UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WALTER SESSION, ET AL.	§	
Plaintiffs,	§	
	§	**CIVIL ACTION**
VS.	§	
	§	**NO. 2:03CV354**
RICK PERRY, ET AL.,	§	
Defendants.	§	**CONSOLIDATED**
	§	

NAACP RESPONSE BRIEF

TO THE HONORABLE PANEL OF SAID COURT:

NOW COMES Plaintiff NAACP in this matter and files this brief in response to the State Defendants' brief:

RESPONSE

Apparently the State Defendants are of the belief that the only Plaintiff party that should be addressed is the Jackson Plaintiffs. They even characterize them as the lead Plaintiffs, though no such designation was ever assigned in this case, nor is one warranted. There are a number of Plaintiff parties and perhaps more importantly a number of issues independent of partisan gerrymandering that are at issue on remand in this case.

Further, the State Defendants' position is apparently that African-Americans can have no political rights that are independent of political

rights of the Democratic Party. Such an argument is myopic, possibly intentionally so, as it essentially guts any equal protection argument for any protected class of voter that votes cohesively. African-Americans have been cohesive voters for generations (when the right to vote was available for exercise) as a result of the political issues and not the party. History shows us that African Americans were largely members of the Republican Party prior to the days of President Franklin Delano Roosevelt, and did not become largely democratic until the days of Lyndon B. Johnson and his passage of the Civil Rights Act of 1964. This past election yielded an increase in African-American votes for President Bush in Ohio to 16% according to CNN exit polling data. History also shows that on the issues important to the African-American community currently, it is the democratic legislators that are voting with the African-American community.

The State Defendants' argument that the Supreme Court's intention on remand was that it simply intended to apply the *Vieth* plurality opinion to see if there would be a different result. Since we all know that the four justices in the plurality have said that political gerrymandering is not justiciable, the Court would have engaged in a useless act. Clearly the United States Supreme Court took action for a reason and cannot be presumed to engage in a futile gesture.

Political gerrymandering clearly encompasses race claims as the courts have recognized for quite some time, given that should the courts choose not to intervene in cases involving minority rights the majority would simply trounce on the rights of racial and ethnic minorities in the name of partisan advantage. Fortson v. Dorsey, 379 U.S. 433, 439 (1963). Additionally, as Justice Stevens said in his dissent in *Vieth*, state action must be undertaken in a non-discriminatory manner in order to ensure that there is not discrimination against a minority simply because of the desire of the majority party to further bolster its position.

Contrary to the State Defendants' position, *Vieth* is not a better case for consideration of the matter of political gerrymandering==unless of course racial minority rights have less value than political majority rights. This case presents a set of facts where political and racial gerrymandering are intertwined with each other and cannot be separated as in *Vieth*. Pennsylvania is not a state covered by the Voting Rights Act and the case did not involve the same nature of claims as this case. In such a state, the possibility of marrying race with party as a means of disregarding the effects of redistricting on racial minority populations has a potential claim for legitimacy, however, there is no legitimate claim in Texas and other Southern states. As the NAACP indicated in our original brief on remand, if

the Court takes the position that a political party can violate racial minority voting rights simply because they vote for the other party, then the Court's would have invalidated the Voting Rights Act and engaged in a violation of the separation of powers principal. In other words, the Voting Rights Act would be stripped of all reasonable meaning and enforceability.

What this Panel's decision currently in place does is make a white voter's vote worth more than a non-white's vote. As those who have orchestrated this redistricting effort have desired, the public face of the Democratic Party has incorrectly become a minority face. This is desired because of the influence race has on voting and voting rights in Southern states like Texas with a horrendous voting rights history and the ever increasingly inventive ways to thwart enforcement of equal voting rights laws.

As the evidence established in this case, much larger percentages of white voters can vote their preference in a Congressional race and actually get that person elected than can African-Americans. Since the total number of racial minority districts have been so drastically reduced, an African-American voter has much less likelihood in electing the candidate of their choice than does the average white voter. One would venture to say that in nearly all 32 Congressional Districts the majority of white voters voted for

the successful candidate, whereas this can only be said for African-American and Hispanic voters in a fraction of the seats despite having a numerical majority in the state! Simply put, under the new arrangement in Texas, there is no longer a one man one vote principle, but instead one white man one vote and one racial minority with a fraction of a vote.

PRAYER

The NAACP respectfully requests that this Panel take up the racial inequality argument on remand and decide it independently of the political issue as briefed initially on remand and order Plan 1374C invalid. The African-American communities across this state were abused in large part by Plan 1374C and unnecessarily so: even to achieve their purely partisan goals.

Respectfully submitted by,

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ATTORNEYS FOR Texas-NAACP

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the above and foregoing instrument was served via email delivery to counsel in this case on January 14, 2005.

Robert Notzon