October 15, 2024

**By Electronic Filing**

The Honorable Jerry E. Smith
The Honorable David C. Guaderrama
The Honorable Jeffrey V. Brown
United States District Court for the
Western District of Texas
262 West Nueva Street
San Antonio, Texas 78207

cc: Counsel of Record via ECF.

Re. *League of United Latin America Citizens et al., v. Abbott et al.*
No. EP-21-CV-00259-DCG-JES-JVB (W.D. Texas)

Dear Judge Smith, Judge Guaderrama, and Judge Brown:

On September 30, 2024, the Court directed the parties "to submit letter briefs . . . addressing the applicability [to this case] of No. 23-40582, *Petteway v. Galveston Cnty.*, 111 F.4th 596 (5th Cir. 2024)." Order at 2 (ECF No. 810). Texas State Conference of the NAACP ("Texas NAACP) submits this letter brief to address the issues raised in the Court's order.

In *Petteway*, the en banc Fifth Circuit held, as a matter of law, that Section 2 of the Voting Rights Act does not allow "coalitions of racial and language minorities to claim vote dilution in legislative redistricting." *Petteway*, 111 F.4th at 599. The practical implication of *Petteway* is that, in this Circuit, Plaintiffs may sustain a Section 2 effects-based vote dilution claim only on behalf of a single racial or language minority group that constitutes a majority of the population under the first *Gingles* precondition, *i.e.*, the group in question must be "sufficiently large and geographically compact to constitute a majority in a single-member district." *Id.* at 614; *see also Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986). After *Petteway*, Texas NAACP's Section 2 vote dilution claims—all of which are currently plead as coalition claims predominantly on behalf of

Black and Hispanic communities that found themselves splintered as a result of Texas's redistricting—are not cognizable as a matter of law. [1]

That said, the plaintiffs in *Petteway* have yet to exhaust their appellate rights, and the Supreme Court may issue a decision that is contrary to this Circuit's en banc ruling. To conserve judicial resources during the pendency of any such appeal, Texas NAACP asks that the Court not dismiss its Section 2 coalition-based vote dilution claims and either permit Texas NAACP to try these claims while an appeal is pending or instead hold these claims in abeyance pending any appeal.

In the alternative, Texas NAACP seeks leave to amend its Complaint and as a part of that amendment, wishes to conform its expert proofs to the new law of this Circuit. Indeed, Federal Rule of Civil Procedure 15(a)(2) provides that a party may amend its pleadings with the "court's leave," and that Amendment should be "freely giv[en] when justice so requires." Fed. R. Civ. P. 15(a)(2). "Absent a substantial reason such as undue delay, bad faith, dilatory motive, repeated failures to cure deficiencies, or undue prejudice to the opposing party, the discretion of the district court is not broad enough to permit denial." *Mayeaux v. La. Health Serv. & Indem. Co.*, 376 F.3d 420, 425 (5th Cir. 2004). Here, the Fifth Circuit changed the law three years after Texas NAACP brought its claims against the State. Having pled its claims under the pre-*Petteway* standard in this Circuit, Texas NAACP seeks leave to conform its proofs of Section 2 effects-based vote dilution based on a single racial minority group (i.e., Black voting age population). Defendants will not suffer any undue prejudice since Texas NAACP would submit its amended Complaint and any corresponding expert reports at the same time by the earlier of any deadline set for supplemental

[1] The *Petteway* decision has no impact on the Texas NAACP's constitutional racial gerrymandering claims or its intentional vote dilution claims under Section 2 of the Voting Rights Act and the U.S. Constitution.

expert reports, *see* ECF Nos. 798, 799, or 60 days, or any deadline the Court should see fit to order. Furthermore, permitting Texas NAACP to amend its Complaint and submit expert reports at the same time will promote efficiency and ensure that Texas NAACP is prepared to try its case as soon as the Court sets a trial date. For the foregoing reasons, and in the interests of justice, the Court should permit Texas NAACP to amend its Complaint and submit new expert reports.

Dated: October 15, 2024.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 15, 2024, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

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