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October 15, 2024

VIA ECF

Hon. Jerry E. Smith
Hon. David Guaderrama
Hon. Jeffrey V. Brown
United States District Court for the Western District of Texas, El Paso Division
525 Magoffin Avenue
El Paso, TX 79901

Re: *League of United Latin American Citizens, et al., v. Abbott, et al.*, No. EP-21-CV-00259-DCG-JES-JVB (Lead Case)

Dear Judges Smith, Guaderrama, & Brown:

We write on behalf of the plaintiffs in Case No. 1:21-cv-00965 (the “Bacy Plaintiffs”) in response to the Court’s September 30, 2024, Order directing the parties to submit letter briefs addressing the applicability of *Petteway v. Galveston County*, 111 F.4th 596 (5th Cir. 2024), to the Plaintiffs’ claims in this case. ECF No. 810.

In *Petteway*, the en banc Fifth Circuit held that minority coalition claims are not cognizable under Section 2 of the Voting Rights Act. 111 F.4th at 599. The Bacy Plaintiffs disagree with the en banc court’s holding in *Petteway*. The Bacy Plaintiffs recognize, however, that this Court has held that it is a panel of the Western District of Texas and is “bound” by the decisions of the Fifth Circuit. *League of United Latin Am. Citizens v. Abbott*, 604 F. Supp. 3d 463, 492-93 (W.D. Tex. 2022); see also *League of United Latin Am. Citizens v. Abbott*, No. 1:21-CV-00943, 2021 WL 5417402, at *2 (W.D. Tex. Nov. 19, 2021) (“The Court finds that all of the above-referenced cases are before the same court (the Western District of Texas).”). If the Court is inclined to revisit that question, the Bacy Plaintiffs request an opportunity to brief it, and to brief the merits of whether minority coalition claims are cognizable under Section 2 if the Court concludes it is free to decide that issue for itself. The Bacy Plaintiffs further reserve their rights to challenge the *Petteway* holding in any appeal from a final judgment in this case.

If the Court is not inclined to revisit the question of whether it is bound by *Petteway* to reject coalition claims, that decision would impact only one of the Bacy Plaintiffs’ claims: their challenge to the Texas House districts in Tarrant County, which depends on the allegation that an additional majority Black and Latino House district could be drawn there. See *Abuabara Pls.’ Third Am. Compl.*, ECF No. 613, ¶ 193; *Bacy Plfs.’ Supp. Compl.*, ECF No. 765, ¶ 14. It would have no

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impact on Bacy Plaintiffs' challenge to the Texas House districts for Harris County, as that is a single-race claim, alleging that an additional majority-Latino voting-eligible House district could be drawn. *See* ECF No. 613 at ¶ 206 & Ex. 4. And each of the Bacy Plaintiffs' congressional district claims alleges that additional majority-Latino congressional districts could be drawn. *See id.* ¶¶ 96–98, 105–06, 117–18, 125–26, 132, 141, 149, 158, 170, 178. While the Bacy Plaintiffs also allege alternative, coalition demonstrative districts in two instances, *see id.* ¶¶ 139–40, 165–66, their claims do not depend on them. Thus, the holding of *Petteway* provides no basis for dismissing any of the Bacy Plaintiffs' challenges to Texas's current congressional map—Count I of the operative Third Amended Complaint, *id.* ¶¶ 248–57.

In short, as the Bacy Plaintiffs previously explained in their Opposition to the Defendants' Motion to Dismiss their Supplemental Complaint, ECF No. 789, *Petteway* affects only one of the Bacy Plaintiffs' claims regarding House districts in one county. If the Court considers itself bound by *Petteway*, any dismissal of their claims based on that decision should be limited to that claim and that claim only.

Sincerely,

/s/ David R. Fox

David R. Fox
Counsel for Bacy Plaintiffs