

2022 WL 992730 (Tex.) (Oral Argument)

This is an unofficial transcript derived from video/audio recordings
Supreme Court of Texas.

Greg Abbott, in His Official Capacity as Governor of the State of Texas; John
Scott, in His Official Capacity as Secretary of State of Texas; The State of Texas

v.

Mexican American Legislative Caucus, Texas House of Representatives;
Roland Gutierrez; Sarah Eckhardt; Rueben Cortez, Jr.; Tejano Democrats.

No. 22-0008.
March 23, 2022.

Oral Argument

Appearances:

Appellants will be represented by [Lanora C. Pettit](#) (Office of the Attorney General), from Austin.

Appellee, [Mexican American Legislative Caucus](#), will be represented by [Sean J. McCaffity](#) (Sommerman, McCaffity, Quesada & Geisler, LLP), from Dallas. Appellees, [Roland Gutierrez](#), [Sarah Eckhardt](#), Ruben Cortez, Jr., and Tejano Democrats, will be represented by [Wallace B. Jefferson](#) (Alexander Dubose & Jefferson LLP), from Austin.

Before:

Chief Justice [Nathan L. Hecht](#), [Debra H. Lehrmann](#), [Jeffrey S. Boyd](#), [John P. Devine](#), James D. Blacklock, [J. Brett Busby](#), [Jane N. Bland](#), [Rebeca A. Huddle](#), and [Evan A. Young](#).

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CHIEF JUSTICE NATHAN L. HECHT: Please be seated. We'll hear argument in 22-0008, Abbott v. the Mexican American Legislative Caucus.

MARSHAL: May it please the Court. Ms. Pettit will present argument for the Appellants. Appellants have reserved five minutes for rebuttal.

[ORAL ARGUMENT OF LANORA C. PETTIT ON BEHALF OF THE APPELLANTS](#)

ATTORNEY LANORA C. PETTIT: Thank you, Mr. Chief Justice, and may it please the Court. This Court has repeatedly recognized that redistricting is a uniquely legislative task and it stated in Terrazas that only most exogen circumstances can a

court invade that arena without affording the Legislature a full opportunity to correct any defects. This is not such a circumstance. Plaintiffs who lack standing, seek an order that is a function of the Constitution, this Court's precedents, and a calendar will lack any practical effect. Because Texas courts lack jurisdiction to issue such an order, Plaintiffs' claims should be dismissed.

Now, I'm going to start with standing because that is both the most fundamental building block of this Court's jurisdiction and the easiest way to resolve this appeal as this Court recognized in Heckman that is a plaintiff-by-plaintiff and claim-by-claim inquiry. And the Plaintiffs here have narrowed that inquiry substantially while on appeal. On their Section 28 claim, there is a single plaintiff on which they defend standing. Senator Guitierrez who alleges that he has to or complains, I should say, that he has to stand for election in 2022 instead of 2024. But that is a requirement of the Constitution that anytime there is an apportionment, a new Senate be elected. There is no restriction as to whether that apportionment must be by a court or by the Legislature.

JUSTICE J. BRETT BUSBY: And I think their argument is that it must be by the Legislature in a regular session.

ATTORNEY LANORA C. PETTIT: So their argument is -- on the merits is that the, the Legislature should be reapportioning in a regular session, but Section 3 is the provision of the Constitution to which I was referring to which triggers the running -- the requirement to run for election and that is not limited to either a regular session or a court.

JUSTICE J. BRETT BUSBY: But it only -- you only have to run for election out of your normal cycle if your district was changed, right?

ATTORNEY LANORA C. PETTIT: Yes, your Honor.

JUSTICE J. BRETT BUSBY: Okay. So then, doesn't that determine -- depend then on their claim about whether the district was changed at a proper time?

ATTORNEY LANORA C. PETTIT: No, your Honor, -

JUSTICE J. BRETT BUSBY: Why?

ATTORNEY LANORA C. PETTIT: - because there is no req -- there is no limit on whether how the district was changed and nobody in this case claims that the maps that were adopted in 2013 based on the 2011 census could be used because they are mal-apportioned under federal law. So ...

JUSTICE J. BRETT BUSBY: I understand that argument but that seems like a merits argument, right? I mean, I understand that standing in the merits are all intertwined but it seems like you have to answer the question of whether the apportionment and a special session was proper under Section 28. And I understand your arguments on the merits as, as to why it was and the other side as to why it wasn't. But it seems like you have to answer that question one way or another in order to know whether Senator Guitierrez had a right not to stand for election basically under -- to, to continue with his current term.

ATTORNEY LANORA C. PETTIT: No, your Honor. As this Court recognized in Heckman for traceability purposes, there is no standing if there is an independent reason why the injury would have occurred. And here, that independent reason is one of any number of federal court with redistricting cases which would have redrawn the maps if the Legislature had not done so. Because that independent cause would have triggered the exact same issue for Senator Guitierrez, he lacks standing to pursue his, his Article 20 -- or his Article III Section 28 claim regardless of its merits. Who's ...

JUSTICE JEFFREY S. BOYD: Who does have standing to bring these complaints?

ATTORNEY LANORA C. PETTIT: So in this particular instance because of the -- as they admit, unique factual circumstance here is unclear that anybody would have a claim -- have standing to raise an Article se -- Article III Section 28 claim because there is not necessarily anybody who has a discrete injury. But this Court follows the justiciability jurisprudence of the United States Supreme Court which has repeatedly recognized that the absence of a plaintiff in a -- that has standing is not a reason to find standing here. For example, the court held that in [inaudible] and in [inaudible].

JUSTICE JEFFREY S. BOYD: That just seems really hard to swallow, honestly, because, I mean, let's set aside the sovereign immunity and the, the mootness or advisory opinion issues. Challenging new maps on these grounds raises a very important constitutional issue, and I hear the State arguing, "Yeah, well, you know, so sorry. There's nobody that gets to raise that issue."

ATTORNEY LANORA C. PETTIT: My answer is limited to Section 28. In that particular instance, as the Supreme Court recognized in [inaudible], our system of government presumes that a number of important tasks are decided by the political sta -- the political process. And the same system of government applies here in Texas. And so, while there may not be a justiciable remedy, there is a remedy as -- somewhere else. Moving to the Section 26 claims, there are, at this point, two Plaintiffs. And here, the question is much more of a pleading question as opposed to a legal impossibility question which I believe your Honor's biggest concern is. The Plaintiffs, at this point, are to relying for two Plaintiffs on the first standing in Section 26. The -- Mr. Cortez who's running for House seat 20 -- 37 and MALC who gets it standing derivatively through Representative Dominguez. They lack standing for different reasons.

Starting with Mr. Cortez, he has a redressability problem that he, himself, admitted on the stand. When asked specifically if his campaign would change in any way, if the maps were enjoined, he said it will not. If the-- if the claims and the relief that he is seeking would not change his behavior in any way, he doesn't have standing to bring the claim. He also hasn't pled an injury because he asserts that he has to run in Willacy County and instead of in Cameron. But because of the way the map -- the shape has changed, there are parts of Cameron County that he also doesn't have to run in. And if there had been an increased cost from having [inaudible] in Willacy, for example, instead of [inaudible], that might be an injury. But here, he hasn't pled that and so he doesn't have a concrete [inaudible].

JUSTICE EVAN A. YOUNG: I thought he said that his behavior would change as he would now have to make much further trips and introduce himself to new people in a different county that presumably is, is a different community of interest and that, that, in and of itself, would qualify as the, the kind of at least injury, you know, very minimum injury, in fact, that would satisfy the changing behavior because of this.

ATTORNEY LANORA C. PETTIT: So his attorneys have certainly argued that. However, on the stand, he said it will not change his behavior and I'm looking at page 161 of the second volume of the reporter's record. More importantly, for the injury point which I think also goes to your Honor's concern, if it's simply that he is traveling east instead of west, that is not a cognizable injury because it's not necessa -- it's not a pocketbook injury. It hasn't increased his cost, it's just the normal activities associated with campaigning in a district of 194,000 people.

JUSTICE EVAN A. YOUNG: But isn't, isn't there not some idea that the, the co -- if the county rule -- county line rule is -- has any, any merit, it premised on the idea that the Constitution regards counties as having distinct identities. So it's not just any collection of contiguous land that has the re-- relevant number of people but crossing into a new county means you, you are now doing something fundamentally different. So this, this -- go-- going west or staying in your same county might be quite different than going north but into a new county.

ATTORNEY LANORA C. PETTIT: Perhaps, but as the Plaintiffs' counsel also acknowledged in the trial court, that county line understanding as it was originally adopted in 1876 has cha -- has to -- had to change a bit because of the one person, one vote rulings out of the Supreme Court starting with Reynolds against Sims.

JUSTICE EVAN A. YOUNG: I, I agree with you this is a very messy thing on the merits. But for standing purposes, why isn't it enough to say, just for -- purely for standing that having to now go into a new county which has a different identity than just another part of the same county, theoretically, maybe I'm wrong, for -- just for standing purposes, why wouldn't that be enough?

ATTORNEY LANORA C. PETTIT: Because the standing injury is an -- is -- has to be a concrete concern and that particular change in identity is more of a claim for the repres -- for the people you'd be representing as opposed to the individual who is campaigning. The campaign activities, the-- there's no, as your Honor is fully aware, no, no magic line that you can see when you're crossing into a county and somebody's residence on one side or another doesn't change what you do for a campaign. And to set your, your Honor's concerns at ease about whether or not there is a substantial difference in this particular instance, there's not. Plaintiffs' own experts recognized here on page 109 of the third volume of the reporter's record that Willacy County and Cameron County are joined in other districts and have quite a bit in common. So for standing purposes, there's no additional cost so there's no additional injury. There's also no redressability because he admitted that enjoining the maps would not be changing his campaign.

JUSTICE EVAN A. YOUNG: He also raised being a voter in, in Cameron County. So I'm wondering, is your arg -- is your answer the same as it was to Justice Boyd for Section 28 that, ultimately, nobody, there is nobody that has standing? I mean, if, if a voter and a representative don't have standing to challenge Section 26 -- under Section 26, who does?

ATTORNEY LANORA C. PETTIT: So a good example might have been if Representative Dominguez had been rerunning for election in, in House District 37, we do not dispute he would have had standing. But the reason he doesn't have standing and MALC doesn't have standing through him is that he was seeking election in the Senate, not in the House. And so, his, his concern is only a concern as a voter which this Court recognized in many cases including Brown against Todd and in NAACP against Andrade that a voter's interest by itself is not enough to establish standing.

CHIEF JUSTICE NATHAN L. HECHT: Would any of the Plaintiffs have standing if the '22 election would be affect -- cycle election would be affected?

ATTORNEY LANORA C. PETTIT: So they would not have standing. Our advisory opinion argument would not be applicable. So they admitted in a statement of jurisdiction to this Court that they were not seeking to change the maps for this election cycle. And because Section 28 is an important -- a part of the Constitution, Justice Busby, we do agree with that. The let, let -- we -- the State takes the position that the Legislature is required to redistrict again in January of 2023. And as a result, because they are not seeking to change the outcome -- the maps for this election cycle, then there is no -- whatever this Court would be to order would not have an effect on a real word election and that's an advisory opinion impermissible under this Court's jurisprudence.

JUSTICE J. BRETT BUSY: But it seems like we can't assume one way or another that redistricting will, in fact, occur or will not occur in the next regular session at this point.

ATTORNEY LANORA C. PETTIT: So this Court does presume that the Legislature will act in accordance with its constitutional obligations. But if it doesn't, there is a constitutionally prescribed method to ensure that it does, in fact, happen. Specifically, it goes to the Legislative Redistricting Board. And if that doesn't happen, then this Court has jurisdiction under a petition for a writ of mandamus to require the Legislative Redistricting Board to, to redistrict as it's required under the Texas Constitution.

JUSTICE J. BRETT BUSY: But how do we know that the Legislature agrees with your clients that they have to redistrict in the next session? Maybe they regard the redistricting that they've already done as satisfactory.

ATTORNEY LANORA C. PETTIT: So we don't know that, that's not in the record. However, the court does presume absent evidence which is the Plaintiffs' burden to bring forward. If that's not going to happen, no such evidence is present. And, again, if the Legislature doesn't do so, then the Legislative Redistricting Board in its jurisdiction is triggered and the Legislative Redistricting Board does include the attorney general. So -- and even if the -- of other member's ...

JUSTICE J. BRETT BUSY: But the attorney general is not your client. It's the Governor and the Secretary of State, right?

ATTORNEY LANORA C. PETTIT: Correct. But the Attorney General's Office position is that this is -- that redistricting would be required. So to this extent, your concern is a matter of fact. The let -- the attorney general who is on the Legislative Redistricting Board is of the opinion that Section 28 requires redistricting in 2023. But if the other members of the Board do not agree, again, a petition for a writ of mandamus is the constitutionally prescribed remedy because they have now -- I've talked about their statement of jurisdiction. In their brief on the merits, they've tried to walk back a bit on their, their acknowledgement saying they were only talking about the primary election, not the general election.

But the -- that is flatly contradictory to this Court's co -- decision earlier this year in [inaudible] where you held that even in the early cycles of an -- election cycle which include both the primary and the general, it is judicial overstepped to interrupt in a way that would require delay of the election. After the primaries, particularly given that the only map they proposed would require changes in 68 districts, would throw this election cycle into absolute chaos, and that is what [inaudible] is attempting to avoid.

JUSTICE JAMES D. BLACKLOCK: The, the, the question though is whether the, the prudential problem with remedies that interfere with ongoing elections also creates a jurisdictional bar to deciding cases. The, the, the fact that it would be unadvisable to issue relief that, that interfered with the election, does that necessarily mean that no such relief can happen such that there -- this isn't redressable and there's nothing to, to decide. I'm not sure that -

ATTORNEY LANORA C. PETTIT: So we ...

JUSTICE JAMES D. BLACKLOCK: - there's a necessary connection between those two concepts.

ATTORNEY LANORA C. PETTIT: I agree with your Honor that it would not render the case moot which is why our argument is based -- framed as an advisory opinion. Because of this Court's jurispr -- this Court's binding previous precedent re-- remedy that affects '22 is not available because this is only a -- because these maps will only apply in 2022 unless, and in response to Justice Busby's questions, a number of different contingencies were to happen, that is what brings an advisory opinion without a practical effect because the ...

JUSTICE JAMES D. BLACKLOCK: I-- in theory though, we would we be -- the, the question is, do we have the power? If, if we saw some overwhelming reason to do so, to say notwithstanding what we said in [inaudible] and this is a special case where we need to interfere with an election, is that-- is that outside of our power jurisdictionally or is that just something that would be unadvisable for us to do?

ATTORNEY LANORA C. PETTIT: So it would not be out-- outside of your power if he were to say that the 2022 election has to be halted and started again. That would be unadvisable, they have waived that requirement as our position in their statement of jurisdiction, and that is where why we raise the advisory opinion claim the way that we did. This Court could also get, for example, under the principles that the Supreme Court announced in [inaudible] addressed jurisdictional questions in any order that it chooses. But here, because the jurisdictional question raises an important issue of constitutional law, we suggest the appropriate time to do so -- to address it would be when it would have a practical effect which it will not here and we request that you reverse.

JUSTICE EVAN A. YOUNG: You're saying not the -- you're saying it's not moot but there would be an advisory opinion anyway.

ATTORNEY LANORA C. PETTIT: Yes, your Honor, because ...

JUSTICE EVAN A. YOUNG: But a very small subset of, of cases, isn't it?

ATTORNEY LANORA C. PETTIT: Yes, your Honor.

JUSTICE EVAN A. YOUNG: How could it -- how -- if it's not moot that means, by definition, there is a live controversy. So how is resolving a live controversy given an advisory opinion? I just don't understand that.

ATTORNEY LANORA C. PETTIT: So -- if your Honor were willing to re-- reverse the [inaudible] cases and ignore their concession and the statement of jurisdiction, we would agree that it's not moot. Their statement in the cour -- in the -- their statement in their statement of jurisdiction that they were not seeking to change the election maps in this election cycle which includes, in our opinion, both the primary election and the general election is what causes us to say that this is an advisory opinion.

JUSTICE EVAN A. YOUNG: But not moot. On, on the [inaudible] point, isn't one of the issues that -- if you're saying it's not moot, that must mean that there's still the potential for a live controversy. You've argued that there was the stream of, of things that could happen and should happen. You know, almost certainly, I think you're saying, wo-- would happen that the, the -- I guess is the fundamental part of your, your advisory opinion argument. But the problem is that if, for some reason, it doesn't work out that way, then [inaudible] and the, the many cases that it relies upon would spring into effect and say, "Oh, well, we can't inter-- interfere with it now."

So even though we really thought back in March of 2022 that this would be taken care of, it hasn't been, we're going to use these maps, we can't interfere with an ongoing election. So try again, and then, then we come back and people say, "Oh, well, clearly, the Legislature is going to fix it next time." And all these things will happen so it would just be an advisory opinion. I mean, that, that's where I'm wondering if this gap between, you know, it's not moot but it would be an advisory opinion isn't quite right.

ATTORNEY LANORA C. PETTIT: Not, not at all, your Honor, because we -- this is a very unique factual circumstance and if, for example, the chain of events including this Court not issuing a writ of mandamus were to happen to require these maps to go into effect in 2024, the claim its -- at least one of the claims itself would be a fundamentally different controversy. So in that circumstance, the controversy would be moot because they would have failed to redistrict in the first re-- regular session after. And then, the question would also under, I think it's [inaudible] from 2018, the United States Supreme Court, you would have to establish that the maps were, were still -- you look at the, the totality of the circumstances of the maps at the time that the Legislature failed to act in this sort of very, very contingent sort of system. But that is -- it -- we're sort of basing our views on whether or not there is a contingency that might affect the outcome of the case.

That is when probably the stereotypical definition of an advisory opinion, because it's contingent and if he is this Court's term.

CHIEF JUSTICE NATHAN L. HECHT: Any other questions? Thank you, Ms. Pettit. We'll hear from the Appellees.

MARSHAL: May it please the Court. Mr. McCaffity and Mr. Jefferson will present argument for the Appellees. Mr. McCaffity will open for the first ten minutes.

ORAL ARGUMENT OF SEAN J. MCCAFFITY ON BEHALF OF THE APPELLEE

ATTORNEY SEAN J. MCCAFFITY: May it please the Court. I'm here today representing the Mexican American Legislative Caucus and I want to give the Court some context for which they can analyze the three procedural hurdles that the State raises as defenses. Ultimately, the Mexican American Legislative Caucus believes that the court splitted the jurisdiction ruling below should be affirmed because not only is they're a live controversy, MALC, Mexican American Legislative Caucus, has the appropriate standing as well as there is a clear waiver of sovereign immunity under the Declaratory Judgment Act.

The Mexican American Legislative Caucus has a time on a tradition of challenging voting rights and protecting the Latino engagement in the political process. It's founded in 1973 for the purpose of ensuring that Hispanic Americans and Mexican Americans and Latino populations had appropriate representation in the State. And it has been a hallmark of their approach as well as their activities to do things like have educational outreach initiatives to engage Latino voters as well as serve as plaintiffs and actively litigate on behalf of Latino interest in voting rights legislation. In particular, they've been found to have been a proper plaintiff in the last cycles redistricting litigation in federal court.

JUSTICE JAMES D. BLACKLOCK: What, what is MALC as a -- what kind of corporate entity or ...

ATTORNEY SEAN J. MCCAFFITY: It-- it's a nonprofit organization, that is a caucus of the Legislature put together that they raise funds, they conduct activities as well as have membership that is ...

JUSTICE JAMES D. BLACKLOCK: I-- is it incorporated? Is it just an informal association or what ...

ATTORNEY SEAN J. MCCAFFITY: I actually believe it is a nonprofit organization, but I don't remem -- they have bylaws, I know that everyone does but I don't remember the specific type of entity that it is. But there is, in fact, an, an entity with, I believe, whether it's an incorporation, LLC, or whatever, but there is a nonprofit entity with bylaws where they have members that as long as you represent a majority Latino district, you're invited, it doesn't matter. You do not have to have Mexican American descent, heritage. And so, they try to engage the Latino population. And one of the ways they do that, and to make sure they're participated fully and publicly in the pro -- political process is by outreach as well as defending in a -- voting rights or other constitutional infringements on those interests.

The one before the court today is -- happens to be the Article sectio -- Article 26 of the Constitution or Section 26 of the Constitution of Texas which specifically requires the Legislature re-- reapportion the House of Representatives to abide by what is called the whole county or the county line rule or the whole county line which the court addressed in 1971. It's [inaudible] and then again in 1981 in [inaudible] and both of those cases were brought by legislators and voters to remedy defects with the House [inaudible] because they violated the county line. There were no standing challenges to those legislators and those voters in those cases and the Supreme Court clearly held that the county line required a district to have its entitled population under the Texas Constitution when they're reapportioning. And the way that works, to, to give the Court an example is Cameron County currently has 420,000 roughly citizens and that's -- you can find that in the record of the Guitierrez Exhibit No. 7. It's the easiest one, I think, to look at.

The ideal district size is 194,000 and you can find that in Guitierrez Exhibit 8. And as a result, when you do the math for what would be the appropriate number of districts that Cameron County should be entitled to, its 2.16 districts. And as a result, the county line rule says, Cameron County gets two wholly contained districts within its borders, and then there's a surplus population which may be adjoined under the Constitution to a contiguous county but just one contiguous county. And in this case, the Legislature adopted a map that gave Cameron County just one wholly contained district and then split the county both to the west, across the Hidalgo border, and then to the north to the Willacy border, which are two independent violations. And since it's been pled, there was evidence clearly supporting those claims in the court below. And this ...

JUSTICE JAMES D. BLACKLOCK: If, if, if, if we disagree with you about how the, the county line rule works, would you agree that, that the plea should have been granted so that if, if you haven't pled a valid claim, the pleading should be granted so we do -- my question is, really, do you agree that we do need to get into the merits here to decide whether the plea should have been granted?

ATTORNEY SEAN J. MCCAFFITY: I think you could get into the merits because I think this is a straightforward issue and that we are correct and you would end up writing the opinion that says that the county line rule has been violated. I do think that on a plea to the jurisdiction standard, if you decided, ultimately, that there -- you should look first to the pleadings. And if the pleadings have alleged a claim to determine whether or not there was a violation of the county line rule, we clearly have satisfied

that burden. As a result, on a plea to the jurisdiction, we don't think you need to go any further and I think their arguments under sovereign immunity, viability, ultimately, breakdown at that point.

But because of the clear -- clarity, we believe that this -- the findings in the court below as well as the violation or the plain language of the Constitution, if the court were inclined to write an opinion, ultimately on the merits, I think you could get there and, and basically answer the question now. We're not necessarily asking the court to do that, we're not asking the court to enter any injunctions enjoining the election. We think the proper thing is to affirm and at a bare minimum reverse and remand because all of the jurisdictional arguments that they made are not incurable defects. They can be remedied by a plea and amendment if necessary. In fact ...

JUSTICE J. BRETT BUSBY: What about the State's argument that the federal law trumps Section 26? And so, they, they couldn't -- you know, there, there seems to be some suggestion that maybe they couldn't comply with the county line rule because of federal mandates. Could that be cured by amendment?

ATTORNEY SEAN J. MCCAFFITY: Well, there's -- the -- in this particular case, there is not an argument that the -- this particular county line violation could not be cured because of federal mandates. In fact, and I, I apologize, I do not have the record cite at my lips, tip of my lips. But there is an exhibit that the -- that we went into the record below that shows a number of demonstration maps that allowed for the county line violation to be fixed that complied with one person, one vote requirements as well as other Section 2 voting concerns. So that isn't an issue in this case. And, in fact, the state has a -- does not have any evidence or an argument that we have to yield to the federal rules of the US Constitution, in this case. That's the only reason. And, in fact, we believe that the [inaudible] case says, it's their burden at the trial court in order to actually defeat this argument, to prove that they had to comply with one person, one vote in equal protection concerns or they had to comply with the Voting Rights Act in order to justify a break in of the whole county line rule.

And that is essentially the only exception to the whole county line rule based on this Court's findings in Smith v. Craddick. And as a result, they didn't satisfy that burden in the court below and we believe that's why the three-judge panel ultimately denied the plea to the jurisdiction and said ...

CHIEF JUSTICE NATHAN L. HECHT: I seem to recall from the record that the change in those three districts occurred late in the process and -

ATTORNEY SEAN J. MCCAFFITY: That's correct.

CHIEF JUSTICE NATHAN L. HECHT: - maybe at the behest of one legislator?

ATTORNEY SEAN J. MCCAFFITY: That is correct.

CHIEF JUSTICE NATHAN L. HECHT: And so, if the Legislature had announced before the session started or early on, you know, when we get to this, I'm going to insist that these districts come out this way, whatever else the map has in it. Could -- you have sued then at that point to say, no, you can't draw the maps that way.

ATTORNEY SEAN J. MCCAFFITY: Could we sue before the bill had been passed -

CHIEF JUSTICE NATHAN L. HECHT: Yes.

ATTORNEY SEAN J. MCCAFFITY: - to enjoin the type of drawing?

CHIEF JUSTICE NATHAN L. HECHT: If he'd said that's what I'm going to do.

ATTORNEY SEAN J. MCCAFFITY: I actually don't know the answer to that, your Honor. I don't -- I -- the -- what strikes me is I don't know that you could ask if we're an injunction that enjoins a specific route of legislating while the legislating is going on before you have an actual idea of what the map it is that you would be seeking.

CHIEF JUSTICE NATHAN L. HECHT: So, so the -- most of my concern is with the advisory, however we characterize that issue. The argument is that the legi -- the next session may not do anything. But if he does, it could fix this problem.

ATTORNEY SEAN J. MCCAFFITY: It could but ...

CHIEF JUSTICE NATHAN L. HECHT: And so, why should we treat this situation any differently than a legislator saying early on, I'm not going to -- this is what I'm going to do?

ATTORNEY SEAN J. MCCAFFITY: Be-- because the law is set and until the law is repealed, this is the law. There is a map that will be used for the elections until the next census and it is the law.

JUSTICE J. BRETT BUSBY: But you're not seeking any relief with, with respect to the next elections?

ATTORNEY SEAN J. MCCAFFITY: Well, not -- when you say next elections, do you mean general election -

JUSTICE J. BRETT BUSBY: 2022.

ATTORNEY SEAN J. MCCAFFITY: - in 2022 or 2024?

JUSTICE J. BRETT BUSBY: Well, before, before the next legislative session that the Chief mentioned.

ATTORNEY SEAN J. MCCAFFITY: So before -- our statement in jurisdiction is we're not seeking to interfere in the election cycle before this Court and not necessarily before the general election based on the court's findings in [inaudible]. If the court ruled very quickly and the trial court below, the three-judge panel had a trial and issued injunction, it is possible that you could have an injunction that stopped the elections in Cameron County, in Hidalgo County, in Willacy and have special elections for the general election in order to cure the constitutional infirmity of HB 1. That's possible. Practically speaking, we do not believe that is likely to occur but we don't, for purposes of mootness, standing, or any of the justicia-- justiciability issues, we don't think that matters because, right now, HB 1 is on the books. And until it is repealed or modified, it is constitutionally infirm.

And if the court, to use their example of the speculation that you might engage in to try to get to this advisory opinion argument, if the court says, "We're going to dismiss this," and there is no finding that there's a county line violation and there's no finding of standing, it would be entire -- or Mr. Jefferson's Section 28 argument, it would be entirely reasonable to assume that the Legislature says, there's not a constitutional problem. We don't need to redistrict again.

JUSTICE JEFFREY S. BOYD: But under your theory, the day that the census results come out, you could file suit that day and say the current maps are constitutionally infirm and that claim would be right.

ATTORNEY SEAN J. MCCAFFITY: Well, you wouldn't have -- I don't think you would have the maps to challenge the day after the ...

JUSTICE JEFFREY S. BOYD: Well, the, the maps that existed prior to the day the new census comes out. Because what the Petitioner is arguing is, look, we should presume that the State, the Legislature, is going to fulfill its constitutional duty to redraw these maps so that they are constitutional. And what you're saying is that you can't presume that, 2023 may come and go and they may not fix this.

ATTORNEY SEAN J. MCCAFFITY: Correct.

JUSTICE JEFFREY S. BOYD: But if that makes it right, then why wouldn't a claim be right the day that the census comes out and yet we're still under the maps we've been in for ten years? Can't we -- wouldn't that, that -- it seems to me she's got a point there, that would be right because we're going to presume the Legislature is going to fix this.

ATTORNEY SEAN J. MCCAFFITY: I think that the -- that might be the case. If it -- there, you would have an issue, I believe, one, with having to comply with federal law which would require them to comply with how they draw the maps which is in our -- my opinion a little bit different than the issue of whether or not there is a violation of the specific Texas Constitution. And here, we know that the maps [inaudible] until they are repealed or modified or constitutionally infirm and the only way to redress that would be for a plaintiff to be able to challenge it. It's a different situation than a speculative drawing of the maps all together completely.

CHIEF JUSTICE NATHAN L. HECHT: Any other questions?

JUSTICE EVAN A. YOUNG: Just -

CHIEF JUSTICE NATHAN L. HECHT: Yes.

JUSTICE EVAN A. YOUNG: - one, one last thing. Can, can I make sure you concede that your standing is entirely derivative of, of Representative Dominguez or are you suggesting basically [inaudible] by itself as an entity would have standing.

ATTORNEY SEAN J. MCCAFFITY: We're, we are arguing that there's associational standing. I don't think it's as necessarily solely to Mr. Doming -- or Representative Dominguez.

JUSTICE EVAN A. YOUNG: But he's the only one that you have [inaudible] ...

ATTORNEY SEAN J. MCCAFFITY: He is the one that testify about Cameron County specifically, but -- there, for instance, the HB 38 member also represents those communities and have interest in, in -- you know, that are implicated the representational interest of Latino voters in Cameron and Hidalgo County. And so, we think that there are multiple members that could potentially drive the derivative standing argument for MALC, but we believed that mis -- Representative Dominguez is the clearest, the most obvious as a resident voter and member ...

JUSTICE EVAN A. YOUNG: Can you respond briefly to Ms. Pettit's point that, that he -- that there would be standing for him. She says, but only if he was running for reelection and short of that, there's nobody?

ATTORNEY SEAN J. MCCAFFITY: Yeah. I, I don't think that is the type of standing that is necessarily implicated here. We're not necessarily claiming through derivative standing that he has candidate injury. That is a potential possibility and you could argue that he chose specifically to run for Senate and gave up that office because of the county line violation. He testified to that in the court below. But as a voter and a resident of cal -- Cameron County, he has and he, he is implicated personally as a voter that has lost the ability to have a more solid foundation -- representational foundation in the House of Representatives for Cameron County.

CHIEF JUSTICE NATHAN L. HECHT: Any other questions? Thank you, Mr. McCaffity.

ATTORNEY SEAN J. MCCAFFITY: Thank you.

CHIEF JUSTICE NATHAN L. HECHT: Mr. Jefferson, we'll hear from you.

ATTORNEY WALLACE B. JEFFERSON: May it please the Court. I think an answer to some of the questions that were posed by members of this Court, the issue from the State, the State is essentially arguing that no one can enforce constitutional limitations on the Legislature's power to apportion legislative districts. That would be the effect of holding that the Plaintiffs here like standing because if these voters and these candidates like standing, no one could ever sue to enforce mandatory provisions of the Texas Constitution. The second point, this case is not moot and it would not be an advisory opinion. The State suggests the case is moot or would be advisory because the case cannot affect the 2023 election. Its argument fails for two reasons and they're both very sound, I think.

First and most fundamentally, the constitutional dispute between the parties is, is, today, and will be a live controversy as long as the current maps under SB 4 exist. But to counter this, the State predicts that the Legislature will enact maps in the regular session in 2023. The State's argument then is that this, this dispute may become moot in 2023, but as the court knows, and history has confirmed, the Legislature and the Redistricting Board often either fail or, Justice Busby, refuse to act. The State points to no precedent holding that a challenge is moot today based on hypothetical future contingency.

JUSTICE J. BRETT BUSBY: Should we presume that they will absent evidence to the contrary?

ATTORNEY WALLACE B. JEFFERSON: The evidence is in the record, is in the history of the court, and the, the problem is that even if they were to act in 2023, the issue today, as we sit today, as I'm standing at the podium today, is that these maps are unconstitutional.

JUSTICE J. BRETT BUSBY: But I thought that your client wasn't asking for relief with respect to the 2022 elections.

ATTORNEY WALLACE B. JEFFERSON: So second, and I'm going to repeat what counsel just said on, on our side, the State is wrong to say that we have abandoned equitable relief regarding 2023 election. If you look at the statement of jurisdiction, what the court -- what we were doing and we're students of the court, we read your opinions, Justice Blacklock and Young, for the court in the [inaudible] case. And this Court made clear that as a prudential matter, there are time constraints where up, you know, when -- at the time you wrote the opinion, we were up on the primary election, the general election is right around the corner. And so, we said that we are not known as this Court to disturb the current election cycle at the point in this litigation. We're not seeking an injunction from this Court in this case. But ...

JUSTICE JANE N. BLAND: Can you presume all [inaudible] and a final judgment say, you know, sometime this summer, what impact would that have and what relief would you seek in connection with the 2022 election?

ATTORNEY WALLACE B. JEFFERSON: So that's a very good question. And the three-judge panel was interested in what is your remedy. You know, what are you going to do if you get the relief? If we declare this unconstitutional? And what we argued before the, the panel, the district court panel is, the time and again, in Texas and in other states and in federal court, the courts have found ways to intervene and, and, and stop elections or redistrict in the midst of campaigning. And so, our relief is not limited. What, what we want is for the court, this Court, to affirm the district panel's decision on jurisdiction and send it back down for the, the very litigation that you're talking about, to answer those questions, to see if there's a remedy. The second ...

JUSTICE JANE N. BLAND: I'm saying, presume that the, the -- we, we grant relief here and it goes back to the three-judge panel -

ATTORNEY WALLACE B. JEFFERSON: Yes.

JUSTICE JANE N. BLAND: - and the three-judge panel finds in your favor, then what? And I'm -- before, before the general election, then what? Then what?

ATTORNEY WALLACE B. JEFFERSON: Then, a remedy could be ordering elections under proper districts. I mean, that, that would be an extreme ...

JUSTICE JANE N. BLAND: With, with the current candidates?

ATTORNEY WALLACE B. JEFFERSON: That would be an extreme remedy. The question is how ...

JUSTICE J. BRETT BUSBY: But I thought your argument for Senator Gutierrez was he didn't have to stand for election in 2022.

ATTORNEY WALLACE B. JEFFERSON: He shouldn't have to stand for election in 2022.

JUSTICE J. BRETT BUSBY: So how would that be effectuated if you would have to redraw his district and say you don't have -- go back to the original district and you don't have to run again?

ATTORNEY WALLACE B. JEFFERSON: Yes or draw ...

JUSTICE J. BRETT BUSBY: How is that administrable by, by a court to be able to say, "Well, you, you change this district and you shouldn't have." That seems like a political question.

ATTORNEY WALLACE B. JEFFERSON: So one, one potential is to revert to the old maps and, and Guitierrez would not run in 2022 but would run in 2024 because there has not been a constitutional redistricting. But the second answer to your question, I think, your Honor, is this is-- this is a question not of power to decide. It's not a jurisdictional question, it's a question of what would a proper remedy be? What would the scope of the remedy be? And that is a -- that is not a core question about whether the court can function, it's a question about what the remedy would be.

And what we would be doing is borrowing from what happens -- what has happened in Texas in prior election contest, what has happened in other states and what the federal courts have done to intervene back during the Voting Rights Act in, in one person, one vote. What has the remedy been and how close to an election has it been possible to pursue it? That's what we would say. And with respect to stand of this ...

JUSTICE JAMES D. BLACKLOCK: Can we turn to the merits a little bit?

ATTORNEY WALLACE B. JEFFERSON: Yes.

JUSTICE JAMES D. BLACKLOCK: This requirement that redistricting take place every ten years that's in the Constitution came about in the-- in the 1950s? Is that right or the '40s?

ATTORNEY WALLACE B. JEFFERSON: Forties. Yes.

JUSTICE JAMES D. BLACKLOCK: Okay. And what was the rule before that? What, what was the Legislature's authority prior to that amendment with respect to redistricting?

ATTORNEY WALLACE B. JEFFERSON: So I don't know the, the exact -- what, what the exact status was right before the constitutional amendment. What I do know is what was taking place when the, the Legislature convened to present a constitutional amendment to the people and it was under Section 28. It was the time for apportion-- apportionment by the legislative redistricting and the Legislature came up with a provision to submit to the people that says, the Legislature shall, at its first regular session after the publication of each census, apportion the State. Now, the original didn't have regular session and it just said a session. And so, the Legislature was very clear that it must be regular and that term must be given meaning.

JUSTICE JAMES D. BLACKLOCK: But what I'm getting at is if the background rule is plenary power to redistrict whenever you feel like it, if you're the Legislature, it's hard to read these amendments as withdrawing that power as opposed to imposing an additional obligation to make sure that you do it every ten years.

ATTORNEY WALLACE B. JEFFERSON: Well, but, but it -- the -- but the additional obligation also imposes the way it's done. It, it is clear that it has to be during a regular session and I don't think anyone is arguing that that word is not there and that it shouldn't have some meaning. And if you're arguing that it doesn't have meaning, then the argument is that the courts and the Legislature don't have to comply with the Constitution and I think that's the essential problem here.

JUSTICE JAMES D. BLACKLOCK: Well, they, they comply by redistricting in 2023 which is you say is the next -- is the first regular session after the, the census.

ATTORNEY WALLACE B. JEFFERSON: Yes, except they've done it before the first regular session after the census.

JUSTICE J. BRETT BUSBY: Well, then, what if-- what if they're -- they've done that to comply as they say with the federal Constitution?

ATTORNEY WALLACE B. JEFFERSON: I wo -- I, I don't think that that's a valid argument. The, the -- under, under the Texas Constitution, they're, they're, they're -- the only way they can redistrict is this way and there's no there ...

JUSTICE J. BRETT BUSBY: And so, the, the Texas Constitution doesn't have to give way to the federal Constitution on this?

ATTORNEY WALLACE B. JEFFERSON: Well, but we don't see in the federal Constitution any mandate to redistrict and a special session. There's no-- there is no conflict between the federal and, and the state Constitutions here. And, and, and, and, and importantly, if they don't do it and if they can't do it, and this was-- this was our lawsuit in the federal court. If they are precluded, the state is precluded by the Texas Constitution from redistricting because it's not a regular session, then the remedy is a federal lawsuit which is what we filed. And that was the premise of this suit in federal court. We're not blaming the Legislature in this instant. We're saying that the Constitution precludes them from doing the job that they would otherwise do in a regular session. And ...

JUSTICE J. BRETT BUSBY: So our Constitution can tell the State Legislature that they cannot comply with federal mandates?

ATTORNEY WALLACE B. JEFFERSON: No. The, the mandates are going to be complied with. The Constitution, through our federal lawsuit, you know ...

JUSTICE J. BRETT BUSBY: No, but I'm talking about the Legislature, not a federal judge -

ATTORNEY WALLACE B. JEFFERSON: Right.

JUSTICE J. BRETT BUSBY: - wanting to follow the federal law. They can't do that.

ATTORNEY WALLACE B. JEFFERSON: So the -- if you're asking can the Texas Constitution -- is Section 28 valid which was adopted by the people with a 70 percent vote, can they mandate how redistricting is done and when it's done, I will say yes.

JUSTICE J. BRETT BUSBY: But if there's -- it -- and it sounds like everybody agrees that section-- that section says that you shall do it at the first regular session and the, the question is, can you also do it at other times? And if the Constitution is not clear on that, one way or another, why shouldn't we presume that, that the Legislature can, can act at another time in order to fulfill its federal obligations?

ATTORNEY WALLACE B. JEFFERSON: Well, we think the precedent shows -- I mean, the, the -- that this has been answered not directly but [inaudible] by the attorney general, by the text of the statute itself, by the legislative practice, it's never happened in a special session after a census, by the common [inaudible] ...

JUSTICE J. BRETT BUSBY: Did, did they ever been this late before?

ATTORNEY WALLACE B. JEFFERSON: Sure. Yes. It's, it's always -- it's often late, it's often come up to the crunch time and, and contemporary cont -- commentators, the people who wrote at least on my shelf the, the books, the two volumes on the Texas Constitution agree with this principle. And the attorney general in a prior opinion which we've cited has said the same thing. So the Constitution precludes the redistricting in this session. The remedy, what we propose in the federal court, was to go that route and, and, and in any event, this is not a question of the court's power to act. And that question, on the narrow question whether the three-judge panel had jurisdiction, I think the three-judge panel got it right and this Court should affirm that. It's a narrow holding, send it back down, and then we'll see how we can work out the remedy.

JUSTICE EVAN A. YOUNG: Do you agree that we cannot address this at all unless we first conclude that Senator Guitierrez has standing or is there's any [inaudible]?

ATTORNEY WALLACE B. JEFFERSON: I think you've got the county line -- whole county jurisdiction for that. But I also think the, the standing exists. I have -- but I won't talk about it. Our brief is pretty clear on this point and, and if the Senator doesn't have standing, then no one has standing both as he's a voter and a senator and one who's impacted directly by this election. Justice Devine in your dissent, you, you make some very points in last week's dissent in the [inaudible] case about standing. We all know what it takes to run an election, a statewide or a huge district. The expense, the time, the effort both as a senator and hi-- himself as a voter. He has the standing and if he doesn't, no one does. And if he -- and if no one does, then what this Court would be saying is the Constitution doesn't -- you, you, you don't have to defend, preserve or protect the Texas Constitution. I think that would be a very disappoint ...

JUSTICE EVAN A. YOUNG: But if we say that he doesn't, I mean, I, I know that, that you're, you're -- you've got strong argument.

ATTORNEY WALLACE B. JEFFERSON: Yes.

JUSTICE EVAN A. YOUNG: If we say he doesn't, then we should say nothing else about Section 28, correct? That sho -- that cannot be part of our analysis into why he does or doesn't have standing [inaudible].

ATTORNEY WALLACE B. JEFFERSON: I think standing is obviously a fundamental question and ...

JUSTICE EVAN A. YOUNG: And utterly divorced from -- sometimes the merits really inter-- intersect with our jurisdictional inquiries but not in this particular instance.

ATTORNEY WALLACE B. JEFFERSON: I don't-- I don't think they do. And I think under, under, under Patel, you don't have to reach the merits to, to agree with us that -- to affirm the three-judge panel's ruling on its jurisdiction. Thank you.

CHIEF JUSTICE NATHAN L. HECHT: Any other questions? Thank you, Mr. Jefferson. Ms. Pettit, you have five minutes.

REBUTTAL ARGUMENT OF LANORA C. PETTIT ON BEHALF OF APPELLANTS

ATTORNEY LANORA C. PETTIT: Thank you. Starting with the last point about the senator standing. The -- as Justice Busby pointed out, the only way that, that the senator could avoid election here would be to return to, as Mr. Jefferson pointed out, the previous maps which are a violation of federal law. The only way that you could rule with -- for them on the merits is to say that the Legislature couldn't correct that violation. That is contrary to bedrock principles of interpretation that try to avoid that type of constitutional conflict. Turning to MALC's representational standing, they were a little vague when they were up here about who the other members of MALC are who might have standing from whom they can have derivatively because there are two MALC members who live in Cameron County. One is Representative Dominguez who was seeking senatorial election and the other is Representative [inaudible] and he was not seeking reelection at all.

And indeed, he actually supported the map early in the process and I'm looking at, at page 691 of volume 4, 4 of the reporter's record. It combined Willacy and Cameron County in the way challenged here. Now, turning to Justice Hecht's question about whether the map or whether a claim would have been right at the time that the census data was issued, it would not be. The -- that's what this Court held in Perry against Del Rio and I believe it was 2001. At that point, it was speculative whether or not the maps would have been appropriately done by the Legislature. It is similarly speculative here in 2023 and in -- that what will happen in 2023. And in light of that, anything this Court has issued would be a non-justiciable advisory opinion.

JUSTICE JAMES D. BLACKLOCK: On, on the county line rule, is the State's interpretation of the county line rules such that in a big county like Harris County you're only required to have one district that's wholly contained in the county, and then you could have 20 other districts that sort of filter out into the surrounding counties and that would -- is, is the State's view that that would satisfy the county line rule for Harris County?

ATTORNEY LANORA C. PETTIT: No, your Honor, for practical and precedential purposes. So Harris County has 25 or 24 different districts. It would be practically impossible to do what the Plaintiff suggest the State would insist it can do which is to assign only one representative, and then to, to, to divide the rest of it up to contiguous counties because there aren't enough contiguous counties. But even if that ...

JUSTICE JAMES D. BLACKLOCK: But it's not impossible to draw a little, you know, tiny little streaks out into the other counties.

ATTORNEY LANORA C. PETTIT: [inaudible] or [inaudible] something like that.

JUSTICE JAMES D. BLACKLOCK: Yeah.

ATTORNEY LANORA C. PETTIT: But that goes to the precedential concern that this Court decided in Craddick and in Clements which is that there had been widespread cutting of the counties that suggested a lack of a good faith effort to comply with the county line rule and to keep counties together, and that the State doesn't challenge that here because it doesn't have to. There are no allegations here that the State did not attempt to co-- to comply with the county line rule in good faith. There was a req-- a request in this particular instance in a single county to combine two counties that had, as I mentioned before, substantial shared interests that was supported by five members of MALC. That -- and five of the seven members of the ha -- of the [inaudible] delegation. That's not ...

JUSTICE J. BRETT BUSBY: So you, you concede that, that -

JUSTICE JAMES D. BLACKLOCK: So do-- does the State have ...

JUSTICE J. BRETT BUSBY: - that you don't comply with this map, doesn't comply with the county line rule?

ATTORNEY LANORA C. PETTIT: No, your Honor. We don't concede that ...

JUSTICE J. BRETT BUSBY: But it sounded like that's what you were saying.

ATTORNEY LANORA C. PETTIT: No. Would -- so, so the county line rule, like all rules in redistricting, have to be interpreted with a good faith requirement, that is our position.

JUSTICE J. BRETT BUSBY: Well, how is it good faith to say, if you can have more than one representative in the county, you need to do that and you don't have more than one representative in the county?

ATTORNEY LANORA C. PETTIT: So maybe it's helpful to pa -- back up and talk about the -- there are three different provisos within Section 26 and to talk about them individually may be able to better answer your question. The first rule -- the first proviso is where there is a representative who -- or, or county that is entitled to representative. They must be assigned a representative, I believe that's what Justice Blacklock was talking about before. That only says a representative, it does not say repre -- or representatives. The only time the word "representatives" is used in the plural is later when they're talking about excess population and you actually see representative or representatives, county or counties always in the disjunctive. So there, because that it can comply with doing any of the or options, that's what implies this sort of good faith requirement that allows the county that what happened here.

JUSTICE J. BRETT BUSBY: So, so your ...

JUSTICE JAMES D. BLACKLOCK: So it's representative or representatives and you have the choice, then why couldn't you do the, the one representative in the middle of Houston and everybody else crossing county lines?

ATTORNEY LANORA C. PETTIT: Because of the way this Court has rep -- has interpreted in Craddick or actually specifically Clements where there has to be an effort to keep counties together. In the orig -- as a matter of original interpretation, you might be able to do that assuming you could practically draw it in a way that would comply with the contiguous county rules. Here, tellingly, however, the only way that they suggest that they could do this without violating federal law is to redraw effectively the entire map which the requirement of com -- good faith compliance with the -- if county line rule does not justify in these circumstances, if ever.

JUSTICE EVAN A. YOUNG: In, in the, the Section 28 issue, if we did not have all the federal law overlays, we didn't have the redistricting whatever, nothing other than the constitutional admonition that the Legislature redraw these in its first regular session, if, if nobody has standing here today suppose that, that in that hypothetical rule that I've just described, the, the Legislature didn't do it and then it went to the next one and didn't do it, who, who have standing then?

ATTORNEY LANORA C. PETTIT: So there, somebody would have -- if this were -- if the allegation were that the redistricting reoccur too late, then somebody who is in a malapportioned district would have standing under various principles into -- including the guarantee of equal protection. Here, the ...

JUSTICE JANE N. BLAND: Somebody meaning a voter?

ATTORNEY LANORA C. PETTIT: A voter would have it because this, this ...

JUSTICE JANE N. BLAND: So it's not your position that it, it must be a candidate?

ATTORNEY LANORA C. PETTIT: No, your Honor.

JUSTICE JANE N. BLAND: That ...

ATTORNEY LANORA C. PETTIT: S-- so there are very limited circumstances where voters have jurisdi -- have standing in this Court's jurisprudence. One of them is for an equal protection violation. And so, if under the hypothetical that Justice Young listed, there would be a clear equal protection violation here because of the changes in apportionment or, or population spread across the state. There would undoubtedly be a malapportioned county and a representative of that county could, could come out and say, my rights under equal protection or, or my rights to have this to be apportion are not being a properly, properly vindicated by the Legislature and they [inaudible] ...

JUSTICE JANE N. BLAND: And by representative, you mean voter?

ATTORNEY LANORA C. PETTIT: Yes. So -- sorry. And, and ...

JUSTICE JANE N. BLAND: Sometimes representatives because of incumbent protection or -

ATTORNEY LANORA C. PETTIT: Correct. And ...

JUSTICE JANE N. BLAND: - other reasons may have interests that diverge from their constituents.

ATTORNEY LANORA C. PETTIT: Yes, your Honor. But the-- but the constituent's interests are different in this case and in -- there are no constituents here who are alleging they are somehow harmed because the Legislature tried to comply with federal law.

JUSTICE EVAN A. YOUNG: The -- but the, the, the idea that you just articulate I think is that you would have that right as a voter regardless of Section 28. So would there ever be someone that could bring a real Section 28?

ATTORNEY LANORA C. PETTIT: Possibly not because there, there the, the al -- the claims would be very intertwined between an equal protection and this Section 20-- and this Section 28 claim. It's possible that Section 28 is a political issue as opposed to something else, but there's also the concern that and the Legislature appears to have created a right by statute to vindicate for remand under the petition for a writ of mandamus. And so, under that circumstances, the delay itself might be causing the harm but it is very intertwined with equal protection jurisprudence.

CHIEF JUSTICE NATHAN L. HECHT: Any other questions? Thank you, Ms. Pettit.

ATTORNEY LANORA C. PETTIT: Thank you.

CHIEF JUSTICE NATHAN L. HECHT: Case is submitted. That concludes the arguments in the cases set for this morning and the Marshal will adjourn the Court.

MARSHAL: All rise. Oyez! Oyez! Oyez! The Honorable, the Supreme Court of Texas, now stands adjourned.