 1968-1971, Specialist Fifth Class. Awards: Army Commendation Medal and the Bronze Star for Service

ACADEMIC AND PROFESSIONAL POSITIONS

THE UNIVERSITY OF TEXAS—HOUSTON SCHOOL OF PUBLIC HEALTH, Assistant Professor, October 1999—Present.

SPEARS CONSULTING SERVICES, President, March 1999—September 1999.

THE TEXAS HEALTH CARE INFORMATION COUNCIL, Director, Health Information, February 1998—April 1999.

THE UNIVERSITY OF TEXAS SCHOOL OF PUBLIC HEALTH, Post Doctoral Fellow, September 1994—January 1998.

THE UNIVERSITY OF TEXAS SCHOOL OF PUBLIC HEALTH, Faculty Associate. January 1981—1994.

ALVIN COMMUNITY COLLEGE, Alvin, Texas; Department of Social Sciences; Instructor; Summer Quarter, 1981.

THE UNIVERSITY OF TEXAS MEDICAL, BRANCH AT GALVESTON, Galveston, Texas; Department of Epidemiology and Preventive Medicine; "Living Arrangements and Dietary Patterns: U.S. Adults" Grant; Computer Programmer II; April 1980—December 1980.

BAYLOR COLLEGE OF MEDICINE, Houston, Texas; Department of Ophthalmology, Glaucoma Service and Research Laboratory; Operations Manager, April 1978—August 1980.

UNIVERSIDADE FEDERAL DE SANTA MARIA, Santa Maria, Rio Grande do Sul, Brazil; Department of Agricultural Education and Rural Extension; Collaborating Professor, September 1977—March 1978.

THE DISASTER RESEARCH CENTER, Ohio State University, Columbus, Ohio; Research Associate, September 1976—May 1977.

UNIVERSIDADE FEDERAL DE VICOSA, Vicosa, Minas Gerais, Brazil; Department of Rural Economics; Research Assistant, June—December 1975.

TEXAS TECH UNIVERSITY, Lubbock, Texas; Department of Sociology; Teaching Assistant; September 1974—June 1975 and January—May 1976.

TEXAS TECH HEALTH SCIENCES CENTER, Lubbock; Texas; Department of Health Communications; Research Assistant, October 1974—June 1975.

MASTER'S THESIS

The Use of Folk Medicine Among Mexican Americans in West Texas, Texas Tech University, 1977.

DOCTORAL DISSERTATION

A Categotical Data Analysis Approach to Estimation of Demographic Characteristics for Texas County Populations. The University of Texas School of Public Health, May 1991.

PUBLICATIONS

1. Davies, M, Spears, W, and Pugh, J. (2004) "What VA Providers Really Think About Clinical Practice Guidelines." Federal Practitioner, 21(2):15-30.
2. Ftanzini, L and Spears, W. (2003) "Contributions of Social Context to Inequalities in Years Of Life Lost To Heart Disease in Texas." Social Science and Medicine, 57(10) 1847-1861.
3. Brackley, M., Davila, Y,, Thornton, J., Leal, C., Mudd, G., Shafer, J., Castillo, P., Spears, W. (2003) "Community Readiness to Prevent Intimate Partner Violence in Bexar County." Journal of Transcultural Nursing, 14(3) 227-236.
4. Warrick, C, Spears, W, Albert, DP, BakamaNume, B, Roes, L. (2003) "GIS and Rural Cancer Disparities." Texas Journal of Rural Health, XX (4):25-34.
5. Speer, J, Spears, W, Blanchard, S, Warrick, C, and Reynolds, T. (2003) "Information for Rural Economic and Community Health: Concepts for an Information System." Texas Journal of Rural Health, XX (4):62-70.

6. Franzini, LI, Ribble, and Spears, W. "The Effects of Income Inequality and Income Level on Mortality by Population Size in Texas Counties," *Journal of Health & Social Behavior*, 42(4):373-87, December 2001.

7. Waller DK, Spears WD, Gu Y, Cunningham GC, "Assessing digit-specific error in the recall of onset of last menstrual period" *Paediatric and Perinatal Epidemiology*. 14(3), 263-267, Jul 2000.

8. Franzini L. Rosenthal J. Spears W. Martin HS, Balderas U Brown M. Mille G. Drutz J. Evans D. Kozinetz C. Oettgen B, Hanson C, "Cost Effectiveness of Childhood Immunization Reminder/ Recall Systems in Urban Private Pediatric Practices." *Pediatrics*, 106 (1 Pt 2):177-183, July 2000.

9. Franzini, L. Rosenthal, J. King, H, Balderas, L. Brown, M. Milne, G. Drutz, J. Evans, D. Kozinetz, C. Oettgen, B, Spears, W. Hanson, I C, Cost and Effectiveness of Immunization Reminder/Recall Systems for Private Providers, *Pediatric Research*, 45(4), PART 2 OF 2:124A, Apr 1999.

10. Kerr, G., Ramsey, D,, and Spears, W. "Searching for the Preventable Causes of Childhood Mortality: Texas Children, 1989-1991." *Texas Medicine*, 95(7):56-64, July 1999.

11. Kennedy, V., Spears, W,, Moore, F., and Loe, Jr, H.. "Public Health Workforce Information: A State-Level Study." *JPHMP*, 5(3):10-19, May 1999.

12. King, I-I S. Evans, D L. Balderas, L. Brown, M. Milne, G C. Drutz, J E. Franzini, L. Kozinetz, C. Oettgen, B. Rosenthal, J. Spears, W. Hanson,. I C., Improving Return Visits In Private Provider Offices Through Immunization Reminder/Recall, *Pediatric*

Research, Program Issue APS-SPR, 43 (4 Supplement), 2:113, April 1998,

13. Kerr, G., Ying J., and Spears, W. Searching for Preventable Causes of Infant Mortality in Texas, *Texas Medicine*, 93(1):81-88, January 1997.

14. Morgenstern, L., Spears, W., Goff, D., Grotta, J., Nichaman, M. African American and Women have the Highest Stroke Mortality in Texas, Stoke, 28(1):15-18, January 1997,

15. Morgenstern, L., and Spears, W. "Tri-ethnic Comparison of Intracerebral Hemorrhage Mortality in Texas." *Annals of Neurology*, 42(6):919-923, December 1997,

16. Hanson, I., Spears, W., Jenkins, K., Stoner, D., and the "All Kids Count" Epidemiology Working Group, Immunization Prevalence Rates for Infants in a Large Urban Center: Houston/Harris County, 1993. *Texas Medicine*, 92(3):66-71, March 1996.

17. Kerr, G,, Ying, J,, and Spears, W. Ethnic differences in causes of infant mortality: Texas birth, 1989 through 1991. *Texas Medicine*, 91(9):50-56, September 1995.

18. Kerr, G., Ying, J., Vernier, M., and Spears, W. Proportional differences in births and infant mortality rates among the triethnic population in Texas from 1984 through 1986. *Texas Medicine*, 91(3):50-57, Match 1995.

19. Kennedy, V. and Spears, W. The Supply and Distribution of Primary Care Physicians and Medical. School Enrollments in Texas. *Texas Medicine*, 90(9):60-70, September 1994.

20. Verrier, M., Spears, W., Ying, J., and Kerr, G. Patterns of Infant Mortality in Relation to Birth

Weight Maternal Age, Parity, and Prenatal Care in Texas' Tri-Ethnic Population, 1984 through 1986. *Texas Medicine*, 90(8):50-56, August 1994.

21. Verrier, M., Spears, W., Ying, J,, and Kerr, G. Patterns of Birth Weight in Relation to Gestational Age, Maternal Age, Parity, and Prenatal Care in Texas` Tri-Ethnic Population, 1984 through 1986. *Texas Medicine*, 89(12):51-56, December 1993.

22. Aday, L., Lee, E., Spears, W., Chung, C. and Youssef, A. Health Insurance and Utilization of Medical Care for Children with Special Health Care Needs. *Medical Care*, 31(11):1013-1026, November 1993.

23. Kennedy, V., Linder:, S. and Spears, W. Estimating the Impact of State Manpower Policy:A Case Study of Reducing Medical School Enrollments. *Journal of Health Politics, Policy and Law*, 12(2):299-311, Summer 1987.

24. Quesada, G, Spears, W:, and Ramos, P. Inter-racial Depressive Epidemiology in the Southwest. *The Journal of Health and Social Behavior*, 19(1):77-85, March 1978.

MONOGRAPHS AND TECHNICAL REPORTS

1. *Community Assessment for Barrio Comprehensive Family Health Care Center.* Center for Health Policy Studies, UTSPH, Jan 2004.

2. *Bexar County Community Assessment*. The Bexer County Community Health Collaborative, September, 2002 (with Margaret Brackley, Steve Blanchard, and Annette Prosterman).

3. *Texas Healthy Kids Corporation: Clinical Classification Report*, Center for Health Policy Studies, UTSPH, June, 2001.

4. *Cost Analysis of Texas Healthy Kids Claims by Risk Status of Child*. Center for Health Policy Studies, UTSPH, June, 2001.

5. *Surveys of Selected Texas Healthy Kids Populations.* Center for Health Policy Studies, HTSPH, June, 2000.

6. *The Make a Difference Program: A Review of Progress and A Report on Health Status Measures: Harris County and HCHD Catchment Areas*, Center for Health Policy Studies, UTSPH, March, 1997 (with Carl Slater, Susan Baker, et al.)

7. *The Make a Difference Program: An Interim Report on Progress and Evaluation Methods*, Center for Health Policy Studies, UTSPH, September 1996 (with Carl Slater, Susan Baker, et al.)

8. *The Professional Public Health Workforce in Texas*, Center for Health Policy Studies, UTSPH, 1996 (with William W. Dyal, Bartholomew P. Hsi, Hardy D. Loe, Jr, Virginia C. Kennedy, and Frank I Moore).

9. University of Texas System Medical Students/ Alumni Survey 1995, Center for Health Policy Studies, UTSPH, 1996 (with Virginia C. Kennedy).

10. *Community-wide Health Needs Assessment: Houston-Galveston Consolidated Metropolitan Statistical Area*, Center for Health Policy Studies, UTSPH, 1994 (with Hardy Loe, Jr, et al.)

11. Texas Physicians 1990-1994: A Statistical Summary of Trends, Center for Health Policy Studies, UTSPH, 1994 (with Virginia C. Kennedy).

12. Texas Registered Nurses 1990-1994: A Statistical Summary of Trends, Center for Health Policy Studies, UTSPH, 1994 (with Virginia C. Kennedy).

13. Texas Dentists 1990-1994: A. Statistical Summary of Trends, Center for Health Policy Studies, UTSPH, 1994 (with Virginia C. Kennedy).

14. *Supply, Distribution, and Selected Characteristics of Texas Physicians*, Center for Health Policy Studies, UTSPH, 1992 (with Virginia C. Kennedy).

15. *Supply, Distribution, and Selected Characteristics of Texas registered Nurses*, Center for Health Policy Studies, UTSPH, 1992 (with Virginia C. Kennedy).

16. *Supply, Distribution and Selected Characteristics of Texas Dentists*, Center for Health Policy Studies, UTSPH, 1992 (with Virginia C. Kennedy).

17. *Population Projections for Texas and State Planning Regions, 1980-2000*, Center for Health Policy Studies, UTSPH, 1986 (with David P. Smith and Eun Sul Lee).

18. *Texas Populations, mjections, 1980-2000*, Center for Health Policy Studies, UTSPH, 1985 (with David P. Smith, Eun Sul Lee).

19. *Physician Manpower: in Texas 1970-2000*, Center for Health Policy Studies, UTSPH, 1985 (with Stephen Linder, et al.).

20. *Texas Physicians 1970-1984: A Statistical Report of Supply, Location, Activities and selected Characteristics*, Center for Health Policy Studies, UTSPH, 1985 (with David Smith, et al.).

ABSTRACTS AND PRESENTATIONS

1. Spears, W. and VonVille, H. A Community Health Assessment Resource for Texas (CHART): Enhancing Access to Health Statistics through Collaboration. To be presented at the 132th APHA Annual Meeting in Washington, DC, November 2004.

2. Franzini, L. Caughy, M. Spears, W. and Fernandez-Esquer, M. Neighborhood economic conditions, social processes and self-rated health: A multilevel structural equation model. To be presented at the 132th APHA Annual Meeting in Washington, DC, November 2004.

3. Franzini, L. Caughy, M. Spears, W. and Fernandez-Esquer, M. Do differences in neighborhood SES, physical, and social characteristics explain racial/ ethnic disparities in self-rated health? To be presented at the 132th APIA Annual Meeting in Washington, DC, November 2004.

4. Bell, ML, Boyles, R, and Spears, W. Developing and Sustaining a Coalition Thru Trials and Tribulation. Presented at the Annual NOAPP Conference in San Diego, CA November 2002.

5. Spears, W, Brackley, M, Blanchard, S, and Prosterman, A. "Bexar County community assessment: A collaborative approach." Presented at the 130th APHA Annual Meeting in Philadelphia, November 2002.

6. Franzini, L., et al. "Health, socioeconomic indicators, social support, and religiosity: A comparison of US born and Mexico born Mexican Americans in Texas." Presented at the 130th APHA Annual Meeting in Philadelphia, November. 2002.

7. Franzini, L, Ribble, J, Perez, N, Montoya, M, Caughy, M, Fernandez-Esquer, M, Risser, J, and Spears, W. "Health, socioeconomic indicators, social support, and religiosity: A comparison of US born and Mexico born Mexican Americans in Texas." Presented at the 130th APHA Annual Meeting in Philadelphia, November 2002.

8. Franzini, L, Ribble, J, Perez, N, Montoya, M, Caughy, M, Fernandez-Esquer, M, Risser, J, and Spears, W. "Effect of religiosity and spirituality on self-perceived health among Hispanics, African-Americans and non-hispanic Whites." Presented at the 130th APHA Annual Meeting in Philadelphia, November 2002.
9. Franzini, L, and Spears, W, "Contribution of social context to years of life lost to heart disease in Texas." Presented at the 130th APHA Annual Meeting in Philadelphia, November 2002.
10. Thornton, J, Spears, W, and Brackley, M. An Adult Fatality Review Team Developed as a Coordinated Community Response to Preventing Intimate Partner Violence. Presented at the 2"d National Conference on Health Care and Domestic Violence, Atlanta, Georgia. September 27, 2002.
11. Jan M H Risser, PhD, Carrie Shapiro, William Spears, PhD. Injury Mortality in Texas and the Lower Rio Grande Valley, 1980-1998. Presented at the 129th APHA Annual Meeting in Atlanta, Oct 2001.
12. L Franzini, J Ribble, N Perez, B Amick, M Caughy, M Fernandez-Esquer, A Keddie, J Risser, W Spears. Social Cohesion and Health in Hispanic Communities: a qualitative analysis. Presented at the 129th APHA Annual Meeting in Atlanta, Oct 2001.
13. J M Risser and W Spears. Mortality in Texas and the Lower Rio Grande Valley Hispanics, 1980-1998. Congress of Epidemiology, June 2001.
14. W Spears, R. Wood, and G. Martellotto. The Lower Rio Grande Valley Community Information System. Presented at the TPHA Annual Meeting. in El Paso, March 2001.

15. W. Spears. The Lower Rio Grande Valley Community Assessment. Presented at Symposium 2000 in South Padre Island, TX, November 2000.

16. W. Spears. Basic Demography. Presented at Texas Demographic and Economic Association, Houston, TX, April 9, 1997.

17. Hanson, L. Franzini, W. Spears, D. Evans, C. Kozinetz. A Cost Effectiveness Study of Immunization Reminder/Recall Systems for Private Providers: A Manual Postcard versus a Computerized Telephone Message. Presented at the Annual APHA meeting in New York, November, 1996.

18. W. Spears, L. Morgenstern, D. Goff; J. Grotta, M. Nichaman. Is Stroke Mortality Increasing? Presented at the American Academy of Neurology Meetings in San Francisco, CA, March 28, 1996.

19. L. Morgenstern, W. Spears, D. Goff, J. Grotta, M. Nichaman. Race/Ethnic Gender Differences in Stroke Mortality. Presented at the American Heart Association Meetings in San Antonio, TX, January 1996.

20. K. Waller and W. Spears, Can. Digit Preferences in the First Day of the Last Menstrual Period be used to Identify Pregnancies with the least accurate Gestational Age? Presented at the Epidemiology Meetings in CA, June 23, 1995.

21. W. Spears. Findings of the Houston-Galveston-Brazoria CMS A Community. Wide Health Needs Assessment. Presented to the Harris County Medical Society Committee on Public Health in Houston, TX, July 19, 1994.

22. W. Spears. Establishing and Using Community Health Information Systems, Presented at the Health Care Conference in Houston, TX, July 8, 1994.

23. W. Spears. Collection and Surveillance Issues for South East Asian Health, Presented at the South East Asian Health and Community Issues Symposium in Houston, TX, May 14, 1994.

24. L. Aday, E. Ice, W. Spears, C. Chung, and A. Youssef. Health Insurance and Utilization of Medical Care for Children with Special Care Needs. Presented at the American Public Health Association Meetings in Washington, DC, November 9, 1992.

25. W. Spears. A Microcomputer-based Hispanic HANES System: An Example of HANES Analysis. Presented at the National Center for Health Statistics seminar: Analyzing HANES Data: A Beginner's How To, March 19, 1989 in New Orleans, LA, and May 4, 1989 in Tampa, FL.

26. W. Spears, An On-line Data Retrieval System. Presented at the National Center for Health Statistics Tape Users Conference in Silver Spring, MD, July 1986.

27. W. Spears. Using Microcomputers for Analysis of Large Datasets. Presented at the National Center for Health Statistics Tape Users Conference in Silver Spring, MD, July 1984.

28. W. Spears, and K. Shaw. Personalized Eye Care: The Chronic Case. Presented at the Texas Public Health Association meetings in San Antonio, TX, February 1980.

29. W. Spears, C. Kurtzman and R. Williams. Automated Patient History: The Personal Touch. Presented at the Computers in Ophthalmology meetings at St. Louis, MO, April 1979.

30. G. Knolle, W. Spears and J. Justice Jr. Discussion - Advantages and disadvantages of KPE. Presented at

the American Academy of Ophthalmology, Kansas City, MO, November 1978.

31. W. Spears, and G, Quesada. Research in Rural Brazil. Presented at the meeting of the Rocky Mountain Council of Latin American Studies, Las Cruces, New Mexico, February 1976.

CONTRACTS AND GRANTS

1. HRSA project—Sub-contract

   Furino (PI) 10/1/2004—9/30/2006

   Community Health Worker Health Workforce Study
   The major goals of this project are to create profiles of Community Health Workers in selected states.

   Role: Co-investigator

2. National Cancer Institute

   Ann Coker (PI) 10/1/2004-9/30/2008

   Pending (score 153)
   Understanding disparities in cervical cancer survival
   Role: Co-investigator

3. SAMSHA project 6 H79 TI15755-0201—Sub-contract

   Medina (PI) 10/1/2003—9/30/2008

   Program Evaluation for a Outreach and Treatment Program for Persons with HIV/AIDS and Substance Abuse or Mental Health Problems.

   The major goal of this project are to evaluate Project SEEK's effectiveness in providing outreach and treatment to 300 HIV positive, substance abusing patient previously lost to care

   Role: PI Award $117,140.

4. HRSA. project - 230-03-0017 - sub-contract

   Furino (PI) 10/1/2003—9/30/2004

   Workforce Profiles for the US-Mexico Border

   The major goals of this project are to create county profiles for California, Arizona, New Mexico, Texas and Florida. The profiles provide both information about the health workforce and health needs based on the US-Mexico Border 2010 Health Objectives

   Role: Co-investigator Award $38,596

5. Barrio Comprehensive Family Health Center
   2/1/2003—8/30/2003

   The Barrio Comprehensive Community Health Assessment.

   The goal of this project was to conduct a Community health assessment of two Health Professions Shortage Areas (HPSAs) in Bexar County that included obtaining community input about community needs and the availability of health services in the target areas.

   Role: Pt Award $27,185

6. The National Network of Libraries of Medicine/ South Central Region.
   6/1/2002-11/30/2003

   The Community Health Assessment Resource for Texas (CHART).

   The goals of this project were to provide free web-based access to census tract level vital statistics and population data for all Texas Counties and to educate public health professionals to access and use health statistics available on the Internet.

   Role: PI Award $19,830.

7. The Bexar County Community Health Collaborative

   1/1/2002—08/31/2002

   The Bexar County Community Health Assessment

   The major goals of this project were to provide a community assessment of health and community indicators for Bexar County TX showing trends for an eight year period. Using participatory action methods community members will be asked to help set community health priorities. This was one of four assessments included in the Mobilization through Planning and Partnership (MAPP) methodology.

   Role: PI Award $140,358.

8. UT Health Science Center San Antonio—K-89-591-4-16

   9/1/2001-8/30/2003

   (subcontract) on Centers for Disease Control funded grant

   Evaluation of the San Antonio Safe Families Project

   The major goals of this project are to design and evaluate the San Antonio Safe Family Coalition as a coordinated community response to intimate partner violence.

   Role; PI Award—$75,002

9. Texas Healthy Kids Corporation

   9/1/1999-08/30/2000

   Texas Healthy Kids Corporation Evaluation Project

   The major goals of this project was to provide analysis of claims paid by THKC, provide a cost analysis of claims paid, and evaluate four aspects of the Texas Health Kids activities including satisfaction with services offered and whether children referred were enrolled in Medicaid.

   Role: Co-PI

10. Episcopal Health Charities 10/1/1997-9/30/1998

    The Healthy Communities Project.

    The goal of this project was to create a web-based Community Information System that would provide access to census tract level vital statistics and population data for a 57 county area in East Texas.

    Role: PI

11. Episcopal Health Charities 6/1/1997-9/30/1997

    A Plan for the Healthy Communities Project.

    The goal of this project was to develop a plan to create a a web-based Community Information System that would provide access to census tract level vital statistics and population data for a 57 county area in East Texas.

    Role: PI Funder: Episcopal Health Charities

12. Baylor College of Medicine 10/1/1996-9/30/1998

    Subcontract Centers for Disease Control funded grant, Hanson. (PI).

    A Cost Effectiveness Study of Immunization Reminder/Recall Systems for Private Providers: A Manual Postcard versus a Computerized Telephone Message.

    The purpose of this project was to compare the efficacy of two systems designed to encourage patients to return to pediatrician's offices for childhood immunizations.

    Role: PI

13. Harris County Hospital District 11/1/1995-5/30/1997

    The Greater Houston Area-Community Health Information System.

    The goal of this project was to create a web-based Community Information System that would provide access to census tract level, vital statistics and

population data for the Houston-Galveston-Brazoria CMSA and to provide information about the conditions treated by the Harris County hospital District in outpatient clinics and hospitals.

Role: P1

14. Texas Health Care Information Council Loe (Pl)

6/1/1996-11/30/1997

Inventory of Public Health Data Sets and the Texas Health Information Plan.

The goal this project was to inventory and produce a report on the data sets collected by the 12 Texas health and human services agencies.

Role—Co-Investigator

THANKAM S. SUNIL

8727 Huebner Road, # 1310
San Antonio, TX 78240

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Office: 210-458-5617
Home: 210-561-2869

Academic Training:

PhD.	2002	Sociology, University of North Texas, Denton, TX,
M.P.H.	1998	Public Health, University of North Texas Health Science Center at Fort Worth, TX.
Ph.D.	1998	Population Studies, International Institute for Population Sciences, Bombay, India.
M.Phil.	1993	Population Studies, International Institute for Population Sciences, Bombay, India.
M.P.S.	1992	Population Studies, International Institute for Population Sciences, Bombay, India.
M.Sc.	1990	Statistics, University of Kerala, Trivandrum, India.
B.Sc.	1988	Statistics, University of Kerala, Trivandrum, India,

Teaching/Research Position:

2002-current	Assistant Professor, Department of Sociology, The University of Texas at San Antonio.
1998-2002	Teaching Fellow, Department of Sociology, University of North. Texas,
1997-2002	Research Associate, Survey Research Center, University of North Texas.
1997	Teaching Assistant, Department of Sociology, University of North Texas.

Courses Taught:

Research	Methods Introduction to Sociology
Social Statistics	World Population
Medical Sociology	Public Health and Public Health Systems

Areas of Teaching Interest:

Research Methods/Statistics	Population and Development
Demography	Marriage and Family
Medical Sociology	Public Health/Reproductive Health
Environmental Sociology	Family Planning & Fertility Analysis

Areas of Research Interest:

Reproductive Health	HIV/AIDS
Fertility Analysis	Child Malnutrition
Program Evaluation	Pre-term and Low Birth Weight
Adolescent Health	Retirement Migration

Research Grants Funded

Principal Investigator: Individual and Neighborhood Effects on Pre-term and Low Birth Weight in Bexar County, TX, Faculty Research Award 2004, University of Texas at San Antonio ($4,780).

Co-Principal Investigator: Pilot project on International migration of American retirees to less developed countries. Startup money from the Office of Research Development, University of Texas at San Antonio ($1,700).

Publications:

15. Sunil, T.S., and Pillai, Vijayan K. 2004. Age at marriage, contraceptive use and abortion in Yemen 1991-1997. Canadian Studies in Population (forthcoming).

14. Minhe Ji, and Sunil, T.S. 2004. Comprehensive Assessments of Regional Environmental Equity: A GIS-Based Multivariate Statistical Approach. International Journal of Risk-Assessment and Management (forthcoming).

13. Rajaram, S, and T.S. Sunil. 2004. Demographic significance of sterilization in three Indian states. The Social Science Journal, 41(4): 605-620,

12. Rajaram, S, and T.S. Sunil. 2003. Child schooling in India: a multilevel approach. Educational Research for Policy and Practice, 2(2): 123-141,

11. Rajaram, S, T.S. Sunil, and Lisa K. Zottarelli. 2003. An analysis of childhood malnutrition in Kerala and Goa. Journal of Biosocial Science, 35(3): 335-351,

10. Pillai, Vijayan K., T.S, Sunil., and Rashmi Gupta. 2003. AIDS prevention in Zambia: implications for social workers, World Development, 31(1): 149-161.

9. Pillai, Vijayan K., and T.S. Sunil. 2003. Gender inequality and reproductive decision-making. In Reproductive Health, Gender and Development; An International Perspective by Gao Ersheng (ed.), New Delhi: B.R. Publishers.

8. Pillai, Vijayan K., and T.S. Sunil, 2002. Gender inequality and reproductive decision-making in developing countries: implications for social work, Social Development Issues, 24(2): 16-22.

7. Sunil, T.S., and Vijayan K. Pillai. 2002. Sterility in Zambia, Annals of Human Biology, 29(4): 414-421.

6. Pillai, Vijayan K., and Sunil, T.S. 2002. Reproductive health in Yemen: a preliminary assessment. In Population Stabilization and Development by Baidyanath Misra, Pradip K. Tripathy, Bipin Bihari Hota, and H.C. Das (eds.). Council of Cultural Growth and Cultural Relations: Cuttack, India.

5. Sunil, T.S., and Vijayan K. Pillai. 2001. Breast-feeding programs and lactational amenorrhea: Evaluation using event history analysis, The Social Science Journal, 38(3): 409-419.

4. Sunil, T.S., and Vijayan K. Pillai, 2001. Ethnic differentials in teenage fertility in Texas: 1980-1990. In Health Strategies and Population Regulation Vol. 1, by Yu Jing Yuan, Frederic Bourdier, M. Kabir, ,Vijayan K. Pillai, Kiran Prasad, Wu Junquing, S, Sivaraju, and V. K.R. Kumar (eds.). Delhi: B.R. Publishers.

3. Sunil, T.S., Vijayan K, Pillai, and Arvind Pandey. 1999, Do incentives matter?—Evaluation of a family planning. program in India. Population Research and Policy Review, 18: 563-577.

2. Sunil, T.S. 1996. Maximum likelihood estimation of contraceptive retention rate using current user data, Indian Society for Medical Statistics Bulletin, 11(2): 8-11.

1. Pandey, Arvind., T.S. Sunil., and Damodar Sahu. 1996. Determinants of the duration of postpartum amenorrhea in Gujrat: A multivariate life table analysis with duration of breast-feeding as time dependent covariant. Demography India, 25(2):25-32.

Publications (in progress):

Sunil, T.S., Rajaram, S., and Zottarelli, Lisa. (in review). Do individual and program factors matter in the utilization of maternal care services in rural India? A theoretical approach. Social Science and Medicine.

Sunil, T.S., and McGehee, Mary. (in review). Social and religious support on treatment adherence among HIV/ AIDS patients by race/ethnicity. AIDS Care.

Sunil, T.S., and Rajaram, S. (in review) Influence of parental and socioeconomic characteristics on stunting in Egypt. Eastern Mediterranean Health Journal.

Sunil, T.S., and Pillai, Vijayan K. (in review), Analysis of reproductive health components in Yemen. International Social Science Reivew.

Sunil, T.S., and Pillai, Vijayan K. (in review). Proximate latent dimensions of reproductive health: a theoretical approach. Journal of Biosocial Science.

Pillai, Vijayan K., and Sunil, T.S. (in review), Demographic innovation and fertility decline in Yemen. Social Forces.

Sunil, T.S. Global problem of AIDS and role of health education, In Health Education and Communication for Quality of Life, by Kausalya Devi, Gao Ersheng, Lory Lian, Kuttan Mahadevan, Vijayan Pillai, K.A. Pisharoti, Ito Youchi (eds.), Delhi: B.R. Publishers.

Rojas, V. & Sunil, T.S. (in review). Crossing borders in search of new homes: U.S. retirees living in Mexico. International Migration Review.

Books Reviewed for Publishers:

Babbie, Earl. 2003. The Basics of Social Research. Third Edition, Belmont, CA: Wadsworth Publishers

Bryman, Alan, 20.04. Social Research Methods. Second Edition. New York; Oxford University Press.

Paper Presentations:

A reproductive health approach to the study of age at marriage, contraceptive use, and abortion in Yemen.

Paper presented at the Southern Demographic Association, Hilton Head, South Carolina, October 14-16, 2004.

Differences in social and religious support for GaylLesbian and Heterosexual persons with. HIV/AIDS by race/ethnicity. Paper presented at the Southern Demographic Association, Hilton Head, South Carolina, October 14-16, 2004.

Age at marriage, contraceptive use and abortion in Yemen, 1991-1997. Paper presented at the American Sociological Association Conference, San Francisco, California, August 14-17, 2004.

HIV/AIDS prevention in Zambia, Paper presented at the Southwestern Social Science Association Conference, Corpus Christi, TX March 17-20, 2004.

Analysis of disparities in treatment adherence among HIV/AIDS patients according to race/ethnicity, Paper presented at the Southwestern Social Science Association Conference, Corpus Christi, TX March 17-20, 2004.

Mooving Art: Exploring a Collective Surge, Paper presented at the American Sociological Association Conference, Atlanta, Georgia, August 16-19, 2003.

Community Involvement in Temporary Public Art; A Cast Study of Fiberglass Animal and Related Projects, Paper presented at the Southwestern Social Science Association Conference, San Antonio, April 16-19, 2003.

Reproductive Health in the Middle East, Paper presented at the Southwestern Social Science Association Conference, San Antonio, April 16-19, 2003.

Reproductive Health in Yemen: Toward a Theoretical Approach. Paper presented at the Southern Demographic Association, Austin, Texas, October 10-12, 2002.

Theoretical Approach to Reproductive Health, Paper presented at the Southwestern Social Science Association Conference, New Orleans, March 27-30, 2002.

Population and Reproductive Health in Yemen, Paper presented at the International Conference on Population Stabilization and Development. Organized by the Council of Cultural Growth and Cultural Relations. February 8-10, 2002, Cuttack, India.

Comprehensive Assessments of Regional Environmental Equity: A GIS-Based Multivariate Statistical Approach. Paper presented at the Applied Geographic Conference, Fort Worth, Texas, November 14-17, 2001.

Reproductive Health in Yemen: A Demographic Model. Paper presented at the Southern Demographic Association, Miami Beach, Florida, October 11-13, 2001.

A Scale for Measurement for Reproductive Health. Paper presented at the International Union for the Scientific Study of Population, Brazil, August 27-31, 2001.

Promotion of Breastfeeding Practice in India. Paper presented at the pre-PAA Annual Conference, Washington D.C., March 29-31, 2001 conducted by Population Reference Bureau.

Women's Reproductive Health and Reproductive Rights in Developing Countries: A Proposed Scale for Measurement. Paper presented at the Southern Demographic Association Annual Conference, New Orleans, October 26-28, 2000.

Reproductive Decision Making Among Zambian Couples (with Vijayan K. Pillai). Paper presented at the PAA Annual Conference, Los Angeles, March 23-25, 2000.

Ethnic Differentials in Teenage Pregnancy in Texas, Poster presented at the Graduate Student Research and Performance Fair, University of North Texas, Denton, Texas, April 27-28, 1998.

Estimation of Infertility in Zambia, Presented at the Women's Health Conference, University of North Texas, Denton, Texas, September 29, 1997.

An Assessment of the Systematic Component of Variation in the Distribution of Number of Births, (with K, B. Pathak and Arvind Pandey). Presented at the National Seminar on Bayesian Statistics and Its Applications, Department of Statistics, Banaras Hindu University, Varanasi, India, April 6-8, 1996.

Determinants of the Duration of Postpartum Amenorrhea in Gufrat, A Multivariate Life Table Analysis with Duration of Breast-feeding as Time Dependent Covariant, (with Damodar Sahu and Arvind Pandey). Presented at the 19th Annual Conference of the Indian Association of the Study of Population, M.S. University, Baroda, India, February 26-28, 1996.

Maximum Likelihood Estimation of Contraceptive Retention Rate Using Current User Data, Presented at the 13th Annual Conference of Indian Society for Medical Statistics, World University Center, Madras, India, November 21-24, 1995,

Fellowships and Awards:

2003-2004	Who's Who Among America's Teachers.
2000-2001	Fellows Program in Population Policies and Communication, Population Reference Bu reau, Washington D.C., USA.
2000	Who's Who Among Students in American Universities and Colleges.
1997	Alvin C. Dorse Sociology Graduate Student Scholarship, University of North Texas, USA.
1997	Provost Competitive Scholarship, Department of Sociology, University of North Texas, USA.

1991-1996	Government of India and United Nations Fund for Population Activities Fellowship.

Department Services:

2002-2005	Sociology faculty library liaison
2003-2005	Member, Academic Policy and Curricula Committee (APCC)
2003-2005	Donors Faculty Advisory Council
2003-2004	Chair, Social Research Laboratory
2000-2002	Graduate Student Representative, Sociology Faculty Search Committee.
1999	Graduate Student Representative, Graduate Curriculum Development Committee.
1999	Vice President, Alpha Kappa Delta, UNT Chapter.
1996	Student Secretary, International Institute for Population Sciences.

Professional Membership:

American Sociological Association (ASA)
Population Association of America (PAA)
Southern Demographic Association (SDA)
Southwestern Sociological Association (SSSA)

Current Congressional Plan (1374C)
With Population Changes

	2000 Census	Change 00-03	Change 00-04
1	651,619	667,131	668,133
2	651,620	673,335	675,778
3	651,619	740,103	752,252
4	651,619	700,631	707,734
5	651,619	680,049	682,019
6	651,619	702,741	710,628
7	651,620	688,020	692,958
8	651,620	707,851	716,021
9	651,619	696,390	702,473
10	651,620	691,296	697,659
11	651,620	661,334	647,287
12	651,619	706,092	713,935
13	651,620	656,233	655,964
14	651,619	692,501	697,689
15	651,619	706,762	715;214
16	651,619	678,241	682,243
17	651,620	688,052	691,887
18	651,619	688,020	692,958
19	651,619	656,022	657,503
20	651,619	684,643	689,799
21	651,619	698,585	706,552
22	651,619	728,112	736,964
23	651,620	683,873	689,448
24	651,620	699,359	704,895
25	651,619	697,428	705,858
26	651,619	728,234	739,999
27	651,619	675,193	678,388
28	651,620	707,873	716,322
29	651,619	688,020	696,575
30	651,620	671,006	671,776
31	651,619	710,815	719,112
32	651,620	671,006.11	671,776.49
State of Texas	20,851,820	22,118,509	22,293,020
Ideal	651,619.38		

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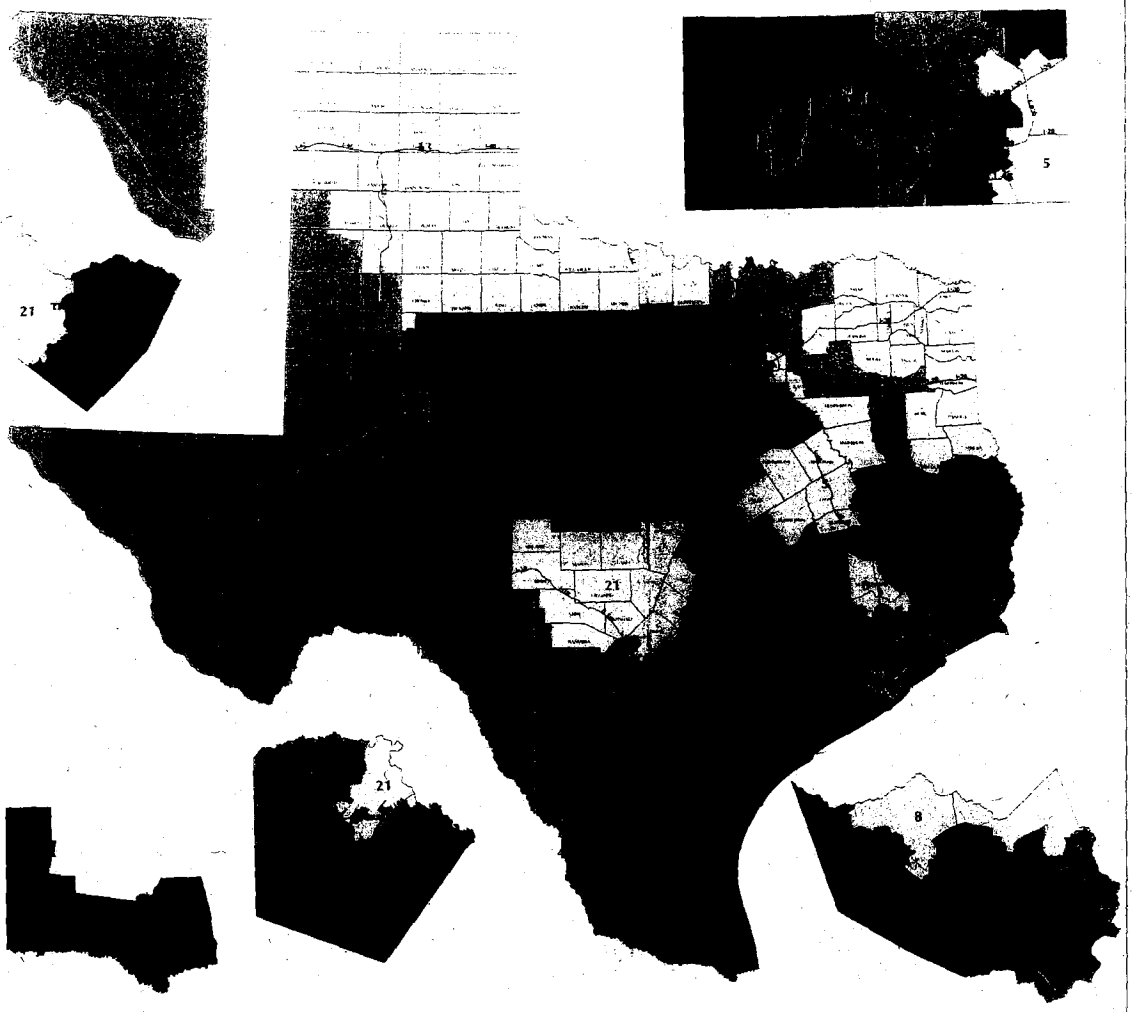
APPENDIX D

TEXAS
U.S. Congressional Districts
US CONGRESSIONAL DISTRICTS, 108th CONGRESS
PLAN 01151C



LEGEND

plan 01151C shaded
Counties

plan 01151C
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TEXAS LEGISLATIVE COUNCIL

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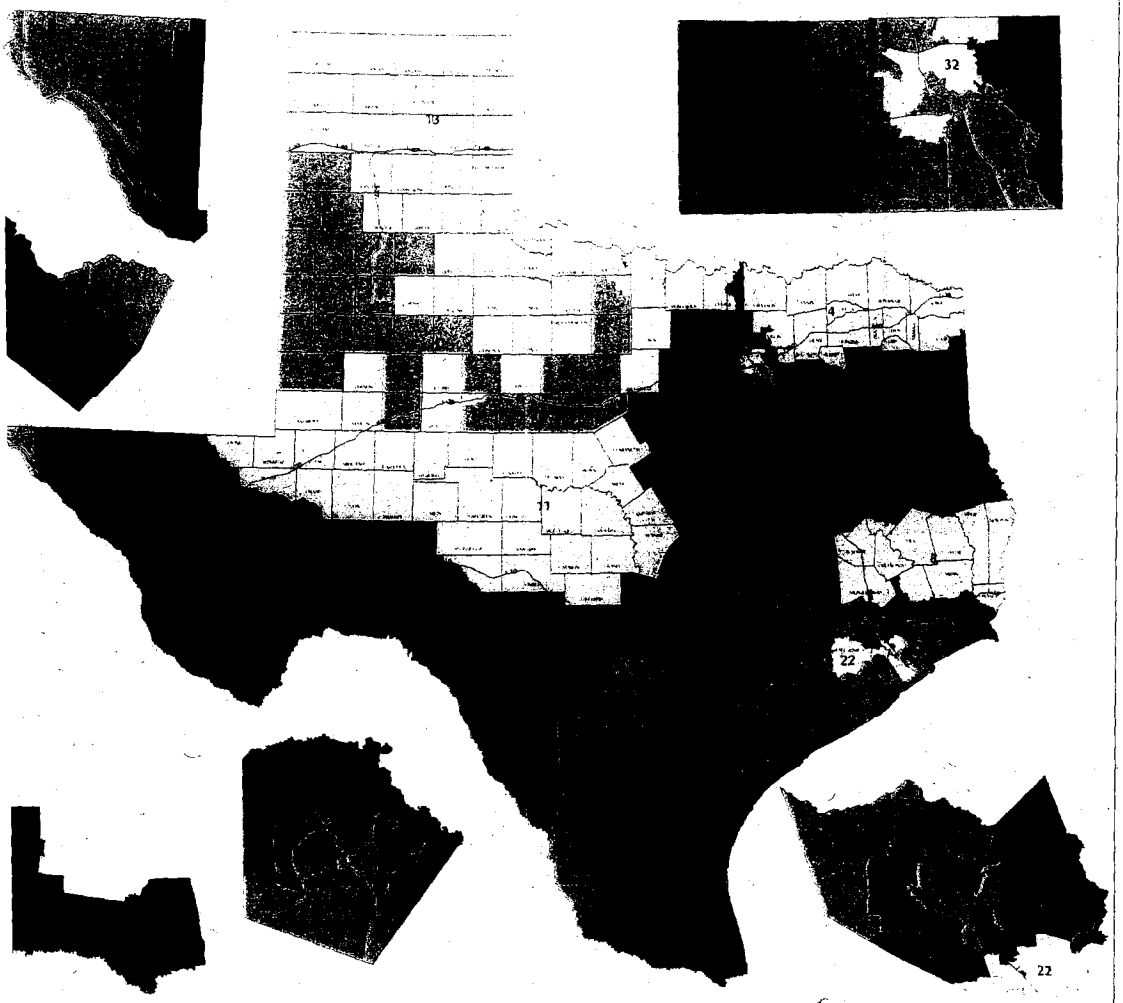
APPENDIX E

TEXAS
U.S. Congressional Districts
HB 3 as Enacted by the 78th Legislature 10-12-03
PLAN 01374C



LEGEND

plan 01374C — shaded
Counties

plan 01374C
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TEXAS LEGISLATIVE COUNCIL

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