No.

In The
Supreme Court of the United States

John T. Morris,
Appellant,
v.

State of Texas, et al.,

Appellees.

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

Jurisdictional Statement

John T. Morris, *pro se*
5703 Caldicote St.
Humble, TX 77346
281-852-6388
johnmorris1939@hotmail.com

Questions Presented

1. Do districts, to the degree, they are not drawn to conform to Court recognized criteria, burden, to this same degree, the First and 14th Amendment political rights of parties and their adherents?

2. Is there a frequent election objective in Article 1, Section 2 of the United States Constitution that requires a redistricting to allow as many voters in a district as possible who have voted in a previous election in the district to use their First Amendment based accumulated knowledge of an incumbent or candidates to vote in a subsequent election?

3. Does Court recognized redistricting criteria and a frequent election objective, understood to be in Article 1, Section 2 of the U.S. Constitution, combined, present a reliable means in terms of fairness by which to measure the representational rights of political parties and their adherents?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Federalists Papers,

UNDERLYING ORDERS

The consolidated case number is SA-11-CA-360-OLG-JES-XR (5:11-cv-360). The case, Shannon Perez, et al., v. State of Texas, et al. Refer to Texas Democratic party case No. 17-680, Order on Plan C235, Aug 15, 2017, App. 89

JURISDICTIONAL STATEMENT

§ 1253. Direct appeals from decisions of three-judge courts

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

CONSTITUTIONAL PROVISION

Article I Section 2 of the United States Constitution

The House of Representatives shall be composed of Members chosen every second year by the People of the several states

First and Fourteenth Amendments

"Congress shall make no law...abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble"

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"

This brief addresses only Case Number SA-11-CA-615-OLG-JES-XR, John T. Morris v. State of Texas, et al., part of the consolidated case above.

STATEMENT OF CASE

In June, 2011 the Texas 82nd Legislature passed a congressional redistricting bill, Plan C185, that drastically changed the 2nd District. This followed a redistricting in 2003 that moved our long-term 8th District boundary and put my wife and I in the 2nd District. This major change to our district prompted me to file a gerrymandering complaint, as I had in 2005 when I had to discard the long-term knowledge of my incumbent due to a boundary change. This claim, Civ. Nol 4:11-CV-02244, was filed on June 27, 2011 in the U.S. District Court Southern District of Texas, for declaratory and injunctive relief and, designation of a three-judge court. My claim stated that a large number of voters unfamiliar with my incumbent "swamped" out my knowledge of the incumbent rendering it nearly meaningless. My case was subsequently consolidated with a number of other cases of which Perry v. Texas, SA-11-CA-360-OLG-JES-XR was the lead case. My claim was based on a violation of the First and 14th Amendments and a violation of a frequent election objective embedded in Article 1, Section 2 of the U.S. Constitution which infers the citizen's candidate knowledge to be the indispensable element in the election process. The defendant State of Texas filed a motion to Dismiss for Lack of Subject Matter Jurisdiction and, in the alternative, Motion for Judgement on the Pleadings on Aug 17, 2011. The

court subsequently dismissed my case on Aug 20th but then issued an amended order stating that any appeal need to be taken only after a final order on the consolidated case Perez v. Perry. The Texas Democratic Party and Boyd Richie and I filed a Motion for Reconsideration and on Oct 3rd, 2011 the court issued an order stating that these motions would be held under advisement till further notice in order to protect our rights to appeal in the most expeditious manner. After a lengthy trial that involved numerous parties the court in November 2011 drew up interim
plans for the 2012 elections which the Supreme Court vacated. The parties themselves hastily drew up new interim plans that were adopted March 19, 2012. After the 2012 elections and after the 2013 legislative session began, at the end of the session on June 23 the State adopted the interim plans as their permanent plans. On June 28 and 29, 2013 the State filed motions to dismiss all of the claims. On July 1, the court denied the State's motions and allowed all defendants to file a motion to amend their 2011 complaints and to include the 2013 plans as well. I filed my amended complaint on July 15, 2013 which included an additional First Amendment claim, based on my realization of the infringement inherent in distorted gerrymandered districts, along with my Article 1, Section 2 claim. After a lengthy response and reply to the Court's allowance to amend, on Sept 6, 2013 the court granted the motions to amend. On May 14, 2014 the State once again filed a motion to dismiss all claims against the 2011 plans as moot and also those claims they referred to as the 2013 partisan-gerrymandering claims one of which was mine. Once

again after responses and replies June 6, 2014 the Court issued a lengthy reasoned order that, though it allowed most of the claims to go forward, dismissed mine and the Texas Democratic Party claims which led to this appeal.

On 8/15/2017 the district court issued an interlocutory, Order On Plan C235, which allowed me to file my notice of appeal pursuant to 28 U.S.C. §§ 1253 & 2284. On 9/27/2017 I filed my Notice of Appeal and on 10/6/2017 the filing fee. Copies of said U.S. Codes and my notice of appeal and fee receipt are in the appendix. U.S. was a party to- these proceedings.

SUMMARY OF ARGUMENT

A. Frequent Election Objective

Gerrymandering that effectively prevents any voter who voted in a previous election from using his or her accumulated knowledge, and experiences with an incumbent and/or candidates, by failing to allow them to vote in a subsequent election in his or her same district or when the incumbent is placed in a different district, without good cause is a violation of the frequent election objective embedded in Article 1, Section 2, of the U.S. Constitution as understood by the framers of the Constitution and by the representatives who ratified it and an abridgement of the First and 14th Amendment rights of the voters. The frequent election objective or principle, as these first citizens understood it, only allows a limited period of time between elections in order to give voters the

opportunity, sooner than later, to remove an incumbent when they have learned of unacceptable behavior making their First Amendment knowledge of their incumbent the primary factor in an election. This objective is obviated when a gerrymandered district requires any citizen to discard their accumulated knowledge of their candidate or candidates by not allowing them to vote for or against their candidate or candidates in a subsequent election in their same district without substantial justification. This can occur either when voters are removed from a district or when their incumbent is moved to another district. And there is also an additional First Amendment burden on voters when after discarding their knowledge of their former incumbent they are required
to learn about a new incumbent or candidates in a relatively short period of time. This First Amendment violation can also occur when voter's with knowledge of the incumbent are removed from a district and a large number of partisan voters are gerrymandered into the district separating the common knowledge voters require to communicate and make informed decisions.

Though there is normally a ten year period between redistricting at no time can there be allowed so gross a violation of the First Amendment that it requires voters to discard their knowledge of their incumbent or be burdened to acquire new candidate knowledge in haste. And with mid-decennial redistricting this time frame may become irrelevant.

B. Redistricting Criteria

Districts that are politically gerrymandered

rarely conform to Court recognized criteria in terms of compactness, communities of interest and geographic integrity, etc., and tend to have a highly irregular configuration that is often long and narrow and drawn with an erratic boundary. Districts that are drawn in this manner burden political parties and their participants in their efforts to communicate and associate with potential adherents, and in terms of their access to needed information. By contrast districts that are compact with a symmetrical configuration and relatively straight and uniform borders will have a central location equidistant from the borders allowing for communication and association efficiencies and a ready access to relevant
information. A district that is compact and does not extend an inordinate distance from one end to the other will tend to have fewer communities of interest. Such a district will have a more focused understanding of the relevant issues and lessen
possible confusion and dissension between party adherents. And there are also efficiencies when districts have fewer governmental institutions and a more uniform geography. On the other hand when districts are not drawn to conform to recognized criteria to this same degree do they burden political parties and their adherents. Districts that are long and narrow clearly burden party participants merely in terms of travel time alone. And any burden or excess demands on parties and their active adherents is clearly an abridgement of their First and Fourteenth Amendment rights. Districts drawn to conform with Court recognized redistricting criteria minimize this abridgement.

C. Representational Rights

In LULAC v. Perry, 548 U.S. at 419, there was the implication that those who believed that because there was a lack of proportion between the votes received by either party and the number of seats that the parties won this indicated that their representational rights were violated. The technical problem with this argument is that since states are divided into districts with an unavoidable random ratio of party adherents in each district, and since voters often switch from one party to another, there is no way of predicting the outcome of the vote in each district and the final number of seats a party will win. This could be defined as an unintentional gerrymander if the number of seats are not proportional to the state-wide vote. Under these circumstances there is no such thing as representational rights in terms of partisan proportionality. If on the other hand we consider partisan politics in respect to the basic contest that it truly is, the parties achieve at election time what their effort and skills dictate. And just as in a sporting contest where the athletes have their right to win ensured by a level playing field so to should representational rights be defined as a partisan right to a fair opportunity to appeal to potential adherents. Gerrymandering when it fails to adhere to Court recognized redistricting criteria, and the objective in Article 1, Section 2, of the Constitution, upsets the playing field for both parties by burdening their opportunities to appeal to potential voters. The party that is able to control the redistricting process, though, is in fact able to weigh these burdens against the

acquisition of congressional seats. The resulting nullification of these burdens on the party in control of the redistricting process leaves the other party or parties with these burdens still relevant, and consequently infringes upon their representational rights to a fair opportunity to appeal to potential voters.

ARGUMENT

A. Imbedded in Article 1, Section 2 of the Constitution is a frequent election objective based on a First Amendment speech right that requires states, when they redistrict, to consider voter's who have voted in a previous election to have the opportunity to vote in a subsequent election and use their accumulated knowledge of an incumbent or candidates

To have a representative you have voted for numerous times and have now decided to vote against - to have a political party change your district so that you are now outside your representative's district and no longer able to vote for him, is not what the democratic system is supposed to be about. To be able to vote for your representative from one election to the next was at the heart of what the framers of the U.S. Constitution, and those who ratified it, were concerned with when they debated whether to adopt a two year term or one year term for congressional representatives. This being truly a matter of the knowledge a voter had acquired about a candidate or incumbent since a previous election to be used in a

subsequent election. In an election term that was short enough to allow the voters to remove someone from office before they fell into corruption or was no longer responsive to them. They used the expression "frequent elections" to refer to the representational security the voter obtained from a short election term and were well aware of its historic roots.

The framers of the Constitution and representatives to the Constitutional Conventions who ratified it knew of the ancient Saxon understanding of government where "[l]arger government when needed by the Saxons...had grown out of their small communities, out of their continuous consent...never granted 'to any man for a longer time than one year.' Indeed, the Saxon made annual elections the 'quintessence' of their constitution, 'the basis of the whole fabric of their government'."[1] According to historian Gordon Wood this was drawn from a pamphlet meant to instruct the Pennsylvania Constitutional delegates in 1775 and known to Thomas Jefferson at the time. A Saxon representative served from one election to the next based on the continuous consent of his constituents which implies that they had a year to year knowledge of his activities.

As Englishmen they were also familiar with the Triennial Acts of 1640 and 1694 that by law required a parliament be held following an election every three years - "whereas frequent and new parliaments tend very much to the happy and good agreement of the

---

[1] The Creation of the American Republic 1776-1787, Gordon S. Wood, 1996, p. 228

King and people." [2] They were also familiar with the English Bill of Rights issued in 1689 during the reign of William and Mary wherein it was declared to be one of the rights of the people "that for redress of all grievances and for the amending, strengthening and preserving of the laws parliaments ought to be held frequently."[3] Acts that were meant to prevent the Crown from holding parliament in session for either a long period of time or not at all, both of which were considered restrictions on the electoral rights of the citizens. As Madison would say, there were "acts" that were "deemed necessary in that kingdom for binding the representative to their constituents." Fed 52. In the view of the framers and the representatives who ratified the Constitution an election must be frequent in order to allow the citizens to utilize their knowledge of the candidate in their district in order to keep their incumbent or elect someone new sooner than later. There is a clear implication that the same citizens who voted in a previous election should certainly make this determination in a subsequent election with an ongoing knowledge of the candidate's behavior.

"In an effort to...regulate the frequency of elections and sessions," all the colonial assemblies at one time or another had tried to pass triennial or septennial acts modeled on those of the English Parliament, but these for the most part, as Richard

---

[2] Select Documents of English Constitutional History Ed. G.B. Adams and H.M. Stevens 1924, p. 471

[3] Id. p. 465

Henry Lee lamented in 1766, had been unsuccessful." So when they had the opportunity in 1776 to write their own Constitutions, " [a]nd since these Americans were familiar with the radical Whig maxim, 'Where ANNUAL ELECTIONS end, Tyranny begins,' all the states except South Carolina provided for the yearly election of their houses of representatives."[4] This concern with tyranny was reflected in the Constitution of Virginia's 1776 Bill of Rights where one of the rights listed was entitled "Frequent elections,"and which stated "[t]hat the legislative and executive powers of the State...may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station...by frequent, certain, and regular elections." [5] The idea was not frequent elections for its sake alone. The objective embedded in the term "frequent elections" was clearly defined numerous times by the framers of the Constitution and by the men who represented the citizens of the states at the ratification conventions. The objective being that before the reelection of representatives their record and behavior must be examined based on the citizen's accumulated knowledge to see if they kept their promises and were obedient to the needs of their constituents. In considering the means by which the new Constitution "will maintain a proper responsibility to the people," James Madison, in Federalist Paper number 57,

---

[4] The Creation..., Supra p 166

[5] Source Of Our Liberties, Ed. R. L. Perry & J. C. Cooper New York University Press, 1972, p 311

further stated, in referring to the requisite requirements for public service, that "[a]ll these securities, however would be found very insufficient without the restraint of frequent elections," when the power of representation "is to cease, when their exercise of it is to be reviewed," and "a faithful discharge of their trust shall have established their title to a renewal of it." And of course **"[**t]he Federalist has always been regarded as entitled to weight in any discussion of the Constitution." Wheeling, P. & C. Transp. Co. V. Wheeling, 99 U.S. 273, (1878). Faithfulness and trust can only be established between the same constituents and their incumbent over time through a continuous relationship during those years from one election to the next.

This frequent election objective was very much on the minds of the representatives to the Constitutional ratification conventions. Though the records of the debates primarily reveal a concern as to whether representatives should be allowed to serve two years rather than one year the underlying concern was this frequent election objective and this was mentioned explicitly. In this respect the Court has always understood that "[t]he words of the Constitution should be given the meaning they were intended to bear when that instrument was framed and adopted." Scott v. Sanford, 19 How, 393.

Speaking in respect to the acceptance of a two year term, Fisher Ames, elected to the First Congress, said during the Massachusetts ratification debates that "[t]he people will be proportionally attentive to the merits of a candidate. Two years will afford opportunity to the member to deserve well of them, and

they will require evidence that he has done it." [6] This obviously implies that a representative, after being elected, will be under the watchful eye of those who elected him or her and what they learn must be allowed to have a bearing on the next election when these same citizens will vote once again. The frequent election objective as Fisher Ames understood it would have no meaning if voters in a previous election were forced to discard their knowledge of their incumbent by preventing them from voting in a subsequent election. Faith in a representative is established over time, from the initial election by a group of voters and over subsequent elections by these same voters. Gerrymandering that shuffles citizens in and out of districts aborts this process and continuous mid-decennial redistricting can put an end to it all together.

Shortly after Massachusetts ratified the Constitution a pamphlet was published which was written by Mercy Warren, the sister of James Otis, whose argument against British-imposed writs of assistance initiated the first tendencies of the colonists towards independence, wherein she stated that the "annual election is the basis of responsibility...a frequent return to the bar of their [c]onstituents is the strongest check against the corruption to which men are liable." [7] A frequent return to the bar to be judged

---

[6] The Documentary History of the Ratification of the Constitution, (DHRC), State Historical Society of Wisconsin, Ed. J.P. Kaminski and G.J. Saladino, 1986, Vol. V. p 1192

[7] DHRC, Supra, Vol. XVI, Commentaries, Vol. 4, p 278

whether they kept their promises and proved their responsibility to their constituents. In respect to a citizen who voted in previous elections and has been gerrymandered out of a district, this surely must be considered an abandonment of this frequent election objective. Which is shown here to be clearly at the heart of Article 1, Section 2 of the U.S. Constitution and certainly a First Amendment right to freedom of speech.

In a speech before the Connecticut ratification convention the Governor, Samuel Huntington, expressed his agreement with the new Constitution in respect to a two year term of office for the representatives by saying that, "[i]t is sufficient, if the choice of representatives be so frequent, that they must depend upon the people, and that an inseparable connection be kept up between the electors and elected."[8] Surely Huntington would not have approved of gerrymandering that moved groups of voters away from there incumbent into another district to then have a new incumbent they were unfamiliar with. It can be assumed that he would certainly say this is adverse to the frequent election objective when he advised that an "inseparable connection" be maintained between "electors and elected." And what of mid-decennial redistricting which has the potential to make this reshuffling more frequent and unpredictable by means of the political gerrymander?

Rufus King, another representative at the Massachusetts convention, and one of the framers of

---

[8] DHRC, Supra, Vol. XV, Commentaries, Vol. 3, p 312

the Constitution, believed it "proper, that the representatives should be in office time enough to acquire that information which is necessary to form a right judgement; but that the time should not be so long as to remove from his mind the powerful check upon his conduct, that arises from the frequency of elections, whereby the people are enabled to remove an unfaithful representative or to continue a faithful one."[9] These words make it emphatically clear that there must be a continuum where faith in a representative is established and then renewed from one election to the next certainly implying that those who voted for a candidate previously must have the opportunity to vote once again in a subsequent election. Not to be able to vote again in their district for or against their incumbent based on the knowledge they have gained of him or her would make a subsequent election for these voters little more than a charade. A Rev. Samuel Stillman also spoke at the same convention and again expressed the matter succinctly. "In all governments where officers are elective, there ever has been and there ever will be competition of interests. They who are in office wish to keep in, and they who are out, to get in: The probable consequence of which will be, that they who are already in place, will be attentive to the rights of the people, because they know that they are dependent on them for a future election, which can be secured by good behavior only."[10] In respect to all of the above "[t]he historical necessities and events of the

---

[9] Id. p 1203

[10] Id. p 1454

English constitutional experience inform the United States Supreme Court's understanding of the purpose and meaning of provisions of the Federal Constitution." Loving v. United States, 517 U.S. 748.

If we return to the circumstances which brought this complaint, where a voter with knowledge about his incumbent, had now decided to vote against him because in this voter's mind he did not display good behavior, and now because this voter's district was gerrymandered his knowledge was swamped out by new partisan voters, he could not effectively utilize his knowledge of the behavior of his incumbent, would this not be considered a perversion of the principle Rev. Stillman was endorsing. The principle being the frequent election objective in Article 1, Section 2 of the U.S. Constitution. Gerrymandering defeats the purpose of frequent elections. The knowledge a voter acquired based on his First Amendment rights is now often useless which is contrary to the fact that "[t]here can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will on a general election." Anderson v. Celebrezze, 460 U.S. at 796.These same sentiments as quoted above were also expressed in Pennsylvania,[11] New York,[12] and Virginia.[13]

"[T]here was a fierce debate over the provisions on the first paragraph of Section 2 that said members of the House of Representatives would be elected every

---

[11] DHRC, Supra, Vol. XIII, Commentaries, Vol. 1, p 332

[12] DHRC, Supra, Vol. XVII, Commentaries, Vol. 5, p 315

[13] DHRC, Supra, Vol. XV, Commentaries, Vol. 3, p 1197

two years. In Massachusetts, all state officials were elected annually to 'safeguard...the liberties of the people,' and any deviation from that practice was bound to provoke opposition."[14] Since all of the states but South Carolina had adopted annual elections after the Declaration of Independence the debates indicated that those that did were not about to give up the implied objective in frequent elections.

"Divide the largest State into ten or twelve districts and it will be found that there will be no peculiar local interests in either which will not be within the knowledge of the representatives of the district." James Madison, Federalist Paper Number 56. "Great weight is properly attached to contemporaneous exposition of the Constitution as by the essays of the Federalists." Cohens v. Virginia, 6 Wheat. 264. These "peculiar local interests" that Madison stated should be the manner in which districts are set apart from one another also corresponds with the frequent election objective. Boundaries that are maintained due to peculiar local interests enable the citizens to consider the representative's behavior in respect to these interests and act accordingly at the ballot box. The connection between a group of voters and their representative must remain unaltered in order to allow the frequent
election objective to function. This of course is not always possible in terms of population distribution and

---

[14] Ratification - The People Debate the Constitution, 1787-1788 Pauline Maier, 1st Edition, 2010, p 171

movement when redistricting. But when it becomes necessary to alter a district the procedure should allow as many of the voters who voted in a previous election to be given the opportunity to vote in a subsequent election. And by doing so it would serve as an additional check on partisan legislative redistricting that goes beyond recognized criteria. In terms of adjudication, this would give the Court a constitutional tool by which to determine whether a state has been gerrymandered illegally.

It could be argued that a large number of citizens gerrymandered into a newly drawn district would still be inclined to familiarize themselves with the former behavior of their new incumbent. But since most voters get their day to day news about their representatives through newspapers or, more commonly now, by means of the internet or television, it would require research into archives of one kind or another, something that is time consuming and unlikely to happen. And since there is a partisan slant on almost every issue in the media it would take time to know who and what to believe. Rather than doing a historical review of their incumbent's behavior they would likely simply focus on the larger issues and/or take a cue from their party leaders. This is well and good and possibly all they have ever done, but this is still a betrayal of the interests of an incumbent's long-time constituents who have knowledge of him or her that was gained through the years. And it is also a burden on the First Amendment rights of those responsible voters who were taken from an incumbent they had knowledge of and who will now have to take the time and make the effort to know what is required

of them to make an informed decision in respect to their new incumbent in their new district. And since this is deeply involved in partisan politics it cannot help but intrude upon their representational rights.

B. Districts that do not conform to Court recognized criteria burden parties and their adherent's in their efforts to appeal to potential voters and is an abridgement of their First and 14th Amendment rights

Party adherents and particularly party activists are always burdened with demands to some extent in pursuit of party objectives. Some of them will work full time while the majority will be men or women with everyday family obligations or students with educational requirements. For all of these individuals spare time is a precious commodity. For some money is not an issue but for most it is always something that must be considered. Any degree of political activity requires a certain amount of time and/or money. In this respect the manner in which a voting district is drawn can have a pronounced effect on a party participant's time and, to a lesser extent, their money. And in addition time and money demands are often just enough to effect a participant's motivation to be more or less active. A properly drawn district, whether a large rural district or a relatively smaller urban district, that conforms to Court recognized criteria as enumerated in Bush v. Vera, 517 U.S. at 966, will minimize these demands. Demands based on First and 14th Amendment rights of communication and association.

The district most often referred to when one is given an example of a gerrymandered district is a district that is noticeably long and narrow. A district of this kind creates a multiplicity of inordinate demands on the average party participant. The most obvious characteristic that will create an excessive demand on the participant's time will be the distance he or she would be required to travel from one point to another within the district in pursuit of party objectives. In an effort to persuade voters in their district and motivate them to turn up at the polls on
election day activists may have to travel the length and breadth of a district many times. They may have to canvas door to door in an area far from where they live. The telephone and internet are useful but almost invariably used to reach those who are already party adherents, and used primarily to ensure that they will vote on election day. To persuade someone who is wavering between one party and another it almost always requires a face to face meeting that can often be time consuming. And in a district that is not compact the time it takes to travel from one place to another reduces the amount of effective work that can be done. In respect to these burdens on party activists I speak from experience having been active in party politics for most of my adult life or approximately 45 years.

This same long and narrow gerrymandered district also often tends to have existing political organizations that are loyal to the same party but far from one another. And due to the configuration of the district, rather than one or two central locations where these groups can all meet and coordinate their efforts they must take the time to meet separately at a

number of locations. A gerrymandered district with a different configuration might have one large area and a long narrow appendage. A district drawn in this manner could easily tend to lead to the dominance of those in the large area over those in the narrow appendage since time once again would inhibit overall participation. A long and narrow circular district can put the shortest distance common to all of the activists outside of the district altogether even though there may be more cost effective and familiar locations within the district. For these reasons the degree to which a district is not drawn in a compact manner is the degree to which it places excessive demands on political activist's and party adherent's in their efforts to efficiently communicate. And it should be noted that there are some adherents who cannot offer money in support of their party but only their time.

Districts that are strangely configured and ignore common interests can burden party participants merely due to the fact that there can easily be confusion as to what constitutes the primary interests of the district as a whole. And this confusion could lead to friction which would be a development that a party trying to unify its political efforts could ill afford, and create an unnecessary burden on First and 14th Amendment political rights. Districts that have large and small areas could lead to the interests of the smaller areas given less support than those in the large area. In this case serious concerns may not be translated into legislative action. It is also conceivable that a district that is not compact could have numerous interests due to the fact that it covers a more diverse geography but have few interests with the needed

political support that would make them district-wide concerns and possibly fail to be addressed by the candidates. In a compact district these issues mentioned above are certainly present but are minimized.

There are burdens on party participants when the boundary of a district is highly irregular where activists cannot be certain without a precise district map which voters are in the district and which are not, and it is at least an unnecessary inefficiency. Districts that are gerrymandered to be within the domain of more than one major governmental entity that citizens look to for similar basic needs could easily lead to conflicts. In a district such as this constituents seeking demands from their representative, in behalf of their respective governmental entities, may find these demands are in opposition to the other governmental entity and lead to friction. A circumstance that would burden a party seeking political unity and obviously create a time consuming demand on the First and 14th Amendment rights of speech and association of its members. These are all admittedly hypothetical circumstances but well within reason and the realm of possibility when districts are not compact and where common interests are not limited to a minimum.

All districts no matter how much they conform to Court recognized criteria are going to create burdens and demands on party adherents and activists and hence the primary objective in the redistricting process must be to minimize these burdens. Burdens which impact the First and 14th Amendment political rights of the citizens. And this can best be done by redistricting that adheres to recognized and reasonable

criteria. "A State's broad power to regulate the time, place, and manner of elections 'does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens.' " Tashjian v. Republican Party of Connecticut. 479 U.S. at 217. "To assess the constitutionality of a state election law, we first examine whether it burdens rights protected by the First and Fourteenth Amendments. Id., at 214.

A properly drawn district that is compact will provide a rough central location that is to some degree equidistant for all party adherents. This can afford them a true sense of their relative political strength within the district since most of them will be able to meet from time to time and convey a consensus of their concerns to their candidates. A compact district will minimize the demands on precious time constraints of the citizens wishing to do more to further the political objectives of their party. Travel costs, which may be a real concern in rural districts would be minimized. A compact urban district would minimize the frustration and danger that is always present when traveling in a high traffic urban area. Districts that are compact, that limit the number of governmental entities within them, and remain within a given geographic area to the extent possible, would limit demands on party activists, focus their interests and enhance long term relationships between party faithful. And, more importantly, between political adversaries which could contribute to a greater degree of understanding between them and lead to a more compromised understanding of representational requirements.

Naturally the ideal district based on recognized

criteria is not possible. But a mere glance at the maps of the three most recent redistricting efforts in Texas,, makes it clear that far more could have been done to conform with proper redistricting. For one thing a comparison between the maps reveals districts that have been partially moved from one location to another. This alone clearly places a burden on citizens who now have a new incumbent and must deal with a new political environment. Where these citizens who were removed to a new district were previously part of a partisan majority they may now find themselves members of a minority. As a new citizen in a new district there would be new issues to understand, and new people to communicate with and become acquainted with. And if they were now in a district where one party had an overwhelming majority and they themselves were now affiliated with the minority party, they may be inclined to cease all political activity what so ever. It should be noted that this reference to personal political associations and issues or interests were also a concern of the citizens when districts were first gerrymandered in 1812. "One of the habitual sentiments offended by this famous gerrymander law was that of community. Voters did not think of themselves as mere numbers; the petitions complained that old connections had been sundered by the new divisions. Genuine 'interests' had been divided. The only interest served was that of the party." [15]

---

[15] Political Representation In England and the Origins of the American Republic, J.R. Pole, 1966, p 247

My wife and I have lived in the North East portion of the Houston metropolitan area for over thirty years and have been active in politics the better part of those years. With the political knowledge we have of the North Houston area it is clear that if we were in a properly drawn district one possibility would be to include all of Montgomery County and once again a small portion of the Northeast corner of Harris County. This latter configuration was approximately the boundaries that were ordered as a result of Balderas v. Texas by the U.S. District Court for the Eastern District of Texas in 2001. This would encompass part of the Interstate-45 corridor as well as part of the Interstate-59 corridor and include a number of the large bedroom communities north of Houston that have definite common interests. Needless to say this Court drawn configuration only lasted two years before the state legislature redistricted in 2003. This new district was far from compact with few common interests. It incorporated the cities of Beaumont and Port Arthur near the Louisiana border, two cities which incidently are rarely if ever mentioned in our local newspapers. We thus went from a district that was fairly compact, with common interests, to a district that had a strange boundary and was far from compact and also with few common interests. But the insult to injury was that this 2003 redistricting removed us from the 8th District and put us in the 2nd District. We were now out of reach of the Congressman we, as former voters in the 8th District, had first voted into office in 1996. This was a frustrating circumstance since I for one had at this time decided to vote against him. In addition to now being unable to vote for or

against my former congressman, there are in this new district a great number of First Amendment political burdens that a properly drawn district would have minimized. These burdens include unnecessary travel time, disruption of long-time political relationships, an unnecessarily large number of common interests or lack of overall common interests, imposition of diverse geographical areas, lack of easy access to information, no uniformly accessible central meeting place and confusing boundaries. All burdens that would have been minimized in a district drawn to conform to Court recognized criteria.

Today the 2nd District, after the redistricting in 2013, now has little resemblance to the 2nd District that was so radically gerrymandered in 2003 (see map in appendix). Starting where we live northeast of Houston, the 2nd District incorporates a large area surrounding lake Houston, which is a little further northeast of the City of Houston. Curiously a couple of subdivisions in this area are not included even though they are within a school district that most of the rest of the district is in. The residents in this area do share numerous common interests. The district then extends to the west in a narrow arch for approximately ten miles while at the same time separating subdivisions for no apparent reason. There is in this narrow arch a number of common interests with the large area mentioned above which include the fact that they are both in proximity to the Houston International Airport. The district then extends west approximately fifteen miles into a much wider area and then south approximately twenty miles and forms the shape of a very broad inverted letter L. In the thirty or more

years since my wife and I have lived in this northeast area we have seen little in the news, other than national or state-wide issues, that would indicate there are any prominent "peculiar local interests," as Madison wrote in Federalist number 56, that we have in common with this large area to the west. In all of the area mentioned and to be mentioned there are common interests in the broadest sense of the words in that these are the general interests mostly of home owners with families. The district then narrows considerably to a very short corridor, which is less than a quarter of a mile wide and a quarter mile long, south into a large area west of Houston known as Houston's energy corridor, in reference to the numerous large energy related corporations that occupy both sides of the I-10 freeway, whereas the district only incorporates the north side. This area is primarily industrial and incorporates a large dike and that is supposed to protect the city of Houston. Once again overall district common interests here are not obvious. The district then goes southeast towards the heart of the City of Houston through an old middle income area. The district then narrows again and goes further southeast into a quaint historic district that has been revitalized near downtown Houston. This area is well known to have interests all their own. Then the district narrows considerably once again and goes southwest into a newly renovated area adjacent to downtown Houston where hundreds of new lofts have been built recently and have attracted a large community of young professionals. A little further southwest and the district incorporates what has come to be known as the LGBT area where the city holds a Gay Pride Parade

and art festival annually. A little further southwest and the district includes Rice University on one side of Main street while on the other side of the street is the museum district along with a very large Houston park and the Houston Zoo and just a little further south is the huge Texas Medical Center. Approximately one third of the district is within the boundaries of the city of Houston which has national interests and where the citizen's interests are focused on Houston city services and ordinances. Though the district includes most of the small city of Humble in the northeast near to us it skirts around the borders of ten other small municipalities where their common interests most certainly reach beyond their boundaries. If there are some "peculiar" common interests within this strangely shaped circular 2nd District you would not be faulted for failing to clearly recognize them. It is obvious there are numerous "peculiarities" in this district rather than that singular peculiarity that Madison wrote should distinguish one district from another, or at least in today's populated reality a minimal number of "peculiarities." And for this reason it is obvious that this alone is a very large burden on party workers trying to find a few major common local interest's that would help to unify support behind a candidate. In this case the party workers would have to rely on a number of the major state or national issues that divide the parties. Under these circumstances the purpose of dividing the state into districts is lost.

This then in fact is that long and narrow district hypothesized early on with all of the enumerated difficulties and burdens on party activists. The district is approximately eighty miles from one end to the

burdens on party adherents and consequently their First and 14th Amendment rights.

It is clear than that there is a direct relationship between the drawing of districts and First and 14th Amendment rights. A district drawn according to proper criteria minimizes burdens on the parties and their adherents. Partisan gerrymandering by the Republican controlled government of Texas did not intend to effect the rights of party adherents but "[i]n the domain of the indispensable liberties of speech, press, or association, abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action. Communications Assn. V. Douds, 339 U.S. at 393. Under these circumstances "[t]he First Amendment may be the more relevant constitutional provision in future cases that allege unconstitutional partisan gerrymandering. After all, these allegations involve the First Amendment interest of not burdening or penalizing citizens because of their voting history, their association with a political party, or their expression of political views." Elrod v. Burns, 427 U.S. 347, (1976).

C. When partisan gerrymandering is prevented due to proper redistricting its absence establishes minimal burdens on partisan activity and a fair pursuit of representation

Representational rights defined as an equal proportion of partisan congressional seats to state-wide same party votes is quixotic in states divided in

districts where multiple parties run numerous candidates for office and voters are allowed the freedom to change their minds at the voting booth. In all districts, even with the State's best efforts, there is always the possibility of a random gerrymander, if you could call it that, where packing and cracking of partisan voters is unintentional. The above definition of representational rights where congressional seats are in proportion to the partisan vote count is only something that can be wishfully envisioned after an election but never prior to an election except in a coercive government. Under these circumstances representational rights can only be considered in terms of a level playing field.

It should have been made clear in the argument in part B that gerrymandered districts burden parties and their adherents in their pursuit of votes to the degree these districts are drawn in a distorted configuration. This is also true in respect to the frequent election objective enlarged upon in part A above. When partisan voters must discard their accumulated knowledge of their incumbent because they have been moved to a new district, or their incumbent has been moved, they are burdened with a far different political environment. If they are coming from a district with well established political associations they must now work to establish new ones or work themselves into new associations. If they were part of a partisan majority and now part of a partisan minority they must establish themselves in this new and far different political environment. All together, gerrymandered districts that do not comply with recognized criteria and ignore the objective in frequent

elections burden the First Amendment rights of all parties and their participants. Both the party that controls the redistricting process and other parties in the state are equally burdened in their pursuit of potential adherents by partisan gerrymandering. The difference is that the party that controls the process can ignore these burdens since its aims have been met. Consequently there is a grossly uneven partisan field of play where one party has won before the game begins and the other is forced to play under duress, and where representational rights are infringed in a fairness definition of the term.

Districts drawn according to Court recognized criteria and where as few voters as possible are required to discard their accumulated knowledge of their incumbent or candidates would bring these burdens on party activity to a minimum and take away any party's ability to gerrymander and thus equalize the representational rights of the parties and their adherents.

IV Conclusion

The courts must use the First Amendment based standards available in recognized redistricting criteria and the frequent election objective in Article 1, Section 2 of the U.S. Constitution to determine whether redistricting has been accomplished properly and put an end to the possibility of gerrymandering and introduce an element of fairness to citizen's representational rights.

Respectfully Submitted

/s/ John T. Morris
John T. Morris
5703 Caldicote St
Humble, TX 77346
281-852-6388