



July 24, 2025

Sent via email

Senate Special Committee on Congressional Redistricting
Texas Senate
Sam Houston State Office Building, Room 445
201 E. 14th Street
Austin, Texas 79701

Re: Opposition to Mid-Decade Congressional Redistricting That Further Harms Black and Other Voters of Color

Dear Chair King and Committee Members:

The Legal Defense Fund, Barbara Jordan Leadership Institute, Houston Area Urban League, and Delta Sigma Theta Sorority, Incorporated write to express opposition to any “legislation that provides a revised congressional redistricting plan” during the special legislative session of the 89th Texas Legislature that further harms opportunities for Black voters and other voters of color to elect their preferred candidates. We oppose the Governor’s call to conduct this mid-decade congressional redistricting for three reasons.

First, access to congressional representation for Black voters and other voters of color should not be further weakened with any new line drawing based on any contradictory positions Texas takes on the role that the race of voters played in the 2021 congressional map’s development. Several plaintiff groups representing Black and Brown Texan voters, currently challenge the 2021 congressional map (C2193) as racially discriminatory under various constitutional and statutory theories of liability, in a consolidated case, *League of United Latin American Citizens v. Abbott*, No. 3:21-cv-00259-DCG-JES-JVB (W.D. Tex.).¹ Texas has repeatedly claimed that the 2021 “Legislature did not racially discriminate in drawing the current congressional electoral districts—full stop.”² While plaintiffs collectively dispute Texas’ defense, the Texas Attorney General characterized the evidence presented at trial, which ended in June 2025, as “clear and unequivocal” that congressional districts were drawn “blind to race.”³ Texas has also defended the districts in the congressional map as legally compliant because Texas legislators drew them to “maximize Republican political advantage balanced against traditional redistricting criteria.”⁴

¹ See Claims Chart, ECF No. 982-3, *League of United Latin Am. Citizens v. Abbott*, Dkt. No. 3:21-cv-00259-DCG-JES-JVB (W.D. Tex.) [hereinafter “*LULAC v. Abbott*” or the “*LULAC* litigation”].

² State Defs.’ Resp. in Opp’n to Pls.’ Emergency Mot. to Reopen R. and Take Additional Test., ECF No. 1116 at 1, *LULAC v. Abbott* [hereinafter State Defs.’ Resp. to Pls.’ Emergency Mot.].

³ Att’y Gen. Ken Paxton’s Resp. to DOJ Letter (July 11, 2025), ECF No. 1116-1 at 2, *LULAC v. Abbott*, [hereinafter Tex.’s Resp. Letter to DOJ].

⁴ *Id.*

Texas now appears to accept that the 2021 congressional mapdrawing process was not race blind for certain districts. Texas is calling a special legislative session after the urging of the U.S. Department of Justice (the “Department”) which asserts that Congressional Districts 9, 18, 29, and 33, are illegal racial gerrymanders.⁵ However, when the Department previously challenged the 2021 congressional map as being racially discriminatory in the *LULAC* litigation, the Department never advanced that legal theory, which could harm the electoral power of Black and Brown voters in the areas of the state it now does, before it withdrew its case in March 2025.⁶ In calling the legislative session to take up mid-decade congressional redistricting beginning on July 21, Texas appears to credit these racial gerrymandering allegations.⁷ The Texas Attorney General, for example, now claims the 2021 “Texas legislature felt compelled under pre-*Petteway* strictures to create coalition districts” in the enacted congressional map.⁸ But that claim is contradicted by the repeated representations—both publicly and through sworn statements by legislators in the *LULAC* litigation—that Texas drew its congressional map blind to the racial makeup of the districts and to comply with race-neutral traditional redistricting criteria and political considerations, including from the Senate Redistricting Committee Chair during the 2021 legislative session.⁹ The claim is further contradicted by the Texas Attorney General’s response to the Department’s recent outreach in which the Texas Attorney General asserts the current congressional map was developed “in conformance with traditional, non-racial redistricting criteria.”¹⁰

Texas cannot, on the one hand, defend its congressional map publicly and in federal court as race blind, while on the other hand rely on unfounded allegations that “outdated and unconstitutional considerations” drove the design of certain districts in the map.¹¹ Those contradictory positions evince a pretextual motivation to engage in mid-decade congressional redistricting that “bear[] the mark of intentional discrimination that could give rise to an equal protection violation.”¹²

Second, the Texas Legislature should also not rely on the Department’s flawed legal theories to conduct mid-decade congressional redistricting. The Department now claims

⁵ *Compare*, Press Release, *Governor Abbott Announces Special Session Agenda*, Tex. Gov. (July 9, 2025) (taking up congressional redistricting in a special session based on “constitutional concerns raised by the U.S. Department of Justice”), <https://gov.texas.gov/news/post/governor-abbott-announces-special-session-agenda>, with letter from Harmeet Dhillon, Assistant Att’y Gen., U.S. DOJ C.R. Div., to Greg Abbott, Governor of Tex. and Ken Paxton, Att’y Gen. of Tex. (July 7, 2025) (notifying Texas officials of “serious concerns regarding the legality of four of Texas’s congressional districts”), available at <https://electionlawblog.org/wp-content/uploads/7-7-2025-DOJ-Letter-re-Unconstitutional-Race-Based-Congressional-District.pdf> [hereinafter DOJ July 7 Letter].

⁶ *United States’ Am. Compl.*, ECF No. 318, *LULAC v. Abbott*.

⁷ Tex.’s Resp. Letter to DOJ, *supra* note 3.

⁸ *Id.* at 2; *See, e.g.*, State Defs.’ Opening Br., ECF No. 986 at 8-12, *LULAC v. Abbott*.

⁹ State Defs.’ Opening Br., ECF No. 986 at 8-12, *LULAC v. Abbott*.

¹⁰ Tex.’s Resp. Letter to DOJ, *supra* note 3, at 2.

¹¹ *Id.* at 3.

¹² *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440 (2006).

that Congressional Districts 9, 18, 29, and 33 are unconstitutional.¹³ But, as Texas officials acknowledge, the Department has offered no factual evidence from the 2021 congressional mapdrawing process that would support those claims.¹⁴ Nor could it. As Texas recognizes, the Department is a “third party with no personal knowledge” of what occurred during the 2021 redistricting process.¹⁵ Still, even without any fact-specific evidence presented publicly, the Department claims Congressional Districts 9, 18, 29, and 33 are racially gerrymandered, specifically alleging that Congressional Districts 9, 18, and 33 are impermissible race-based coalition districts.¹⁶

But the mere fact that Black and Latino voters together form a majority of voters in a congressional district, such as in Congressional Districts 9, 18, and 33,¹⁷ does not mean that those districts are racially gerrymandered or otherwise constitutionally suspect. Rather, the Supreme Court has acknowledged that districts in which no group of voters of a particular race holds a majority is evidence of a *lack* of racial gerrymandering.¹⁸ Racial gerrymandering occurs only when a state sorts a significant number of voters predominantly based on their race and lacks a compelling reason for doing so.¹⁹ To make such a showing, a plaintiff can offer direct evidence of an impermissible race-based purpose for the design of a district or, more typically in these modern times, demonstrate with circumstantial evidence that a state “‘subordinated’ race-neutral districting criteria such as compactness, contiguity, and core preservation to ‘racial considerations’” in designing the district without a good reason.²⁰ The Department, however, offers no such direct or circumstantial evidence of race impermissibly predominating in the sorting of the relevant districts without a compelling state interest. Instead, the Department offers conclusory remarks that four districts—serving the needs of Black, Latino, and other Texans—were drawn along “racial lines.”²¹ And again, as explained above, Texas has defended its enacted congressional map as having been drawn without any consideration of race and rather for political considerations and with adherence to traditional redistricting principles.²²

Also contrary to the Department’s assertion, the Fifth Circuit’s 2024 decision in *Petteway v. Galveston* did not create any legal change in racial gerrymandering case law.

¹³ DOJ July 7 Letter, *supra* note 5.

¹⁴ State Defs.’ Resp. to Pls.’ Emergency Mot., *supra* note 2, at 2.

¹⁵ *Id.*

¹⁶ DOJ July 7 Letter, *supra* note 5.

¹⁷ Hispanic voters are the majority in Congressional District 29. See *District Population Analysis with County Subtotals - Congressional Districts - PLANC2193*, District 29, Tex. Legis. Council (Oct. 17, 2021) at 11, https://data.capitol.texas.gov/dataset/b806b39a-4bab-4103-a66a-9c99bcaba490/resource/d28bfc49-8987-49ab-a678-eb610f57230c/download/planc2193_map_report_package.pdf.

¹⁸ *Cf. Lawyer. v. Dep’t of Just.*, 521 U.S. 567, 582 (1997).

¹⁹ *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 260, 267, 272 (2015). Unjustified racial predominance is not race consciousness, the latter of which is permissible. See, e.g., *Allen v. Milligan*, 599 U.S. 1, 31 (2023).

²⁰ *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 8 (2024) (citation omitted).

²¹ DOJ July 7 Letter, *supra* note 5, at 2.

²² Texas’ Response Letter to DOJ, *supra* note 3.

The Fifth Circuit sitting en banc did not consider plaintiffs’ analytically distinct claims of intentional racial discrimination and racial gerrymandering.²³ Both of those claims were remanded by the en banc Court.²⁴ But for plaintiffs’ Section 2 claim under the Voting Rights Act that was at issue in *Petteway*, the Fifth Circuit ruled that coalitions of distinct racial minority voters—there, Hispanic and Black voters—may not aggregate their populations to meet the 50%+1 baseline necessary to show the first prong of proving a discriminatory results vote dilution claim under Section 2 of the Voting Rights Act.²⁵ *Petteway* thus signifies that in states like Texas that make up the Fifth Circuit, Section 2 cannot compel the development of coalition districts where conditions exist for doing so.²⁶

Petteway does not, and could not, signify that the mere existence of a district comprised of a majority of different racial and ethnic groups—because a legislature, of its own volition, developed such a district in a purported race blind redistricting process where appropriate political considerations and race neutral redistricting principles explain the formation of such a district—is an impermissible racial gerrymander. No law prohibits a state from choosing to establish such a district so long as it complies with other legal requirements,²⁷ like the ones Texas publicly and repeatedly has offered (*i.e.*, political considerations and traditional redistricting criteria) to explain its existing congressional map.²⁸ Tellingly, Texas never raised any such concerns about the existence of such coalition districts in its enacted 2021 congressional map when it had to brief a court about the effects of the *Petteway* decision in the ongoing *LULAC* litigation.²⁹

Federal law and the U.S. Constitution do, however, prohibit legislatures from engaging in purposeful or results-based racial vote dilution and any other legally impermissible redistricting schemes during redistricting.³⁰ For example, as the Supreme Court recently reaffirmed, a legislature cannot harm Black voters as a means to achieve any political party’s power.³¹ Moreover, “if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments” to the U.S. Constitution.³²

²³ *Petteway v. Galveston Cnty.*, 111 F.4th 596, 614-15 (5th Cir. 2024) (en banc).

²⁴ *Id.*

²⁵ *Id.* at 599.

²⁶ *Id.*

²⁷ *Cf. Bartlett v. Strickland*, 556 U.S. 1, 23-24 (2009) (“Our holding that § 2 does not require crossover districts does not consider the permissibility of such districts as a matter of legislative choice or discretion.”)

²⁸ Texas’ Response Letter to DOJ, *supra* note 3.

²⁹ Defs.’ Br. Addressing the Effect of *Petteway*, ECF No. 815, *LULAC v. Abbott*; Defs.’ Reply Br. Addressing the Effect of *Petteway*, ECF No. 823, *LULAC v. Abbott*.

³⁰ *See, e.g.*, 52 U.S.C. § 10301; *Allen v. Milligan*, 599 U.S. 1, 11 (2023); *Hunter v. Underwood*, 471 U.S. 222, 233 (1985); *Chisom v. Roemer*, 501 U.S. 380, 394 n.21 (1991); *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 226-27 (4th Cir. 2016).

³¹ *See, e.g.*, *Alexander*, 602 U.S. at 7 n.1; *see also Bartlett*, 556 U.S. at 24.

³² *See Bartlett*, 556 U.S. at 24 (citing *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 481-482 (1997) and the amicus curiae brief of the Department in *Bartlett*).

Third, attempting to complete any mid-decade congressional redistricting during the upcoming special legislative session increases the risk of a rushed and non-transparent process and limits meaningful public participation. As discussed above, the Governor only recently added congressional redistricting to the special legislative session agenda, which also includes a plethora of other significant agenda items.³³ The Senate Special Committee on Congressional Redistricting only recently shared public notice this week for four upcoming hearings, with the first scheduled for Friday, July 25 and the final one scheduled for Tuesday, July 29. Although these hearings have been scheduled, members of the public lack basic information about what redistricting criteria will guide any mid-decade congressional redistricting. Members of the public also lack knowledge about how maps will be developed, who is involved in developing them, and how proposed maps will be considered. No member of the legislature has publicly introduced proposed congressional maps. These challenges are compounded by the limited 30-day period of the special legislative session, especially as Texans throughout the state continue to recover from devastating natural disasters. The lack of transparency and limited timeline risk creating the same conditions that defined the 2021 special legislative session when the 2021 congressional map was enacted. Of that previous session, the Department previously asserted that it “moved at a rapid pace with little transparency and limited opportunities for witness testimony.”³⁴ Instead, if the Texas Legislature wants to meaningfully address claims of racial discrimination, it should conduct a separate legislative session to address the harms documented with evidence in the *LULAC* litigation.

Our concerns are heightened based on the Department’s call for Texas to focus mid-decade congressional redistricting on further harming Black and other Texan voters, potentially in Congressional Districts 9, 18, 29, 33, and throughout the state. Congressional Districts 9 and 18, for example, are widely known as historic districts, providing electoral opportunities for Black voters and Latino voters, to elect their preferred representatives.³⁵ Texas is fortunate to be home to the largest number of Black registered voters among all the 50 states.³⁶ Any revised congressional map must not further restrict access to electoral opportunity and representation for Black, Brown, and other racial minority voters. At issue is the right to be a part of our shared democratic processes, including the right to urge representatives to act in service of all the rights that flow from political participation like funding for schools, environmental disaster relief, healthcare, and jobs that pay living wages.³⁷

For all these reasons, we urge the Texas Legislature to refrain from conducting mid-decade congressional redistricting under these circumstances. We further urge the

³³ See *supra* note 5.

³⁴ See, e.g., *United States’ Am. Compl.*, *supra* note 6, ¶¶ 23-24.

³⁵ *Id.* ¶ 91; see also *Congressional Intervenors’ First Am. Pretrial Br.* ECF No. 989 at 2, 4-6, *LULAC v. Abbott*.

³⁶ Jens Manuel Krogstad and Mohamad Moslimani, *Key Facts about Black Eligible Voters in 2024*, Pew Rsch. Ctr. (Jan. 10, 2024), <https://www.pewresearch.org/short-reads/2024/01/10/key-facts-about-black-eligible-voters-in-2024/>.

³⁷ Cf. *Yick v. Wo*, 118 U.S. 356, 370 (1886).



Legislature to not line draw in any way that further harms Black Texan voters and other voters of color and risks further damage to those communities.

Sincerely,

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NAACP Legal Defense and Educational Fund, Inc. (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the NAACP since 1957, though LDF was originally founded by the NAACP and shared its commitment to equal rights.

Barbara Jordan Leadership Institute

As a nonpartisan organization founded and led by Black women driven by our lived experiences, The Barbara Jordan Leadership Institute (BJLI) provides a comprehensive approach to community based leadership in action through voter education, advocacy, and leadership development. BJLI mission is to increase the diversity of leadership by training, mentoring, supporting, and uplifting Black communities throughout Texas.

Houston Area Urban League

The Houston Area Urban League (“HAUL”) is a nonpartisan, nonprofit organization with its principal office in Houston. HAUL’s mission is to enable Black people and other marginalized communities to secure economic self-reliance, parity, power, and civil rights.

Delta Sigma Theta Sorority, Incorporated

Delta Sigma Theta Sorority, Incorporated was founded on January 13, 1913, on the campus of Howard University to promote academic excellence; to provide scholarships; to provide support to the underserved; educate and stimulate participation in the establishment of positive public policy; and to highlight issues and provide solutions for problems in their communities. Since its founding, more than 350,000 women have joined the organization, making it one of the largest predominantly Black women’s organizations in the country. Delta Sigma Theta Sorority, Incorporated has over 1,000 collegiate and alumnae chapters worldwide, continuing to uplift Black communities globally through its unwavering mission and strategic action.



The Sorority's tradition of activism on the frontlines dates back to just weeks after its inception, when its Founders boldly marched in the 1913 Women's Suffrage Parade—the only Black women's organization to do so. In keeping with this tradition, members of Delta Sigma Theta conduct voter registration drives and host voter education programs on many topics, including redistricting. Delta Sigma Theta has 75 chapters, alumnae and collegiate, and approximately 20,445 members in Texas, most of whom are registered voters in Texas.