UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

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JOHN T. MORRIS,

Plaintiff,

v.

STATE OF TEXAS, et al.,

Defendants.

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TEXAS LATINO REDISTRICTING
TASK FORCE, et al.,

Plaintiffs,

v.

RICK PERRY,

Defendant.

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CIVIL ACTION NO.
SA-11-CA-360-OLG-JES-XR
[Lead case]

CIVIL ACTION NO.
SA-11-CA-615-OLG-JES-XR
[Consolidated case]

CIVIL ACTION NO.
SA-11-CV-490-OLG-JES-XR
[Consolidated case]
JOHN T. MORRIS' MERIT BRIEF
IN SUPPORT OF CLAIMS
CITATIONS

Debate On The Constitution; Federalist and Antifederalist Speeches, Articles, and Letters During the Struggle over Ratification, Part One & Part Two, (D.O.T.C.)

The Creation Of The American Republic, 1776 - 1787, by Wood, Gordon S.
The University of North Carolina Press, Chapel Hill, 1969


The Anti-Federalist Papers and the Constitutional Convention Debates, by Ketcham, Ralph
New American Library, New York, N.Y., First Mentor Printing, 1986

The Rise and Development of the Gerrymander, by Griffith, Elmer C.
Arno Press, New York, N.Y., 1974

SUMMARY OF CLAIM

If Article 2, Sect. 1 of the United States Constitution were interpreted as it should be, based on an honest appraisal of what the framers of the Constitution intended, when considering the election of representatives every two years by the people, the 2011 gerrymandered redistricting map 185 would be found unconstitutional.

Article 2, Sect. 1 was based on a demand for “frequent elections” by the citizens of the colonies prior to the adoption of the Constitution and affirmed by the framers of the document.
Frequent elections was understood as the primary connection between the representative and his constituents. And understood to mean that those who voted for a representative would naturally be the same voters who would have the opportunity to vote to retain, or not, this same representative as long as the voter remained within the representative’s district.

**HISTORY OF FREQUENT ELECTION PRINCIPLE**

Well before the adoption of the Constitution frequent or annual elections were deemed essential. In the words of John Adams, a future President, “‘when annual elections end, there slavery begins.’ Yearly elections, Adams pointed out, would teach politicians ‘the great political virtues of humility, patience and moderation, without which every man in power becomes a ravenous beast of prey.’” (A New Age Now Begins, Smith, P-849).

But in numerous ratification conventions delegates expressed their fears that representation would be inadequate and unsafe, “because of the long terms for which it (Congress) is appointed” and by the mode of its appointment...become self-elected” (The Antifederalist Paper, Ketcham, P-248). In the ratification debates in Pennsylvania Timothy Pickering defended the new constitution against those who believed “that our federal rulers will necessarily have interests separate(sic) from those of the people, and exercise the power of government not only arbitrarily, but even wantonly.” (D.O.T.C., Part One, P-293). In the New York debate “Cato” wrote to the citizens of New York “that biennial elections for representatives are a departure from the safe domocratical(sic) principles of annual ones” and with other factors included in the new constitution “will lead to the establishment of an aristocracy.” (D.O.T.C., Part One, P-401). And again in the Pennsylvania convention Robert Whitehill fearing that Congress would increase their terms on office, among other grievances, dramatically proclaimed that it would be “easy to anticipate the fate of petitions or remonstrances presented by the trembling hand of the oppressed, to the irritated and ambitious oppressor.” (D.O.T.C., Part One, P-813). There was an unwillingness of the delegates to the ratification conventions to even allow annual elections to be replaced by two year elections for representatives. In this respect a full fifteen percent of the debates, letters, etc. in the two volumes of the Debate On The
Constitution, (D.O.T.C.), expressed their concern about the possible undermining of annual or frequent elections.

Americanus III, written by John Stevens, Jr. and printed in the Daily Advertiser in New York on November 30, 1787 expressed well what it appears most of the colonists felt at that time when he wrote that “[N]othing more is then necessary to place liberty on the firmest basis, than the frequent recurrence of elections.” (D.O.T.C., Part One, P-440). And in a debate with John Jay and Robert R. Livingston in the New York convention Melanton Smith praises the Continental Congress having representatives that “[I]n the first place, they were chosen annually:- What more powerful check;” (D.O.T.C., Part Two, P-783). In The Federarlist XXXIX, James Madison speaks to the two year term devised for the House of Representatives as “conformable to the republican standard...is periodically elective as in all the States and for the period of two years as in the State of South-Carolina.” (D.O.T.C., Part Two, P-28). And in “Publius,” The Federalist LVII, Madison again lauds the principle of frequent elections when he states that “[T]he means relied on in this form of government (republican) for preventing their (the rulers) degeneracy are numerous and various. The most effective one is such a limitation of the term of appointments, as will maintain a proper responsibility to the people.” (D.O.T.C., Part Two, P-213).

And it appears frequent elections can only mean elections where the voters who elect a representative have the opportunity to vote in subsequent elections based on their knowledge of the representative’s performance in office over the previous two years. In The Federalist LVII, James Madison conveys this principle when he writes “the House of Representatives is so constituted as to support in the members an habitual recollection of their dependence on the people. Before the sentiments impress on their minds by the mode of their elevation, can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed” and “shall have established their title to a renewal of it.” (D.O.T.C., Part Two, P-215).

Madison in his comments above is reassuring the people that their would be frequent elections even though they would be biennial rather than annual. The people were demanding that the frequent elections they were accustomed to would continue to be a principle in the new
constitution. The question is would they want frequent elections if they were not to be the ones who would “review” and “shall have established their (the representatives) title to a renewal of it.” (id).

First, a reason to believe that these voters expected frequent elections meant that they would be voting in subsequent elections is that the universal qualification necessary for suffrage in the colonies at this time and beyond for a number of years, after ratification, was property ownership either in land or wealth of another kind, “On the eve of the American Revolution, in seven colonies men had to own land of specified acreage or monetary value in order to participate in elections; elsewhere, the ownership of personal property of a designated value (or in South Carolina, the payment of taxes) could substitute for real estate.” (The Right To Vote, Keysser, P-5). And as John Adams said in 1776 (id, P-1):

The same reasoning which will induce you to admit all men who have no property, to vote, with those who have,...will prove that you ought to admit women and children; for, generally speaking, women and children have as good judgments, and as independent minds, as those men who are wholly destitute of property; these last being to all intents and purposes as much dependent upon others, who will please to feed, clothe, and employ them, as women are upon their husbands, or children on their parents...Depend upon it, Sir, it is dangerous to open so fruitful a source of controversy and altercation as would be opened by attempting to alter the qualifications of voters; there will be no end of it. New claims will arise; women will demand the vote; lads from twelve to twenty-one will think their rights not enough attended to; and every man who has not a farthing, will demand an equal voice with any other, in all acts of state. It tends to confound and destroy all distinctions, and prostrate all ranks to one common level.

The ownership of property tied a voter to his district either in terms of his land or his business. These voters we can presume wanted frequent elections in order to keep their representatives concerned with his constituents and a short period in which to “review” his behavior before his representative had an opportunity to forget about them.

The second reason we can assume that frequent elections meant the same voters voting in subsequent elections was the practice of instructing representatives. “The use of instructions - directives drawn up by a body of constituents to their particular representatives - had long been common in colonial politics.” and “implied that the delegate represented no one but the people
who elected him and that he was simply a mistrusted agent of his electors, bound to follow their
directions.” (The Creation Of The American Republic, 1776-1787, Wood, P-195). In respect to
instructions “[B]y 1788 James Madison had concluded that ‘a spirit of locality’ permeated
American politics and ‘inseparable’ from elections by small districts or towns.” (Id. P-195).
Could it be possible that constituents who instruct their representatives would be uninterested in
voting for or against him in a subsequent election?

And the third reason is the fact in itself that so often there have been attempts to put an
end to gerrymandering. “Various means were devised to prevent this political evil from
destroying the principles of representation....These provisions included the requirement that the
districts be composed of contiguous territory, that they be compact, that the number to be
apportioned to a district be limited to two; that no county be divided; that apportionment be made
for congressmen but once in ten years’ and that districts be dispensed with entirely.” (The Rise
and Development of the Gerrymander, Griffith, P-123). Taken together these methods of
stopping gerrymandering are in effect an attempt to preserve solitary stable districts that would
then lead to the principle of “frequent elections” where voters would have the opportunity to vote
in subsequent elections and have the political ability to voice their concerns amongst a
population where they have had long term relations and their voices are not drowned out by
thousands of new voters in extended districts where logistics make forming alliances financially
impossible.

And the fourth reason is that the Court is leaving the door open for a standard which
could be used to anchor a district within a compact and contiguous area. A standard where too
great a difference in the number of voters allowed to vote in a subsequent election after taking
into account any additions or subtractions from the number of congressional districts required,
would alert the Court to an illegal gerrymander.

“Law construeth things according to common possibility or intendment.” and “Law
favoreth things for the commonwealth.” (Wingate’s Maxims, 189 & 197 respectively).

“The term of election must be so long, that the representative may understand the
interests of the people, and yet so limited, that this fidelity may be secured by a dependance upon
their approbation.” (D.O.T.C., Part One, P-891-892). It is hard to interpret this in any other way
than that a representative must know what his constituents want and do what they want in order for these same voters to give him their vote. It is almost impossible to believe that this could mean that after a representative came to know what his constituents wanted of him they (the constituents) would allow strangers to assume their place come a subsequent election or that the representative would expect this to happen. “The 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.” (Id P-895). This clearly is an interpretation of frequent elections where the representative is concerned about the same constituents that voted in a previous election.

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2011 a true and correct copy of this Plaintiff’s Merit Brief, was delivered to all counsel in this matter listed below via the United States District Court, Western Division of Texas, San Antonio Division, ECF system or when this was not possible by electronic mail or Certified United States postal mail.
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