

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS, et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action

Lead Case No.:

3:21-CV-00259-DCG-JES-JVB

AKILAH BACY, et al.,

Plaintiffs,

v.

JANE NELSON, et al.,

Defendants.

Consolidated Case No.:

1:21-CV-00965-DCG-JES-JVB

**BACY PLAINTIFFS' MOTION
FOR LEAVE TO FILE RESPONSE**

The Bacy Plaintiffs, by and through their undersigned counsel, respectfully move this Court for leave to file a short response to Defendants' reply to Plaintiffs' letter briefs addressing the effect of *Petteway* on the resolution of this matter. The proposed response letter is attached as **Exhibit A**. Counsel for Defendants have stated that they oppose this Motion.

On October 15, 2024, as ordered by the Court, ECF No. 810, the Bacy Plaintiffs submitted a letter brief addressing the applicability of *Petteway v. Galveston County*, 111 F.4th 596 (5th Cir. 2024), to the Plaintiffs' claims in this case. ECF No. 814. In that letter, the Bacy Plaintiffs explained that *Petteway* affects only one of their claims regarding House districts in one county:

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* ECF No. 814 at 1 (citing ECF No. 613, ¶ 193; ECF No. 765, ¶ 14). The Bacy Plaintiffs further explained that each of their congressional district claims alleges that additional majority-Latino congressional districts could be drawn. *See id.* at 2 (citing ECF No. 613 ¶¶ 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, their claims do not depend on them. *See id.* (citing ECF No. 613 ¶¶ 139–40, 165–66).

Defendants submitted their own letter brief on the same day, summarily claiming without explanation that “The Bacy Plaintiffs seek to create five coalition districts.” ECF No. 815 at 4. Because the Bacy Plaintiffs’ letter brief already explained why that assertion was wrong, the Bacy Plaintiffs did not submit a reply to the Defendants’ letter brief as contemplated by the Court’s September 30 Order. *See* ECF No. 810.

In their reply letter submitted on October 21, however, Defendants attempted for the first time to support their argument for a broader dismissal, raising new arguments that do not accurately reflect the extent to which the Bacy Plaintiffs depend on minority coalition districts to meet the first *Gingles* precondition, which the Bacy Plaintiffs have not had an opportunity to address. ECF No. 823 at 3. The Bacy Plaintiffs accordingly seek leave to file a response to arguments raised for the first time in Defendant’s reply letter. *See Ga. Firefighters’ Pension Fund v. Anadarko Petroleum Corp.*, 99 F.4th 770, 774 (5th Cir. 2024) (“[W]hen a party raises new arguments or evidence for the first time in a reply, the district court must either give the other party an opportunity to respond or decline to rely on the new arguments and evidence.”). The Court

should allow the Bacy Plaintiffs to file their proposed response to assist the Court with the full and fair adjudication of the questions pending before it.

Dated: October 22, 2024

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Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Counsel for the Plaintiffs conferred with counsel for the Defendants in a good-faith attempt to resolve the subject matter of this Motion, and counsel for the Defendants indicated that they oppose the Motion.

/s/ David R. Fox

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on October 22, 2024, and that all counsel of record were served by CM/ECF.

/s/ David R. Fox

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Exhibit A

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October 22, 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:

I write on behalf of the plaintiffs in Case No. 1:21-cv-00965 (the “Bacy Plaintiffs”) in response to Defendants’ October 21, 2024 reply to Plaintiffs’ letter briefs addressing the effect of *Petteway* on the resolution of this case, ECF No. 823.

Defendants’ reply cherry-picks allegations in the Bacy Plaintiffs’ operative Third Amended Complaint (“TAC”) to misleadingly suggest a far broader effect than *Petteway* in fact has. As the Bacy Plaintiffs explained in their previous letter, ECF No. 814, and 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: 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* ECF No. 613, ¶ 193; ECF No. 765, ¶ 14. The remaining references to minority coalitions in the Third Amended Complaint involve arguments in the alternative, and the Bacy Plaintiffs’ claims do not depend on them. *See* ECF No. 789 at 7-8; ECF No. 814 at 2.

In their reply, Defendants pull allegations out of context to bolster their previously unsupported contention that the Bacy Plaintiffs in fact seek to create *five* coalition districts. ECF No. 823 at 3. There are four problems with Defendants’ argument.

First, it is not true that “for proposed CD33, both sets of demonstrative maps rely on minority coalitions.” ECF No. 823 at 3. Defendants selectively quote paragraphs addressing the effects of the Bacy Plaintiffs’ demonstration maps on just *one* of the Plaintiffs—Cecilia Gonzales—who resides in enacted CD25 and is moved to CD33 under both demonstration maps. *Id.* But the TAC

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also makes clear that “under Plaintiffs’ second demonstration map, Plaintiffs Jana Lynne Sanchez and Debbie Lynn Solis would each reside in the second demonstration map’s Proposed CD12, a *majority-Latino* district in which 52.4 percent of eligible voters are Latino.” ECF No. 613 ¶ 149 (emphasis added). Plaintiffs’ challenge to CD33 alleges that the enacted district “pack[s] many of the region’s Black *and Latino* communities.” *Id.* ¶ 143 (emphasis added). The second demonstration map unpacks CD33 and places Plaintiffs Sanchez and Solis into a new 52.4 percent majority Latino district—CD12. *Id.* ¶ 149. This new, majority-Latino district satisfies the first *Gingles* precondition even after *Petteway*. See 111 F.4th at 601-02.

Second, it is neither true nor relevant that “Bacy Plaintiffs’ preferred method of modifying enacted CD29” involves a coalition district. ECF No. 823 at 3 (quoting ECF No. 613 ¶ 167). As the TAC explains: “Alternatively, Plaintiffs’ second demonstration map shows that Enacted CD29 could instead be split into two different districts . . . *each of which has a majority-Latino voting-eligible population.*” ECF No. 613 ¶ 170 (emphasis added). The result is again an additional, majority-Latino district that satisfies *Gingles* 1 even after *Petteway*.

Third, the Bacy Plaintiffs’ general allegations that “Texas’s maps have ‘the effect of denying Black *and Latino* voters’ equal opportunity under Section 2,” ECF No. 823 (quoting Bacy Plfs. Suppl. Compl., ECF No. 765 ¶ 1), are entirely consistent with their specific allegations that additional, majority-Latino districts can be drawn, and provide no basis for dismissing the Bacy Plaintiffs’ claims. The general allegations are just that: general. They cannot fairly be read to convert every claim as to each challenged district into a coalition district claim.

Finally, Defendants do not even attempt to substantiate their claim that the Bacy Plaintiffs’ Proposed CD25 and CD12 would create new coalition districts. Again, that claim ignores the second demonstration map altogether. As to CD25, the second demonstration map shows “Latino voters in Dallas and Tarrant Counties are also sufficiently numerous and compact to allow the creation of an additional *majority-Latino* voting-eligible-population district in the area[.]” ECF No. 613 ¶ 141. And “[p]roposed CD12 in the second demonstration map is a majority Latino district in Dallas and Tarrant Counties.” *Id.* ¶ 158.

Far from forming the “fundamental legal basis,” ECF No. 923 at 3, of the Bacy Plaintiffs’ suit, coalition districts therefore affect only one of their claims: the challenge to the Tarrant County Texas House plan.

Sincerely,

/s/ David R. Fox

David R. Fox
Counsel for Bacy Plaintiffs