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Regarding: Congressional

Message:
Testimony of W. David Griggs
Senate Redistricting Hearing - July 29, 2025

Good morning, Mr. Chairman, Members of the Committee, my name is David Griggs from Dallas County. I am an attorney currently in private practice, formerly a long-time civil prosecutor with the Federal Trade Commission in Dallas, and a long-time adjunct professor of government and political science at Dallas College and, currently, an adjunct professor of Election Law at the University of North Texas Dallas College of Law. Today, I am here representing myself.

It is from my experience teaching Election Law, and specifically, in reviewing the case precedents surrounding the issues of "Partisan Gerrymandering" and "Race and Redistricting" that I draw my comments opposing this mid-decade redistricting effort today.

I agree with the public comments of many of my fellow Texans who have previously testified regarding the pressure from the White House and the ill-advised nature of this whole process. I also agree with many who have pointed out the irony and flat contradiction of arguments between the statements offered by many legislators when they properly engaged in Redistricting in 2021 and when they testified in the El Paso litigation that the current districts were drawn race-blind - versus- the DOJ's position in their letter that those efforts were somehow race-based in violation of the Voting Rights Act (VRA) and the US Constitution.

My main purpose for testifying today is to reiterate the comments and testimony you have heard from other law professors and legal experts that the Department of Justice letter, dated July 7th, is a deliberate misrepresentation of the case law governing these issues and should not serve as any kind of legitimate justification for this reconsideration of district lines.

Allen v. Milligan (2023) – this was a U.S. Supreme Court case that upheld the applicability of Section 2 of the VRA after Sections 4 and 5 were decimated in the Shelby County v. Holder Supreme Court case in 2012. Allen v. Milligan was widely hailed as a positive case for the future of VRA enforcement of Section 2 except for dicta in Justice Kavanaugh's concurrence hinting that the Section 2 protections may not last forever. However, in the continued polarized environment of 2023, the court majority felt that the VRA Section 2 protections were

still relevant. DOJ lawyers distort the concurrence language to imply that the 2021 maps were race-based, and thus, TX would have to demonstrate a compelling state interest to keep them. This is an absurd argument and a serious misreading of the majority opinion.

Petteway v. Galveston County (2024) – this was a 5th Circuit U.S. Court of Appeals case where the Court expounded on "coalition districts" and what it takes for a successful claim to challenge them. The DOJ letter claims that coalition districts are no longer protected by the VRA. Again, this is a misreading of the opinion. The court does not offer what constitutes an unconstitutional gerrymander, it merely asserts that the VRA in the 5th Circuit no longer allows individual racial or ethnic groups to join together to CLAIM that the maps dilute their votes. (The circuits are split on this issue, by the way, and the Supreme Court may eventually weigh in.) Anyway, the case does NOT say that "coalition districts" are not protected. They are still valid and allowed to exist.

Furthermore, the DOJ letter makes a huge, misleading jump to say that the 5th Circuit as aligned itself with Bartlett v. Strickland.

Bartlett v. Strickland (2009) – this U.S. Supreme Court case determined that a minority group must meet a numerical test of more than 50% of voting age population to allow "cross-over district" claims. Although "cross-over districts" are not at issue here, the DOJ letter wants you believe that this numerical test should apply here for "coalition districts." However, like Petteway, supra, this case deals with claims brought by plaintiffs to create these districts. It is important to note here that the Supreme Court in Strickland did NOT consider the permissibility of such districts as a matter of legislative choice or discretion. The court stated that "The option to draw such districts gives legislatures a choice that can lead to less racial isolation," and that "[s]tates that wish to draw crossover districts are free to do so where no other prohibition exists." One can certainly argue that this legislative discretion also applies to the creation of coalition districts.

Thus, my conclusion is that the DOJ letter that claims that coalition districts in Texas are now race-based, and thus, illegal, based upon its characterization of these three cases, is deliberately misleading, based on a false reading of the cases involved, and is a poor justification for this entire process. As a former federal government civil prosecutor, I am shocked at the highly partisan, poorly drafted, mischaracterization of case law in the DOJ letter. If this mid-decade redistricting effort is based in any way on the DOJ position espoused in its letter, I suggest you find a different justification.

Thank you for this opportunity to share my thoughts on this issue.

W. David Griggs
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Farmers Branch, TX [redacted]

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