

because the case indisputably includes constitutional challenges. *Compare Thomas v. Reeves*, 961 F.3d 800, 801–10 (5th Cir. 2020) (en banc) (Costa, J., concurring), *with id.* at 810–27 (Willet, J., concurring).

To avoid any doubt about whether “a request for three judges” has been properly filed, Defendants hereby request that the Court “immediately notify the chief judge of the circuit” and that she “designate two other judges, at least one of whom shall be a circuit judge,” “to serve as members of the court to hear and determine the action or proceeding.” 28 U.S.C. § 2284(b)(1).

By filing this request, Defendants do not waive any of their defenses. Nor do they concede that Plaintiff’s action has any merit. Defendants simply invoke Section 2284 because Plaintiff’s action challenges the constitutionality of the apportionment of both congressional districts and statewide legislative bodies.¹

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¹ On November 4, 2021, the Governor and the Secretary of State filed a motion to consolidate this case and several others into *Gutierrez v. Abbott*, No. 1:21-cv-00769-RP-JES-JVB (W.D. Tex. Sept. 1, 2021). *See* ECF 26. The Court has not yet ruled on that motion.

Date: November 8, 2021

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on November 8, 2021, and that all counsel of record were served by CM/ECF.

/s/ Patrick K. Sweeten
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