

IN THE SUPREME COURT OF TEXAS

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No. 01-0988

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RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS,
AND HENRY CUELLAR, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF
THE STATE OF TEXAS, APPELLANTS

v.

ALICIA DEL RIO, ET AL., APPELLEES

- consolidated with -

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No. 01-1002

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ALICIA DEL RIO, ET AL., APPELLANTS

v.

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS,
AND HENRY CUELLAR, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF
THE STATE OF TEXAS, APPELLEES

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ON DIRECT APPEALS FOR THE 353RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

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Argued on October 18, 2001

JUSTICE RODRIGUEZ, joined by JUSTICE ENOCH and JUSTICE JEFFERSON, concurring.

I join fully in the Court's opinion, but I write separately because I share the concerns raised by JUSTICE HECHT in Part II(B) of his opinion regarding the propriety of the trial court's consideration of incumbency protection issues in formulating its plan. ___ S.W.3d at ___ (Hecht, J., dissenting). The changes asked for by Speaker Laney and ultimately adopted by the trial court in plan 1089C, while not couched in terms of incumbent protection, are not so distinct from incumbent protection as to escape suspicion. And I would caution on remand that the trial court may not consider incumbent protection in drawing Congressional district lines.

That the trial court used incumbent protection as a factor in drawing the district lines for plan 1089C is an issue raised by the Attorney General in his Appellant's Brief and by others. I believe it is appropriate for this Court to provide guidance to the trial court on this issue on remand. *See, e.g., Dallas Mkt. Ctr. Dev. Co. v. Liedeker*, 958 S.W.2d 382, 385 (Tex. 1997) (considering an issue raised by a party to provide guidance to the district court on remand); *Edinburg Hosp. Auth. v. Trevino*, 941 S.W.2d 76, 81 (Tex. 1997) (considering an issue "not essential to [the Court's] disposition of th[e] case ... to provide the trial court with guidance in the retrial of [the] case").

XAVIER RODRIGUEZ
JUSTICE

OPINION DELIVERED: October 19, 2001