IN THE SUPREME COURT OF THE UNITED STATES

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Nos. 17-586, 17-626

GREG ABBOTT, GOVERNOR OF TEXAS, ET AL., APPELLANTS

v.

SHANNON PEREZ, ET AL.

_____

ON APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

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MOTION FOR DIVIDED ARGUMENT

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Pursuant to Rules 21 and 28.4 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that oral argument for appellants in these consolidated cases be divided between the appellants and the United States, which has filed a brief as appellee in support of appellants. This Court has scheduled oral argument for April 24, 2018, and has allocated a total of one hour for oral argument. The other appellees have filed a motion to enlarge the time for argument by 20 minutes, to be divided equally between each side.

If one hour is allowed for argument, the Solicitor General respectfully requests that appellants be allocated 20 minutes of argument time and that the United States be allocated 10 minutes of argument time. In the event that the other appellees' motion for enlargement of time is granted, the Solicitor General respectfully requests that appellants be allocated 25 minutes of argument time and that the United States be allocated 15 minutes of argument time. Counsel for appellants agree that these divisions of time would be appropriate and therefore consent to this motion.

1. These appeals concern redistricting plans enacted by the Texas Legislature in 2013 for the State's House of Representatives (the State House plan) and for the State's Representatives in the United States House of Representatives (the congressional plan). The 2013 plans were based, entirely or almost entirely, on interim remedial plans that a three-judge panel of the United States District Court for the Western District of Texas adopted in 2012, after that court had enjoined use of the State's prior 2011 redistricting plans pending separate preclearance proceedings in the United States District Court for the District of Columbia. In the decisions under review, the district court in Texas invalidated various districts in the 2013 congressional and State House plans on the grounds that they were intentionally discriminatory, were racially gerrymandered, or caused unlawful vote dilution in

violation of the Equal Protection Clause of the Fourteenth Amendment or the Voting Rights Act of 1965 (VRA), 52 U.S.C. 10301 et seq. (Supp. III 2015).

2. The United States has filed a brief as appellee supporting appellants and taking the position that the Court has appellate jurisdiction under 28 U.S.C. 1253. The United States is an appellee in this Court because it intervened in district court to assert claims that the State's 2011 redistricting plans were enacted with racially discriminatory intent in violation of Section 2 of the VRA, 52 U.S.C. 10301. The United States has not brought any claims challenging the 2013 congressional or State House plans.

The United States' brief principally argues that the district court committed errors of law in finding that the 2013 Texas Legislature engaged in intentional vote dilution in adopting Congressional District 27 and State House Districts 32, 34, 54, 55, 103, 104, and 105 in the 2013 plans, which were identical to districts contained in the district court's own 2012 interim remedial plans. The brief explains that legislatively enacted redistricting plans may be invalidated on grounds of intentional vote dilution only if the plaintiffs show that the legislature acted with a discriminatory purpose, and in adjudicating such a challenge, courts must accord a "presumption of good faith [to] legislative enactments." Hunt v. Cromartie, 526 U.S. 541, 553

(1999) (citation omitted). The brief argues that this presumption of good faith is heightened where, as here, the district court ordered the use of interim remedial plans that it found to redress all likely violations of law, and the state legislature in turn permanently adopted the court-ordered plans to replace its original enactments.

The United States' brief also explains that the district court erred in finding Congressional District 35 (CD35) to be an unconstitutional racial gerrymander. The brief explains that the predominant consideration in setting CD35's boundaries in 2013 was not race, but rather whether it matched the boundaries that the district court provisionally deemed lawful in 2012. And the brief argues that the State had good reasons to believe that the VRA required it to draw CD35 in 2011 and maintain it in 2013, including that the district court itself found in 2012 that CD35 aided in complying with the State's obligations under the VRA.

3. The United States has a substantial interest in the Court's resolution of this case. The United States, through the Attorney General, has primary responsibility for enforcing the VRA. See 52 U.S.C. 10308(d). The United States accordingly has a substantial interest in the proper interpretation of the VRA and of the related constitutional protection against the unjustified use of race in redistricting. Because the United States would present the federal government's distinct perspective on the

appropriate standards for adjudicating claims of intentional vote dilution and racial gerrymandering in the context of a state legislature's adoption of a court-ordered remedial plan, the United States' participation in oral argument is likely to assist the Court in its consideration of this case.

When this case was previously before this Court on review of an initial set of court-ordered interim redistricting plans in 2011, the United States participated in oral argument as amicus curiae. See Perry v. Perez, 565 U.S. 388 (2012) (Nos. 11-713, 11-714, 11-715). The United States has participated in oral argument in other cases involving vote-dilution challenges under the VRA, see, e.g., Bartlett v. Strickland, 556 U.S. 1 (2009) (No. 07-689); League of United Latin American Citizens v. Perry, 548 U.S. 399 (2006) (Nos. 05-204, 05-254, 05-276, 05-439), or concerning the constitutionality of districts alleged to constitute racial gerrymanders, see, e.g., Cooper v. Harris, 137 S. Ct. 1455 (2017) (No. 15-1262); Alabama Legislative Black Caucus v. Alabama, 135 S. Ct. 1257 (2015) (Nos. 13-895, 13-1138); Hunt v. Cromartie, 526 U.S. 541 (1999) (No. 98-85).

4. The other appellees have filed a motion to enlarge the total argument time to one hour and 20 minutes, to be divided equally between each side. The United States takes no position on that motion. In the event that the motion for enlargement of time is granted, the Solicitor General respectfully requests that

appellants be allocated 25 minutes of argument time, and that the United States be afforded the remaining 15 minutes of time that would otherwise be afforded to appellants. In the event that the motion for enlargement of time is denied, the Solicitor General respectfully requests that appellants be allocated 20 minutes of argument time and that the United States be allocated 10 minutes of argument time. We are authorized to represent that counsel for appellants agree with these allocations and that they therefore consent to this motion.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

MARCH 2018