

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

<b>WALTER SESSION, ET AL.</b>	§	
<b>vs.</b>	§	<b>CIVIL ACTION NO. 2:03-CV-354</b>
<b>RICK PERRY, ET AL.</b>	§	<b>Consolidated</b>

**DECLARATION OF JOHN A. ALFORD**

Pursuant to 28 U.S.C. §1746, I, John A. Alford, declare as follows:

1. My name is John A. Alford and I have previously appeared in the above case and testified as an expert witness on behalf of the Jackson plaintiffs and the Democratic Congressional Intervenors. My qualifications are set forth on my curriculum vita which is a part of the record in this case.
2. The 2004 Texas congressional elections confirm what experts for both sides, myself included, testified would be the likely result of elections under the newly adopted districting plan. That testimony can be summed up into two key points, both of which were highlighted in the reports and testimony of the State's election expert Professor Gaddie, as well as in my report and testimony. The new plan has 22 solid Republican seats and 10 solid Democratic seats, as well as a configuration of incumbent locations and core retentions that will immediately move the state to a delegation with at least 21 Republicans, and that the new plan will be largely non-competitive.
3. The actual election results in the 2004 elections bear out these expectations. The 10 districts with Democratic statewide index majorities, all of which are minority opportunity districts, ended up as two open seats and 8 seats with Democratic incumbents. The two open seats, the 9<sup>th</sup> and the 28<sup>th</sup>, both became open seats as the result of Democratic incumbents losing in primary contests. Two other seats with Democratic index majorities, the 25<sup>th</sup> and the 29<sup>th</sup>, were drawn as open seats with the expressed intention of boosting the chances of Hispanic candidates, but attracted Anglo incumbents who survived the primaries. Not surprisingly, the Democratic candidates in all 10 of these

Democratic index majority districts won election. The average share of the two-party vote for the Democratic candidate in these 10 seats was 76 percent. In the 8 seats with incumbents running, the average Democratic vote share was 78 percent; while in the 2 open seats, the average Democratic vote share was 67 percent.

4. The 22 seats in the new plan with Republican statewide index majorities ended up in the general election as 14 seats with Republican incumbents facing non-incumbent challengers, 3 open seats, 2 Republican incumbents paired against Democratic incumbents, and 3 Democratic incumbents facing non-incumbent Republican challengers. The range of the types of election contests in these Republican majority districts runs from settings most likely to produce Republican success to settings most favorable to Democrats. As expected, all 14 Republican incumbents in un-paired districts won, with an average Republican two-party vote share of 74 percent. The 3 Republican open seats also performed as engineered, with all Republican victories and an average Republican two-party vote share of 81 percent. The two paired Republican index majority seats also worked as intended, with off-setting incumbency advantage leaving the underlying pro-Republican tilt of the districts to carry the day. The average Republican two-party vote share in these 2 districts was 57 percent. In the 3 remaining districts with Republican statewide index majorities, Democratic incumbents faced non-incumbent challengers. This is the sort of election scenario that frustrated Republicans in the previous districting map, but with substantial alterations in the district cores, Republicans were much more successful under the new plan, with Republican wins in 2 of the 3 contests, and an average Republican two-party vote share in these 3 districts of 56 percent. The lone Democratic winner, Chet Edwards eked out a narrow victory, finishing with 51 percent of the vote. Even Edwards could have been beaten by the addition of more money on the Republican side, or by an opponent who, unlike Arlene Wohlgemuth in 2004, didn't hale from the northernmost part of the district and who had stronger ties to the heart of the district (such as Waco or College Station/ A&M). I would

predict that both will be features of the 2006 election in this district. Although each candidate in the 17<sup>th</sup> district spent in excess of 2 million dollars in the 2004 contest, Edwards outspent his challenger Wohlgemuth. Given the other demands for Republican dollars across the state (the Republican spending in the two paired seats alone was nearly 7 million dollars), this shortfall is understandable. In 2006 the focus will be largely directed to the 17<sup>th</sup> district. Barring a mid-decade redistricting in some other state, the 17<sup>th</sup> district will likely be one of less than a dozen or so districts in the whole country where the Republican Party stands a chance of gaining a seat. The concentration of Republican party resources that will be focused on achieving that outcome in the 17<sup>th</sup> district will be impressive, and stands a very significant chance of ultimately being successful.

5. While the election results in 2004 are instructive, it is none-the-less a transition election for the new map. As such, it is important to look at the relatively settled parts of the map for guidance about the future. The most representative picture comes from the 22 districts (14 Republican and 8 Democratic) with incumbents running in settings that give them an underlying partisan majority. The 2006 election will likely see these districts joined by 9 of the 10 remaining districts that will then also have incumbents matched up to voter partisan majorities. Thus, what we see in these 22 districts in 2004 will likely be the pattern for 31 of the 32 districts by 2006. The average two-party vote share for the incumbents in these 22 districts in 2004 was fully 75 percent of the vote. This strikingly non-competitive result is not surprising given that the incumbents in these districts started with an average statewide index for their party of 65 percent. Thus, even as open seats, these districts would be expected to routinely yield lopsided, non-competitive results. And indeed, when we look to the 5 seats that were actually open in 2004 (3 Republican majority districts and 2 Democratic majority districts), we see that the majority party in the districts won with an average of 75 percent of two-party vote. So much for the possibility that the minority party might find

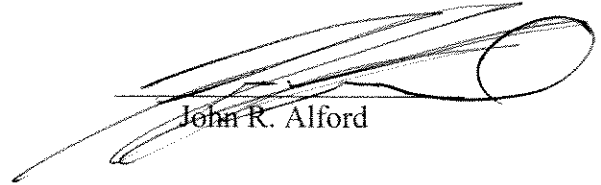
some measure of influence in the occasional open seat that might crop up in the future.

6. The two paired districts, along with two of the Republican index majority districts with Democratic incumbents, fell within the broadest 60-40 definition of competitive contests, but three of these four contests will shift to the least competitive category of majority party incumbents in 2006 if the winners seek re-election; and even if the incumbents don't run, these will be open seats, which based on the 2004 results discussed above, are hardly any better. Only two other districts fell in the 60-40 range; the 15<sup>th</sup> and the 22<sup>nd</sup>. There is surely some irony in the case of the 22<sup>nd</sup>, with Tom Delay, the House Majority Leader, and architect of the current district plan, ending up with the second worst showing for any Republican incumbent in the state, less than a percentage point above Pete Sessions who was locked in an epic struggle with Democratic incumbent Martin Frost. Although this may seem surprising at first, nationally prominent members in leadership positions often find themselves the focus of relatively more aggressive campaigns than those waged against their less visible rank-and-file colleagues (e.g. Tom Foley, Tom Daschle, Jack Brooks, Newt Gingrich). The relative competitiveness of the 15<sup>th</sup> district likely stems from the disruption to that district that followed from the decision to bolster the Republican majority for Bonilla in the 23<sup>rd</sup> district while keeping a substantial Hispanic population in the 23<sup>rd</sup> district (these issues related to the performance of the 15<sup>th</sup> district were widely documented at trial). While the 15<sup>th</sup> should settle into a less competitive range in the future, the result in 2004 suggests that this district, and possibly other similar districts around it, could be flipped to a non-performing district by a strong Hispanic Republican candidate in an open seat contest.
7. As noted above, the consensus expectation for the new district map for Texas was that it would shift the state rapidly to a 22R-10D party split composed of non-competitive districts strongholds for each party. The only surprise from the actual 2004 election results is how far things moved in that direction in a single election year. Already the split is 21R-11D, and the party vote shares,

even in open seats, are strikingly non-competitive. The trend could easily complete itself in 2006, with a 22R-10D result, and extend throughout the rest of the decade with even less competition than what was evident in 2004.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 12/03/2004



John R. Alford