

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ, *et al.*,

Plaintiffs,

and

UNITED STATES of AMERICA,

Plaintiff-Intervenor,

v.

STATE OF TEXAS, *et al.*,

Defendants.

Civil Action No. 5:11-cv-360
(OLG-JES-XR)
Three-Judge Court
[Lead Case]

MEXICAN AMERICAN LEGISLATIVE CAUCUS,
TEXAS HOUSE OF REPRESENTATIVES (MALC),

Plaintiff,

v.

STATE OF TEXAS, *et al.*,

Defendants.

Civil Action No. 5:11-cv-361
(OLG-JES-XR)
Three-Judge Court
[Consolidated Case]

TEXAS LATINO REDISTRICTING TASK FORCE,
et al.,

Plaintiffs,

v.

RICK PERRY,

Defendant.

Civil Action No. 5:11-cv-490
(OLG-JES-XR)
Three-Judge Court
[Consolidated Case]

MARGARITA V. QUESADA, *et al.*,

Plaintiffs,

v.

RICK PERRY, *et al.*,

Defendants.

Civil Action No. 5:11-cv-592
(OLG-JES-XR)
Three-Judge Court
[Consolidated Case]

JOHN T. MORRIS,

Plaintiff,

v.

STATE OF TEXAS, *et al.*,

Defendants.

Civil Action No. 5:11-cv-615
(OLG-JES-XR)
Three-Judge Court
[Consolidated Case]

EDDIE RODRIGUEZ, *et al.*,

Plaintiffs,

v.

RICK PERRY, *et al.*,

Defendants.

Civil Action No. 5:11-cv-635
(OLG-JES-XR)
Three-Judge Court
[Consolidated Case]

PLAINTIFF-INTERVENOR UNITED STATES'
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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PROPOSED FINDINGS OF FACT

I. THE PARTIES

1. The United States of America is a Plaintiff-Intervenor in *Perez v. Texas*, No. 5:11-cv-360, the lead case in this consolidated litigation. 9/24/13 Order (ECF No. 904).

2. Plaintiffs Shannon Perez, Margarita Quesada, and Eddie Rodriguez are Hispanic and African-American citizens and registered voters residing in Texas. 9/2/11 Order at 5-10 (ECF No. 285).

3. Plaintiff Mexican American Legislative Caucus (MALC) is a non-profit organization established to serve members of the Texas House of Representatives and their staffs in matters of interest to the Mexican American Community. 9/2/11 Order at 6 (ECF No. 285).

4. Plaintiff Texas Latino Redistricting Task Force (TLRTF) is an unincorporated association of individuals and organizations committed to securing fair redistricting plans for Texas. 9/2/11 Order at 7 (ECF No. 285).

5. Plaintiff John T. Morris is a United States citizen and registered voter residing in Texas. 9/2/11 Order at 11 (ECF No. 285).

6. Defendant the State of Texas is a state of the United States and subject to its laws. Tex. Const. art. I, § 1.

7. Defendant John Steen is the Secretary of State and chief election officer of the State of Texas. Tex. Elec. Code § 31.001.

II. THE CLAIMS

8. The United States alleges that Texas's 2011 Congressional delegation redistricting plan (C185) and 2011 State House redistricting plan (H283) were adopted with the purpose, at least in part, of denying or abridging the right to vote on account of race, color, or membership in a language minority, in violation of Section 2 of the Voting Rights Act and the

voting guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution. U.S. Compl. at 15 (ECF No. 907).

9. The United States requests that this Court retain jurisdiction for a period of 10 years pursuant to Section 3(c) of the Voting Rights Act, 52 U.S.C. § 10302(c), and bar the State of Texas from enforcing any new voting qualification prerequisite, standard, practice, or procedure during that time unless the state has obtained preclearance. U.S. Compl. at 16 (ECF No. 907).

III. PROCEDURAL HISTORY

10. At the time that Texas enacted the 2011 House and Congressional plans, it was subject to the preclearance provisions of Section 5 of the Voting Rights Act, 52 U.S.C. § 10304. 3/19/12 Order at 5 (ECF No. 691).

11. Texas sought preclearance for the 2011 House and Congressional plans by filing a declaratory judgment action against the United States in the United States District Court for the District of Columbia (“D.C. District Court”). *See* Compl., *Texas v. United States*, No. 1:11-cv-1303 (D.D.C. July 19, 2011) (ECF No. 1).

12. The United States and several defendant-intervenors filed answers contesting Texas’s claim that the House and Congressional plans were entitled to preclearance and denying that the plans had neither a retrogressive effect nor a discriminatory purpose under Section 5. 3/19/12 Order at 6-7 (ECF No. 691); *see also, e.g.,* Answer, *Texas v. United States*, No. 1:11-cv-1303 (D.D.C. Sept. 19, 2011) (ECF No. 45).

13. On September 29, 2011, this Court enjoined implementation of the House and Congressional plans on the ground that Texas had not yet obtained Section 5 preclearance for either plan. 9/29/11 Order (ECF No. 380).

14. In the absence of enforceable redistricting plans that complied with one-person,

one-vote requirements following the 2010 Census, this Court crafted interim redistricting plans for the Texas House and the Texas Congressional delegation. 11/23/11 Order (ECF No. 528) (House); US Ex. 756 (Map, Plan C220); 11/26/11 Order (ECF No. 544) (Congress).

15. Texas appealed this Court's orders establishing interim redistricting plans to the U.S. Supreme Court. Am. Notice of Appeal (ECF No. 548); 9/6/13 Order at 2-3 (ECF No. 886).

16. On January 20, 2012, the Supreme Court vacated this Court's orders establishing interim redistricting plans and—after clarifying the governing legal standards—remanded to this Court for further proceedings. *See Perry v. Perez*, 132 S. Ct. 934 (2012) (per curiam).

17. After further briefing, this Court ordered a second set of interim plans for the Texas House and the Texas Congressional delegation in light of the legal standards clarified by the Supreme Court. 3/19/12 Order (ECF No. 690) (House); 3/19/12 Order (ECF No. 691) (Congress); 9/6/13 Order at 3 (ECF No. 886).

18. On August 28, 2012, the D.C. District Court denied preclearance of the 2011 Plans. *Texas v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2012) (three-judge court), *vacated*, 133 S. Ct. 2885 (2013).

19. The D.C. District Court specifically concluded that Texas had failed to meet its burden under Section 5 to prove that it had not acted with discriminatory intent in adopting the Congressional plan. *Texas*, 887 F. Supp. 2d. at 138, 159-65.

20. The D.C. District Court further concluded that Texas had failed to meet its burden under Section 5 to establish the absence of discriminatory effect in the House plan and found that the record strongly suggested that the discriminatory effect “may not have been accidental.” *Texas*, 887 F. Supp. 2d. at 138, 166-78.

21. Three days after the D.C. District Court issued its opinion, Texas appealed the

denial of preclearance to the U.S. Supreme Court. Notice of Appeal, *Texas v. United States*, No. 1-11-cv-1303 (D.D.C. Aug. 31, 2012) (ECF No. 234).

22. On June 25, 2013, the Supreme Court in *Shelby County v. Holder* held that the coverage formula in Section 4(b) of the Voting Rights Act, 52 U.S.C. § 10303(b), as reauthorized by the Voting Rights Act Reauthorization and Amendments Act of 2006, could no longer be used as a basis for subjecting covered jurisdictions to Section 5 preclearance. 133 S. Ct. 2612 (2013).

23. The Supreme Court issued no holding on the validity of Section 5 itself, and stated that Congress could draft another coverage formula based on current conditions. *Shelby Cnty.*, 133 S. Ct. at 2631.

24. Two days later, the Supreme Court vacated the D.C. District Court's judgment in *Texas v. United States* and remanded the case for further consideration in light of *Shelby County*, *Texas v. United States*, 133 S. Ct. 2885 (2013).

25. On remand, the D.C. District Court granted Texas's motion for voluntary dismissal of its preclearance claim, which the United States had not opposed. Mem. and Order at 2-4, *Texas v. United States*, No. 1:11-cv-1303 (D.D.C. Dec. 3, 2013) (three-judge court) (ECF No. 255).

26. Also in June 2013, Texas enacted new redistricting plans for the Texas House and the Texas Congressional delegation based on this Court's revised interim plans, and Texas soon thereafter moved to dismiss all challenges to the 2011 Plans as moot. Mot. to Dismiss (ECF No. 768); *see also* 9/6/13 Order at 1, 5-7 (ECF No. 886).

27. After this Court denied Texas's motion to dismiss without prejudice, 7/1/13 Order (ECF No. 771), several Plaintiffs moved to amend their complaints to seek relief regarding the

2011 Plans under Section 3(c) of the Voting Rights Act, 52 U.S.C. § 10303(c), and some groups added claims based on the 2013 plans. Cueller Mot. to Amend (ECF No. 774); NAACP Mot. for Leave to Amend (ECF No. 776); Perez Pls.' Mot. for Leave to File 4th Am. Compl. (ECF No. 777); Democratic Party Mot. for Leave to File 1st Am. Cross-Claim (ECF No. 778); MALC Mot. for Leave to File Am. Compl. (ECF No. 779); TLRTF Mot. for Leave to Supplement Pleadings (ECF No. 780); Morris Mot. for Leave to File 3d Am. Compl. (ECF No. 783); *see also* 9/6/13 Order at 1, 6-7 (ECF No. 886).

28. In opposition to Plaintiffs' motions for leave to amend, Texas once again moved to dismiss all claims regarding the 2011 Plans as moot. Mot. to Dismiss (ECF No. 786).

29. While those motions remained pending, the United States moved to intervene in this case, asserting claims under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, and the Fourteenth and Fifteenth Amendments. U.S. Mot. to Intervene (ECF No. 871); *see also* U.S. Compl. in Intervention (ECF No. 907).

30. On September 6, 2013, this Court denied Texas's motion to dismiss claims against the 2011 Plans as moot and allowed Plaintiffs to amend their complaints. 9/6/13 Order at 1, 17-19 (ECF No. 886).

31. On September 24, 2013, this Court granted the United States' motion to intervene, again rejecting Texas's argument that claims based on the 2011 Plans claims are moot. 9/24/13 Order at 2, 11 (ECF No. 904).

32. Following a reopening of discovery, Texas once again moved to dismiss all claims based on the 2011 House and Congressional plans and moved for partial summary judgment, largely based on the mootness theory advanced in its prior motions. Mot. to Dismiss. (ECF No. 995); Mot. for Summ. J. (ECF No. 996). This Court granted the motion for summary

judgment in part but allowed most claims to proceed to trial. 6/17/14 Order (ECF No. 1104); 6/23/14 Order (ECF No. 1108).

33. From July 14 to July 19, 2014, this Court conducted a six-day bench trial regarding claims against the 2011 House plan, and from August 11 to August 16, 2014, this Court conducted a six-day bench trial regarding claims against the 2011 Congressional plan. 6/6/14 Order (ECF No. 1052); Trial Trs. (ECF Nos. 1209, 1212-13, 1215-17).

IV. BACKDROP OF THE 2011 REDISTRICTING PROCESS

A. Population Growth

34. Between 2000 and 2010, the total population of Texas increased by 4,293,741 persons with 89.2 percent of that growth attributed to the state's minority population. US Ex. 40 (Change in Pop., 2000-2010); Mot. for Judicial Notice ¶¶ 3, 6 (ECF No. 1085); 6/20/14 Minute Order (taking judicial notice in relevant part); US Ex. 34 at 28-30, 35-40 (Oct. 2011 Saenz Rep.).

35. Hispanics led the state's population growth, adding nearly 2.8 million people to the state's total population. The state's Hispanic population growth comprised 65 percent of the total increase, the African-American population growth comprised 13.4 percent, and the Asian population growth comprised 10.1 percent. US Ex. 40 (Change in Pop., 2000-2010); Mot. for Judicial Notice ¶¶ 3, 6 (ECF No. 1085); US Ex. 34 at 28-30, 35-40 (Oct. 2011 Saenz Rep.).

36. Minorities comprised 54.7 percent of the state's total population in 2010, an increase from 47.6 percent in 2000. US Ex. 38 at 1 (Tex. Pop. Growth); Mot. for Judicial Notice ¶¶ 3, 6 (ECF No. 1085). At the same time, the state's Anglo population decreased from 52.4 percent of the total population in 2000 to 45.3 percent in 2010. US Ex. 38 at 1 (Tex. Pop. Growth); Mot. for Judicial Notice ¶¶ 3, 6 (ECF No. 1085).

37. During this same period, the voting-age population (VAP) of Texas increased by 3,314,676, from 14,965,061 to 18,279,737, with more than 78 percent of this increase attributed

to the state's minority population. US Ex. 41 (Tex. Pop. Growth by Race); Mot. for Judicial Notice ¶¶ 4-7 (ECF No. 1085).

38. The Hispanic population comprised 56.1 percent of VAP growth, the African-American population comprised 13.4 percent, and the Asian population comprised 9.1 percent, also resulting in an increase of VAP share for each of these groups and a decrease of VAP share for Anglo Texans. US Ex. 41 (Tex. Pop. Growth by Race); Mot. for Judicial Notice ¶¶ 4-7 (ECF No. 1085).

39. According to the 2000 Census, the State of Texas had a citizen voting-age population (CVAP) of 13,299,845 persons, including 8,305,993 (62.5%) non-Hispanic white persons, 2,972,988 (22.4%) Hispanic persons, 1,590,832 (12.0%) Black persons, and 225,374 (1.7%) Asian persons. Mot. for Judicial Notice ¶ 5 & ex.3 (ECF No. 1085).

40. According to the 2006-2010 American Community Survey (ACS) 5-year estimates, the State of Texas had a CVAP of approximately 15,276,966 persons, including 8,800,442 (57.6%) non-Hispanic White persons, 3,889,571 (25.5%) Hispanic persons, 1,938,918 (12.7%) Black persons, and 419,716 (2.7%) Asian persons. Mot. for Judicial Notice ¶ 8 & ex.5 (ECF No. 1085).

41. According to the 2010 American Community Survey (ACS) 1-year estimates, the State of Texas had a CVAP of approximately 15,854,093 persons, including 8,952,806 (56.5%) non-Hispanic White persons, 4,180,024 (26.4%) Hispanic persons, 2,048,450 (12.9%) Black persons, and 463,558 (2.9%) Asian persons. United States Census Bureau, 2010 ACS 1-Year Estimates, Sex by Age by Citizenship Status, *at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_B05003&prodType=table (last visited Oct. 30, 2014) (CVAP); *id.* at :

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_B05003H&prodType=table (last visited Oct. 30, 2014) (White CVAP); *id.* at

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_B05003I&prodType=table (last visited Oct. 30, 2014) (Hispanic CVAP); *id.* at

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_B05003B&prodType=table (last visited Oct. 30, 2014) (Black CVAP); *id.* at

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_B05003D&prodType=table (last visited Oct. 30, 2014) (Asian CVAP).

42. According to the five-year ACS estimates, the state's total CVAP increase between 2000 and 2010 was approximately 2 million persons, with more than 70 percent of this increase attributed to the state's minority population. Mot. for Judicial Notice ¶¶ 5, 8 (ECF No. 1085).

43. According to the five-year ACS estimates, the Hispanic population comprised approximately 46 percent of CVAP growth, the African-American population comprised approximately 18 percent, and the Asian population comprised approximately 10 percent, also resulting in an increase of CVAP share for each of these groups and a decrease of CVAP share for Anglo Texans. Mot. for Judicial Notice ¶¶ 5, 8 (ECF No. 1085).

44. Because of the population growth, the State of Texas gained four additional seats in the House of Representatives, increasing the number of representatives for the state from 32 to 36. Trial Tr. 1597:13-19, Aug. 15, 2014 (Downton).

45. If Hispanic and Black voters were able to elect members of Congress in proportion to their CVAP from 2006-2010, they could elect 14 of 36 Congressional seats, and if Hispanic and Black voters were able to elect representatives to the Texas House in proportion to

their 2006-2010 CVAP, they could elect 57 of 150 House seats. *Supra* ¶ 40.

B. 2010 Election Results

46. The 2010 election featured reduced voter turnout among Hispanic and African-American voters, as often occurs in a midterm election, and older Anglo voters turned out at higher levels, nearing participation rates typically associated with a presidential election. Trial Tr. 878:14-879:13, Sept. 8, 2011 (Murray).

47. As a result, several districts that consistently elected Hispanic voters' preferred candidate throughout the decade did not do so in 2010. *Infra* ¶¶ 48-58.

48. CD 23 was redrawn by a three-judge court following the Supreme Court's decision in *LULAC v. Perry*, 548 U.S. 399 (2006), in order to remedy vote dilution that occurred when the Texas legislature attempted to protect a vulnerable incumbent who was not the preferred candidate of a growing Hispanic electorate. Trial Tr. 300:13-22, Sept. 7, 2011 (Kousser); *LULAC v. Perry*, 548 U.S. at 423-43; *LULAC v. Perry*, No. 2:03-cv-354, 2006 WL 3069542 (E.D. Tex. Aug. 4, 2006) (three-judge court).

49. In the two elections prior to 2010, CD 23 elected a Hispanic-preferred candidate, but in 2010, in a racially polarized contest, CD 23 elected the candidate preferred by Anglo voters. Trial Tr. 225:19-25, Sept. 7, 2011 (Kousser); US Ex. 686 at 4-5 (2011 Handley Cong. Rep.).

50. Between 1982 and 2008, CD 27 consistently elected U.S. Representative Solomon Ortiz. Trial Tr. 1870:16-22, Sept. 14, 2011 (Alford).

51. In 2010, U.S. Representative Blake Farenthold, an Anglo who was not the candidate of choice of most Hispanic voters, narrowly defeated Representative Ortiz. Trial Tr. 226:3-9, Sept. 6, 2011 (Kousser); Trial Tr. 973:14-16, Sept. 9, 2011 (Downton).

52. On November 28, 2001, the 2001 House redistricting plan was approved by a

three-judge court in *Balderas v. Texas*, 2001 WL 34104833 (E.D. Tex 2001).

53. HDs 33, 34, 35, and 117 consistently elected Hispanic-preferred candidates for three election cycles prior to 2010, but in 2010, in racially polarized contests, each district elected a candidate preferred by Anglo voters. Trial Tr. 626:1-632:18, July 15, 2014 (Herrero); US Ex. 351 at 5 (2011 Handley House Rep.); *see* US Ex. 352 ¶ 17 (Oct. 2011 Arrington Rep.).

54. In the 2010 general election in HD 33, Representative Raul Torres bested Representative Solomon Ortiz, Jr. and in HD 34, Representative Connie Scott defeated Representative Abel Herrero. US Ex. 363 at 41-42 (RED-225, Plan H100); US Ex. 351 at 5 (2011 Handley House Rep.). Likewise, while Hispanic voters in HD 35 elected their preferred candidates of choice between 2002 and 2008, Representative Jose Aliseda, the Anglo-preferred candidate, was elected in 2010. US Ex. 363 at 44 (RED-225, Plan H100); US Ex. 351 at 5 (2011 Handley House Rep.). Further, HD 117 elected a Hispanic-preferred candidate in 2004, 2006, and 2008, but Representative John Garza defeated the Hispanic-preferred candidate in the 2010 election. US Ex. 363 at 170 (RED-225, Plan H100); US Ex. 351 at 5 (2011 Handley House Rep.).

55. All four of the House districts in Hidalgo County—HDs 36, 39, 40, and 41—elected Hispanic-preferred candidates during the decade prior to the 2011 redistricting. US Ex. 351 at 4 (2011 Handley House Rep.).

56. Following the 2010 election, Representative Aaron Peña of HD 40 changed parties and joined the Republican Caucus. Trial Tr. 121:22-122:2, Aug. 11, 2014 (Peña).

57. Prior to redistricting, Texas officials stated that the goal of redistricting would be to protect incumbents, including those newly elected in 2010 from Hispanic opportunity districts. Trial Tr. 1294:10-18, July 17, 2014 (Coleman); Trial Tr. 1743:2-4, July 18, 2014 (Aycock); Trial

Tr. 343:1-344:2, Aug. 11, 2014 (Interiano); Trial Tr. 450:16-25, Aug. 12, 2014 (Arrington); Trial Tr. 1344:15-22, Aug. 14, 2014 (Solomons); US Ex. 76 (Email, Nov. 20, 2010).

58. In each of these cases, protection of incumbents who were not the preferred candidates of Hispanic voters but who represented Hispanic opportunity districts required the elimination, or reduction, of the opportunity for Hispanic voters to elect their preferred candidates of choice in future elections. US Ex. 352 ¶¶ 16-17, 131 (Oct. 2011 Arrington Rep.); US Ex. 356 ¶ 38 (Feb. 2014 Arrington Rep.); US Ex. 76 (Email, Nov. 20, 2010) (describing the addition of Anglo voters to an opportunity district).

C. 2010 Redistricting Field Hearings

59. Between June 21, 2010 and November 20, 2010, the Texas House Committee on Redistricting, the Texas House Judiciary Committee, and the Texas Senate Select Committee on Redistricting held 18 field hearings regarding the redistricting process around the state. US Ex. 272A (Hearing Notices).

60. The 2010 field hearings did not provide a genuine opportunity for public input into the redistricting process and the hearings were organized, at least in part, to provide superficial support for Texas's request for preclearance of its redistricting plans under Section 5. Trial Tr. 895:7-20, Aug. 13, 2014, (Dukes); *infra* ¶¶ 61-70.

61. The 2010 Census data were not yet available at the time of the hearings. Trial Tr. 9:4-17, July 14, 2014 (Veasey); Trial Tr. 251:2-4, Aug. 11, 2014 (Seliger); Trial Tr. 1241:16-1242:3, Aug. 14, 2014 (Korbel).

62. There were no proposed maps available at the field hearings on which the public could offer comments, limiting the effectiveness of any public input. Trial Tr. 895:7-20, Aug. 13, 2014 (Dukes); Trial Tr. 635:7-9, July 15, 2014 (Herrero); Trial Tr. 1320:2-13, July 17, 2014

(Coleman); Trial Tr. 1930:10-16, July 19, 2014 (Bruce); US Ex. 352 ¶ 109 (Oct. 2011 Arrington Rep.).

63. The Legislature's leadership did not provide critical information necessary for an informed and effective discussion, such as the potential to eliminate a House district from Nueces County. Trial Tr. 635:10-16, July 15, 2014 (Herrero).

64. Several of the field hearings were held during the workday in locations not accessible by public transportation, which made meaningful public participation by minority citizens extremely difficult to achieve. Trial Tr. 9:18-11:25, July 14, 2014 (Veasey).

65. Representative Marc Veasey, then a member of the 2009-2010 House Redistricting Committee, reached out to House Speaker Joe Straus and Chairman Delwin Jones of the House Redistricting Committee and offered to find convenient, accessible locations for field hearings in the Dallas-Fort Worth (DFW) Metroplex, but those officials did not take him up on the offer. Trial Tr. 11:14-12:19, 44:22-45:15, July 14, 2014 (Veasey).

66. Key figures who managed the 2011 redistricting process did not attend the 2010 field hearings, including Chairman Solomons of the House Redistricting Committee and Ryan Downton, counsel to the House Committee. Trial Tr. 1089:14-17, 1090:1-10, Aug. 14, 2014 (Hunter); Trial Tr. 1556:20-1557:6, Sept. 13, 2011 (Solomons).

67. No summary of the 2010 field hearings was available for the use of legislators or their aides during the 2011 redistricting process. Trial Tr. 642:6-643:2, July 15, 2014 (Herrero).

68. Although the 2010 field hearings were transcribed by the Office of the Texas Attorney General, the transcripts were not provided to the House Redistricting Committee or other members of the 82nd Legislature. Trial Tr. 642:6-643:2, July 15, 2014 (Herrero); Trial Tr. 1091:18-1092:8, Aug. 14, 2014 (Hunter).

69. The House Committee on Redistricting provided the 82nd Texas Legislature with a report of the 2010 field hearings, but the report lacked substance and consisted almost entirely of the dates and locations of hearings. Trial Tr. 636:23-641:5, July 15, 2014 (Herrero); Trial Tr. 1089:14-17, 1090:1-10, Aug. 14, 2014 (Hunter); US Ex. 340 (House Comm. on Redistricting Interim Rep.).

70. Because of this lack of substance, Representative Abel Herrero, a Hispanic Representative from Nueces County, declined to sign the interim report, although the interim report concealed this fact by omitting his signature line. Trial Tr. 641:6-642:5, July 15, 2014 (Herrero); US Ex. 340 (House Comm. on Redistricting Interim Rep.).

D. The Map Drawing Process

71. The Texas State Constitution provides that its Legislature will meet every two years and at other times when convened by the Governor. Tex. Const. art. III, § 5(a). The Legislature is sworn in on the second Tuesday of every odd-numbered year and meets in regular session for 140 days. *Id.* § 24(b); Tex. Gov't Code § 301.001. The committees within the Legislature are typically not appointed until February and, therefore, legislation is not usually considered until mid-February, when the general legislative session begins. Tex. Const. art. III, § 24(b); Tex. Gov't Code § 301.001. Actual legislative consideration of bills and their passage primarily takes place between February and May of a legislative year. Tex. Const. art. III, § 5(b).

72. Speaker of the House Joe Straus appointed Representative Solomons, who represented HD 65, as Chairman of the House Redistricting Committee in 2011. Trial Tr. 1551:25-1552:3, 1553:10-16, Sept. 13, 2011 (Solomons). Chairman Solomons had never before served on a redistricting committee, *id.* at 1553:10-16; Trial Tr. 1936:3-16, July 19, 2014

(Bruce), and had no background or expertise in redistricting, Trial Tr. 1554:6-8, Sept. 13, 2011 (Solomons).

73. Senator Seliger was the chairperson of the Senate Select Committee on Redistricting in 2011. Trial Tr. 219:8-10, Aug. 11, 2014 (Seliger).

74. The United States Census Bureau provided 2010 block-level census data to the State of Texas on February 17, 2011. Trial Tr. 9:4-17, July 14, 2014 (Veasey); Trial Tr. 93:15-18, July 14, 2014 (Pena); Trial Tr. 1320:2-7, July 17, 2014 (Coleman); Trial Tr. 251:2-4, Aug. 11, 2014 (Seliger); Trial Tr. 1241:16-1242:3, Aug. 14, 2014 (Korbel).

75. In the House, there were two principal map drawers for the Congressional and House redistricting plans—Ryan Downton and Gerardo Interiano.

76. Downton, the general counsel to the House Committee on Redistricting under Chairman Solomons, was the principal drafter of the Congressional Plan. Trial Tr. 903:3-12, 904:11-905:12, Sept. 9, 2011 (Downton). Downton's role in the House map included drafting both multi-county and urban districts, mediating disagreements between members, and modifying districts during the committee process. Trial Tr. 1989:5-9, 2016:2-8, 2025:7-2027:11, July 19, 2014 (Downton).

77. Interiano, counsel to Speaker of the House Joe Straus, testified that he was the principal map drawer for the House Plan. Trial Tr. 1472:14-1472:17, 1575:12-1575:15, July 18, 2014 (Interiano). Interiano also worked on the Congressional map. Trial Tr. 296:21-297:6, Aug. 11, 2014 (Interiano).

78. In the Senate, Doug Davis served as the Committee Director. Trial Tr. 255:3-5, Aug. 11, 2014 (Seliger). Although the Senate worked on the Congressional map, the architecture for the 2011 Plan came from the map drawers in the House. *Id.* at 220:20-221:1, 224:5-8. The

Senate did not make any changes to the House redistricting plan, per Texas tradition. Trial Tr. 154:20-25, July 14, 2014 (Arrington); Trial Tr. 697:24-698:2, July 16, 2014 (Rodriguez); US Ex. 603 (Article, May 4, 2011).

79. RedAppl is a software program used by members and their staff for redistricting. Trial Tr. 227:22-25, July 14, 2014 (Dyer). Members access RedAppl using a four-digit client ID code, which typically corresponds to the first four letters of a member's last name. *Id.* at 230:9-19.

80. During the 2011 redistricting process, Interiano was the primary user of the account STRJ, which was assigned to Speaker Straus. Trial Tr. 244:20-24, July 14, 2014 (Dyer); Trial Tr. 1548:8-12, July 18, 2014 (Interiano). Downton was the primary user of the House Redistricting Committee's account, HRC1. Trial Tr. 1990:16-1991:5, July 19, 2014 (Downton).

81. Interiano testified that he spent close to one thousand hours learning the RedAppl software program before any census results were available. Trial Tr. 1476:22-25, July 18, 2014 (Interiano). He also attended several trainings and read major cases on redistricting. *Id.* at 1476:3-11.

82. RedAppl has a function that shades a map to indicate the percentage of ethnic (Hispanic) or racial (Black) voting-age population in certain voter tabulation districts (also known as "VTDs" or "precincts"). As relevant here, RedAppl further disaggregates this data to allow a user to view the variations of voting-age population or total population by race or ethnicity at the census block level through color shading. RedAppl also allows a user to view variances in Spanish surname voter registration (SSVR) data between VTDs through color shading, but does not show variances in the SSVR rate between census blocks within a particular VTD. Trial Tr. 270:24-71:05, July 14, 2014 (Dyer). Similarly, election information, i.e., the

percentage of population that voted for a certain candidate in a prior election, is available only at the county and VTD levels. *Id.* at 276:9-25.

83. According to the Texas Secretary of State's website, “[a] suspense voter is a voter known to have an incorrect or outdated address. The county has sent the voter a form to obtain a new current address, but no response has been received.” Texas Secretary of State's Voter Registration Public Information Request Form, <http://www.sos.state.tx.us/Elections/forms/pi.pdf> (last visited Sept. 25, 2014) (internal quotation marks omitted). A suspense voter is typically known as an “inactive voter” in other states, which means he or she can still vote in an election. A non-suspense voter would typically be considered an “active voter.”

84. Map drawers for the House used non-suspense data with respect to SSVR instead of total voter registration data. Trial Tr. 2139:4-5, 2146:14-18, July 19, 2014 (Downton). Using non-suspense voters to determine SSVR requires more Hispanic population to be in a particular district than suspense voters in order to meet a requirement of 50 percent SSVR.

85. Downton, Interiano, and Bonnie Bruce took individual maps to legislators to have them sign off if their particular district was acceptable. Trial Tr. 1539:1-18, July 18, 2014 (Interiano). Once legislators had signed off on the configuration of their district, the practice was to include the district in the full statewide proposal, contingent on the other districts also being accepted if it was a drop-in county. Trial Tr. 1996:25-1997:11, 2061:9-16, July 19, 2014 (Downton).

86. A drop-in county requires that none of the boundaries of the districts in the county cross the county lines. Trial Tr. 731:17-24, July 16, 2014 (Pickett). There were eight drop-in counties in the 2011 Plan, which include Bexar, Dallas, Denton, El Paso, Harris, Nueces, Tarrant, and Travis counties. Trial Tr. 1876:2-8, July 19, 2014 (Alford).

V. THE 2011 CONGRESSIONAL REDISTRICTING PLAN

A. *Gingles* Preconditions

1. Creation of New Opportunity Districts

87. Minority population in Texas is sufficiently geographically concentrated that the state could maintain the cores of existing minority opportunity districts and form the cores of new minority opportunity districts. *E.g.*, Trial Tr. 406:11-407:5, Aug. 12, 2014 (Arrington).

88. The interim plans drawn by this Court demonstrated that it was possible to create at least 12 districts that provided minority voters with the opportunity to elect their preferred candidates of choice in a 36-district Congressional map. 11/26/11 Order at 16 n.32 (ECF No. 544) (Congress).

89. The Congressional plan enacted by Texas in 2011 (“2011 Plan”), also known as Plan C185, contains 36 congressional districts. US Ex. 711 (Plan Packet, C185).

90. The 2011 Plan had only 10 districts in which minority citizens would have the opportunity to elect candidates of their choice, out of 36 total districts. US Ex. 686 at 7-8 (2011 Handley Cong. Rep.); US Ex. 608 (Article, June 7, 2011).

91. The 2011 Plan contained seven opportunity districts for Hispanic citizens (CDs 15, 16, 20, 28, 29, 34, and 35) and three opportunity districts for African-American citizens (CDs 9, 18, and 30). US Ex. 686 at 7-8 (2011 Handley Cong. Rep.).

92. There were 10 minority opportunity districts in the 32-district court-drawn plan used in Congressional elections in Texas between 2006 and 2010 (“2006 Plan”). US Ex. 686 at 5-6 (2011 Handley Cong. Rep.).

93. The 2006 Plan contained seven opportunity districts for Hispanic citizens (CDs 15, 16, 20, 23, 27, 28, and 29) and three opportunity districts for African-American citizens (CDs 9, 18, and 30). US Ex. 686 at 7-8 (2011 Handley Cong. Rep.).

94. The 2011 Plan created two minority opportunity districts in CD 34 and CD 35. However, two minority opportunity districts that existed in the 2006 Plan, CD 23 and CD 27, were eliminated. *E.g.*, Trial Tr. 393:24-394:21, Aug. 12, 2014 (Arrington); *see also* US Ex. 761 (CD 23 Election Analyses); US Ex. 606 (Article, June 9, 2011).

95. Alternate plans showed that it was possible to draw 12 or more majority-minority congressional districts. Trial Tr. 406:11-407:5, Aug. 12, 2014 (Arrington); US Ex. 602 (Article, Apr. 7, 2011); US Ex. 605 (Article, May 26, 2011); US Ex. 613 (NAACP Plan).

96. Alternative plans also showed that it was possible to draw a plan that satisfied traditional redistricting principles, but contained at least three additional Hispanic districts as compared to the 2011 Plan. US Ex. 352 ¶¶ 158-63 (Oct. 2011 Arrington Rep.).

97. Those individuals drawing maps and those involved in the redistricting process knew that additional minority opportunity congressional districts could have been created, but elected not to do so. *See* Trial Tr. 243:3-244:11, Aug. 12, 2014 (Seliger); Trial Tr. 305:7-308:6, Aug. 11, 2014 (Interiano); US Ex. 749 (Email, May 17, 2011); 626 (Email, June 8, 2011); US Ex. 195 at 398 (Email, April 5, 2011); US Ex. 602 (Article, Apr. 7, 2011); US Ex. 605 (Article, May 26, 2011).

2. Cohesion

98. Statewide, Hispanic voters are politically cohesive and African-American voters are politically cohesive. *See* ECF 151-1 at 18 (Aug. 2011 Engstrom Rep.) (“Latinos are consistently supportive of candidates from within their own group, in both general and primary elections.”); ECF No.123-1 at 8 (Aug. 2011 Ansolabehere Rep.) (“. . . 75 percent or more of Hispanics and 90 percent or more of Blacks vote for the same candidates . . .”).

99. Record evidence in *Perez v. Perry* establishes that African Americans and Hispanics in Texas are politically cohesive in general elections. *See* ECF No. 151-1 at 18 (Aug.

2011 Engstrom Rep.) (“African Americans share [the] preference [of Hispanic voters] in general elections . . . but not in Democratic primaries. Other voters do not offer consistent support for these candidates in either type of election.”); ECF No. 123-1 at 8 (Aug. 2011 Ansolabehere Rep.) (“[V]oting patterns in the state indicate high levels of racial cohesion and polarization[,] . . . 75 percent or more of Hispanics and 90 percent or more of Blacks vote for the same candidates, and the candidates chosen by the majority of Hispanics and Blacks are opposite of the candidates preferred by Whites.”); ECF No. 150-1 at 26-28 (Aug. 2011 Burton Rep.) (“[I]n the general elections and often during primaries, African American and Latino voters supported the same candidates.”); ECF No. 128-1 at 73 (Aug. 2011 Kousser Rep.) (“Latinos vote overwhelmingly for Latino Democratic candidates in both primary and general elections . . . African-Americans vote almost unanimously for Latino Democratic candidates in general elections, but not in Democratic primaries . . . [I]t makes sense to combine African-American and Latino voters in districts in order to assess districting plans [because] [i]n general elections they reliably coalesce.”).

100. In seven counties studied by Dr. Robert Brischetto—including Nueces County and Kleberg County—Hispanic voters demonstrated cohesive voting patterns. Trial Tr. 969:3-11, July 16, 2014 (Brischetto); MALC Ex. 161 (Feb. 2014 Brischetto Rep.).

3. Polarized Voting

101. Anglo and minority voters exhibit patterns of racially polarized voting throughout the State of Texas, tending to vote in opposing blocs. Trial Tr. 229:12-14, Sept. 6, 2011 (Kousser); Trial Tr. 594:16-24, 609:2-11, Aug. 12, 2014 (Handley); 477:11-478:13, 483:20-484:2, Aug. 12, 2014 (Engstrom); 649:21-650:20, Aug. 12, 2014 (Archer).

102. The State of Texas conceded during closing arguments that racially polarized voting exists in all areas of the state except for Nueces County and Kleberg County. Trial Tr. 2168:5-2169:19, Aug. 26, 2014 (Frederick).

103. Analyses conducted in 2011 by the State of Texas, through the Office of the Texas Attorney General (OAG), documented racially polarized voting patterns in statewide elections from 2002 to 2010. US Exs. 1-4 (OAG RPVA).

104. Racially polarized voting persists in Texas elections across the state, including Nueces County and Kleberg County. US Ex. 356 ¶¶ 38, 78 (Feb. 2014 Arrington Rep.); US Ex. 351 app.D (2011 Handley House Rep.); US Exs. 1-4 (OAG RPVA); ECF No. 307-1 at 2-24 (Sept. 2011 Engstrom Rep.); Trial Tr. 938:16-21, 945:7-22, 946:15-947:13, 969:12-16, July 16, 2014 (Brischetto).

B. Direct Evidence of Discriminatory Intent

1. The Nudge Factor

105. In 2010, Eric Opiela and Gerardo Interiano were both counsel to Speaker Joe Straus. Trial Tr. 1478:9-21, July 18, 2014 (Interiano). During the 2011 legislative session, Opiela worked for Republican members of the Texas congressional delegation in an attempt to pass a map satisfactory to the delegation. Trial Tr. 236:24-237:1, Aug. 11, 2014 (Seliger). Interiano also had strong ties to the Republican delegation, having previously worked as a campaign manager and later as a legislative staffer for U.S. Representative Lamar Smith. Trial Tr. 1473:6-1474:23, July 18, 2014 (Interiano).

106. On November 19, 2010, while still employed by the Speaker, Opiela wrote in an email to Interiano that a useful metric would be to calculate for every census block “a ratio of Hispanic CVAP/Total Hispanic Population, a ratio of Spanish Surname RV /Hispanic CVAP, and a ratio of Spanish Surname RV/Total Hispanic Population[.]” US Ex. 75 (Email, Nov. 19,

2010). According to Opiela, “[i]t also would be good to calculate a Spanish Surname Turnout/Total Turnout ratio for the 2006-2010 General Elections for all VTDs (I already have the data for this for 2006-2008 in a spreadsheet, just need to gather it for every VTD for 2010).”

Id.

107. Opiela’s email continues: “These metrics would be useful in identifying a ‘nudge factor’ by which one can analyze which census blocks, when added to a particular district (especially 50+1 minority majority districts) help pull the district’s Total Hispanic Pop and Hispanic CVAPs up to majority status, but leave the Spanish Surname RV and TO the lowest. This is especially valuable in shoring up Canseco and Farenthold.” US Ex. 75 (Email, Nov. 19, 2010).

108. Interiano explained that in this email “Pop” stands for population, “RV” stands for registered voters, and “TO” stands for turnout. Trial Tr. 1536:15-1537:22, July 18, 2014 (Interiano).

109. Opiela used the term “OHRVS” or “Optimal Hispanic Republican Voting Strength” to refer to this effort to maintain Hispanic concentration and drive down Hispanic performance. Ex. 75 (Email, Nov. 19, 2010); Trial Tr. 127:15-128:8, July 14, 2014 (Arrington).

110. On December 7, 2010, Interiano requested data from the Texas Legislative Council (TLC) regarding the so-called “nudge factor” or OHRVS. US Ex. 81 (Email, Dec. 7, 2010); Trial Tr. 257:6-258:18, July 14, 2014 (Dyer).

On December 13, 2010, the TLC provided some of the requested data. US Ex. 86 (Email, Dec. 13, 2010). The data transmitted to Interiano would enable a map drawer to estimate which census blocks had both high Spanish surname voter concentrations and low turnout in the 2008 general election. *Id.*; Trial Tr. 258:19-260:24, July 14, 2014 (Dyer); Trial Tr. 396:4-25, Aug. 12,

2014 (Arrington). Clare Dyer of the TLC explained that a map drawer could achieve the same “nudge factor” result with data already built into RedAppl. Trial Tr. 265:18-266:21, July 14, 2014 (Dyer).

111. Opiela also made his own requests to the TLC, and obtained block-level data for the 2010 election. Trial Tr. 760:21-762:15, Aug. 13, 2014 (Dyer); *see also* US Ex. 729 (Non-Plan Reprs. and Limitations of Data).

112. During the redistricting process, Opiela also used a 13.9-gigabyte database containing all registered voters, coded by census block, including Spanish surname designations and 10 years of individual voter turnout records. US Ex. 149 (Email, Nov. 22, 2010); Trial Tr. 1490:2-1493:16, July 18, 2014 (Interiano); Trial Tr. 298:20-299:21, Aug. 11, 2014 (Interiano).

113. Interiano admitted that with regard to the “nudge factor” e-mail, there was never any doubt that Opiela was trying to draw districts that would appear to be Hispanic opportunity districts because their demographic benchmarks were above a certain level but would elect a candidate who was not the Hispanic candidate of choice. Trial Tr. 375:19-25, Aug. 11, 2014 (Interiano).

114. Opiela visited the redistricting and legislative office. Trial Tr. 314:21-316:7, Aug. 11, 2014 (Interiano). Opiela showed maps to Interiano and Downton on his laptop. Trial Tr. 1728:12-23, Aug. 15, 2014 (Downton). Interiano and Downton worked together on redistricting plans in the same office on the second floor of the State Capitol building. Trial Tr. 314:25-315:10, Aug. 11, 2014 (Interiano). Interiano communicated frequently with Opiela to receive the views of Republican members of the congressional delegation. *Id.* at 297:21-298:4.

115. Opiela also visited frequently with other members of the redistricting committee and their staffs. US Ex. 745 (Email, May 16, 2011); US Ex. 746 (Email, May 14, 2011); Trial Tr. 244:12-246:9, Aug. 11, 2014 (Seliger); Trial Tr. 1278:10-22, Aug. 14, 2014 (Solomons).

116. The emails exchanged by these map drawers were not merely theoretical; the methodology they discussed was used to weaken minority voting strength. *See* Trial Tr. 375:19-25, Aug. 11, 2014 (Interiano); US Ex. 76 (Email, Nov. 20, 2010); *see also infra* ¶¶ 146-159.

2. Racially Focused Statements

117. The emails between key figures in the process also establish that decision makers thought and spoke in terms of race. US Ex. 76 (Email, Nov. 20, 2010). Opiela described his plan to protect the newly elected incumbents in CD 23 and CD 27 by adding “Anglo voters” to those districts and then, in the case of CD 23, adding enough low-turnout Hispanic areas in Bexar County to ensure its majority-minority population status. *Id.* at 1-2; *see* US Ex. 761 (CD 23 Election Analyses). Opiela referred to “Anglo voters” as the solution to his political problem not just once, but four times in a single paragraph. US Ex. 76 at 2 (Email, Nov. 20, 2010); Trial Tr. 343:1-348:1, Aug. 11, 2014 (Interiano). This fit the broader pattern of the 2011 Texas legislative session being a racially charged session that included several racially charged bills. Trial Tr. 261:19-262:17, Aug. 11, 2014 (Seliger).

3. Split Precincts (VTDs)

118. The 2011 Congressional plan split 518 VTDs. Trial Tr. 409:2-7, Aug. 12, 2014 (Arrington); US Ex. 699 (RED-381, Plan C185); US Ex. 352 ¶165 & tbl.19 (Oct. 2011 Arrington Rep.). The 2011 House plan split 412 VTDs. These splits are concentrated in minority communities and frequently divide precincts to exclude or include racial minority groups in specific districts. US Ex. 352 ¶¶ 164-73 & tbl.21 (Oct. 2011 Arrington Rep.).

119. As a general matter, splitting precincts tends to reduce turnout because of voter confusion. Trial Tr. 138:19-140:17, July 14, 2014 (Arrington). Concentrating precinct splits in minority communities weighs more heavily on minority voters and drives down minority voter turnout. US Ex. 352 ¶¶ 84-103 (Oct. 2011 Arrington Rep.).

120. Although there may be a need to split one or more precincts in each congressional district to ensure that they each have precisely the same population, it does not justify the 518 split precincts in the Congressional plan or the 412 splits precincts in the House plan. Trial Tr. 409:2-7, Aug. 12, 2014 (Arrington); US Ex. 352 ¶ 87, (Oct. 2011 Arrington Rep.).

121. When Texas split precincts, the only accurate statistical data available to guide boundaries were population data and racial composition; no political information was available to divide these precincts, *see infra* ¶¶ 122-123.

122. Texas's redistricting application "RedAppl" provided population and race data at the census block level, which is typically a much smaller unit than a precinct. Trial Tr. 760: 3-12, 763:13- 764:22, Aug. 13, 2014 (Dyer). Although RedAppl allocates election data to the census block level, that allocation is not accurate. Trial Tr. 396:4-397:22, Aug. 12, 2014 (Arrington). RedAppl applies election results homogenously throughout a precinct. In other words, RedAppl assumes that the percentage of the vote received by a candidate in a particular census block within a precinct is identical to the percentage that the candidate received in the precinct as a whole. Trial Tr. 785:11-787:9, Aug. 13, 2014 (Dyer); Trial Tr. 265:22-266:24, July 14, 2014 (Dyer).

123. Therefore, when Texas split precincts, it had no accurate way to determine the electoral performance of the census blocks within those precincts. Trial Tr. 128:9-129:5, July

14, 2014 (Arrington). Texas officials knew of this limitation in RedAppl. Trial Tr. 257:25-259:22, July 14, 2014 (Dyer).

124. Moreover, numerous precinct splits along the borders of certain Congressional and House districts show a statistically significant racial skew, in which voters of a particular race are deliberately included in or excluded from particular districts. US Ex. 352 ¶¶ 77-80, 100-03 & tbl.11, 164-73 & tbl.21 (Oct. 2011 Arrington Rep.); Trial Tr. 128:9-129:5, July 14, 2014 (Arrington); *see infra* ¶¶ 170-188, 433-442. Therefore, the only plausible explanation for the concentration of VTD splits is the use of race as a proxy for political preference. US 352 ¶¶ 102-03, 166-68 (Oct. 2011 Arrington Rep.).

C. Circumstantial Evidence of Discriminatory Intent

1. Evidence of Discriminatory Intent in Congressional District 23

a. Comparison of CD 23 in the 2006 Plan and CD 23 in the 2011 Plan

125. In 2006, a three-judge court created CD 23 as a minority opportunity district in compliance with Section 2 of the Voting Rights Act, following the Supreme Court's decision in *LULAC v. Perry*, 548 U.S. 399, 425-42 (2006). *LULAC v. Perry*, No. 2:03-cv-354, 2006 WL 3069542 (E.D. Tex. Aug. 4, 2006) (three-judge court).

126. CD 23 in the 2006 Plan was located in Southwest Texas and included 17 whole counties and parts of three others. US Ex. 735 (Map, Change from C100 to C185).

127. According to 2010 census data, CD 23 in the 2006 Plan had a total Hispanic population of 66.4 percent, a Hispanic voting-age population (HVAP) of 62.8 percent, and a SSVR rate of 52.0 percent. US Ex. 710 (RED-202, Plan C100). The district's Hispanic citizen voting-age population (HCVAP) was 58.4 percent. *Id.*

128. Voters in CD 23 first elected *Ciro Rodriguez* to the U.S. House of Representatives in 2006, US Ex. 709 (RED-206, Plan C100, 2006 General Election), then again in 2008, *Quesada* Ex. 91 (RED-225, Plan C100, 2008 General Election).

129. Francisco “*Quico*” *Canseco* was elected as the Representative from CD 23 in the November 2010 general election, defeating Representative *Rodriguez*. Trial Tr. 566:8-10, Aug. 12, 2014 (*Canseco*); TLRTF Ex. 241 (RED-206, Plan C100, selected 2010 elections); US Ex. 686 at 19, app.D (2011 *Handley Cong. Rep.*). Representative *Canseco* was not the Hispanic candidate of choice, and the map drawers were aware of this fact. US Ex. 76 (Email, Nov. 20, 2010); Trial Tr. 308:18-309:17, Aug 11, 2014 (*Interiano*); US Ex. 629 (Email, May 30, 2011); US Ex. 627 (Email, June 11, 2011).

130. In the 2006 Plan, Hispanic citizens in CD 23 elected their candidate of choice to the U.S. House of Representatives in 2006 and 2008, but not in 2010. US Ex. 686 at 5 (2011 *Handley Cong. Rep.*); TLRTF Ex. 241 (RED-206, Plan C100, selected 2010 elections); Trial Tr. 513:7-514:12, Sept. 7, 2011 (*Engstrom*); *see* US Ex. 709 (RED-206, Plan C100, 2006 General Election).

131. Hispanic voters in the area of CD 23 voted cohesively. US Ex. 686 at 15-19 (2011 *Handley Cong. Rep.*); US Ex. 600 (OAG RPVA, CD 23, Plan C100); US Ex. 609 (*Archer RBVA*).

132. Voting in CD 23 in the 2006 Plan was highly polarized. US Ex. 686 at 5 (2011 *Handley Cong. Rep.*). In CD 23 during the 2010 Congressional election, the Hispanic-preferred candidate received an estimated 84.2 percent of the Hispanic vote but only 12.4 percent of the Anglo vote. US Ex. 686 at 15-19 (2011 *Handley Cong. Rep.*); US Ex. 600 at 529-52 (OAG RPVA, CD 23, Plan C100); US Ex. 609 (*Archer RBVA*).

133. According to the 2010 Census, CD 23 in the 2006 Plan was overpopulated by more than 149,000 people. US Ex. 710 at 10 (Plan Packet, C100); Trial Tr. 450:2-11, Sept. 7, 2011 (Flores); Trial Tr. 400:14-22, Aug. 12, 2014 (Arrington).

134. According to data from 2010, in the 2011 Plan, CD 23 had a total Hispanic population of 67.8 percent, a HVAP of 63.8 percent, and a SSVR rate of 54.5 percent. US Ex. 711 at 2 (Plan Packet, C185). The district's HCVAP was 58.5 percent. US Ex 697 at 1 (RED-106, Plan C185).

135. Under the 2006 Plan, Hispanic voters elected their candidate of choice in CD 23. Trial Tr. 589: 20- 590:5, Aug. 12, 2014 (Handley); US Ex. 687A at 5-6 (Apr. 2014 Handley Rep.). Hispanic voters elected their preferred candidate in two of the three "endogenous" Congressional elections held in the district. Trial Tr.591:25-592:15, Aug. 12, 2014 (Handley); Trial Tr. 403:23-404:6, Aug. 12, 2014 (Arrington).

136. Compared to CD 23 in the 2006 Plan, CD 23 in the 2011 Plan decreased the performance of Hispanic-preferred candidates in exogenous general elections. US Ex. 687A at 5-6 (Apr. 2014 Handley Rep.) (exogenous index decreased from 50 percent to 0 percent); US Ex. 350 at 6 (Oct. 2011 Alford Rep.) (exogenous index decreased from 46 percent to 29 percent); US Ex. 25 at 2 (Article, June 2, 2011).

137. Dr. Handley examined the districts' likely performance using recompiled election results from six contests involving minority candidates in Statewide election contests. US Ex. 687A at 5-6 (Apr. 2014 Handley Rep.); Trial Tr. 592:23-594:10, Aug. 12, 2014 (Handley).

138. In the 2011 Plan, CD 23 no longer provided minority voters with the opportunity to elect their candidates of choice. US Ex. 687A at tbl.4 (Apr. 2014 Handley Rep.); US Ex. 686 at 7-8 (2011 Handley Cong. Rep.); Trial Tr. 589:20-590:5, 595:25-596:6, Aug. 12, 2014

(Handley); Trial Tr. 1877:23-1878:6, Sept. 14, 2011 (Alford); Trial Tr. 454:12-455:1, Sept. 7, 2011 (Flores).

139. The state's expert, Dr. John Alford testified, with respect to the changes in CD 23 from the 2006 Plan to the 2011 Plan, that the problems that existed in CD 23 in *LULAC v. Perry* were also present in the 2011 Plan: "There are some obvious parallels between what happened previously [in 2003] and what happened this time." Trial Tr. 1875:2-9, Sept. 14, 2011 (Alford). Dr. Alford also stated, when discussing the changes to CD23: "we feel like we are all having déjà vu[.]" *Id.* at 1929:18-21. Further, Dr. Alford testified: "If I [were] advising the legislature on drawing the 23rd, I would not have done what was done to the 23rd." *Id.* at 1838:9-21.

b. Alford's "Mosaic" Analysis of CD 23

140. In his rebuttal report, Dr. Alford, presented his analysis of reconstituted 2012 congressional elections using what he described as a "mosaic" technique. Trial Tr. 1850:11-1855:13, Aug. 16, 2014 (Alford). Using this method, Alford aggregated the 2012 results for the Democratic and Republican congressional candidates in the precincts that would have been within CD 23 in the 2011 Plan. *Id.* at 1854:12-22. Based on this mosaic analysis, he concluded that U.S. Representative Pete Gallego might have prevailed in CD 23 in the 2012 election if the election had been held in Plan C185. *Id.* at 1855:8-13.

141. Under cross-examination, however, Alford was unable to identify any other expert who performs reconstituted election analysis using this "mosaic" technique. Trial Tr. 1917:17-1918:7, Aug. 16, 2014 (Alford). He had not seen the technique adopted in any reported cases or scholarly publications. *Id.* at 1918:9-14. Alford admitted that the TLC does not use this "mosaic" technique, and he was not aware of any other social scientists that use the "mosaic" technique. *Id.* at 1918:15-22.

142. The United States' expert, Dr. Lisa Handley, criticized Alford's technique, noting that it "borrowed from different congressional elections with different candidates and different dynamics in each of these congressional elections." Trial Tr. 594:25-595:11, Aug. 12, 2014 (Handley). She concluded that Alford's analysis "doesn't indicate to me how a minority-preferred candidate, who is a minority, would do in that district." *Id.* at 595:9-11.

143. Jeffrey Archer, a senior TLC attorney with 25 years of experience in redistricting, offered a similar critique. Under questioning from the state's attorney about combining results of State Senate contests within the boundaries of CD 23 into what he called "a composite," Archer noted that "[t]here are a lot of apples and oranges, so you are going to see a fragment of a district that is heavily Republican, and if you add that to the wins by the others—sometimes the congressional challengers are extremely low turnout or low-funded, are not well-known, if it is a very lopsided district that just happens to overlap with District 23. I probably didn't look at these, more than just to peruse the ballot." Trial Tr. 673:18-674:7, Aug. 12, 2014 (Archer); *see also id.* at 678:7-680:17. He also noted that "you don't know if you have a Hispanic preferred candidate in every race." *Id.* at 673:23-24; US Ex. 623 (Email, June 2, 2011).

144. In light of the Handley and Archer criticisms, as well as Alford's own testimony on cross examination, Alford's "mosaic" technique fails to produce reliable results. As a result, we give Alford's analysis, and the conclusion he draws from it, little weight.

c. Legislative Goals Regarding CD 23

145. Legislators wanted to make CD 23 politically safer for Representative Canseco after the close election of 2010. Trial Tr. 224:17-225:7, Aug. 11, 2014 (Seliger); Trial Tr. 1454:23-1455:3, Sept. 12, 2011 (Interiano); Trial Tr. 1927:16-1928:10, Sept. 14, 2011 (Alford); Trial Tr. 1634:19-1635:8, 1666:11-18, 1693:23-1694:21, Aug. 15, 2014 (Downton).

d. "Nudge Factor" Applied to CD 23

146. CD 23 was drawn to make the district appear to provide Hispanic voters an opportunity to elect their preferred candidates, but in reality, the district's Hispanic voters would be unable to elect their candidates of choice. Trial Tr. 395:10-17, Aug. 12, 2014 (Arrington); Trial Tr. 453:24-455:1, Sept. 7, 2011 (Flores); US Ex. 352 ¶ 141-43 & tbl.14 (Oct. 2011 Arrington Rep.); US Ex. 356 ¶ 24 (Feb. 2014 Arrington Rep.); US Ex. 686 at 6-8 (2011 Handley Cong. Rep.).

147. To accomplish their goal, map drawers intentionally removed highly mobilized Hispanic voters from the district, and purposefully included areas with a relatively high Hispanic population percentage and relatively low turnout rate. Trial Tr. 402:8-403:7, Aug. 12, 2014 (Arrington); Trial Tr. 596:7-598:17, Aug. 12, 2014 (Handley) .US Ex. 687A, tbl.5 (Apr. 2014 Handley Rep.); US Ex. 26 (Article, June 3, 2011). At the same time, they took care to maintain an appearance of Hispanic opportunity by keeping the district's Hispanic CVAP at the same level in the 2011 Plan as in C100. Trial Tr. 450:19-451:16, Sept. 7, 2011 (Flores); US Ex. 352 ¶ 141-43 & tbl.14 (Oct. 2011 Arrington Rep.); US Ex. 356 ¶ 24 (Feb. 2014 Arrington Rep.); US Ex. 686 at 6-8 (2011 Handley Cong. Rep.).

148. The map drawers received numerous maps from Opiela designed to accomplish this goal. *See* US Ex. 658 (HRC Plan List). On June 11, 2011, Opiela provided maps to Downton and Interiano "that should (1) improve CD 23's hispanic [sic] performance while maintaining it as a Republican district[.]" US Ex. 633 (Email, June 11, 2011); US Ex. 356 ¶ 24 (Feb. 2014 Arrington Rep.); Trial Tr. 310:1-20, Aug. 11, 2014 (Interiano).

149. On June 13, 2011, Opiela sent a map to Interiano regarding the configuration of CD 23, which is listed in Interiano's RedAppl account as STRJC116. US Ex. 739 (Map(s), STRJC116); US Ex. 196 at 307 (Email, June 13, 2011). One minute after downloading the map

into his RedAppl account, Interiano provided it to Downton. US Ex. 664 (Straus (Part I) Plan List); Trial Tr. 318:21-319:11, Aug. 11, 2014 (Interiano).

150. On June 13, 2011, Opiela wrote an email to Jennifer Brown explaining that he had given the map drawers the “tools to fix this,” referring to the ability to shore up CD 20. Tex. Ex. 631 (Email, June 13, 2011).

151. Opiela expressed that the map drawers did not want to use Anglo voters to bolster Canseco’s performance because that would “put a neon sign telling the court to redraw [the district].” US. Ex. 629 (Email, May 30, 2011); US Ex. 352 ¶ 185 (Oct. 2011 Arrington Rep.); Trial Tr. 398:3-25, Aug. 12, 2014 (Arrington).

152. The OAG used 10 statewide elections between 2002 and 2010 to determine whether the Hispanic candidate of choice would prevail in each of the 10 sample elections. Trial Tr. 302:10-14, Aug. 11, 2014 (Interiano); US Ex. 190 (Email, Apr. 22, 2011). As the map drawers were creating CD23, they received a recompiled election analysis for their draft maps, which included an index of 10 elections compiled by the Texas OAG. Trial Tr. 5:13-8:25, 302:4-14, 310:21-311:7, Aug. 11, 2014 (Interiano). When the map drawers were receiving these reports, they understood them as determining Hispanic performance and not necessarily Democratic performance. *Id.* at 304:13-18.

153. While the Hispanic-preferred candidate received the majority of votes in 3 of 10 elections in CD 23 in the 2006 Plan, this fell to 1 of 10 elections in the draft maps. Trial Tr. 303:12-15, 304:19-24, Aug. 11, 2014 (Interiano); US Ex. 610 (OAG-10); US Ex. 630 at 1 (Email, May 28, 2011); Trial Tr. 1513:9-1514:15, Aug. 15, 2014 (Hanna). In the map passed by the House, the performance of CD 23 was reduced from three out of ten to one out of ten. Trial Tr. 1638:7-14, Aug. 15, 2014 (Downton); Trial Tr. 377:19-24, Aug. 11, 2014 (Interiano).

154. In CD 23 in the 2011 Plan, Hispanic voters with higher turnout rates were swapped for voters who turned out at lower rates. US Ex. 687A at 7-8 (Apr. 2014 Handley Rep.); Trial Tr. 450:19-451:16, Sept. 7, 2011 (Flores); US Ex. 610 (OAG-10); US Ex. 600 (CD 23 Est. Turnout by Race/Ethnicity, Plan C100); US Ex. 601 (CD 23 Est. Turnout by Race/Ethnicity, Plan C185).

155. Specifically, Dr. Flores found that in precincts swapped by the map drawers, Hispanic turnout was two percentage points lower in CD 23 in the 2011 Plan as compared to the 2006 Plan. TLRTF Ex. 1109 at 2 (Analysis of Changes to CD 23); Trial Tr. 519:15-520:8, Aug. 12, 2014 (Flores). He found that Anglo turnout was two percentage points higher in the same comparison. TLRTF Ex. 1109 at 2 (Analysis of Changes to CD 23); Trial Tr. 519:15-520:8, Aug. 12, 2014 (Flores).

156. Hispanic turnout decreased in CD 23 from the 2006 Plan to the 2011 Plan. *Compare* US Ex. 600 (OAG RPVA, CD 23, Plan C100), *with* US Ex. 601 (OAG RPVA, CD 23, Plan C185).

157. The RedAppl plan lists and trial testimony reveal that Opiela also sent numerous maps to Interiano and Downton with suggested changes to the maps under consideration. US Ex. 658 (Downton Plan List); US Ex. 664 (Straus (Part I) Plan List); US Ex. 739 (Map(s), STRJC116); US Ex. 740 (Map(s), HRC1C165); US Ex. 741 (Map(s), HRC1C124); US Ex. 742 (Map, Plan C100); Trial Tr. 312:18-314:4, Aug 11, 2014 (Interiano). Some of the changes in Opiela's maps were adopted exactly as suggested. Trial Tr. 312:18-314:4, Aug 11, 2014 (Interiano). Even when the map drawers did not adopt the exact changes proposed by Opiela, including his boundary changes in STRJC 116, they implemented concepts proposed by Opiela. Trial Tr. 1660:14-25, 1662:22-1663:1, 1726:2-14, Aug 15, 2014 (Downton).

158. Chairman Solomons followed Opiela's recommendation in rejecting a proposed amendment by Representative Peña. US Ex. 757 (Email, June 15, 2011); Trial Tr. 1349:9-1353:1, Aug. 14, 2014 (Solomons). Opiela's calculations showed that Anglo Republicans in statewide election contests would receive a smaller share of the vote if the Peña amendment was adopted, and that led Representative Solomons to not allow the amendment to the floor of the House. US Ex. 757 (Email, June 15, 2011); Trial Tr. 1349:9-1353:1, Aug. 14, 2014 (Solomons).

159. Although Opiela expressed some concerns about CD 20 on June 13, 2011, one day later on June 14, 2011, after Interiano explained that Opiela had looked at incorrect numbers for CD 20, Opiela was an enthusiastic supporter of the final bill, saying: "Let's get this bill passed!" Tex. Ex. 632 (Email, June 14, 2011); Trial Tr. 376:7-377:2, Aug. 11, 2014 (Interiano).

e. Warnings that CD 23 Did Not Comply with the Voting Rights Act Were Not Heeded

160. Jeffrey Archer and David Hanna from the TLC expressed concerns to the map drawers about whether Hispanic voters would be able to elect their candidate of choice in CD 23 in the Solomons-Seliger draft Plan C125 and subsequent plans, and whether those plans would comply with the Voting Rights Act. Trial Tr. 644:17-645:23, 660:14-662:20, Aug. 12, 2014 (Archer); US Ex. 609 (Archer RBVA); Trial Tr. 1515:2-1519:7, Aug. 15, 2014 (Hanna).

161. Senate Committee staffer Doug Davis expressed concerns about certain proposed iterations of CD 23. He was concerned about compliance with the Voting Rights Act and the fact that the proposed district would elect Hispanic-preferred candidates only one of 10 elections. TLRTF Ex. 673 (Email, Apr. 13, 2011); Trial Tr. 325:12-327:9, Aug. 11, 2014 (Interiano).

162. Despite concerns expressed by Archer, Hanna, and Davis that Hispanic voters would not be able to elect their candidates of choice in CD 23 in Plans C125 and C130, subsequent congressional plans changed the boundaries in such a manner that Hispanic-preferred

candidates did worse in recompiled elections. As explained below, the share of the vote Hispanic-preferred candidates received decreased in Plans C149, C170 and C 185. US Ex. 761 (CD 23 Election Analyses).

163. The recompiled election results in United States Exhibit 761 include three Hispanic candidates, Chavez-Thompson in 2010, Yanez in 2008, and Molina in 2006, all of whom were Hispanic voters' candidates of choice. United States' Exhibit 761 lists the share of the vote that these three candidates received in the 2006 Plan (C100); the initial plan released by Solomons-Seliger (C125) to the public on May 30, 2011, the day before the special session began, the plan considered by the House Committee as a substitute on June 9, 2011 (C149); Opiela's plan sent to Interiano and Downton on June 13, 2011, Solomon's West Texas amendment to CD 23 and CD 20 (C170) on June 14, 2011; and the enacted 2011 Plan (C185) which is virtually identical to Plan C170. The share of the vote received by the Hispanic-preferred candidate decreased compared to that in the 2006 Plan (C100). The share of the Hispanic-preferred candidate did not improve after staff and TLC counsel warned that as configured, CD 23 would not provide Hispanic voters with an opportunity to elect, as the following table shows:

Table 1: CD 23 Election Results by Plan

Election Year	Candidate	C100	C125	C149	STRJ116	C170	C185
2010	Chavez-Thompson	41.7	37.9	37.8	36.9	37.8	37.8
2008	Yanez	53.7	50.6	50.5	50	50.8	50.8
2006	Molina	49.6	46.8	46.6	45.7	46.6	46.6

See id.

164. United States Exhibit 761 also lists the numerical turnout for the recompiled elections, and the number of total voters decreased in all of the plans that came after C125, including STRJC116, C170 and C185. US Ex. 761 (CD 23 Election Analyses).

165. The concerns expressed by the TLC counsel and Doug Davis were not addressed to improve performance in CD 23 in the 2011 Plan. Trial Tr. 1518:16-1519:7, Aug. 15, 2014 (Hanna). In fact, performance of the Hispanic-preferred candidate in CD 23 decreased after these concerns were raised. US Ex. 761 (CD 23 Election Analyses); Trial Tr. 662:21-664:7, Aug. 12, 2014 (Archer); US Ex. 609 (Archer RBVA); US Ex. 732 (TLC Reps.).

166. Senator Seliger testified that if Mr. Canseco was not the Hispanic-preferred candidate and actions were being taken that would not allow the minority-preferred candidate to prevail in the 2011 Plan that this would have been a violation of the Voting Rights Act. Trial Tr. 225:18-22, Aug. 11, 2014 (Seliger); US. Ex. 629 (Email, May 30, 2011).

f. CD 23 Could Have Easily Been Configured to Provide Hispanic Voters with an Opportunity to Elect their Candidates of Choice

167. CD 23 could have easily been maintained as a Hispanic opportunity district with relatively minor changes to the configuration proposed in the 2011 Plan. Redrawing the district's lines to raise slightly the number of participating Hispanic voters would have significantly increased Hispanic voters' ability to elect their candidates of choice. US Ex. 686 at 9-10 & app.E (2011 Handley Cong. Rep.).

168. There were alternative redistricting proposals to improve the performance of Hispanic preferred candidates beyond what CD 23 in the 2011 Plan provided. Trial Tr. 307:18-308:6, Aug. 11, 2014 (Interiano); Trial Tr. 64:24-65:20, Oct. 31, 2011 (Golando).

169. David Hanna testified that it would have been possible to adjust the boundaries of CD 23 in a way that would have resolved his concerns about compliance with the Voting Rights Act. Trial Tr. 1521:15-25, Aug. 15, 2014 (Hanna).

g. Split Precincts in CD 23

170. There were 39 VTD splits in CD 23 in the 2011 Plan, all of which occurred in one of five counties: Atascosa (8), Bexar (19), El Paso (9), La Salle (1), and Maverick (2). US Ex. 704 at 159-70 (RED-110, Plan C185); US Ex. 743A (CD 23 Map, Plan C185).

171. Of these 39 VTD splits, only two, both of which were in Bexar County, were introduced on or before June 7, 2011. The first precinct split (in 293112) occurred in Plan HRC1C124, created on May 11, 2011. The second precinct split (in 293096) occurred in Plan HRC1C165, created on June 7, 2011. US Ex. 658 (HRC Plan List); US Ex. 740 (Map(s), HRC1C165); US Ex. 741 (Map(s), HRC1C124).

172. There were seven precincts split in plan STRJC116, which was drawn by Opiela and imported by Interiano into RedAppl on June 13, 2011 at 8:15 A.M. US Ex. 739 (Map(s), STRJC116); US Ex. 664 (Straus (Part I) Plan List); *see* US Ex. 754 (Email, June 13, 2011).

173. The three split precincts in Atascosa County were introduced by the Opiela plan STRJC116 and included precinct numbers 130001 and 130022. US Ex. 739A (Map(s), STRJC116).

174. The four split precincts in Bexar County were introduced by the Opiela plan STRJC116 and included precinct numbers 291056, 291085, 293099, 293101. US Ex. 739B (Map(s), STRJC116).

175. The remaining 30 precinct splits were added by Downton on June 13, 2011, the final day that anything other than technical changes were made to the congressional map that became the 2011 Plan. The additional split precincts added in HRC1C187 included the

following: 130003, 130013, 130015, 130018, 130019A, 130020, 291041, 291043-48, 291060, 291084, 291086, 291089, 293096, 293099, 293101, 294073, 140140-44, 140148-49, 140155, 140157, 280003, 320001A, and 320002A. US Ex 704 at 159-68 (RED-110, Plan C185).

176. The 2011 Plan split the south side of San Antonio, including the community of Harlandale, among three congressional districts (20, 23, and 35). Trial Tr. 784:4-785:11, Sept. 8, 2011 (Rodriguez). Historically, this area was home to a highly effective and politically active Hispanic community that wielded considerable influence within a single congressional district. *Id.* at 781:1-10; Trial Tr. 1753:14-1754:5, Aug. 15, 2014 (Downton).

177. In Harlandale, precincts 1044, 1045, 1046 and 1048 were split, and precinct 1048 was divided into three separate Districts: 20, 23, and 35. US Ex. 704 at 139, 160, 240 (RED-110, Plan C185); Trial Tr. 583:11-584:5, Aug. 12, 2014 (Canseco).

178. The turnout in the Harlandale precincts was substantially higher than many other precincts located in CD 23. Trial Tr. 784:4-785:11, Sept. 8, 2011 (Rodriguez).

179. Downton testified that if South San Antonio and Harlandale were communities of interest, they did not need to be kept together because “that’s one redistricting principle. There are others.” Trial Tr. 1752:2-12, Aug. 15, 2014 (Downton).

180. The 2011 Plan also split the politically cohesive Hispanic community of Maverick County, as well as the City of Eagle Pass, dividing residents between CD 23 and CD 28, a Laredo-based district in which Hispanics already could elect their preferred candidates. US Ex. 644 (Eagle Pass and Maverick Cnty. Split, Plan C185); US Ex. 739E (Map(s), STRJC116) (showing split between CD 23 and CD 28); Trial Tr. 765:18-766:21, Sept. 8, 2011 (Saucedo).

181. Hispanics comprised more than 90 percent of the population of Maverick County in 2010. US Ex. 690 at 6 (RED-100, Plan C100). The population of Eagle Pass, similarly, was over 90 percent Hispanic. Trial Tr. 1756:4-16, Aug. 15, 2014 (Downton).

182. Downton testified that the split of Maverick County was a concept that he took from Opiela. Although most of Opiela's proposed split in Maverick County was adopted in the final map, Downton also split additional precincts—323001A and 323002A. US Ex. 739E (Map(s), STRJC116). The first time Downton divided Maverick County was in Map HRC1C187 on June 13, 2011, the final day that any substantive changes were made to the map before the Legislature adopted the 2011 Plan. *See* US Ex. 196 at 307 (Email, June 13, 2011).

183. In previous redistricting cycles, Maverick County remained whole in one congressional district. Trial Tr. 447:21-448:1, Sept. 7, 2011 (Flores); Trial Tr. 766:22-767:1, Sept. 8, 2011 (Saucedo). Maverick County had become a significant force in determining the outcome of elections in CD 23. Trial Tr. 768:23-770:10, Sept. 8, 2011 (Saucedo). The division of Maverick County in the 2011 Plan diluted Hispanic voting strength and diminished the political influence of the Hispanic community. Trial Tr. 680:23-681:18, Sept. 8, 2011 (Korbel); Trial Tr. 767:21-768:15, Sept. 8, 2011 (Saucedo).

184. Downton was aware that he split the City of Eagle Pass in Maverick County when Representative King testified about it during debate on the House floor on June 14. The legislature took no action to restore Eagle Pass and make the city whole in the final redistricting plan. Trial Tr. 1754:14-22, Aug. 15, 2014 (Downton).

185. Downton stated that splitting the heavily Hispanic city of Eagle Pass would not be a violation of the Voting Rights Act, even though he insisted that splitting the Hispanic

population in Fort Worth would be a Voting Rights Act violation. *Compare* Trial Tr. 1744:20-1746:18, Aug. 15, 2014 (Downton), *with id.* at 1754:23-1755:8.

186. State Defendants have defended the decision to split Maverick County as an effort to raise CD 23's SSRV level. But Chairman Solomons admitted that the district's SSRV percentage could have been increased without splitting Maverick County by incorporating less of Atascosa, La Salle, and Dimmit Counties. Trial Tr. 1360:14-1362:13, Aug. 14, 2014 (Solomons).

187. Downton agreed that he did not need to split Maverick County and that he could have put all of it into CD 23, but he stated that doing so would have made it difficult for Representative Canseco to get re-elected. Trial Tr. 1666:11-18, Aug. 15, 2014 (Downton).

188. Redrawing the district lines to increase slightly the number of Hispanic citizens likely would have significantly increased Hispanic voters' ability to elect their candidate of choice in CD 23, seriously jeopardizing Rep. Canseco's reelection. *See* 597:14-598:17, Aug. 12, 2014 (Handley).

h. CD 23 in the 2011 Plan did not Help Hispanic Republicans

189. The 2011 Plan, and specifically the exclusion of the south side San Antonio precincts, made it more difficult for Hispanic Republicans in CD 23 to win election in the primary. Trial Tr. 575:6-22, Aug. 12, 2014 (Canseco); *see* Trial Tr. 455:2-457:13, Sept. 7, 2011 (Flores).

190. From 2002 to 2010, the Hispanic candidate of choice won in 0 out of 3 Republican primary elections in CD 23 in which an Anglo candidate ran against a Hispanic candidate. TLRTF Ex. 200 (Chart Comparing Election Performance Across Plans); TLRTF Ex. 237 (RED-206, Plan C100, selected 2002 elections); TLRTF Ex. 238 (RED-206, Plan C100, selected 2004 elections); TLRTF Ex. 241 (RED-206, Plan C100, selected 2010 elections).

2. Evidence of Discriminatory Intent in Congressional District 27

a. Comparison of CD 27 in C100 and CD 27 in the 2011 Plan

191. In the 2006 Plan, CD 27 was located in southeastern Texas; it included the cities of Corpus Christi and Brownsville and the counties of Kenedy, Kleberg, Willacy, and Nueces, as well as portions of Cameron and San Patricio counties. US Ex. 710 at 7 (Plan Packet, C100); Tex. Ex. 400-1 at 1, 7, 17, 22 (Cnty. Maps, Plan C100); Trial Tr. 457:18-459:7, Sept. 7, 2011 (Flores); US Ex. 710 at 1, 7 (Plan Packet, C100).

192. Based on 2010 demographic data, CD 27 in the 2006 Plan had a total Hispanic population of 73.2 percent, a HVAP of 69.2 percent, a HCVAP of 63.8 percent, and a SSVR rate of 61.1 percent. US Ex. 710 at 10 (Plan Packet, C100); US Ex. 701 (RED-106, C100)

193. CD 27 is currently represented by U.S. Representative Blake Farenthold, an Anglo Republican. Representative Farenthold has represented CD 27 since 2010, when he defeated 27-year incumbent Solomon Ortiz, a Hispanic Democrat. Trial Tr. 228:12-229:2, Aug. 11, 2014 (Seliger); TLRTF Ex. 241 (RED-206, Plan C100, selected 2010 elections). In the low-turnout 2010 election, Farenthold defeated Ortiz by only 775 votes. Farenthold received 51,001 votes, or 47.84 percent of the total, compared to Ortiz, who received 50,226 votes, or 47.11 percent. TLRTF Ex. 241 (RED-206, Plan C100, selected 2010 elections).

194. Representative Farenthold was not the Hispanic candidate of choice in CD 27. Trial Tr. 228:19-229:2, Aug 11, 2014 (Seliger); Trial Tr. 226:3-16, Sept. 6, 2011 (Kousser).

195. According to Texas's expert, CD 27 "performed" from the time of its creation for close to 37 years, until the 2010 election. Trial Tr. at 1870:16-1871:4, Sept. 14, 2011 (Alford). Indeed, Senator Seliger testified that CD 27 in the 2006 Plan was "clearly an opportunity district." Trial Tr. 229:16-18, Aug 14, 2014 (Seliger). Dr. Handley found that Hispanic voters

had the opportunity to elect their candidates of choice in CD 27 under the 2006 Plan. US Ex. 686 at 4-5 (2011 Handley Cong. Rep.).

196. According to 2010 Census data, CD 27 in the 2006 Plan was overpopulated by approximately 43,000 people. US Ex. 690 at 6 (RED-100, Plan C100); Trial Tr. 1098:5-25, Aug. 14, 2014 (Hunter); Trial Tr. 972:17-973:13, Sept. 9, 2011 (Downton).

197. In the 2011 Plan, CD 27 was reconfigured and moved north and west, keeping the City of Corpus Christi, but eliminating Brownsville from the district. US Ex. 711 at 7 (Plan Packet, C185); Tex. Ex. 401-1 at 1, 7, 16, 27, 30 (Cnty. Maps, Plan C185); US Ex. 25 at 2-3 (Article, June 3, 2011). CD 27 in the 2006 Plan and CD 27 in the 2011 Plan were very different districts. Trial Tr. 970:20-973:23, Sept. 9, 2011 (Downton). The 2011 Plan did not include the southern counties of Kenedy, Kleberg, Willacy, and Cameron in CD 27. *Compare* US Ex. 710 at 7 (Plan Packet, C100), *with* US Ex. 711 at 7 (Plan Packet, C185). The 2011 Plan added Aransas, Calhoun, Jackson, Lavaca, Matagorda, Refugio, Victoria, and Wharton counties, as well as parts of Bastrop, Caldwell, and Gonzales counties. Trial Tr. 458:5-16, Sept. 7, 2011 (Flores); *compare* US Ex. 710 at 7 (Plan Packet, C100), *with* US Ex. 711 at 7 (Plan Packet, C185).

198. Downton testified that he considered CD 27 to be protected by the Voting Rights Act in the 2006 Plan but that the district no longer was a majority-Hispanic district in the 2011 Plan. Trial Tr. 1772:25-1773:13, 1798:10-24, Aug. 15, 2014 (Downton); Trial Tr. 970:20-971:4, Sept. 9, 2011 (Downton). Similarly, Dr. Alford testified that CD 27 in the 2011 Plan had “flipped, in almost exactly the same way 23 was flipped previously, so it is CD 27 this time that is flipped into being a majority . . . Anglo district.” Trial Tr. 1829:6-1830:4, Sept. 14, 2011 (Alford). Dr. Handley found that Hispanic voters did not have the opportunity to elect their

candidates of choice in CD 27 under the 2011 Plan. US Ex. 686 at 6-9 (2011 Handley Cong. Rep.).

199. In the 2011 Plan, CD 27 had a total Hispanic population of 49.5 percent, a HVAP of 45.1 percent, a HCVAP of 41.1 percent, and a SSVR rate of 36.8 percent. US Ex. 711 at 10 (Plan Packet, C185); US Ex. 697 (RED-106, C185). When compared to CD 27 in the 2006 Plan, the HVAP decreased by 24.1 percentage points, a SSVR rate decreased by 22.6 percentage points, and the HCVAP decreased by 22.7 percentage points. *Compare* US Ex. 710 at 10 (Plan Packet, C100), *and* US Ex. 701 (RED-106, C100), *with* US Ex. 711 at 10 (Plan Packet, C185), *and* US Ex. 697 (RED-106, C185).

b. CD 27 in the 2011 Plan Intentionally Diminished the Voting Strength of Hispanic Voters in Nueces County

200. While CD 27 in Plan C185 no longer included counties in South Texas, Nueces County remained in the district. US Ex. 711 at 1, 7 (Plan Packet, C185). Nueces County thus was no longer included in the South and West Texas configuration of Hispanic opportunity districts. *Compare* US Ex. 710 at 1, 7 (Plan Packet, C100), *with* US Ex. 711 at 1, 7 (Plan Packet, C185); Trial Tr. 949:10-950:3, Sept. 9, 2011 (Downton). Downton testified that in the 2011 Plan, Nueces County was in a different district in than it had been in the 2006 Plan. Trial Tr. 971:5-9, Sept. 9, 2011 (Downton).

201. According to the 2010 Census, Nueces County has a population of 340,223 and a HCVAP of 54.6 percent. US Ex. 711 at 10 (RED-202, C185); US Ex. 701 (RED-106, C185). In the 2006 Plan, Nueces County voters constituted over 50 percent of the total registered voters of CD 27, while in the 2011 Plan, they did not. US Ex. 710 at 10 (RED-202, C100); Trial Tr. 971:23-972:7, Sept. 9, 2011 (Downton); Trial Tr. 1772:25-1773:13, Aug. 15, 2014 (Downton).

202. Downton conceded that because CD 27 in the 2006 Plan was overpopulated by only approximately 43,000 individuals, if it simply had been the state's goal to maintain CD 27, he would have needed to remove only a few precincts. Trial Tr. 972:17-973:13, Sept. 9, 2011 (Downton). Downton further testified that CD 27 was redrawn to give Representative Farenthold a better chance of re-election. *Id.* at 971:10-13. This could have been accomplished in the congressional plan by carving out the small portion of Nueces County containing the incumbent's home and moving that portion into a northern district, leaving the bulk of Nueces County in a South Texas district. *Id.* at 1022:25-1023:9.

203. Senator Seliger similarly testified that it was possible conceptually to take Representative Farenthold's neighborhood, which is located along Gulf Shore Drive in Corpus Christi, and pair it with counties to the north to create a safer district for him, leaving the remainder of Nueces County in the district that runs south to Cameron County. Trial Tr. 230:5-16, Aug. 11, 2014 (Seliger).

204. Downton testified that the map drawers considered and rejected proposals to include Nueces County's Hispanic population in the South Texas configuration of congressional districts. Trial Tr. 972:17-973:13, Sept. 9, 2011 (Downton). This decision was in large part a choice. *Id.* According to Downton, he moved Nueces County northwards into CD 27, in part, because the Cameron County delegation in the House and the Senate wanted a district anchored in Cameron County, without Nueces, so that voters from their county could elect a candidate of their choice. *Id.* at 1021:22-1022:14.

205. In the 2010 field hearing, Representative Farenthold stated that two Hispanic-majority districts could be created with one being a coastal bend district and the other being

based in the Cameron County area. Trial Tr. 1094:16-1096:6, Aug. 14, 2014 (Hunter); US Ex. 460 at 90-93.

206. No one attending the hearings requested for Nueces County to be grouped with Bastrop, Caldwell, Gonzales, and Lavaca Counties in a new congressional district. Trial Tr. 1097:9-13, Aug. 14, 2014 (Hunter). Numerous individuals at the interim hearings testified about the importance of continuing to allow Hispanic voters in Nueces County the opportunity to elect candidates of choice in a congressional district. *Id.* at 1092:9-1094:15.

3. Evidence of Discriminatory Intent in the Dallas-Fort Worth Metroplex

a. Comparison of DFW Congressional Districts in C100 and DFW Congressional Districts in the 2011 Plan

207. In the 2006 Plan, nine congressional districts converged in the Dallas-Fort Worth (DFW) Metroplex. US Ex. 710 at 1, 9-10 (Plan Packet, C100).

208. The 2006 Plan had one minority opportunity district in the DFW Metroplex: CD 30. US Ex. 710 at 10 (Plan Packet, C100); US Ex. 686 at 2 (2011 Handley Cong. Rep.).

209. In the 2011 Plan, 10 congressional districts converged in the DFW Metroplex. US Ex. 711 at 1, 3-8 (Plan Packet, C185).

210. Due to significant population growth in north Texas, one of the state's four newly apportioned congressional districts was allocated to the DFW Metroplex. *Compare* US Ex. 710 at 9-10 (Plan Packet, C100), *with* US Ex. 711 at 9-10 (Plan Packet, C185); US Ex. 5 (Article, Feb. 18, 2011). This growth was 100 percent attributable to the minority population; in fact, Anglo population in the DFW Metroplex decreased between 2000 and 2010. US Ex. 34 at 133-34 (Oct. 2011 Price Decl.); *compare* US Ex. 710 at 3-8 (Plan Packet, C100), *with* US Ex. 711 at 3-8 (Plan Packet, C185).

211. Specifically, African Americans and Hispanics account for a combined 55 percent of the voting-age population in Dallas County. US Ex. 711 at 3-8 (Plan Packet, C185); US Ex. 34 at 32-33 (Oct. 2011 Saenz Rep). Hispanics led the population growth in Dallas County adding nearly a quarter of a million persons to the population between 2000 and 2010. US Ex. 711 at 3-8 (Plan Packet, C185); US Ex. 34 at 32-33 (Oct. 2011 Saenz Rep). Meanwhile, during the same period, the Anglo population in Dallas dropped from 44.3 percent to 33.31 percent with a net population loss of almost 200,000 persons. US Ex. 38 at 3 (Tex. Pop. Growth). African Americans and Hispanics account for a combined 37 percent of the voting-age population in Tarrant County. US Ex. 711 at 3-8 (Plan Packet, C185). Hispanics led the population growth in Tarrant County adding almost 200,000 persons, increasing their population between 2000 and 2010 by approximately 87 percent. US Ex. 38 at 6 (Tex. Pop. Growth). During the same period, the Anglo population in Tarrant County dropped from 61.9 percent to 51.8 percent. *Id.*

212. Plan C185 did not reflect the minority growth in the DFW Metroplex. Trial Tr. 407:1-23, Aug. 12, 2014 (Arrington); US Ex. 28 (Article, June 10, 2011). The newly apportioned congressional district allocated to the DFW Metroplex in the 2011 Plan did not give minority voters the ability to elect their candidates of choice. *Id.*; *see also* US Ex. 686 at 7 (2011 Handley Cong. Rep.); US Ex. 691 at 2 (RED-206, Plan C185); US Ex. 692 at 61-63 (RED-225, Plan C185).

b. State Officials Knew another Minority Opportunity District Could be Drawn in the DFW Metroplex

213. At the outset of the redistricting process, U.S. Representative Lamar Smith submitted a congressional plan on behalf of the Texas congressional delegation that would have provided minority voters in Tarrant and Dallas counties with an additional opportunity to elect their candidates of choice. US Ex. 653 (L. Smith Proposal).

214. Ryan Downton, the primary map drawer for Plan C185, was aware of Representative Smith's plan and discussed the configuration with Smith during the 82nd Legislature's regular session. Trial Tr. 974:22-975:1, Sept. 9, 2011 (Downton). Indeed, many of Downton's early drafts included the additional minority opportunity district in the DFW Metroplex. US Ex. 674 (HRC Shapefiles, Part I); US Ex. 675 (HRC Shapefiles, Part II).

215. In April of 2011, a task force of leading Hispanic advocacy groups unveiled a plan that created an additional Hispanic-opportunity district in the DFW Metroplex. US Ex. 602 (Article, Apr. 7, 2011). The map was made available to all legislators and published on the TLC District Viewer. *Id.* A map by Senator West, Plan C192, created two minority opportunity districts in DFW, but it was rejected by the Senate. Trial Tr. 261:6-17, Aug. 11, 2014 (Seliger). The Court's interim plans also established that creating a new minority opportunity district in DFW would not diminish minority opportunities elsewhere. 11/23/11 Order (ECF No. 528) (House); US Ex. 756 (Map, Plan C220); 11/26/11 Order (ECF No. 544) (Congress); 3/19/12 Order (ECF No. 691) (Congress); 9/6/13 Order at 3 (ECF No. 886).

c. DFW Congressional Districts in the 2011 Plan were Intentionally Drawn to Diminish Minority Voting Strength by Splitting Precincts and Dividing Minority Communities

216. Map drawers diluted minority voting strength in DFW by violating traditional redistricting principles—cracking minority communities and splitting precincts. Cracking occurs when a cohesive minority community is divided into several districts, preventing the group from voting together to elect a candidate of their choice. Trial Tr. 407:6-23, Aug. 12, 2014 (Arrington).

217. Instead of allowing an additional minority opportunity congressional district to occur naturally within the compact minority communities in the DFW Metroplex, Downton intentionally divided most of the urban, low-income, minority population among four Anglo-

controlled congressional districts: CD 6, CD 12, CD 26, and CD 33. US Ex. 674 (HRC Shapefiles, Part I); US Ex. 675 (HRC Shapefiles, Part II); US Ex. 711 at 1, 3-8 (Plan Packet, C185); US Ex. 704 (RED-110, Plan C185); Trial Tr. 690:18-691:2 (Sept. 8, 2011) (Korbel).

218. To accomplish this, Downton split a number of precincts in minority communities, Trial Tr. 690:18-691:2 (Sept. 8, 2011) (Korbel); US Ex. 704 (RED-110, Plan C185); Quesada Ex. 73 at 3-4 (Neighborhood Fractures Map); US Ex. 607 (Article, June 14, 2011).

219. In the 2011 Plan, CD 6 was anchored in majority-Anglo Ellis and Navarro counties. US Ex. 711 at 1, 3 (Plan Packet, C185). Anglos make up 69.7 percent of the VAP in Ellis County and 65.1 percent of the VAP in Navarro County. *Id.* at 3.

220. CD 6 had a combined Black and Hispanic voting-age population (BHCVAP) of 38.6 percent, with most of the minority population located in Dallas County. US Ex. 711 at 1, 3 (Plan Packet, C185); US Ex 697 at 1 (RED-106, Plan C185).

221. In the 2011 Plan, a “finger” reaches up from majority Anglo Ellis and Navarro Counties to take in large concentrations of African-American and Hispanic population from Dallas and Tarrant Counties. US Ex. 711 at 1, 3 (Plan Packet, C185); Trial Tr. 1129:9-1130:14, Sept. 10, 2011 (Ansolabehere). The boundaries of the district split 39 precincts. US Ex. 699 at 2 (RED-381, Plan C185). These splits disproportionately affect majority minority precincts—28 of the 39 precinct splits are majority minority. *Id.* The configuration of CD 6 fractured minority communities of interest and diluted the voting strength of African-American and Hispanic voters along the border of Tarrant and Dallas counties. Trial Tr. 1129:9-1130:14, Sept. 10, 2011 (Ansolabehere); Quesada Ex. 73 at 3-4 (Neighborhood Fractures Map).

222. CD 12 in the 2011 Plan was located entirely within Tarrant County and had a BHCVAP of 28.1 percent. US Ex. 711 at 1, 4 (Plan Packet, C185); US Ex 697 at 1 (RED-106, Plan C185).

223. Initially, there were “changes made to keep the Black population together in District 12.” US Ex. 630 (Email, May 28, 2011)

224. CD 12 in the 2011 Plan divided minority communities of interest in Tarrant County. Quesada Ex. 73 at 3-4 (Neighborhood Fractures Map).

225. The boundaries of CD 12 split 53 precincts to combine a majority of northern Tarrant County’s Anglo, rural population with southeast Fort Worth, which is made up of several inner-city, low-income communities that are predominantly African American. US Ex. 699 at 4-5 (RED-381, Plan C185); US Ex. 711 at 1, 4 (Plan Packet, C185).

226. Southeast Fort Worth is situated south of Interstate 30 and east of Interstate 35 and is made up of several inner-city, low-income communities that are predominantly minority. Quesada Ex. 73 at 3-4 (Neighborhood Fractures Map); US Ex. 704 at 74-82 (RED-110, Plan C185); US Ex. 607 (Article, June 14, 2011).

227. CD 26 in the 2011 Plan was anchored in rural, majority-Anglo Denton County. US Ex. 711 at 1, 7 (Plan Packet, C185); *see also* US Ex. 755 (Map, Plan C185). Anglos make up 67.5 percent of the VAP in Denton County. *Id.*

228. CD 26 had a combined BHCVAP of 22 percent, most of which came from Tarrant County. US Ex. 711 at 1, 7 (Plan Packet, C185); US Ex 697 at 1 (RED-106, Plan C185). The largely Denton County-based congressional district strikes downward in a “lightning bolt” to take in two significant minority communities of interest in Tarrant County—Near North Side and South Fort Worth. Quesada Ex. 73 at 3-4 (Neighborhood Fractures Map). Near North Side and

South Fort Worth are two urban, low-income, majority Hispanic communities in Fort Worth. US Ex. 711 at 7 (Plan Packet, C185); Trial Tr. 1188:22-1189:9, Aug. 14, 2014 (Moss); Trial Tr. 1130:9-25, Sept. 10, 2011 (Ansolabehere); Trial Tr. 664:22-666:12, Sept. 8, 2011 (Korbel).

229. Race was used to split precincts in CD 26 in the 2011 Plan. Trial Tr. 1710:9-20, Aug. 15, 2014 (Downton). The boundary of CD 26 divided 49 precincts, and 38 of these splits were located within the “lightning bolt” in Tarrant County. US Ex. 699 at 10-11 (RED-381, Plan C185); US Ex. 612 (Precinct Splits CD 26). The precinct splits pulled Hispanic population from Near North Side and South Fort Worth into CD 26 while the non-Hispanic population was split out. Trial Tr. 409:8-410:18, Aug. 12, 2014 (Arrington); US Ex. 352 ¶¶ 147, 190, tbls.16, 17, maps 7, 8 (Oct. 2011 Arrington Rep.); US Ex. 698 at 5 (RED-236, Plan C185); US Ex. 704 at 182-88 (RED-110, Plan C185).

230. In the 2001 Plan, CD 26 dropped down from Denton County and made a smaller incursion into Tarrant County. US Ex. 710 at 1 (Plan Packet, C100). However, that incursion did not pick up primarily Hispanic population like the incursion in the 2011 Plan. Trial Tr. 942:6-943:6, Sept. 9, 2011 (Downton).

231. Downton stated that when he drew the CD 26 incursion, he was trying to keep the Hispanic population together, but he admitted that the Hispanic population in CD 26 might not want to be included in a district based primarily into Denton County. Trial Tr. 1710:9-20, Aug. 15, 2014 (Downton). He also admitted that he had no personal knowledge to guide him in splitting the VTDs in CD 26, and that he simply used racial data to guide the splits. *Id.*

232. The boundary between CD 26 and CD 12 at the eastern boundary of the “lightning bolt” divided minority communities according to race. Trial Tr. 1710:9-20, Aug. 15,

2014 (Downton). The line divided a homogenous Democratic area and could not have been based on political data. *Id.*; Quesada Ex. 73 at 3-4 (Neighborhood Fractures Map).

233. CD 33, one of the state's newly apportioned congressional districts in the 2011 Plan, encompassed all of Parker County and parts of Wise County. US Ex. 711 at 1, 8 (Plan Packet, C185). Anglos made up 85.3 percent of the population in Parker County and 78.7 percent of the VAP in Wise County. *Id.* at 8.

234. That district wends eastward splitting 10 precincts and fracturing minority communities of interest in the City of Arlington, which has one of the fastest growing minority populations in Tarrant County, and subordinates their voting strength to that of the majority-Anglo electorate in Parker and Wise counties. US Ex. 699 at 4-5 (RED-381, Plan C185); US Ex. 711 at 8 (Plan Packet, C185).

235. It was possible to create another minority opportunity congressional district in the DFW Metroplex. Trial Tr. 407:1-9, Aug. 12, 2014 (Arrington); US Ex. 653 (L. Smith Proposal); US Ex. 674 (HRC Shapefiles, Part I); Ex. 675 (HRC Shapefiles, Part II); US Ex. 602 (Article, Apr. 7, 2011); US Ex. 606 (Article, June 9, 2011).

236. The configuration of congressional districts in the DFW Metroplex in the 2011 Plan, which intentionally cracked the minority population, is evidence of discriminatory intent. Trial Tr. 407:1-408:6, Aug. 12, 2014 (Arrington).

237. The 2011 Plan packed a large concentration of Dallas County's minority population into CD 30, which is represented by U.S. Representative Eddie Bernice Johnson. Trial Tr. 1272:19-1273:2, 1276:2-20, Sept. 12, 2011 (Johnson); Trial Tr. 407:1-408:6, Aug. 12, 2014 (Arrington). Packing occurs when a minority community can elect their candidates of choice in a district, and yet, substantial minority population is added to the already performing

district, thus reducing the opportunity to create additional minority districts. Trial Tr. 1899:14-21, Aug. 16, 2014 (Alford).

238. CD 30 had a Black voting-age population of 45.6 percent and a HVAP of 40.3 percent under the 2001 House plan. US Ex. 710 at 7, 10 (Plan Packet, C100). In the 2011 Plan, the total Black and Hispanic VAP in CD 30 was increased to 85.9 percent, and the BHCVAP was increased to 66 percent. US Ex. 711 at 7, 10 (Plan Packet, C185); US Ex 697 at 1 (RED-106, Plan C185).

239. The state increased the combined minority voting-age population in CD 30 by 4.8 percentage points in the 2011 Plan. *Compare* US Ex. 710 at 7 (Plan Packet, C100), *with* US Ex. 711 at 7 (Plan Packet, C185).

240. This excessive concentration of African-American and Hispanic population was not necessary for minorities to elect their candidate of choice in CD 30, Trial Tr. 1042:15-17, Sept. 9, 2011 (Murray), and thus served only to further suppress minority voting strength in the DFW area. US Ex. 352 ¶ 149 (Oct. 2011 Arrington Rep.); Trial Tr. 1276:2-20, Sept. 12, 2011 (Johnson).

4. Evidence of Discriminatory Intent in Harris County

241. It was possible to create an additional Hispanic opportunity district in Harris County. US Ex. 352 ¶ 147 (Oct. 2011 Arrington Rep.); Trial Tr. 407:1-5, Aug. 12, 2014 (Arrington); Trial Tr. 127:5-23, July 17, 2014 (Hanna); ECF No. 440-6 (MALC Proposed Maps, Plan C211); ECF No. 440-7 (MALC Proposed Reports, Plan C211).

242. The 2011 Plan intentionally cracked the Hispanic population of Harris County, dividing 672,362 Hispanics among six Anglo-controlled districts—CD 2, CD 7, CD 8, CD 10, CD 22, and CD 36. US Ex. 352 ¶ 147 (Oct. 2011 Arrington Rep.); US Ex. 356 ¶ 26 (Feb. 2014 Arrington Rep.); Trial Tr. 412:13-413:10, Aug. 12, 2014 (Arrington).

243. Four of those districts—CD 8, CD 10, CD 22, and CD 36—swooped in from outside Harris County to take Hispanic population into those districts. US Ex. 352 ¶ 147 (Oct. 2011 Arrington Rep.); US Ex. 356 ¶ 26 (Feb. 2014 Arrington Rep.).

244. The configuration of congressional districts in Harris County in Plan C185 is evidence of discriminatory intent. US Ex. 352 ¶ 146-47 (Oct. 2011 Arrington Rep.); US Ex. 356 ¶ 26 (Feb. 2014 Arrington Rep.).

5. Unequal Treatment of Minority-Preferred Representatives

245. Further evidence of discriminatory intent in the 2011 Plan was the removal of Representative Johnson's home from her district. Clare Dyer from the TLC testified that the removal of Representative Johnson's home from her district was inadvertent, and that Representative Johnson's address was incorrectly coded in the RedAppl system because the TLC incorrectly used 2009 Census block data. Trial Tr. 766:2-767:5, 778:23-780:18, Aug. 13, 2014 (Dyer).

246. Dyer's office faxed a memorandum designed to confirm the location of Representative Johnson's residence but that correspondence was sent to the representative's public fax number. Trial Tr. 766:2-767:5, Aug. 13, 2014 (Dyer). Dyer does not know if that fax transmission was successful or if it was ever received by Representative Johnson's staff. *Id.*

247. Nevertheless, because the TLC incorrectly used 2009 Census block data, even if Representative Johnson received the memorandum, her address would have appeared correct and she would have had no reason to reach out to Dyer or her staff. Trial Tr. 778:23-780:18, Aug. 13, 2014 (Dyer).

248. However, the state's failure to correct this mistake was intentional. In late 2010, Representative Johnson attended a meeting in Washington, D.C. arranged by Interiano that included three members of the State House, a representative from Speaker Joe Straus's office,

and a representative from the Texas Attorney General's office. Trial Tr. 682:24-683:18, Aug. 12, 2014 (Johnson); Trial Tr. 274:10-20, Aug. 11, 2014 (Seliger).

249. At that meeting, U.S. Representative Smith and Eric Opiela were designated as the individuals who would coordinate the delegation's participation in the 2011 redistricting process. Trial Tr. 1277:10-1278:16, Sept. 12, 2011 (Johnson); Trial Tr. 684:3-7, Aug. 12, 2014 (Johnson).

250. After learning that her home had been drawn out of CD 30, Representative Johnson contacted Representative Smith and Opiela several times by phone and by email, as she had been instructed to do, and alerted them to the removal of her home from the district. Trial Tr. 686:12-687:4, Aug. 12, 2014 (Johnson). Representative Johnson also worked with the congressional delegation to submit a map to the Texas legislature that returned her home to her district; the legislatively enacted plan did not reflect those changes. Trial Tr. 1277:10-1279:2, Sept. 12, 2011 (Johnson).

251. Downton stated that he was not told that Representative Johnson's home was removed from CD 30. Trial Tr. 1020:15-19, Sept. 9, 2011 (Downton). However, Opiela, the state-approved congressional redistricting contact for the delegation did pass along the requests of numerous Anglo members of Congress to Downton and others. Trial Tr. 951:7-17, Sept. 9, 2011 (Downton); Trial Tr. 1455:4-13, Sept. 12, 2011 (Interiano).

252. Moreover, Opiela's mapping program, Maptitude, would not have contained the same error as RedAppl, and therefore, it would have been obvious to Opiela that Representative Johnson's home was not in CD 30. Trial Tr. 2154:15-25, July 19, 2014 (Downton).

253. As a former state representative who had been involved in redistricting, Representative Johnson understood the importance of working within the systems established by

and for the state legislature. Trial Tr. 707:17-708:1, Aug. 12, 2014 (Johnson). Representative Johnson followed the procedures established by the state for correcting problems with her district, and the state's failure to draw her home back into CD 30 is evidence of discriminatory intent. Trial Tr. 704:24-705:6, 705:15-18, Aug. 12, 2014 (Johnson).

254. The treatment of Anglo-preferred U.S. Representatives and minority-preferred U.S. Representatives was unequal in the Congressional redistricting process. *Compare* Trial Tr. 255:6-256:4, Aug. 11, 2014 (Seliger), *and* Trial Tr. 685:23-686-25, Aug. 12, 2014 (Johnson), *and* Trial Tr. 1527:19-1529:1, Sept. 12, 2011 (Jackson Lee), *with* Trial Tr. 1343:15-1344:3, Aug. 14, 2014 (Solomons), *and* Trial Tr. 909:11-24, 951:7-17, Sept. 9, 2011 (Downton). While Anglo representatives' requests for their districts were accommodated, similar requests from minority representatives were rebuffed. *Compare* Trial Tr. 255:6-256:4, Aug. 11, 2014 (Seliger), *and* Trial Tr. 685:23-686-25, Aug. 12, 2014 (Johnson), *and* Trial Tr. 1527:19-1529:1, Sept. 12, 2011 (Jackson Lee), *with* Trial Tr. 1343:15-1344:3, Aug. 14, 2014 (Solomons), *and* Trial Tr. 909:14-24, 914:2-4, 951:7-17, Sept. 9, 2011 (Downton; US Ex. 625 (Email, June 4, 2011)).

255. Map drawers accommodated Anglo representatives' requests to include portions of a development project, a country club, and their grandchildren's schools in their districts. TLRTF Ex. 311 at 214 (Email, May 31, 2011) (Marchant request for grandchildren's school); TLRTF Exs. 282, 284, 292 (Emails, June 8, 2011) (Downton trying to appease Marchant); TLRTF Ex. 276 (Email, June 8, 2011) (Granger's request for campaign office); TLRTF Ex. 270 (Email, June 8, 2011) (Smith request for country club); Trial Tr. 909:11-21, 915:3-15, Sept. 9, 2011 (Downton) (Granger request for North Richland and for Trinity River Project).

256. Minority representatives' more substantive requests to return a home, district office, or certain economic engines to their districts were either allegedly not received or plainly

ignored. Trial Tr. 692:6-20, Aug. 12, 2014 (Johnson); Trial Tr. 1527:19-1529:1, Sept. 12, 2011 (Jackson Lee); Green Dep. 13:17-17:19, May 5, 2014; US Ex. 640 (Memo, Sept. 15, 2011).

Economic engines are described as centers of opportunity for business and job creation and can include hospitals, universities, corporate headquarters, sports stadiums, museums, etc. Jackson Lee Dep. 13:25-15:18, May 2, 2014.

257. Representative Johnson testified that her district was almost at an ideal population size and required very few changes. Trial Tr. 685:23-686-5, Aug. 12, 2014 (Johnson). Instead of making small changes to the district to zero out population, map drawers conducted major surgery, resulting in the loss of a number of economic engines, including the American Airlines Center and Love Field Airport. *Id.* at 692:6-20.

258. As Representative Johnson explained, economic engines add to the quality of life of constituents in a district by revitalizing struggling communities by boosting the economy and providing jobs for citizens. Trial Tr. 729:1-8, Aug. 12, 2014 (Johnson). *See also* Trial Tr. 1391:17-1392:9, Aug. 14, 2014 (Murray); Green Dep. 20:1-9, May 5, 2014 (stating that economic engines “create jobs” and have “a positive impact on the economy”). By placing these economic engines in Anglo-controlled districts that are not anchored in these struggling, minority communities, the non minority-preferred Representative has no incentive to use the economic engines to benefit the minority community. Jackson Lee Dep. 14:10-16:4, May 2, 2014.

259. Representative Jackson Lee also testified that in addition to losing her main district office, which was once the district office for U.S. Representative Barbara Jordan, numerous communities of interest in her district were dismantled. Trial Tr. 1527:19-1529:1, Sept. 12, 2011 (Jackson Lee); Jackson Lee Dep. 154:2-155:9, May 2, 2014.

260. Changing district offices makes it more difficult for members to meet the needs of their constituents, particularly in minority-controlled districts, where the demand for constituent services is often high. Trial Tr. 1386:22-1387:17, Aug. 14, 2014 (Murray).

261. Representative Jackson Lee likewise complained about losing economic engines. Trial Tr. 1512:1-13, Sept. 12, 2011 (Jackson Lee). Representative Jackson Lee wrote a letter to Speaker Straus, Chairperson Solomons, and Chairperson Seliger outlining these concerns. *Id.*; Jackson Lee Dep. 153:1-157:8, May 2, 2014. Representative Jackson Lee's correspondence was ignored. Jackson Lee Dep. 153:1-157:8, May 2, 2014.

262. Similarly, U.S. Representative Alexander Green complained to Speaker Straus and Chairperson Solomons about the loss of his district office and the removal of several economic engines from his district. Green Dep. 13:17-17:19, 99:5-111:6, May 5, 2014. His concerns also were ignored. *Id.*

263. There is no evidence before this Court that shows Anglo members losing district offices and numerous economic engines like the African-American representatives. *See* Trial Tr. 727:3-8, Aug. 12, 2014 (Johnson); Trial Tr. 1408:6-14 (Murray) (Aug. 14, 2014). As Representative Johnson testified, most often the loss of economic engines in Anglo districts was due to an agreement or trade. Trial Tr. 715:3-9, 716:3-8, 716:15-21, Aug. 12, 2014 (Johnson).

264. The systematic loss of district offices and economic engines by the African-American representatives was never explained by state officials. However, Interiano recalls testifying that it was a coincidence that minority members of Congress had their offices removed from their districts. Trial Tr. 299:13-17, Aug. 11, 2014 (Interiano).

D. Process of Adopting the 2011 Congressional Plan

265. The 2011 Plan was a product of an exclusive process that prevented meaningful participation by minority citizens and their elected officials. US Ex. 356 ¶¶ 33-35 (Feb. 2014)

Arrington Rep.). State legislators from minority opportunity districts were excluded from the process. Trial Tr. 807:14-19, Sept. 8, 2011 (Turner); US Ex. 26 (Article, June 3, 2011); US Ex. 34 at 120 (Aug. 2011 Dukes Decl.). For example, preliminary analysis regarding racially polarized voting was not made available to state legislators who represented minority opportunity districts. Trial Tr. 252:20-253:12, Aug. 11, 2014 (Seliger).

266. Moreover, the Senate leadership met only with Republican members of the Texas congressional delegation on a visit to Washington, D.C. in preparation for the redistricting process. Trial Tr. 253:22-254:8, Aug. 11, 2014 (Seliger). While the Senate Redistricting Committee leadership worked closely with Republican members of Congress, including Lamar Smith, *id.* at 254:9-255:5, when minority members of the Texas Congressional delegation reached out to the redistricting committee, their requests to be included in the process were rebuffed summarily, *id.* at 255:21-256:8; *see also infra* ¶¶ 267-273, 275.

267. Minority senators were not included or involved in the actual development of the map, contrary to previous redistricting processes when the Republican leadership had the same partisan incentives. Trial Tr. 258:6-11, Aug. 11, 2014 (Seliger); US Ex. 26 (Article, June 3, 2011). The Chair of the Senate Redistricting Committee, Kel Seliger, admitted on the floor of the Senate that no minority members were involved in the development of the Senate's plan. Trial Tr. 257:9-13, Aug. 11, 2014 (Seliger); US Ex. 603 (Article, May 4, 2011)

268. The Senate Redistricting Committee released no plans and held no public hearings on congressional redistricting during the regular session; the only public hearing initially scheduled was cancelled. Trial Tr. 109:19-21, Sept. 6, 2011 (Martinez Fischer); Trial Tr. 230:17-23, 231:3-6, Aug. 11, 2014 (Seliger); US Ex. 34 at 120 (Aug. 2011 Dukes Decl.).

269. On the afternoon of May 30, 2011, the first proposed congressional redistricting plan (Plan C125) was released to the public. US Ex. 611 (Timeline). Minority senators did not have an opportunity to see Plan C125 before its public release. Trial Tr. 258:12-17, Aug. 11, 2014 (Seliger).

270. A notice of the Senate-side public hearing for Plan C125 was issued the next day, May 31, 2011, late in the afternoon. US Ex. 611 (Timeline); US Ex. 352 ¶¶ 174-76 & tbl.22 (Feb. 2014 Arrington Rep.).

271. The Senate Redistricting Committee held its only public hearing at the State Capitol in Austin on June 3, 2011, less than 72 hours after the hearing notice was publicized. Trial Tr. 1347:20-1348:18, Aug. 14, 2014 (Solomons); US Ex. 611 (Timeline). But at that hearing, the Committee took up an entirely different plan, Plan C130, which had only been released for public comment on the evening of June 2. Trial Tr. 1348:4-13, Aug. 14, 2014 (Solomons); US Ex. 611 (Timeline); US Ex. 639 (Statement of Sheila Jackson Lee, June 2, 2011); US Ex. 622 (Email, June 1, 2011).

272. At the June 3, 2011 public hearing, minority members of the committee complained about their exclusion from the congressional redistricting process. US Ex. 26 (Article, June 3, 2011). Minority senators noted the haste with which the plan was pushed through and complained that adequate time in which to study the proposed map was not made available to them or the public prior to the hearing. Trial Tr. 257:24-258:5, Aug. 11, 2014 (Seliger); US Ex. 744 (Hearing Tr., June 3, 2011). Minority senators also objected generally to the fact that they were shut out of the process and permitted no input into the development of the map. Trial Tr. 258:6-17, Aug. 11, 2014 (Seliger); US Ex. 744 (Hearing Tr., June 3, 2011).

273. At that same hearing, the Senate's outside counsel expressed concern that the plan had been rushed without sufficient time for public scrutiny. Trial Tr. 259:15-25, Aug. 11, 2014 (Seliger); US Ex. 744 at 2-3 (Hearing Tr., June 3, 2011); *see* US Ex. 120 (Email, Apr. 13, 2011); US Ex. 504 ¶¶ 35-38 & app.15 (Jan. 2012 Arrington Rep.). Counsel described the redistricting process as "quite different from what we've seen in the past" because legislators saw Plan C130 for the first time at 8:00 A.M. on the morning of the hearing, not during the regular session; legislators were not asked to evaluate the plan's compliance with Section 5; and legislators were provided only limited election returns with which to evaluate the plan's compliance with the Voting Rights Act. US Ex. 744 at 2-3 (Hearing Tr., June 3, 2011).

274. In 2003, by contrast, the Senate Redistricting Committee held multiple statewide hearings regarding the congressional redistricting plan, and they hired experts to do retrogression analysis. US Ex. 744 at 2 (Hearing Tr., June 3, 2011).

275. Following the public hearing on June 3, 2011, the congressional redistricting plan was voted out of committee by a vote of nine to six, with no senators representing minority opportunity districts voting in favor of the plan. Trial Tr. 260:2-8, Aug. 11, 2014 (Seliger).

276. The 2011 Plan that ultimately passed differed substantially from the bill that was available at the June 3, 2011 hearing, C130, especially in CD 23 and the DFW area. Trial Tr. 231:14-232:20, Aug. 11, 2014 (Seliger). There was never another public hearing in the Senate on any of the changes. *Id.* at 232:25-233:2; Trial Tr. 1571:16:1572:3, Sept. 13, 2011 (Solomons).

277. In the final vote on the floor, no senators representing minority opportunity districts voted in favor of the 2011 Plan. Trial Tr. 260:13-19, Aug. 11, 2014 (Seliger).

278. Minority members of the Texas House of Representatives were excluded from the redistricting process until plans were unveiled to the public just days before the House hearing on congressional redistricting. Trial Tr. 896:4-20, Aug. 13, 2014 (Dukes); Trial Tr. 1518:24-1519:13, Sept. 12, 2011 (Jackson Lee); US Ex. 34 at 120 (Aug. 2011 Dukes Decl.).

279. A notice of the House-side public hearing for Plan C125 at the State Capitol in Austin was not issued until late in the afternoon on May 31, 2011, less than 24 hours after the plan was released to the public. US Ex. 611 (Timeline); *see* US Ex. 352 at tbl.22 (Oct. 2011 Arrington Rep.). There was less than 24 hours between the time of the plan's release on the evening of May 30, 2011 and the announcement of the public hearing on the afternoon of May 31, 2011, and less than 48 hours between the time of the announcement of the public hearing and the sole public hearing on the morning of June 2, 2011. US Ex. 611 (Timeline); *see* US Ex. 352 at tbl.22 (Oct. 2011 Arrington Rep.); US Ex. 34 at 120 (Aug. 2011 Dukes Decl.).

280. On June 6, 2011, notice was given on the House floor that the House Committee on Redistricting would meet to consider the proposed congressional plan at 9:00 A.M. on June 9, 2011. US Ex. 611 (Timeline); *see* US Ex. 352 at tbl.22 (Oct. 2011 Arrington Rep.)

281. On June 9, 2011, the House Committee on Redistricting met to consider the proposed congressional plan and adopted a committee substitute, Plan C149. *See* US Ex. 611 (Timeline); Trial Tr. 1334:16-1335:8, Aug. 14, 2014 (Solomons). The committee did not take public comment prior to passing the proposed plan passed out of committee for a floor vote. *See id.*; US Ex. 352 at tbl.22 (Oct. 2011 Arrington Rep.).

282. That same day, a calendar rule was invoked, limiting the time for filing of any amendments, which meant that minority House members had limited time to study the plan and propose amendments. Trial Tr. 897:14-18, Aug. 13, 2014 (Dukes); *see* US Ex. 611 (Timeline).

House members typically had significantly more time to study and propose amendments to comparable proposals. Trial Tr. 897:19-23, Aug. 13, 2014 (Dukes).

283. When the Committee's plan was brought to the House floor, Representative Dawnna Dukes proposed an alternative plan, C166, which enjoyed wide support from House members representing minority opportunity districts. Trial Tr. 899:5-16, Aug. 13, 2014 (Dukes). The committee leadership tabled the amendment after only 30 minutes of debate, preventing a re-visitation of the proposal. *Id.* at 899:17-900:8.

284. Dr. Arrington compared Plan C166 to the 2011 Plan finding that C166 created three more Hispanic opportunity districts (C166 created ten while the 2011 Plan created seven). C166 also did the same or a better job in terms of traditional districting principles such as compactness (C166 was more compact than the 2011 Plan), keeping counties whole, population deviation and not pairing incumbents (C166 had the same results as the 2011 Plan). The Dukes plan did not include the bizarre shapes and other characteristics of the enacted plan that were created for partisan benefit but harmed the interests of minority voters. US Ex. 352 ¶¶153-63, tbl.18, 19 (Oct. 2011 Arrington Rep.); US Ex. 356 ¶ 30 (Feb. 2014 Arrington Rep.)

285. The rejection of Plan C166 mirrored the treatment of virtually every amendment offered by African-American or Hispanic representatives: perfunctory debate and a move to table. Trial Tr. 900:9-17, Aug. 13, 2014 (Dukes); TLRTF Exs. 218-19 (Statements of Vote).

286. Representative Aaron Peña sought to amend CD 23 by removing all or part of rural Schleicher and Sutton counties and adding part of Bexar County. Representative Solomons rejected the amendment before it could be considered by the whole House based on Opiela's analysis, which showed that the amendment slightly decreased the performance of some Anglo

Republican candidates in state elections. US Ex. 757 (Email, June 15, 2011); Trial Tr. 1349:2-1353:4, Aug. 14, 2014 (Solomons).

287. Chairperson Solomons introduced an amendment, Plan C170, to the Congressional redistricting plan on June 14, 2011. The amendment concerned changes to the boundaries of CD 23 and CD 20. Trial Tr. 557:3-557:15 Aug. 11, 2014 (Flores); Tex. Ex. 603.1 at 1 (House Journal, June 14, 2011). Despite Representative Solomons' assurances that his amendment, Plan C170, made changes necessary to maintain the Hispanic performance in CD 23, Tex. Ex. 603.2 at 367 (House Journal, June 14, 2011), analyses showed that Plan C170 decreased Hispanic performance in CD 23, *see* Trial Tr. 1285:20-1289:16, Aug. 14, 2014 (Solomons); *see also* US Ex. 761 (CD 23 Election Analyses). Representative Solomons and his staff had received those OAG analyses prior to his introduction of Plan C170. Trial Tr. 1285:20-1289:25, Aug. 14, 2014 (Solomons).

288. Representative Villareal, a member of the redistricting committee, voted for the amendment and noted that the purported improved performance was the reason for doing so. Trial Tr. 557:3-558:9, Aug. 11, 2014 (Flores); Tex. Ex. 603.2 at 367 (House Journal, June 14, 2011).

289. Overall, the entire process—including a Senate committee hearing, debate on the Senate floor, the House committee hearing, debate on the House floor, and reconsideration by the Senate—took 21 days, only two-thirds of the time that was allotted for the special session. Trial Tr. 464:17-24, Aug. 12, 2014 (Arrington); US Ex. 352 ¶ 175 (Oct. 2011 Arrington Rep.); US Ex. 356 ¶ 35 (Feb. 2014 Arrington Rep.). There was time to conduct further debate and hearings if the leadership desired to do so, but it did not happen.

290. If a redistricting plan was not passed during the special session, the governor could have called a second session; there were three special sessions to deal with redistricting in 2003. Trial Tr. 1356:18-1357:16, Aug. 14, 2014 (Solomons); US Ex. 604 (Article, May 18, 2011).

291. In terms of opportunity for public comment on the enacted plan, there was a period of only approximately 48 hours in the House and less than 24 hours in the Senate. Trial Tr. 1348:9-18, Aug. 14, 2014 (Solomons). This extremely compressed timeframe for public input limited meaningful public participation by minority citizens, who often are financially and logistically unable to travel to the State Capitol with such short notice. *See* US Ex. 356 ¶ 35 (Feb. 2014 Arrington Rep.).

292. The legislative session in which the 2011 Congressional and House plans were passed was described as both racially acrimonious and rushed. Trial Tr. 435:7-436:9, 441:20-442:9, Sept. 7, 2011 (Flores).

VI. THE 2011 HOUSE PLAN

A. *Gingles* Preconditions

1. Creation of new opportunity districts

293. Minority population in Texas is sufficiently geographically concentrated that the state could maintain the cores of existing minority opportunity districts and still create new compact minority opportunity districts. *E.g.*, Trial Tr. 150:4-24, July 14, 2014 (Arrington).

294. The 2001 Texas House of Representatives plan included 50 districts in which minority voters had the opportunity to elect their preferred candidates of choice, thereby establishing that at least 50 such districts could be drawn. 11/23/11 Order at 7 (ECF No. 528); US Ex. 351 at 4-8 (2011 Handley House Rep.).

295. The interim plans drawn by this Court demonstrated that it was possible to create at least 52 districts that provided minority voters with the opportunity to elect their preferred candidates of choice in a 150-district map for the Texas House of Representatives. 11/23/11 Order at 7-8 (ECF No. 528); *see also* 3/19/12 Order (ECF No. 690) (House).

296. Nonetheless, the 2011 House plan contained only 45 or 46 districts in which minority voters had the opportunity to elect their preferred candidates of choice. Trial Tr. 118:16-24, July 14, 2014 (Arrington); 11/23/11 Order at 7 (ECF No. 528); US Ex. 351 at 8-13 (2011 Handley House Rep.).

297. Specifically, the 2011 House plan eliminated minority voters' opportunity to elect their preferred candidates in HD 33 (Nueces County), HD 35 (South Texas), HD 117 (Bexar County), and HD 149 (Harris County), and potentially eliminated minority voters' opportunity to elect their preferred candidates in HD 41 (Hidalgo County). Trial Tr. 118:25-120:18, July 14, 2014 (Arrington); US Ex. 351 (2011 Handley House Rep.); US Ex. 352 ¶ 17 (Oct. 2011 Arrington Rep.).

298. The 2011 Plan removed HDs 33 and 149 from the counties in which they had previously been located and altered the racial compositions of HDs 35, 41, and 117 to protect Anglo-preferred incumbents. Trial Tr. 118:25-120:18, July 14, 2014 (Arrington); *infra* ¶¶ 472-478, 481-483, 564-578.

299. Those individuals drawing maps and those involved in the redistricting process knew that they could have created a number of new minority opportunity House districts, including one in El Paso County, one in the Rio Grande Valley, and one in Harris County. Trial Tr. 1175:7-1176:24, July 17, 2014 (Hanna) (Harris County); Trial Tr. 2042:24-2043:2, 2095:20-23, July 19, 2014 (Downton) (El Paso County and the Rio Grande Valley).

300. Minority legislators presented several alternative House plans that would have restored existing opportunity districts and created new ones. Trial Tr. 75:16-76:3, 141:11-18, Sept. 6, 2011 (Martinez Fischer); Trial Tr. 46:14-19, July 14, 2014 (Veasey); Trial Tr. 332:18-333:12, July 15, 2014 (Farias); Trial Tr. 804:18-805:3, Sept. 8, 2011 (Turner); US Ex. 198 (House Journal, Apr. 27, 2011); US Ex. 604 (Article, May 18, 2011).

301. MALC submitted an interim plan, H295, which maintained the Hispanic opportunity districts in the 2001 House Plan and created an additional Hispanic opportunity district in Harris County. ECF No. 440-1 (MALC Proposed Maps, Plan H295); ECF No. 440-2 (MALC Proposed Maps, Plan H295); ECF No. 440-3 (MALC Proposed Reports, Plan H295); ECF No. 440-4 (MALC Proposed Reports, Plan H295); ECF No. 440-5 (MALC Proposed Reports, Plan H295).

2. Cohesion

302. Statewide, Hispanic voters are politically cohesive and African-American voters are politically cohesive. US Exs. 1-4 (OAG RPVA); *see also supra* ¶ 98.

303. African Americans and Hispanics are politically cohesive in general elections. *See supra* ¶ 99.

3. Polarized voting

304. In addition to the statewide findings in *supra* ¶¶ 101-104, record evidence demonstrates the existence of racially polarized voting in legislative districts in Southeast Texas, Southwest Texas, the Rio Grande Valley, Bexar County, Nueces County, Harris County, and the Dallas-Fort Worth Metroplex. US Ex. 356 ¶¶ 38, 78 (Feb. 2014 Arrington Rep.); US Ex. 351 app.D (2011 Handley House Rep.); US Exs. 1-4 (OAG RPVA); Trial Tr. 928:9-929:22, 938:7-21, 945:14-22, 946:15-947:13, 969:12-16, July 16, 2014 (Brischetto); MALC Ex. 163 (HD 34 Chart).

B. Direct Evidence of Discriminatory Intent

1. The Nudge Factor

305. It is evident from the configuration of House Districts in the 2011 House Plan, *see infra* ¶¶365-379, 402-407, that map drawers used the theory underlying the “nudge factor” metric, *i.e.*, a focus on areas with high concentrations of Hispanic voters and low voter turnout rates, *see supra* ¶¶ 105-116, to impermissibly diminish minority voting strength.

2. Split Precincts (VTDs)

306. The House Redistricting Committee established a policy to minimize split VTDs. Chairman Solomons based his opposition to a Hispanic-preferred legislator’s amendment on this policy. Trial Tr. 734:8-17, July 16, 2014 (Pickett); *see also* US Ex. 198 at 37-38 (House Journal, Apr. 27, 2011).

307. Despite this policy, the 2011 House Plan split 412 VTDs. US Ex. 387 at 7 (RED-381, Plan H283). These splits were concentrated in minority communities and frequently divided precincts to exclude or include racial minority groups in specific districts in a non-random fashion. US Ex. 352 ¶¶ 92-103, 136 (Oct. 2011 Arrington Rep.).

308. No political information was available to guide the division of these precincts, *see supra* ¶¶ 121-123, and the VTD splits along the borders of these House districts show a statistically significant racial bias. US 352 ¶¶ 164-73 & tbl.21 (Oct. 2011 Arrington Rep.). The statistical relationship between splitting precincts and the racial character of the district is significant at the .0009 level, meaning that there is less than 9 chances out of 10,000 that a relationship this strong would occur by chance. *Id.* ¶ 92 & tbl.9.

309. Therefore, the only plausible explanation for the concentration of VTD splits was the use of race as a proxy for political preference. *Id.*

C. Circumstantial Evidence of Discriminatory Intent

1. Process of Adopting a Redistricting Plan for the State House

a. The Intended Effect of a Member-Driven Process

310. The 2011 House redistricting process, and particularly the process by which consequential decisions were made and conflicts were resolved, was not open or transparent and did not include minority-preferred legislators or their staff. Trial Tr. 43:3-12, July 14, 2014 (Veasey); Trial Tr. 1298:20-1299:1, 1300:24-1302:10, 1303:17-1305:17, July 17, 2014 (Coleman); Trial Tr. 899:5-901:1, Aug. 13, 2014 (Dukes); *infra* ¶¶ 328-334.

311. Chairman Solomons announced in early 2011 that the Redistricting Committee would use a “member-driven” process and urged members to draw maps by consensus. Trial Tr. 1069:18-1070:1, 1073:13-1074:1, July 17, 2014 (Solomons); Trial Tr. 1560:23-1561:19, Sept. 13, 2011 (Solomons).

312. By its nature, a consensus redistricting process will protect incumbents. Trial Tr. 1382:14-16, July 17, 2014 (Vo); Trial Tr. 1631:6-1633:5, Sept. 13, 2011 (Solomons).

313. In the landslide 2010 election, a few districts that provided minority voters with the ability to elect their candidate of choice elected legislators who were not the minority-preferred candidates. *Supra* ¶¶ 53-54.

314. The consensus process instituted by Chairman Solomons effectively instructed members to eliminate minority voters’ opportunity to elect their candidates of choice in opportunity districts where exceptional Anglo turnout had allowed Anglo voters to elect their preferred candidates in 2010 or—in the case of Representative Peña—where an incumbent had been elected as the preferred candidate of minority voters and changed parties immediately thereafter. US Ex. 352 ¶¶ 16-17, 132-34 (Oct. 2011 Arrington Rep.).

315. Notwithstanding the general member-driven process, several minority members of the legislature were not permitted to create a district of which they approved. Trial Tr.

326:12-330:1, July, 15, 2014 (Farias); Trial Tr. 1355:19-1356:17, 1361:25-1362:8, July 17, 2014 (Vo).

316. In at least one case where a delegation had reached consensus, legislative leadership changed minority opportunity districts without reason, explanation, or consultation. Trial Tr. 14:9-16:1, July 14, 2014 (Veasey).

317. Specifically, in Tarrant County, after members of the delegation reached consensus, changes were made to District 95 that divided communities of interest and failed to include key African-American communities in a Black opportunity district. Trial Tr. 14:9-16:1, July 14, 2014 (Veasey); US Ex. 351 at 7 & tbl.2 (2011 Handley House Rep.); US Ex. 10 at 2 (Article, Apr. 21, 2011).

318. The incumbent of HD 95, now-U.S. Representative Marc Veasey, was not notified of the change until the public release of Chairman Solomons' statewide proposal, and he received neither a reason for the change nor an opportunity to offer input regarding the best way to make any necessary change, despite his membership on the House Redistricting Committee. Trial Tr. 14:9-16:1, July 14, 2014 (Veasey).

b. Compliance with the Voting Rights Act

319. Chairman Solomons spent no time learning anything about the Voting Rights Act or Texas's obligations there under, and was entirely reliant on legislative staff members (Ryan Downton, Gerardo Interiano, and the TLC) and the OAG throughout the redistricting process. Trial Tr. 1029:24-1320:6, July 17, 2014 (Solomons).

320. Chairman Solomons never communicated to the Texas House the number of districts that he believed to be protected by the Voting Rights Act, and he never stated that he intended to deviate from legal guidance provided by the TLC. Trial Tr. 1028:21-1029:23, July 17, 2014 (Solomons).

321. Throughout the redistricting process, the TLC advised Chairman Solomons and his staff to use a functional election analysis under Section 5 of the Voting Rights Act, to preserve coalition districts (particularly HD 149), to draw an additional Hispanic district in Dallas County, and to compensate for the elimination of a Hispanic opportunity district from Nueces County. US Ex. 102 (Email, Feb. 18, 2011); US Ex. 357 (TLC guidance); US Ex. 343 at 5 (First Hanna Memo, version A).

322. Throughout the redistricting process, key legislators and staff received a summary of election results concerning Hispanic-preferred candidates in key House districts from the OAG, and Chairman Solomons was aware that this election analysis was necessary in order to assess compliance with the Voting Rights Act. Trial Tr. 1017:8-1023:6, July 17, 2014 (Solomons); Trial Tr. 1640:16-1641:11, Sept. 13, 2011 (Solomons); US Ex. 190 (Email, Apr. 22, 2011).

323. While the 2011 Plan was before the House Redistricting Committee, the district election analysis indicated decreased performance for Hispanic-preferred candidates in key districts and specifically showed that the number of contests in which Hispanic-preferred candidates received a majority of votes in HD 41 moved from a majority of contests to half of contests. This suggests that the Texas House used the OAG's election analysis to ensure that Hispanic voters would have less of an opportunity to elect their preferred candidates of choice. Trial Tr. 1022:13-1023:6, July 17, 2014; US Ex. 190 (Email, Apr. 22, 2011).

324. By March 21, Chairman Solomons rejected TLC advice and turned to the state's litigation team for a second opinion concerning the Voting Rights Act implications of eliminating a Hispanic opportunity district in Nueces County and removing HD 149 from Harris

County. US Ex. 108 at 2 (Email, Mar. 21, 2011); *see also* Trial Tr. 1933:13-24, 1985:15-1986:5, July 19, 2014 (Bruce).

325. Before the release of Chairman Solomons' statewide plan, David Hanna raised Voting Rights Act concerns regarding several districts in the map, US Ex. 347 (First Hanna Memo, version B); US Ex. 117 (Email, Apr. 8, 2011), and subsequent iterations of that analysis reveal that many of these issues remained unresolved. US Ex. 339 at 2 (Hanna Memo, Plan H110); US Ex. 338 at 2 (Hanna Memo, Plan H153).

326. Even under the 50.1 percent SSVR bright line standard advanced by Chairman Solomons on the floor of the House, US Ex. 198 at 15-18 (House Journal, Apr. 27, 2011) (claiming that districts that already provided an electoral opportunity should be newly counted as ability districts when they cross a population threshold), the Chairman's initial proposal violated Section 5 of the Voting Rights Act. Trial Tr. 2038:6-2039:21, July 19, 2014 (Downton)

327. Hanna expressly noted in his comments on a draft submission to the Department of Justice that the 50.1 percent SSVR cutoff was not the legal standard under the Voting Rights Act and labeled this standard "phony." US Ex. 193A at 4-5 (Draft Informal Submission, Hanna comments); US Ex 635 (Draft informal Submission, Hanna comments).

c. The Exclusion of Minority Legislators

328. The leadership of the Texas House had access to substantial redistricting resources, including outside counsel and sophisticated statistical analyses that were not publicized or shared with minority-preferred legislators. Trial Tr. 1014:20-1016:1, 1023:14-1027:23, 1068:16-22, July 17, 2014 (Solomons).

329. Minority members also were denied access to data and draft plans necessary for effective participation in the redistricting process and were not given timely notice of decisions made by House leadership concerning the broad contours of the plan. *E.g.*, Trial Tr. 15:7-16:1,

July 14, 2014 (Veasey); Trial Tr. 1374:25-1375:12, July 17, 2014 (Coleman); *see* US Ex. 128 (Email, Apr. 22, 2011).

330. For example, Representative Yvonne Davis and members of her staff were incorrectly told that Representative Dan Branch was not drafting a map for Dallas County, and Representative Davis's attempts to set up a meeting with Chairman Solomons to discuss her district and available data were rebuffed. Davis Dep. 200:23-202:19, May 9, 2014.

331. Likewise, Chairman Solomons declined to explain to members of the Hidalgo County delegation who had drawn their map, and even the Hispanic Vice-Chairman of the House Redistricting Committee, Representative Mike Villarreal, did not know the answer to the question. US Ex. 198 at 98-99 (House Journal, Apr. 27, 2011).

332. Memoranda written by David Hanna setting out potential legal problems under the Voting Rights Act also were not shared with any minority legislators. Trial Tr. 1957:9-17, July 19, 2014 (Bruce).

333. Any influence that minority-preferred legislators had on the 2011 House plan was limited to matters that did not interfere with the preferences of Anglo-preferred legislators; when the interests of minority-preferred legislators conflicted with the interests of Anglo-preferred legislators, minority-preferred legislators were unable to influence the plan. Trial Tr. 325:18-331:15, 349:25-350:25, July 15, 2014 (Farias); Trial Tr. 802:5-803:14, 806:6-21, Sept. 8, 2011 (Turner); US Ex. 198 at 34-38, 64-72, 73-82, 90-107, 114-42, 149-54 (House Journal, Apr. 27, 2011); US Ex. 352 ¶¶ 108-29 (Oct. 2011 Arrington Rep.).

334. The April 3 draft committee schedule included a 10-day period when only "key legislators" and a "kitchen cabinet" could see the statewide map, but no minority legislators were

shown the map during this period. US Ex. 113 (Email, Apr. 3, 2011); Trial Tr. 1963:7-19, July 19, 2014 (Bruce).

d. Procedural Departures in the 2011 House Plan

335. Before Chairman Solomons released the initial statewide plan, David Hanna pushed for public disclosure and cautioned that the proposed hearing schedule would not allow for “meaningful input.” US Ex. 120 (Email, Apr. 13, 2011); US Ex. 122 (Email, Apr. 13, 2011).

336. Hanna suggested a third public hearing on April 18, 2011, and warned that the committee must allow time for public consideration prior to a floor debate, but the House Redistricting Committee did not hold a third public hearing on the 18th. US Ex. 119 (Email, Apr. 13, 2011); Trial Tr. 17:1-8, July 14, 2014 (Veasey); Trial Tr. 1943:7-17, July 19, 2014 (Bruce); US Ex. 273 (Timeline).

337. Hanna also warned that rushing the House plan out of committee would be “a mistake,” noting that members would not be happy with “this short of a schedule on something that is very important to them.” US Ex. 165 (Email, Apr. 17, 2011).

338. The House Committee publicly released the draft redistricting plan for the Texas House of Representatives on April 13, 2011, and simultaneously announced two public hearings to be held on April 15 and April 17. Trial Tr. 17:1-8, July 14, 2014 (Veasey); Trial Tr. 1943:7-17, July 19, 2014 (Bruce); US Ex. 273 (Timeline); US Ex. 9 (Article, Apr. 18, 2011).

339. Such short notice required waiver of the Texas House five-day posting rule, which mandates five days of notice prior to a committee hearing. Waivers limit public participation, it is not common to seek a waiver for all hearings on a major bill. Trial Tr. 1650:22-1651:15, 1655:24-1656:3, 1684:25-1685:11, July 18, 2014 (Hochberg).

340. April 15, 2011 was a Friday and April 17, 2011 was Palm Sunday. Friday hearings are rare, and Sunday hearings are very unusual. Trial Tr. 17:1-22, July 14, 2014

(Veasey); Trial Tr. 1651:21:1652:2, 1654:21-1655:1, July 18, 2014 (Hochberg); US Ex. 273 (Timeline).

341. Holding a hearing only 48 hours after the public release of the Chairman's plan did not give members of the public or minority groups sufficient time to travel to the State Capitol to provide comments or amendments to the plan. Trial Tr. 441:20-442:6, Sept. 7, 2011 (Flores); Trial Tr. 1356:18-1357:11, July 17, 2014 (Vo); US Ex. 9 (Article, Apr. 18, 2011).

342. This was a particular burden to legislators and citizens in minority opportunity districts—districts that were drafted or altered without input from the incumbent legislators—who did not have adequate time to assess the newly drawn districts. Trial Tr. 1656:13-1657:1, July 18, 2014 (Hochberg).

343. Like the April 15 hearing, the limited notice given for the April 17 hearing was particularly burdensome on the minority community. Trial Tr. 17:1-22, July 14, 2014 (Veasey); Trial Tr. 1651:21:1652:2, 1654:21-1655:1, July 18, 2014 (Hochberg); US Ex. 273 (Timeline).

344. Having only two hearings was a departure from the legislature's normal procedures. For example, in 2001, the House Redistricting Committee conducted five public hearings, which allowed for greater public input. US Ex. 107 (Email, Mar. 17, 2011).

e. Passage with Minimal Minority Support

345. Chairman Solomons announced from the House floor on April 18 that the redistricting committee would meet to consider amendments to the Chairman's initial plan on April 19, 2011. Trial Tr. 1080:2-21, July 17, 2014 (Solomons); US Ex. 273 (Timeline); US Ex. 9 (Article, Apr. 18, 2011). The April 19 committee hearing was held in the Agriculture Museum Room of the State House, a venue with limited seating and with no ability to record or broadcast the proceedings. US Ex. 9 (Article, Apr. 18, 2011); US Ex. 27 (Article, June 7, 2011).

346. House Bill 150, the 2011 House plan, passed out of committee by a vote of 11-5, with Representative Peña (who changed parties immediately after his reelection) being the only minority legislator to vote in favor of the plan. Trial Tr. 18:16-21, July 14, 2014 (Veasey).

347. Despite testimony before the House Redistricting Committee that Chairman Solomons' statewide plan diminished minority voting strength, the committee did not adopt any amendments that would have created additional minority opportunity districts. Trial Tr. 18:8-13, July 14, 2011 (Veasey); US Ex. 8 (Article, Apr. 15, 2011).

348. Once the House plan was taken up for debate on the House floor, the House similarly rejected numerous amendments that would have repaired minority opportunity districts eliminated by the committee plan or increased minority voting strength statewide. *See, e.g.*, Trial Tr. 46:17-19, July 14, 2014 (Veasey); Trial Tr. 332:18-333:12, July 15, 2014 (Farias); US Ex. 198 (House Journal, Apr. 27, 2011); US Ex. 8 (Article, Apr. 15, 2011).

349. Changes to the House plan during the floor debate were either cosmetic or moderate "fixes" in Harris County that did not affect Anglo-controlled districts and did not increase the number of districts in which minority voters had a reasonable opportunity to elect their representatives of choice. US Ex. 352 ¶¶ 108-29 (Oct. 2011 Arrington Rep.); US Ex. 356 ¶ 64 (Feb. 2014 Arrington Rep.)

350. The final vote for the enacted House plan was 92-54, with only three minority-preferred legislators from minority opportunity districts voting for passage (including Representative Peña). US Ex. 199 at 14 (Informal Submission).

2. Evidence of Discriminatory Intent in Bexar County: HD 117 & HD 118

a. Comparison of HD 117 in H100 and HD 117 in the 2011 Plan

351. Prior to the 2011 redistricting, HD 117 was located in western Bexar County and included portions of San Antonio and smaller cities. US Ex. 395 at 1, 11 (Plan Packet, H100); US Ex. 293B (Bexar Cnty. Map, Plan H100).

352. According to data available during the House Redistricting, HD 117 had a HVAP of 58.7 percent and a SSVR rate of 50.8 percent. US Ex. 395 at 18-19 (Plan Packet, H100).

353. Hispanic voters elected their preferred candidate from HD 117 in 2004, 2006, and 2008, but not in 2002 or 2010. US Ex. 351 at 5, 35 (2011 Handley House Rep.).

354. Prior to the 2011 redistricting, Hispanic voters had the opportunity to elect their preferred candidate of choice to the Texas House of Representatives from HD 117, even if they did not successfully utilize that opportunity in every election. US Ex. 351 at 5 (2011 Handley House Rep.); US Ex. 350 at 8 (Oct. 2011 Alford Rep.); *see also* US Ex. 199 at 3-5 (Informal Submission).

355. Representative John Garza was elected to the Texas House from HD 117 in 2010, although he was not the Hispanic candidate of choice. Trial Tr. 356:22-357:1, 358:6-10, 363:4-13, 368:18-369:4, July 15, 2014 (Garza); US Ex. 351 at 35 (2011 Handley House Rep.); TLRTF Ex. 612 (Election Analysis, HD 117); US Ex. 112 (Email, March 25, 2011) (VTD Analysis, HD 117).

356. In the 2011 House plan, HD 117 remained in western Bexar County, although it included less of the City of San Antonio inside the I-410 Loop and more unincorporated area. US Ex. 396 at 1, 11 (Plan Packet, H283); US Ex. 294D (Bexar Cnty. Map, Plan H283).

357. In the 2011 House plan, HD 117 had a HVAP of 62.7 percent and a SSVR rate of precisely 50.1 percent. US Ex. 396 at 1, 18 (Plan Packet, H283).

358. Although HD 117 retained a marginal Spanish surname registered voter majority, the 2011 House plan eliminated Hispanic voters' opportunity to elect their preferred candidate of choice to the Texas House of Representatives from that district. US Ex. 351 at 11 (2011 Handley House Rep.); *see also* US Ex. 350 at 10-11 (Oct. 2011 Alford Rep.) (illustrating decreased success rate in exogenous elections from 60 percent to 33 percent).

b. Legislative Goals Regarding HD 117

359. HD 117 in the 2011 Plan was constructed by Representative Garza, his staff, and Gerardo Interiano. Trial Tr. 364:4-11, 387:17-388:8, July 15, 2014 (Garza); US Ex. 427 (HRC Shapefiles); US Ex. 481 (Garza Shapefiles). HD 117 in Plan 283 was designed to give Representative Garza, who is not the Hispanic-preferred candidate, the ability to get reelected. Trial Tr. 1523:2-9, July 18, 2014 (Interiano).

360. At the beginning of the redistricting process, Representative Garza drafted his ideal House district, which moved the boundaries of HD 117 north and did not include any portion of the City of San Antonio. Trial Tr. 363:24-364:3, 367:5-25, July 15, 2014 (Garza); Tex Ex. 265 (Email, Feb. 24, 2011); Tex. Ex. 284 (HD117 in H100 vs. HD 117 in H283 Map); US Ex. 403 (Bexar Cnty. Map, Plan H100); US Ex. 404 (Bexar Cnty. Map, Plan H283). Specifically, Representative Garza testified that his ideal district extended north to I-10 and south to the Medina River and it remained outside of the I-410 Loop, which removed all of the City of San Antonio. Trial Tr. 379:6-20, July 15, 2014 (Garza); TLRTF Ex. 523 (Garza Map, H100).

361. Northern Bexar County is predominately Anglo, in contrast to the City of San Antonio and southern Bexar County, which are predominately Hispanic, and Representative Garza wanted his district to be "more Anglo and more conservative." Trial Tr. 367:20-370:3, July 15, 2014 (Garza); Trial Tr. 323:20-324:12, July 15, 2014 (Farias); US Ex. 294D (Bexar Cnty. HVAP Map).

362. The Anglo voters in northern Bexar County turn out at a higher rate than the Hispanic voters in southern Bexar County. Trial Tr. 429:11-430:3, July 15, 2014 (Garza); TLRTF Ex. 954 (Bexar Cnty. Election Returns by Pct.).

363. The City of San Antonio that was previously included in Representative Garza's district included South San Antonio Independent School District ("ISD), which is a very politically active Hispanic area. Trial Tr. 330:2-332:6, July 15, 2014 (Farias).

364. Representative Garza knew that he had more electoral support from the Anglo voters in northern Bexar County than from the Hispanic voters in city of San Antonio and the Hispanic voters in Southern Bexar County. Trial Tr. 400:8-403:13, July 15, 2014 (Garza); TLRTF Ex. 954 (Bexar Cnty. Election Returns by Pct.).

c. "Nudge Factor" Applied to HD 117

365. Representative Mike Villarreal, the vice chairman of the House Redistricting Committee, told Representative Garza that his ideal district impermissibly reduced the Hispanic population of District 117, and that Representative Garza could not eliminate the majority-SSVR status of his district, which had dropped to 46.3 percent in Representative Garza's ideal district. Trial Tr. 365:2-366:25, 382:9-19, July 15, 2014 (Garza); Trial Tr. 329:6-10, July 15, 2014 (Farias); *see also* Trial Tr. 395:11-15, July 15, 2014 (Garza) (noting reduction from 50.3 percent SSVR to 50.1 percent SSVR); US Ex. 155 (Email, Feb. 24, 2011).

366. Representative Garza and his staff then worked with Interiano to maintain majority-SSVR status while improving Representative Garza's reelection chances, notwithstanding that he had not been the Hispanic-preferred candidate in 2010. Trial Tr. 374:14-23, 387:17-388:16, July 15, 2014 (Garza); US Ex. 481 (Garza Shapefiles); US Ex. 482 (Garza Plan List); TLRTF Ex. 523 (Garza Map, H100); TLRTF Ex. 528 (Garza Map, H104); TLRTF

Ex. 529 (Garza Map, H105); TLRTF Ex. 533 (Garza Map, H106); TLRTF Ex. 534 (Garza Map, H107).

367. To maintain the necessary Hispanic demographics, Representative Garza and Interiano added large portions of southern Bexar County to HD 117, while eliminating concentrated Hispanic population in the core of the City of San Antonio. Trial Tr. 372:15-373:5, 379:15-19, July 15, 2014 (Garza); US Ex. 427 (HRC Shapefiles); US Ex. 481 (Garza Shapefiles); *compare* US Ex. 293B (Bexar Cnty. Map, Plan H100), *with* US Ex. 294D (Bexar Cnty. Map, Plan H283).

368. Thus, Interiano applied the same redistricting strategy underlying the “nudge factor” emails: focusing on voter turnout to eliminate Hispanic voters’ opportunity to elect their preferred candidates while maintaining Hispanic population majorities. Trial Tr. 126:16-127:14, July 14, 2014 (Arrington); US Ex. 75 (Email, Nov. 19, 2010); *see also supra* ¶¶ 105-116.

369. The House Redistricting Committee incorporated the district drawn by Representative Garza, his staff, and Interiano in the 2011 House plan. *Compare* US Ex. 481 (Garza Shapefiles), *and* US Ex. 482 (Garza Plan List), *with* US Ex. 294D (Bexar Cnty. Map, Plan H283), *and* Tex. Ex. 284 (HD117 in H100 vs. HD 117 in H283Map).

370. Notably, the 2011 redistricting added the City of Somerset and the community of Whispering Winds, which are rural areas of Southern Bexar County, to HD 117. US Ex. 404 (Bexar Cnty. Pcts., Plan H283).

371. Somerset and Whispering Winds are two of the poorest communities in Bexar County and are plagued by inadequate water, sewer services, housing, and education. Trial Tr. 317:8-318:22, July 15, 2014 (Farias).

372. Most Hispanic residents in these communities live at or under the poverty line, and their political participation levels are low. Trial Tr. 322:21-324:2, July 15, 2014 (Farias); Trial Tr. 403:20-404:19, July 15, 2014 (Garza).

373. By contrast, the 2011 redistricting did not include the South San Antonio Independent School District (ISD) in HD 117. Trial Tr. 330:2-12, July 15, 2014 (Farias).

374. The South San Antonio ISD is a majority Hispanic and politically active area, where Hispanic voter turnout is much higher than in southern Bexar County. Trial Tr. 330:19-21, 331:20-332:14, July 15, 2014 (Farias).

375. The change in political performance in HD 117 in the 2011 Plan was evident. HD 117 in the 2011 Plan increased HVAP by 4.0 percentage points and increased HCVAP by 5.0 percentage points. SSVR in HD 117 in the 2011 Plan decreased by 0.7 percentage points. *Compare* US Ex. 395 at 11, 18-19 (Plan Packet, H100), *and* US Ex. 380 at 4 (RED-106, Plan H100), *and* US Ex. 3 at 358 (OAG RPVA), *with* US Ex. 396 at 11, 18 (Plan Packet, H283), *and* US Ex. 381 at 4 (RED-106, Plan H283), *and* US Ex. 3 at 382 (OAG RPVA).

376. The expert for the United States and the expert for Texas both agree: no opportunity to elect existed for Hispanic citizens in HD 117 in the 2011 Plan. According to Dr. Lisa Handley's exogenous index, HD 117 scored only 20 in the 2011 plan, dropping from a score of 60 in the 2001 Plan. *See* US Ex. 351 at 8-9, 11 (2011 Handley House Rep.). Dr. John Alford similarly concluded that, despite an increase in HCVAP in the 2011 Plan, Hispanic voters are only able to elect their candidate of choice 33 percent of the time, a decrease from 60 percent in HD 117 in the 2011 Plan. *See* US Ex. 350 at 11 (Oct. 2011 Alford Rep); US Ex. 351 at 9, n.13 (2011 Handley House Rep.).

377. The fact that Representative Garza and Interiano were able to increase the HVAP and HCVAP substantially while simultaneously decreasing the proportion of Spanish surnamed voters and Hispanic electoral opportunity indicates that they intentionally and impermissibly focused on race when drawing the district. *See* ECF No. 690 at 6 (3/19/12 Opinion).

378. In sum, HD 117 was intentionally drawn to create the appearance of Hispanic electoral opportunity when no actual Hispanic opportunity exists. Trial Tr. 119:14-19, 124:10-127:14, July 14, 2014 (Arrington); US Ex. 356 ¶¶ 17-18, 37-39 (Feb. 2014 Arrington Rep.).

379. Therefore, the 2011 House plan intentionally eliminated the opportunity for Hispanic voters to elect their preferred candidates of choice in HD 117. *Supra* ¶¶ 351-378.

d. Disparate Treatment of Minority-Preferred Legislator in Adjacent HD 118

380. HD 118 was adjacent to HD 117 prior to the 2011 redistricting and remained so in the 2011 House plan. US Ex. 395 at 1 (Plan Packet, H100); US Ex. 396 at 1 (Plan Packet, H283).

381. Prior to the 2011 redistricting, HD 118 encompassed much of southern Bexar County, including the City of Somerset and the community of Whispering Winds. Trial Tr. 319:23-25, 320:8-10, July 15, 2014 (Farias); US Ex. 403 (H100 Bexar Cnty. Pct. Map).

382. Somerset and Whispering Winds are rural, majority-Hispanic communities with high poverty rates, dilapidated housing, and inadequate funding for schools, and both have had persistent problems with water and sewer systems. Trial Tr. 321:13-323:14, 324:8-20, July 15, 2014 (Farias).

383. Representative Joe Farias has represented HD 118 since January 2007. Trial Tr. 312:9-13, 313:12-16, July 15, 2014 (Farias). Representative Farias is the minority-preferred candidate in HD 118. *See* US Ex. 351 at 11 (2011 Handley House Rep.).

384. Prior to the 2011 redistricting, Representative Farias worked with Somerset and Whispering Winds to improve the general infrastructure, including introducing and supporting bills to improve education funding and funding for water and sewer systems, and he wished to continue representing the interests of those communities. Trial Tr. 316:22-318:22, 321:13-323:12, 324:8-325:8, July 15, 2014 (Farias).

385. After draft plans placed southern Bexar County—including Somerset and Whispering Winds—in HD 117, Representative Farias met with Representative Garza numerous times in an attempt to negotiate retaining those two communities in HD 118. Trial Tr. 326:12-327:4, July 15, 2014 (Farias).

386. Representative Garza had not supported any of the legislative initiatives aimed to improve the quality of housing, education, or utility services in Somerset and Whispering Winds; rather he had supported initiatives contrary to the interests of the Hispanic residents of those communities. Trial Tr. 324:3-325:11, July 15, 2014 (Farias).

387. Representative Garza would not tell Representative Farias why he wanted HD 117 to include Somerset and Whispering Winds. Representative Garza would only say he needed “more Mexicans” in his district. Trial Tr. 335:2-336:5, July 15, 2014 (Farias); *see also* Trial Tr. 425:23-427:13, July 15, 2014 (Garza).

388. Representative Garza placed precise constraints on his negotiations with Representative Farias. First, he would not accept retaining the South San Antonio ISD in HD 117 in order to maintain Hispanic population figures, even though that heavily Hispanic (and politically active) community had been in HD 117 prior to the redistricting. Trial Tr. 330:2-12, 332:15-17, July 15, 2014 (Farias).

389. Second, Representative Garza refused to accept any alteration to District 117 that would raise the SSVR rate above 50.1 percent. Trial Tr. 328:5-329:12, July 15, 2014 (Farias).

390. Representative Farias drafted several amendments to return the City of Somerset and the community of Whispering Winds to HD 118, but they were all rejected by Representative Garza because they raised SSVR in HD 117 above 50.1 percent. *See* Trial Tr. 329:13-330:1, July 15, 2014 (Farias) (noting Representative Garza's refusal to accept any proposed amendment in which SSVR was above precisely 50.1 percent). Representative Farias testified that none of his amendments raised SSVR above 52 percent in HD 117. *Id.* at 329:13-22.

391. Representative Farias eventually drafted an amendment that would have left Somerset in HD 117 and returned Whispering Winds to HD 118 and maintained HD 117 at precisely 50.1 percent SSVR. Trial Tr. 327:5-329:12, July 15, 2014 (Farias). Representative Garza told Representative Farias that he would inform the House that he did not oppose the amendment and would leave it to the "will of the House." *Id.* at 332:18-333:12.

392. During the debate on the 2011 House plan, Representative Garza refused to inform the House that he did not oppose the Amendment, and Chairman Solomons spoke out against the amendment because of the precinct splits, notwithstanding his support for the 412 precincts splits in the final bill. Trial Tr. 332:18-334:3, July 15, 2014 (Farias); *see also* Trial Tr. 138:9-15, July 14, 2014 (Arrington) (precinct splits).

393. Representative Farias testified that it was impossible to draft an amendment that would return either Somerset or Whispering Winds to HD 118 and leave HD 117 at precisely 50.1 percent SSVR without splitting additional precincts. Trial Tr. 334:4-335:1, July 15, 2014 (Farias).

394. All minority members of the Bexar County delegation except for Representative Garza voted for the Representative Farias's amendment, but it was defeated on the House floor. Trial Tr. 332:18-333:12, 349:25-350:22, July 15, 2014 (Farias).

395. As a result, the final 2011 House plan moved Somerset and Whispering Winds from HD 118 to HD 117, over the objection of all minority members of the Bexar County delegation who had been the candidates of choice of minority voters. Trial Tr. 351:11-21, July 15, 2014 (Farias); *compare* US Ex. 403 (Bexar Cnty Pcts., Plan H100), *with* US Ex. 404 (Bexar Cnty. Pcts., Plan H283).

396. The treatment of HD 118 during the 2011 redistricting process establishes that minority-preferred representatives had no ability to influence the process when their desires interfered with the goal of eliminating minority voters' opportunity to elect their preferred candidates of choice in districts that were represented by Anglo-preferred candidates following the 2010 wave election. *Supra* ¶¶ 380-395.

3. Evidence of Discriminatory Intent in South Texas: HD 35

a. Comparison of HD 35 in the 2001 Plan and HD 35 in the 2011 Plan

397. Prior to the 2011 redistricting, HD 35 was located in south Texas and was made up of Atascosa, Bee, Goliad, Jim Wells, Karnes, Live Oak, and McMullen counties. US Ex. 395 at 1 (Plan Packet, H100).

398. According to data available during the House Redistricting, House District 35 had a HVAP of 60.6 percent and a SSVR rate of 55.3 percent. US Ex. 395 at 14, 18 (Plan Packet, H100).

399. Hispanic voters in HD 35 elected their preferred candidates of choice in 2002, 2004, 2006, and 2008. US Ex. 351 at 5 (2011 Handley House Rep.).

400. In 2010, voters in HD 35 elected Representative Jose Aliseda, who was not the preferred candidate of Hispanic voters. US Ex. 351 at 5, 34 (2011 Handley House Rep.).

401. Prior to the 2011 redistricting, Hispanic voters had the opportunity to elect their preferred candidates of choice in HD 35, even if they did not do so in every single election. Trial Tr. 119:20-25, July 14, 2014 (Arrington); US Ex. 351 at 5 (2011 Handley House Rep.).

b. HD 35 in Plan H283 was Purposely Configured to Diminish Hispanic Voting Strength

402. HD 35 was assigned as a “special project” to an employee of the Office of Speaker Straus, suggesting that the effects of changes made to the district were intended by House leadership. Trial Tr. 1923:24-1924:8, July 19, 2014 (Bruce).

403. In the 2011 Plan, HD 35 was reconfigured to remove Goliad, Jim Wells, and Karnes counties and to add Duval, La Salle, and San Patricio counties. Trial Tr. 134:4-134:15, July 14, 2014 (Arrington); US Ex. 396 at 1, 11 (Plan Packet, H283); US Ex. 294 (South Texas Map, Plan H283).

404. The 2011 House plan reduced HVAP in HD 35 by 1.5 percentage points to 54.9 percent and reduced SSVR by 1.9 percentage points to 53.4 percent. US Ex. 395 at 11, 19 (Plan Packet, H100); US Ex. 396 at 14 (Plan Packet, H283).

405. Although there is an increase in overall turnout among both Anglo and Hispanic voters in HD 35, the Anglo voter turnout is significantly greater than the Hispanic voter turnout, reducing the effective share of Hispanic voters in the electorate. US Ex. 3 at 103, 105, 127, 129 (OAG RPVA).

406. The 2011 Plan reduced the performance of Hispanic-preferred candidates in HD 35. Trial Tr. 134:4-135:8, July 14, 2014 (Arrington); US Ex. 351 at 5, 11 (2011 Handley House

Rep.) (exogenous index decreases from 40 percent to 20 percent); US Ex. 350 at 11 (Oct. 2011 Alford Rep.) (exogenous index decreases from 58 percent to 48 percent).

407. Texas purposefully diluted Hispanic voting strength by eliminating the opportunity for Hispanic citizens in HD 35 to elect their preferred candidate to the Texas House. *Supra* ¶¶ 402-406.

4. Evidence of Discriminatory Intent in the Rio Grande Valley

a. Texas's Decision Not to Create a New Hispanic Opportunity District

408. Hidalgo County and Cameron County, the two counties that make up the core of the Rio Grande Valley, grew faster than the State of Texas as a whole between the 2000 Census and the 2010 Census. Tex. Ex. 199 (2000 Census ideal district sizes); Tex. Ex. 200 (2010 Census ideal district sizes).

409. Hidalgo County and Cameron County had six Hispanic opportunity districts wholly within their borders prior to the 2011 redistricting, Districts 36, 37, 38, 39, 40, and 41. US Ex. 395 at 1 (Plan Packet, H100); US Ex. 351 at 4 (2011 Handley House Rep.).

410. Following the 2010 Census, Hidalgo County had a population equal to 4.62 ideal-sized House districts, and Cameron County had a population equal to 2.42 ideal-sized House districts, making it possible to create seven districts wholly within these two counties without dividing additional counties in violation of the Texas County Line Rule. Tex. Ex. 199 (2000 Census ideal district sizes); Tex. Ex. 200 (2010 Census ideal district sizes); Trial Tr. 462:24-463:19, Sept. 7, 2011 (Flores); Trial Tr. 1540:8-15, July 18, 2014 (Interiano); Trial Tr. 2043:8-2045:1, July 19, 2014 (Downton); US Ex. 198 at 95-96 (House Journal, Apr. 27, 2011).

411. The seventh Rio Grande Valley district would have provided Hispanic voters with an opportunity to elect their preferred candidates. Trial Tr. 1209:7-11, July 17, 2014 (Hanna).

412. Gerardo Interiano, counsel to Speaker Straus, testified that a new district in Cameron and Hidalgo County could not be drawn because it would have caused an additional division of a county boundary elsewhere in the state, in violation of the Texas County Line Rule, but he never identified any communications or draft plans that illustrated that he had actually attempted to determine the effect of drawing a district combining Cameron and Hidalgo County. Trial Tr. 1540:8-1542:6, July 18, 2014 (Interiano).

413. This Court drew seven minority opportunity districts in the Rio Grande Valley in its second remedial House map. Opinion at 3-5 (ECF No. 690).

414. The 2013 House Plan created the seventh Rio Grande Valley District without creating an additional county line split, illustrating that compliance with the Texas County Line Rule did not mandate that Texas crack the naturally emerging seventh Rio Grande Valley district. Trial Tr. 1543:14-1544:7, July 18, 2014 (Interiano).

415. David Hanna, an attorney from the TLC, also advised House leadership and staff that requirements of the federal Voting Rights Act preempt any limitation on redistricting established by state law. Trial Tr. 1208:6-1209:6, July 17, 2014 (Hanna); US Ex. 338 at 1 (Hanna Memo, Plan H153).

416. By refusing to combine the surplus population of the Rio Grande Valley into a single district, and instead attaching the surplus population of each county to a different district, the 2011 Plan increased the number of county line breaks statewide. US Ex. 396 at 1 (Plan Packet, H283).

417. Minority legislators raised concerns regarding a potential violation of the Texas County Line Rule resulting from the failure to combine the surplus population of Hidalgo

County and Cameron County into a seventh Rio Grande Valley district. US Ex. 198 at 25, 95-96, 112-13 (House Floor Debate).

418. The Texas House of Representatives made a “policy decision” not to create a new district in Cameron and Hidalgo County, notwithstanding the substantial underrepresentation of Hispanics in the Texas House and the natural emergence of a new district in the rapidly growing Rio Grande Valley region, and therefore purposefully diluted Hispanic voting strength. Trial Tr. 2095:20-23, July 19, 2014 (Downton).

b. HD 41 in the 2011 Plan was Drawn to Minimize Hispanic Voting Strength by Splitting Precincts and Dividing Communities of Interest

419. Prior to the 2011 redistricting, Hidalgo County contained four House districts: HDs 36, 39, 40, and 41. Tex. Ex. 100 at 1 (Map, Plan H100).

420. Prior to the 2011 redistricting, HD 41 had a Hispanic VAP of 81.4 percent, an Anglo VAP of 14.8 percent, and a Spanish surname registered voter share of 68.7 percent. US Ex. 373 at 3 (RED-202, Plan H100). HD 41 had the highest Anglo VAP among the four Hidalgo County districts. US Ex. 373 at 3 (RED-202, Plan H100).

421. The incumbent in House District 41 was Representative Veronica Gonzales, a Democrat. Trial Tr. 509:14-16, July 15, 2014 (Longoria); US Ex. 385 at 1 (RED-350, Plan H100).

422. HD 41 elected the Hispanic candidate of choice in all five elections preceding the 2011 redistricting, and in most statewide contests with Hispanic candidates HD 41 provided a majority of votes to Hispanic-preferred candidates. US Ex. 351 at 4 (2011 Handley House Rep.).

423. In 2010, Representative Aaron Peña was nominated by the Democratic Party and re-elected to a fifth term representing HD 40. Trial Tr. 116:7-20, 120:24-121:2, Aug. 11, 2014 (Peña). Prior to the 2011 redistricting, HD 40 had a Hispanic VAP of 93.5 percent, an Anglo

VAP of 5.1 percent, and a Spanish surname registered voter share of 86.5 percent. US Ex. 373 at 2 (RED-202, Plan H100).

424. However, soon after the election, Representative Peña switched parties and joined the Republican caucus. Trial Tr. 121:22-122:2, Aug. 11, 2014 (Peña).

425. The 2011 Plan redrew HD 41 to include the residence of Representative Peña and to exclude the residence of former incumbent, Representative Gonzales. Trial Tr. 509:14-23, July 15, 2014 (Longoria); Trial Tr. 1507:10-16, July 18, 2014 (Interiano); US Ex. 386 at 1 (RED-350, Plan H283).

426. Representative Peña previously represented only the portion of the new House HD 41 that immediately surrounded his home, in the district's northeast corner, approximately 1.1 percent of the new HD 41. Trial Tr. 509:17-23, July 15, 2014 (Longoria); US Ex. 198 at 90 (House Journal, Apr. 27, 2011).

427. The new HD 41 had a Hispanic VAP of 76.2 percent, an Anglo VAP of 19.7 percent, and a SSVR rate of 62.1 percent. US Ex. 374 at 3 (RED-202, Plan H283).

428. Thus, the 2011 Plan reduced Hispanic VAP by 5.6 percentage points, increased Anglo VAP by 4.9 percentage points, and reduced SSVR by 7.1 percentage points. US Ex. 373 at 3 (RED-202, Plan H100); US Ex. 374 at 3 (RED-202, Plan H283).

429. HD 41 had a SSVR rate 19.2 percentage points lower than the next most Anglo district in Hidalgo County and 21.7 percentage points lower than HD 31, an adjacent district in Hidalgo County. US Ex. 373 at 2-3 (RED-202, Plan H100).

430. In the 2011 Plan, HD 41 was substantially underpopulated in comparison to other Hidalgo County districts, all of which included far greater concentrations of Hispanic voters. US Ex. 374 at 2-3 (RED-202, Plan H283); *see also* US Ex. 275 at 1 (Map, Plan H283).

431. Specifically, HD 41 had a population of 160,238, which was 7,399 below the ideal district size (-4.41%), whereas the other districts that included portions of Hidalgo County—HDs 31, 36, 39, and 40—ranged in population from 168,636 to 175,383, which was 999 to 7,746 above the ideal district size (0.60-4.62%). US Ex. 374 at 2-3 (RED-202, Plan H283); *see also* US Ex. 275 at 1 (Map, Plan H283).

432. Thus, HD 41 had 15,145 fewer individuals in it than HD 39, the most populous district in Hidalgo County. Trial Tr. 144:1-11, July 14, 2014 (Arrington). This strongly suggests that Texas drew HD 41 to include as many Anglo voters as could be found in Hidalgo County and then—once there were no concentrations of Anglo voters left to be added—ceased adding additional population that would dilute the Anglo concentration of the district.

Table 2: Hidalgo County Districts (2011 House Plan)

District	Incumbent	SSVR	Population	Deviation	Deviation %
31	Guillen	90.8%	168,636	999	0.60%
36	Muñoz	85.1%	172,005	4,368	2.61%
39	Martinez	82.2%	175,383	7,746	4.62%
40	Gonzales	85.8%	173,493	5,856	3.49%
41	Peña	63.0%	160,238	-7,399	-4.41%

433. The boundary of HD 41 in the 2011 House Plan divided 17 previously existing VTDs. US Ex. 516 (HD 41 Split Summary).

434. This number alone is remarkable, given the credible testimony at trial that representatives had been instructed by House leadership not to divide precincts when drawing districts. Trial Tr. 734:8-22, July 16, 2014 (Pickett).

435. In addition, House leadership opposed an amendment offered by a minority-preferred legislator because it split precincts. Trial Tr. 333:13-335:1, July 15, 2014 (Farias); *supra* ¶ 392.

436. Therefore, the use of a substantial number of divided precincts in HD 41 constitutes a deviation from the substantive rules governing House redistricting. *Supra* ¶¶ 433-435.

437. Even more notably, these split precincts followed a clear racial pattern. Within divided precincts, areas with a greater level of Anglo VAP were included in House District 41, while areas with a lesser level of Anglo VAP were excluded from House District 41 and placed in other districts. US Ex. 516 (HD 41 Split Summary); Trial Tr. 143:4-25, July 14, 2014 (Arrington); Trial Tr. 22:9-24:22, Aug. 11, 2014 (Interiano).

438. Six specific precincts were split so that the area in House District 41 had a Hispanic VAP concentration that was 13 percentage points to 32 percentage points lower than the areas of those same precincts that were excluded from House District 41 and placed in other districts: Precincts 25, 47, 48, 88, 95, and 103. US Ex. 516 (HD 41 Split Summary); Trial Tr. 143:4-25, July 14, 2014 (Arrington).

439. In sum, the final version of HD 41 retained portions of split precincts that had higher Anglo VAP concentrations than the district as a whole before the splits were made and excluded portions of split precincts that had higher Hispanic VAP concentrations than the district as a whole before the splits were made. US Ex. 516 (HD 41 Split Summary); Tex. Ex. 112 at 5 (H113 Population Concentrations).

440. Jaime Longoria, a longtime public servant in Hidalgo County, explained that the precinct splits placed country clubs, gated communities, and other disproportionately Anglo neighborhoods in HD 41 and excluded dense Hispanic neighborhoods and colonias. Trial Tr. 506:9-507:4, 513:2-524:4, July 15, 2014 (Longoria).

441. HD 41 divided cities and broke working relationships between more-affluent communities and those in need of development. Trial Tr. 508:10-19, 525:3-526:8, July 15, 2014 (Longoria).

442. Whether HD 41 provided an electoral opportunity for Hispanic voters to elect their preferred candidate of choice is a close question. Votes are tabulated only at the precinct level, but precincts along the boundary of HD 41 have been divided along racial lines, and patterns of racial bloc voting suggest that areas with different racial concentrations will exhibit different voting patterns. Therefore, ordinary reconstituted election analysis, which assumes that all portions of a divided precinct exhibit the same voting patterns, is likely to produce inaccurate estimates, and it is not possible to determine with a reasonable degree of scientific certainty whether voters HD 41 in the 2011 Plan actually provided a majority of votes to Hispanic-preferred candidates in most statewide elections. Trial Tr. 120:1-18, 141:19-142:23, July 14, 2014 (Arrington); Trial Tr. 20:1-22:8, Aug. 11, 2014 (Interiano); US Ex. 351 at 9-10 (2011 Handley House Rep.); US Ex. 1 (OAG RPVA).

c. There is No Plausible Non-Racial Explanation for Changes to HD 41

443. In the 2001 Plan, HD 41 was a minority opportunity district protected by the Voting Rights Act. US Ex. 351 at 4 (2011 Handley House Rep.); US Ex. 373 at 3 (RED-202, Plan H100).

444. In the 2011 Plan, Texas altered HD 41 with the goal of shoring up a vulnerable incumbent and ensuring that Anglo voters, not Hispanic voters, would control this district in future elections. Trial Tr. 1575:18-25, 1578:25-1579:11, July 18, 2014 (Interiano); Trial Tr. 103:16-104:8, Aug. 11, 2014 (Peña).

445. Split precincts along the boundary of HD 41 in the 2011 Plan followed a clear racial pattern, and there can be no credible argument that these race-based decisions were made

in order to comply with the Voting Rights Act or traditional race-neutral districting principles. US Ex. 516 (HD 41 Split Summary); Trial Tr. 143:4-25, July 14, 2014 (Arrington); Trial Tr. 22:9-24:22, Aug. 11, 2014 (Interiano); *infra* ¶¶ 446-464.

446. Gerardo Interiano drew the version of HD 41 that was included in Chairman Solomons' initial statewide proposal (H113), relying on political data and the assistance of Representative Peña and Ryan Guillen of HD 31. Trial Tr. 1503:15-25, 1504:13-15, 1578:5-1579:3, 1579:12-1580:18, 1582:21-25, July 18, 2014 (Interiano).

447. Chairman Solomons' initial statewide proposal split four precincts along the boundary of HD 41, and Interiano provided a credible reason for each of the four splits. Interiano divided Precinct 14 to include Representative Peña. Interiano divided Precincts 62 and 124 to exclude Representative Gonzales, and divided Precinct 28 to exclude a precinct that provided a substantial margin to Hispanic-preferred candidates. Tex. Ex. 334 (Split VTDs H113); Trial Tr. 1506:6-1508:4, 1583:1-1584:16, July 18, 2014 (Interiano).

448. Representative Peña signed off on this map, and this map contained none of the race-based precinct splits described by Longoria and highlighted by Dr. Arrington, including Precincts 25, 47, 48, 88, 95, and 103. Tex. Ex. 229 at 91 (signed map); Trial Tr. 513:2-524:4, July 15, 2014 (Longoria); Trial Tr. 1509:2-1510:24, July 18, 2014 (Interiano); Trial Tr. 93:3-23, Aug. 11, 2014 (Peña).

449. Notwithstanding the prior approval of Representative Peña, Ryan Downton made numerous changes to HD 41 during committee consideration and divided thirteen additional precincts. Trial Tr. 2027:3-2031:14, July 19, 2014 (Downton); Tex. Ex. 295 (Split VTDs H283); *see also* Trial Tr. 1515:23-1516:1, July 18, 2014 (Interiano) (stating that either Downton or Bonnie Bruce drew the final configuration of HD 41).

450. Downton admitted to dividing precincts guided by racial data at the census block level elsewhere in the 2011 Plan. Trial Tr. 2093:13-2094:7, July 19, 2014 (Downton).

451. Downton claimed to have divided precincts in HD 41 solely at the direction of Representative Peña and principally to follow roads. Trial Tr. 2030:6-9, 2066:10-24, July 19, 2014 (Downton).

452. Downton's claims that he only divided precincts in HD 41 at the direction of Representative Peña, and principally to follow roads, is not credible. *Infra* ¶¶ 453-455.

453. First, Representative Peña testified that he did not request any further precinct splits after he had signed off on the prior version of his district. Trial Tr. 97:12-98:1, 106:10-20, 107:4-108:21, 113:8-18, Aug. 11, 2014 (Peña).

454. Second, splits introduced by Downton in Precincts 48, 95, 103, and 105 moved the district boundary away from major roads. Trial Tr. 32:10-33:21, Aug. 11, 2014 (Interiano); US Ex. 313 (HD 41 Pct. Map, NE); US Ex. 314 (HD 41 Pct. Map, NW).

455. Downton also left other boundaries separated from major roads, specifically along the western edge of Precincts 7 and 8 and the southern edge of Precinct 66. US Ex. 315 (HD 41 Pct. Map, SE).

456. Representative Peña testified that Representative Guillen worked on HD 41 directly with Downton, Trial Tr. 110:12-112:15, Aug. 11, 2014 (Peña), but Downton did not testify that he made any changes to HD 41 at the direction of Representative Guillen. Trial Tr. 1988:17-2156:12, July 19, 2014 (Downton).

457. The Court finds that Downton did not split precincts at the direction of Representative Guillen. *Supra* ¶ 456.

458. According to the data available to Downton—through RedAppl and reports available from the TLC—the changes made by Downton to House HD 41 actually reduced Republican performance. Trial Tr. 18:21-19:21, Aug. 11, 2014 (Interiano); US Ex. 518 (Performance Comparison).

459. The precinct splits introduced by Downton actually exclude portions of Republican-leaning precincts from House District 41 and include portions of Democratic-leaning precincts in House District 41. US Ex. 311 (HD 41 Map, Partisan Shading).

460. Most notably, Downton excluded some heavily Hispanic portions of precincts that favored Republicans, such as Precinct 25. US Ex. 311 (HD 41 Map, Partisan Shading); US Ex. 315 (HD 41 Pct. Map, SE); US Ex. 516 (HD 41 Split Summary).

461. On the other hand, Downton excluded some relatively Anglo portions of precincts that favored Democrats, such as Precincts 47, 48, and 95. US Ex. 311 (HD 41 Map, Partisan Shading); US Ex. 316 (HD 41 Pct. Map, SE); US Ex. 516 (HD 41 Split Summary).

462. These changes can only be explained by a motive to minimize Hispanic electoral strength and relates to partisan concerns only if race is used as a proxy for partisanship. Trial Tr. 21:11-22:8, Aug. 11, 2014 (Interiano).

463. In light of the careful attention given to the drawing of House District 41, it is implausible that changes that reduced the Republican performance of the district would be made in order for the district to more closely follow particular roads on the boundary of the district. *Supra* ¶¶ 419-426, 446-449.

464. In sum, the racial pattern of precinct splits made after Representative Peña signed off on the map drawn by Interiano is simply too consistent to support a non-racial explanation. US Ex. 516 (HD 41 Split Summary); *cf.* Trial Tr. 217:25-219:3, July 14, 2014 (Arrington).

465. David Hanna, an attorney for the TLC, repeatedly warned the map drawers that HD 41 raised concerns under the Voting Rights Act. Trial Tr. 1155:20-1162:13, July 17, 2014 (Hanna); US Ex. 347 at 2 (First Hanna Memo, version B); US Ex. 339 at 2 (Hanna Memo, Plan H110); US Ex. 338 at 2 (Hanna Memo, Plan H153).

466. The Voting Rights Act issues that Hanna raised concerning HD 41 were never resolved. Trial Tr. 1164:6-10, July 17, 2014 (Hanna).

467. Chairman Solomons and Gerardo Interiano were aware that the House redistricting plan passed by the Committee reduced minority electoral opportunity in House HD 41. Trial Tr. 1020:10-1023:6, July 17, 2014 (Solomons); Trial Tr. 9:2-9, Aug. 11, 2014 (Interiano).

468. Texas purposefully diluted Hispanic voting strength by minimizing the opportunity for Hispanic citizens in HD 41 to elect their preferred candidate. *Supra* ¶¶ 419-467.

d. HD 41 also Reflected Deviations from Substantive Redistricting Rules

469. Despite the stated policy that the House map would be a “member-driven plan,” *see supra* ¶ 311, House Districts in Hidalgo County were drawn with no input from three of the four incumbents who resided there: Representative Gonzales, Representative Martinez, and Representative Muñoz. *See* Trial Tr. 1501:1-8, July 19, 2014 (Interiano); US Ex. 198 at 90-95, 99 (House Journal, Apr. 27, 2011).

470. Despite the statewide policy against splitting precincts, *see supra* ¶ 434-435, the boundaries of HD 41 divided 17 precincts. US Ex. 382 at 76-77 (RED-110, Plan H283). This was over 40 percent of all precincts included in whole or in part in HD 41. *Id.*

471. HD 40 and HD 41 were also the only instances where an incumbent was surgically excluded from the district that they represented and moved into a different district. Trial Tr. 509:14-19, 511:6-25, July 15, 2014 (Longoria); US Ex. 198 at 90 (House Floor Debate).

Representative Peña was the incumbent who resided in HD 41 in the 2011 House plan, although that district included only approximately 1 percent of his prior district. Trial Tr. 141:19-142:4, July 14, 2014 (Arrington); Trial Tr. 509:20-23, July 15, 2014 (Longoria); US Ex. 198 at 90 (House Journal, Apr. 27, 2011).

5. Evidence of Discriminatory Intent in Nueces County: HD 33 & HD 34

a. Comparison of House Districts in Nueces County in the 2001 Plan and House Districts in Nueces County in the 2011 Plan

472. Prior to the 2011 redistricting, Nueces County included two house districts in which Hispanic voters had the opportunity to elect their preferred candidates, HDs 33 and 34, as well as a portion of a third district in which Anglo voters were a majority. Trial Tr. 461:3-11, Sept. 7, 2011 (Flores); Trial Tr. 626:1-633:22, July 15, 2014 (Herrero); US Ex. 373 at 2 (RED-202, Plan H100); *see also* US Ex. 351 at 5 (2011 Handley House Rep.) (summarizing election results in HDs 33 and 34).

473. HD 33 in the 2001 Plan was located in Nueces County in the heart of Corpus Christi, Texas. US Ex. 395 at 1, 5 (Plan Packet, H100).

474. According to data from 2010, HD 33 in the 2001 Plan had a HVAP of 61.9 percent, a HCVAP of 60.4 percent, and a SSVR rate of 55.3 percent. US Ex. 395 at 5, 14 (Plan Packet, H100).

475. In the 2011 Plan, the area encompassed by HD 33 in the 2001 Plan was redistributed to HDs 32 and 34. US Ex. 199 at 6 (Tex. Informal House Submission).

476. HD 33 in the 2011 Plan had a HVAP of 13.5 percent, a HCVAP of 8.5 percent, and a SSVR rate of 6.5 percent. US Ex. 396 at 5, 14 (Plan Packet, H283).

477. It is undisputed that Hispanic citizens would not have the ability to elect their preferred candidates of choice to the Texas House in HD 33 in the 2011 Plan. US Ex. 199 at 3-6

(Tex. Informal House Submission); US Ex. 350 at 14 (Oct. 2011 Alford Rep.); US Ex. 352 ¶ 17 (Oct. 2011 Arrington Rep.).

478. Nueces County did not grow as quickly as the rest of the state between 2000 and 2010, and strictly applying the Texas County Line rule alone in 2011 would have required the drawing of two districts using the entirety of Nueces County's population because it was possible to include the entirety of Nueces County in two districts without either being more than five percent larger than an ideal-sized district. Trial Tr. 657:8-658:20, July 15, 2014 (Herrero); Trial Tr. 1497:25-1498:8, Sept. 12, 2011 (Interiano); Tex. Ex. 199 (2000 Census ideal district sizes); Tex. Ex. 200 (2010 Census ideal district sizes).

b. Advice from TLC that County Line Rule Should Yield to Federal Voting Rights Act in Nueces County

479. However, David Hanna of the TLC advised that an additional minority opportunity district could likely be drawn using portions of Nueces County and that, due to the Supremacy Clause, “[i]f it was required by the Voting Rights Act, then the county line rule couldn’t stand in the way.” Trial Tr. 1208:6-1209:6, July 17, 2014 (Hanna); *see also* Trial Tr. 1220:5-20, July 17, 2014 (Hanna) (noting that the County Line Rule “is routinely broken for one person, one vote”); US Ex. 338 at 1 (Hanna Memo, Plan H153) (warning that the County Line Rule “would have to yield to the federal Voting Rights Act if it can be shown retrogression could be avoided by splitting the county”); TLRTF Ex. 226 at 3 (Hanna PowerPoint) (noting the “basic rule” that “a county may be cut in drawing a house district only when required to comply with: the one-person, one-vote requirement . . . or the Voting Rights Act”).

480. Nonetheless, Chairman Burt Solomons announced on the House floor that any deviation from the Texas County Line Rule in order to comply with the Voting Rights Act or the

United States Constitution would have to be ordered by the courts. Trial Tr. 1593:15-1594:16, Sept. 13, 2011 (Solomons); US Ex. 198 at 10 (House Journal, Apr. 27, 2011).

c. The 2011 Plan Intentionally Diminished the Voting Strength of Hispanic Voters in Nueces County

481. The 2011 Plan included only two districts in Nueces County: HD 32 and HD 34. US Ex. 275 at 3 (Map, Plan H283).

482. Under the 2011 Plan, HD 33 included Rockwall County and most of the perimeter of Collin County, an overwhelmingly Anglo area. US Ex. 275 at 3 (Map, Plan H283); US Ex. 374 at 2 (RED-202, Plan H283) (73.0 percent Anglo VAP).

483. Therefore, as a direct result of the Texas Legislature's deliberate decision to privilege state law over the federal rights of minority voters, the 2011 House Plan diminished Hispanic electoral opportunity in Nueces County and statewide.

484. The 2011 Plan packed a greater share of Spanish surnamed registered voters into HD 34 than any Nueces County district in the pre-2011 Plan. US Ex. 373 at 2 (RED-202, Plan H100) (54.3% and 53.3%); US Ex. 374 at 2 (RED-202, Plan H283) (60.1%).

485. Hispanic voters were further packed into District 34 through population deviations, with the population of District 34 drawn to be 6,075 persons higher than the population of District 32. US Ex. 396 at 5 (Plan Packet, H100).

486. District 34 has a population of 173,149 (3.29 percent above ideal), while District 32 has a population of 167,074 (-0.34 percent below ideal). US Ex. 396 at 5 (Plan Packet, H100).

487. Thus, the 2011 Plan replaced three competitive districts—two of which provided Hispanic voters with the opportunity to elect their preferred candidates and all three of which had elected Hispanic candidates in the prior decade—with a single safe Hispanic seat and a single

safe Anglo seat. Trial Tr. 626:1-633:22, July 15, 2014 (Herrero); US Ex. 351 at 11 (2011 Handley House Rep.) (summarizing reconstituted election results); *see* TLRTF Ex. 412 ¶ 14 (Sept. 2011 Bezdek Decl.) (ECF No. 330-5 at 67).

488. The peculiar line that divided the two Nueces County districts made clear that HD 32 minimized Hispanic electoral opportunity by design. The boundary between the two districts creates a boot-shaped extension from HD 34 into HD 32, which at its end includes the residences of both the Hispanic Republican incumbent of HD 33 and the Hispanic Democrat who had preceded him. This irregular line therefore excluded HD 32 the only potential Hispanic candidates from either party who had state legislative experience, and who might challenge an Anglo incumbent. Trial Tr. 647:16-648:12, 649:24-650:3, July 15, 2014 (Herrero); *see also* Tex. Ex. 109 at 139 (Nueces Cnty. Map, Plan H283); US Ex. 327 (Detail of Extension).

489. Thus, the organization Hispanic Republicans of Texas opposed the Nueces County configuration. Tex. Ex. 225 (Email, Apr. 18, 2011) (from Hispanic Republican incumbent of HD 33 explaining that “HRT” was “very disappointed” in his decision to accept the lines as drawn).

490. The boundary between the Nueces County districts also created an odd extension from HD 32 into HD 34, which placed low-turnout minority communities in HD 32. Therefore, measures of population and SSVR alone do not explain the full extent to which the 2011 Plan packed active minority voters in HD 34 and maximized Anglo control over HD 32. Trial Tr. 647:6-648:23, July 15, 2014 (Herrero).

491. The Anglo incumbent of HD 32, Representative Todd Hunter, was the architect of the Nueces County plan. Hunter Dep. 72:16-72:22, May 22, 2014 (ECF No. 1092-3 at 53-54).

492. Representative Hunter did not appear at the House trial to offer any alternative explanation for the plan's peculiar contours.

493. In sum, the 2011 Plan divided Nueces County into two districts that minimized the possibility that Hispanic voters could continue to elect two minority-preferred legislators or could once again do so as demographic shifts occurred through the decade, and several features of the districts—along with the absence of a plausible alternative explanation—establish that this division was deliberate. *Supra* ¶¶ 481-492.

6. Evidence of Discriminatory Intent in El Paso County: HD 78

a. Failure to Create a New Hispanic Opportunity District

494. Prior to the 2011 House redistricting, four of the five districts in El Paso County House had a SSVR rate above 50 percent: HDs 75, 76, 77, and 79. Trial Tr. 731:6-16, July 15, 2014 (Pickett); US Ex. 395 at 16-17 (RED-202, Plan H100).

495. Each of the four majority-SSVR districts in El Paso County provided Hispanic voters with the opportunity to elect their preferred candidates, but the fifth El Paso district—HD 78—did not. US Ex. 351 at 4-5 (2011 Handley House Rep.).

496. From 2000 to 2010, the Anglo share of the total population of El Paso County shrank from 17.0 percent to 13.1 percent, and the Anglo share of the voting-age population shrank from 19.8 percent to 15.4 percent. US Ex. 358 at 9-10 (2000 Census data); US Ex. 395 at 8 (2010 Census data).

497. From 2000 to 2010, the Anglo VAP share of House District 78 decreased from 39.2 percent to 29.4 percent, while the SSVR level increased from 39.6 percent to 47.1 percent. US Ex. 358 at 9 (2000 Census data); US Ex. 395 at 8 (Plan Packet, H100); US Ex. 358 at 23 (2000 SSVR data).

498. Key legislative staff with responsibility related to redistricting the House were aware that it was possible to create an additional minority opportunity district in El Paso County. Trial Tr. 1174:21-1175:1, July 17, 2014 (Hanna); Trial Tr. 2042:24-2043:2, July 19, 2014 (Downton).

499. In the 2011 Plan, HD 78 did not provide Hispanic voters with the opportunity to elect their preferred candidates of choice. Trial Tr. 1444:13-16, Sept. 12, 2011 (Interiano); US Ex. 351 at 9 (2011 Handley House Rep.).

500. Creating an additional Hispanic opportunity district in El Paso County would not have required violating the Texas County Line Rule. Trial Tr. 1206:10-16, July 17, 2014 (Hanna).

501. The Texas Latino Redistricting Task Force proposed an alternative plan that would have created five Hispanic opportunity districts in El Paso County. Trial Tr. 461:23-462:8, Sept. 7, 2011 (Flores); Trial Tr. 1174:21-1175:1, July 17, 2014 (Hanna); *see* TLRTF Ex. 340 (Map, Plan H292).

502. Ultimately, the 2011 Plan reduced the SSVR of District 78 from 47.1 percent to 46.8 percent. US Ex. 395 at 16 (Plan Packet, H100); US Ex. 396 at 16 (Plan Packet, H283).

503. The Texas House of Representatives simply made a “policy choice” not to create an additional minority opportunity district in El Paso County. Trial Tr. 2042:24-2043:4, July 19, 2014 (Downton).

b. Precinct Splits in El Paso County

504. Throughout the 2011 redistricting process, the TLC provided explanations regarding Voting Rights Act requirements, including guidance specific to El Paso County. Trial Tr. 794:6-12, July 16, 2014 (Pickett); Trial Tr. 1158:10-1159:12, July 17, 2014 (Hanna); US Ex. 117 (Email, Apr. 8, 2011); US Ex. 347 (First Hanna Memo, version B).

505. An early iteration of the 2011 House plan reduced the concentration of Spanish surname registered voters in HD 78, the only House district in El Paso County that had not provided Hispanic voters an opportunity to elect their preferred candidates in the prior decade. US Ex. 343 at 3 (First Hanna Memo, version A); *see also supra* ¶ 494.

506. When HD 78 was drawn following the 2000 Census, its SSVR had been 39.6 percent, and the first El Paso County draft assessed by David Hanna would have compensated in part for population trends in El Paso County by further concentrating Anglo voters and reducing the SSVR rate in HD 78 from 47.1 percent to 45.8 percent. US Ex. 358 at 23 (2000 SSVR data); US Ex. 373 at 4 (RED-202, Plan H100); US Ex. 343 at 3 (First Hanna Memo, version A).

507. David Hanna recommended that HD 78 be redrawn without a reduction in SSVR in order to avoid Voting Rights Act concerns and noted that any problems “could easily be remedied by swapping some precincts with an adjoining district.” US Ex. 343 at 3 (First Hanna Memo, version A); *see also* Trial Tr. 794:2-12, July 16, 2014 (Pickett); Trial Tr. 1056:2-1057:9, July 17, 2014 (Solomons); *see also* Trial Tr. 2110:6-2113:21, July 19, 2014 (Downton) (demonstrating that it was possible to restore SSVR without splitting additional precincts).

508. Ryan Downton then made changes to HD 78 by splitting precincts and moving individual census blocks between HD 77 and HD 78 based on Hispanic population concentrations, and he shaded the map according to Hispanic population concentrations in order to do so. Trial Tr. 2117:14-22, 2119:24-2120:3, July 19, 2014 (Downton).

509. At the time that Downton was making these changes, he was assessing electoral outcomes in HD 78, namely the results of the 2008 McCain/Obama contest, to ensure that Hispanic voters would not gain the opportunity to elect a preferred candidate of choice, notwithstanding population changes. Trial Tr. 2119:5-2120:3, July 19, 2014 (Downton).

510. In sum, the 2011 Plan moved several predominantly Anglo precincts from HD 77 into HD 78, and moved several Hispanic precincts from HD 78 into HD 77. Trial Tr. 694:1-11, 696:11-697:18, 698:9-16, July 15, 2014 (Rodriguez); Trial Tr. 2117:14-2118:25, July 19, 2014 (Downtown); TLRTF Ex. 328 (El Paso Map with HCVAP shading, Plan H283); TLRTF Ex. 1012 (West Antler Map with HVAP shading, Plan H283); TLRTF Ex. 1014 (East Antler Map with HVAP shading, Plan H283).

511. In the 2011 Plan, the boundary between HD 77 and HD 78 split the historic community in northeast El Paso served by Irving High School and packed politically active Hispanic population into HD 77. Trial Tr. 377:2-25, Sept. 7, 2011 (Martin). The final version of HD 78 included a reduced SSVR share of 46.8 percent. US Ex. 374 (RED-202, Plan H283).

512. The Texas House purposefully diluted the Hispanic vote in HD 78 by drawing the District with the express intent of maintaining Hispanic population levels while protecting the Anglo-preferred incumbent and minimizing the opportunity for Hispanic voters to elect their preferred candidate of choice. Trial Tr. 695:5-13, July 15, 2014 (Rodriguez); *supra* ¶¶ 494-511.

7. Evidence of Discriminatory Intent in Dallas County: HD 105

a. Dallas County Population Growth from 2000 to 2010

513. In 2000, Dallas County had a voting-age population of 1,599,868 persons, of whom 783,669 (49.0%) were Anglo, 421,900 (26.4%) were Hispanic, 307,466 (19.2%) were Black, and 86,833 (5.4%) were of other ethnicities. US Ex. 358 at 12-13 (2000 Census data).

514. In 2010, Dallas County had a voting-age population of 1,713,876 persons, of whom 657,889 (38.4%) were Anglo, 569,832 (33.2%) were Hispanic, 376,989 (22.0%) were Black, and 109,146 (6.4%) were of other ethnicities. US Ex. 396 at 10-11 (Plan Packet, H283).

515. The minority population in Dallas County grew by 28 percent over the decade, accounting for the entirety of the population growth; the Anglo population actually declined by

20 percent in the same period. Trial Tr. 327:19-328:7, Sept. 7, 2011 (Martin); US Ex. 38 at 3 (Tex. Pop. Growth); US Ex. 34 at 32-33 (Oct. 2011 Saenz Rep.); US Ex. 34 at 133-34 (Oct. 2011 Price Decl.); US Ex. 5 (Article, Feb. 18, 2011).

b. Minority Opportunity Districts in Dallas County in the 2001 Plan

516. Prior to the 2011 redistricting, Hispanic voters had the opportunity to elect their candidates of choice in HD 103 and HD 104, and African-American voters had the opportunity to elect their candidates of choice in HD 100, HD 109, HD 110, and HD 111. Trial Tr. 200:25-201:7, July 14, 2014 (Arrington); Trial Tr. 614:24-615:1, July 15, 2014 (Lopez); Trial Tr. 2017:14-16, July 19, 2014 (Downton).

517. According to data from 2010, HD 103 in the 2001 Plan had a HVAP of 69.3 percent, a Black VAP of 8.4 percent, and Anglo VAP of 19.5 percent. US Ex. 395 at 18 (Plan Packet, H100). Although CVAP information was not available at the time of redistricting, HD 103 had a HCVAP of 46.5 percent, a Black CVAP of 14 percent, and an Anglo CVAP of 34.8 percent. US Ex. 380 at 4 (RED-106, Plan H100). The SSVR rate was 38.8 percent. US Ex. 395 at 18 (Plan Packet, H100).

518. According to data from 2010, HD 104 in the 2001 Plan had a HVAP of 77.2 percent, a Black VAP of 9 percent and Anglo VAP of 12.8 percent. US Ex. 395 at 18 (Plan Packet, H100). Although CVAP information was not available at the time of redistricting, HD 104 had a HCVAP of 60.8 percent, a Black CVAP of 11.1 percent, and an Anglo CVAP of 26 percent. US Ex. 380 at 4 (RED-106, Plan H100). The SSVR rate was 57.6 percent. US Ex. 395 at 18 (Plan Packet, H100).

519. HD 105 on the western edge of Dallas County encompassed portions of Irving and Grand Prairie. US Ex. 395 at 1 (Plan Packet, H100). According to data from 2010, HD 105 in the 2001 Plan had a HVAP of 31.2 percent, a Black VAP of 14.7 percent, and Anglo VAP of

36.1 percent. US Ex. 395 at 18 (Plan Packet, H100). Although CVAP information was not available at the time of redistricting, HD 105 had a HCVAP of 19.6 percent, a Black CVAP of 15.3 percent, and an Anglo CVAP of 56 percent. US Ex. 380 at 4 (RED-106, Plan H100). The SSVR rate was 13.7 percent. US Ex. 395 at 18 (Plan Packet, H100).

520. HD 106 on the western edge of Dallas County encompassed portions of Irving and Grand Prairie, and is just below HD 105. US Ex. 395 at 1 (Plan Packet, H100). According to data from 2010, HD 106 in the 2001 Plan had a HVAP of 44.3 percent, a Black VAP of 13.7 percent, and Anglo VAP of 35.9 percent. *Id.* at 18. Although CVAP information was not available at the time of redistricting, HD 106 had a HCVAP of 29 percent, a Black CVAP of 12.8 percent, and an Anglo CVAP of 52 percent. US Ex. 380 at 4 (RED-106, Plan H100). The SSVR rate was 22.9 percent. US Ex. 395 at 18 (Plan Packet, H100).

521. Prior to the 2011 redistricting, Hispanic voters did not have the opportunity to elect their candidates of choice in HD 105. US Ex. 351 at 3-8 (2011 Handley House Rep.). The Hispanic candidate of choice did not prevail in any election for HD 105, but in 2008, the Hispanic candidate of choice lost by only 20 votes. US Ex. 370 at 100 (RED-225, Plan H100). In 2008, 7 of 9 Hispanic-preferred candidates in statewide elections prevailed in HD 105. *Id.* at 99-100. This included statewide elections for US President, US Senate, Railroad Commissioner, Supreme Court Chief, Supreme Court 7, Supreme Court 8, Court of Criminal Appeals (CCA) 3, CCA 4, and CCA9. *Id.*

522. Prior to the 2011 redistricting, minority voters elected their candidate of choice in HD 106 in 2006 and 2008, but did not elect their candidates of choice in 2002, 2004, or 2010. US Ex. 351 at n.10 (2011 Handley House Rep.). In 2008, 8 of 9 Hispanic-preferred candidates in statewide elections prevailed in HD 106. US Ex. 370 at 101 (RED-225, Plan H100).

c. Legislative Goals in Dallas County

523. Dallas County had 16 seats in 2000, but because population in Dallas County had not grown as much as in other areas of the state, Dallas County had to lose two seats. Trial Tr. 145:12-22, July 14, 2014 (Arrington); US Ex. 500 (Dallas Cnty., Plan H100). Legislators and map drawers initially agreed that two Republican seats would need to be eliminated because the other six seats were minority opportunity districts under the Voting Rights Act. Trial Tr. 2014:25-2015:15, July 19, 2014 (Downton); Trial Tr. 925:2-7, Sept. 9, 2011 (Martinez-Fischer); US Exs. 148A & 193A at 8-9 (Hanna memos); US Ex. 188 at 4-5 (Email, Apr. 12, 2011); Trial Tr. 200:25-201:7, July 14, 2014 (Arrington). It was unlikely that the Dallas County delegation would be able to agree upon a map given the loss of two seats, and therefore Downton said that he needed to draw the map. Trial Tr. 2014:25-2016:8, 2074:19-2075:3, July 19, 2014 (Downton).

524. Downton said that he started with the two Hispanic opportunity districts, HD 103 and HD 104, to make sure to preserve Hispanic electoral opportunity in those districts. Trial Tr. 2017:11-22, July 19, 2014 (Downton). At Downton's request, Representative Anchia of HD 103 provided a map of his ideal district, and while Downton received that proposal, it is not the district he adopted. *Id.* at 2075:4-2076:18; US Ex. 434 at 7 (HRC Plan List); US Ex. 427 (HRC1H257 Shapefile). Although Representative Alonzo of HD 104 was a member of the House Redistricting Committee, Downton never met with him or requested information regarding Representative Alonzo's ideal configuration for his district. Trial Tr. 110:5-11, Sept. 6, 2011 (Martinez-Fischer); Trial Tr. 924:13-21, Sept. 9, 2011 (Downton). Both Anchia and Alonzo voted against the 2011 House Plan. Trial Tr. 160:12-22, Sept. 6, 2011 (Martinez-Fischer).

525. It was decided early in the process that Representative Harper-Brown from HD 105 and Representative Anderson from HD 106 would be paired in a redrawn district. Trial Tr. 2073:1-7, July 19, 2014 (Downton). Downton drew the Republican districts with Representative Branch. *Id.* at 2015:20-2016:5, 2017:1-4, 2073:25-2074:12. Representative Jackson from HD 115 provided a map that paired Representatives Harper-Brown and Anderson. *Id.* at 2077:13-2079:10; US Ex. 512 (Jackson Map). That map did not split any precincts.

d. Failure to Create a New Minority Opportunity District: HD 105

526. David Hanna informed the House leadership that if a new minority opportunity district could be drawn in Dallas County, the Voting Rights Act would require the legislature to do so. US Ex. 102 (Email, Feb. 18, 2011); Trial Tr. 2053:8-18, July 19, 2014 (Downton).

527. It was possible to draw an additional minority opportunity district in western Dallas County, but the 2011 Plan did not do so. Trial Tr. 146:21-147:1, 150:1-24, 222:17-23, July 14, 2014 (Arrington); Trial Tr. 1922:8-21, Sept. 14, 2011 (Alford); US Ex. 352 ¶ 52 (Oct. 2011 Arrington Rep.); US Ex. 351 (2011 Handley House Rep.); Trial Tr. 150:1-12, July 14, 2014 (Arrington); Trial Tr. 1808:13-16, July 18, 2014 (Lozano); Trial Tr. 86:8-22, Sept. 6, 2011 (Martinez Fischer); Trial Tr. 813:5-17, Sept. 8, 2011 (Turner); Trial Tr. 840:7-841:8, 844:15-23, Sept. 8, 2011 (Hanna); Trial Tr. 46:10-19, July 14, 2014 (Veasey); Trial Tr. 1258:8-15, July 17, 2014 (Thompson).

528. The Legislative Black Caucus proffered a map for redistricting consideration (Plan H202) that included a proposed additional minority opportunity district (HD 107) combining African Americans with a BCVAP of 26.5 percent and Hispanics with an HCVAP of 23.9 percent, for a combined total of 50.4 percent using 2006-1010 ACS data. Trial Tr. 578:1-21, July 15, 2014 (Wallace); Trial Tr. 913:1-4, 921:13-17, July 16, 2014 (Fairfax); Tex. Ex. 324 (RED-116, Plan H202).

529. The deliberate failure to create an additional minority opportunity district resulted from the protection of Anglo voting strength in HD 105, where the growing minority population had challenged the Anglo incumbents in HD 105 and HD 106. *Supra* ¶¶ 521-522.

530. The 2011 Plan carved western Dallas County into bizarrely shaped, intertwining districts. Trial Tr. 147:2-10, July 14, 2014 (Arrington), Trial Tr. 1107:25-1108:3, July 17, 2014 (McPhail); US Ex. 299A (Dallas Cnty. Map, Plan H283); US Ex. 396 at 1 (Plan Packet, H283); US Ex. 34 at 137-38 (Oct. 2011 Price Decl.).

531. Following the 2001 redistricting, HD 105 and HD 106 were compact, contiguous districts in western Dallas County, both with an Anglo voting-age population share decreasing from over 48 percent in 2001 to approximately 36 percent by 2010. US Ex. 358 at 12 (2000 Census data); US Ex. 395 at 1, 18 (Plan Packet, H100).

532. The 2011 Plan increased the Anglo voting-age population share back to 41.0 percent by stretching HD 105 down the length of western Dallas County, sometimes connecting Anglo areas through a narrow land bridge. Trial Tr. 321:14-323:6, Sept. 7, 2011 (Martin); US Ex. 396 at 1, 18 (Plan Packet, H283); US Ex. 356 at 26, fig.1 (Feb. 2014 Arrington Rep.). This had a corresponding effect in the election analyses, in which the Hispanic-preferred candidate in HD 105 won zero of 9 statewide election contests in the recompiled election results for 2008 in the 2011 Plan. US Ex. 371 at 107-08 (RED-225, Plan H100). This included statewide elections for US President, US Senate, Railroad Commissioner, Supreme Court Chief, Supreme Court 7, Supreme Court 8, Court of Criminal Appeals (CCA) 3, CCA 4, and CCA9. *Id.*

533. In the 2011 Plan, HD 106 was no longer located in Dallas County, and it instead was a new district in Denton County. Trial Tr. 1425:12-1426:4, July 17, 2014 (Korbel); US Ex. 275 at 11 (Map, Plan H283).

534. HD 104 was packed. The Anglo VAP in HD 104 in the 2011 Plan was at 15.2 percent, the Black VAP was at 13.4 percent, and the Hispanic VAP was at 69.2 percent. US. Ex 374 at 6 (Population data comparison: House Districts, 2010 Census).

535. HD 103 was packed . The Anglo VAP in HD 103 in the 2011 Plan was at 21.1 percent, the Black VAP was at 8.4 percent, and the Hispanic VAP was at 67.7 percent. US. Ex 374 at 6 (Population data comparison: House Districts, 2010 Census).

e. Split Precincts in HD 105

536. The boundary of HD 105 divided the cities of Grand Prairie and Irving, split 22 precincts, and broke up numerous communities of interest. Trial Tr. 321:14-323:6, Sept. 7, 2011 (Martin); US Ex. 387 at 7 (RED-381, Plan H283); US Ex. 299A (Dallas Cnty. Map, Plan H283); US Ex. 299B (Dallas Cnty. with VTDs Map, Plan H283); US Ex. 299C (Dallas Cnty. Map, Plan H283).

537. The population excluded from HD 105 by splitting precincts was disproportionately Hispanic and low income, Trial Tr. 599:12-601:18, 602:6-605:25, 606:23-609:24, July 15, 2014 (Lopez); Trial Tr. 1124:4-1125:9, July 17, 2014 (McPhail), US Ex. 299D (Dallas Cnty. Hispanic VAP Map, Plan H283), while the population in split precincts that remained in HD 105 was disproportionately Anglo and relatively affluent. Trial Tr. 151:7-22, July 14, 2014 (Arrington), Trial Tr. 595:15-596:2, 601:19-602:5, 606:1-22, July 15, 2014 (Lopez), Trial Tr. 1125:10-1126:5, July 17, 2014 (McPhail); US Ex. 356 ¶¶ 52-53 & tbl.1 (Feb. 2014 Arrington Rep.).

538. HD 103 reaches an arm into HD 105 to take Hispanic portions of Irving by splitting precincts. Trial Tr. 146:2- 148:22, 155:1-22, July 14, 2011 (Arrington); Trial Tr. 599:12-19, July 15, 2011 (Lopez); Trial Tr. 1117:2-1118:1, 1121:14-19, July 17, 2014,

(McPhail); Trial Tr. 321:14-325:16, Sept. 7, 2011 (Martin); US Ex. 299D (Dallas Cnty, Map for Plan H283).

539. Downton deliberately split precincts by race in order to pull Hispanic voters out of HD 105. *See* Trial Tr. 2069:11-21, July 19, 2014 (Downton). He excluded Hispanic population from HD 105, and he added it to HD 103 and HD 104. *Id.*

f. Population Deviations in Dallas County

540. The populations of HDs 103, 104, and 105 approached the maximum permitted deviation from the ideal, with HD 103 at precisely 5.0 percent over the ideal district size. Trial Tr. 149:20-25, July 14, 2014 (Arrington); US Ex. 396 at 10 (Plan Packet, H283). The overpopulation of HDs 103 and 104 allow the districts to be packed with extra Hispanic voters. *Id.*

541. Although HD 105 also had a deviation of 4.8 percent above the ideal, there was nowhere for additional minority population to go. The only other district touching HD 105 was HD 115, which bordered HD 105 to the north. Although HD 115 was not overpopulated, there was little minority population in the northern part of HD 105. US Ex. 299A (Dallas Cnty., Plan H283).

542. The resulting configuration not only failed to create a new Hispanic opportunity district, but it also thwarted the natural emergence of a Hispanic opportunity district by increasing the dwindling Anglo population concentration in HD 105. Trial Tr. 148:23-151:22, July 14, 2014 (Arrington); US Ex. 352 ¶¶ 52-60 & tbls.5-6 (Oct. 2011 Arrington Rep.); *compare* US Ex. 395 at 10 (Plan Packet, H100), *with* US Ex. 396 at 10 (Plan Packet, H283).

543. In addition to western Dallas, there were areas of significant minority population growth in northeast Dallas in which no additional minority districts were drawn. An alternate plan showed it was feasible to create two additional districts in Dallas in which minority voters

could elect their candidates of choice. Trial Tr. 331:16-332:13, 334:15-335:15, Sept. 7, 2011 (Martin).

8. Evidence of Discriminatory Intent in Harris County

a. Exclusion of Minority Legislators from the Redistricting Process

544. The Harris County delegation began the redistricting process working in a bipartisan manner under the direction of Representatives Wayne Smith, who is a Republican, and Representative Senfronia Thomspon, who is a Democrat. Trial Tr. 1295:17-1296:3, July 17, 2014 (Coleman); Trial Tr. 1350:3-10, July 16, 2014 (Vo).

545. At the beginning of the redistricting process, Chairman Solomons announced on the floor of the House that Harris County would be allotted 25 districts and directed the county delegation to cooperate in determining district boundaries. Trial Tr. 1295:4-11, July 17, 2014 (Coleman); Trial Tr. 1349:19-1350:2, July 16, 2014 (Vo).

546. According to the 2010 Census, Harris County had 24.41 times the population of an ideal Texas House district. Tex. Ex. 200 (2010 Census ideal district sizes).

547. Following the 2000 Census, Harris County had 24.46 times the population of an ideal Texas House district, but Texas nonetheless rounded up the number of districts in Harris County to 25. Trial Tr. 1379:10-17, July 17, 2014 (Vo); Trial Tr. 756:3-25, Sept. 8, 2011 (Korbel); Tex. Ex. 199 (2000 Census ideal district sizes).

548. Harris County's minority population reached majority status sometime prior to the 2000 Census, and by 2010 it reached 67 percent of the total county population. US Ex. 38 at 2 (Tex. Pop. Growth).

549. Between 2000 and 2010, the total population of Harris County increased from 3,400,578 to 4,092,459, while the Anglo population declined by more than 100,000 persons. US Ex. 38 at 2 (Tex Pop. Growth).

550. As a result, the Anglo population share of Harris County declined from 42.8 percent to 33.0 percent over the decade preceding the 2010 Census. US Ex. 38 at 2 (Tex. Pop. Growth).

551. On March 7, Gerardo Interiano asked David Hanna to meet with the Harris County GOP delegation to “make sure we are on the same page.” US Ex. 157 (Email, Mar. 7, 2011).

552. Later in the 2011 redistricting process, Chairman Solomons spoke with Representative Smith and Representative Woolley, the Speaker Pro Tem of the House, concerning the need to draw a 24-district plan, and Representative Woolley informed the Anglo, Republican members of the Harris County delegation but did not inform the Black and Hispanic members of the delegation. Trial Tr. 1983:3-1984:17, July 19, 2014 (Bruce); Smith Dep. 6:18-7:9, 11:20-12:20, 23:18-24:13, Oct. 13, 2011 (ECF No. 1182-16); Trial Tr. 1295:12-17, July 17, 2014 (Thompson).

553. After Representative Woolley and other Anglo members of the Harris County delegation spoke out against the bipartisan process, Speaker Straus gave control over the Harris County map to Representative Woolley, and Representative Woolley directed a lobbyist to draw a 24-district map of Harris County using only input from Anglo Republicans. Woolley Dep. 11:8-23, 16:3-25, 67:22-68:24, Oct. 13, 2011 (ECF No. 1182-17).

554. When the 24-district plan was being drawn, adjustments were made to the Harris County map “to make [Representative] Woolley’s district more Anglo.” US Ex. 441 at 5 (Wayne Smith Shapefile Log).

555. Minority members of the Harris County delegation did not learn of Chairman Solomons’ decision to reduce Harris County to 24 districts until the unveiling of the Woolley

map on April 7. Trial Tr. 1299:2-21, July 17, 2014 (Coleman); Trial Tr. 1351:11-17, July 17, 2014 (Vo); US Ex. 266 (Coleman Letter).

556. With only minor changes, the Woolley map was included in the statewide plan adopted by the House Redistricting Committee, H153. Trial Tr. 1303:17-21, July 17, 2014 (Coleman).

557. Following adoption of H153, there was a meeting of the Harris County delegation to discuss the Woolley proposal. When minority legislators complained about the closed-door process through which they were excluded from the Harris County redistricting process, the response of Representative Beverly Woolley indicated that her focus was on race rather than partisanship alone; Representative Woolley justified the exclusion of Black and Hispanic members of the Harris County delegation to Representative Garnet Coleman by telling him “Y’all are protected by the Voting Rights Act and we are not.” Trial Tr. 1303:22-1304:10, 1304:15-1306:4, July 17, 2014 (Coleman).

558. Following their confrontation, Representative Woolley filed an amendment—to her own map—that gutted Representative Coleman’s District and removed Coleman’s district office and prominent features including the Museum District, downtown, parts of midtown, and Hobby Airport. Trial Tr. 1305:18-1306:12, 1307:18-1308:4, 1312:17-1313:15, July 17, 2014 (Coleman).

559. The retaliatory nature of this amendment is established both by the timing of Representative Woolley’s actions and the inclusion in her RedAppl log of a note accompanying the amendment stating “The new final amendment changes...LOL.” Trial Tr. 1313:11-1313:15, July 17, 2014 (Coleman); US Ex. 442 (Woolley Plan List) (ellipsis in original).

560. Representatives elected from minority-controlled districts were eventually permitted to amend the Woolley amendment in order to change the boundaries between their districts, but only so long as they did not disturb Anglo-controlled Republican districts. Trial Tr. 1314:13-1316:3, July 17, 2014 (Coleman); Trial Tr. 933:10-22 (Sept. 9, 2011) (Downton).

561. In deciding who to list as minority contacts in the informal Section 5 submission to the Department of Justice, Interiano made suggestions. He suggested that some minority members in Harris County could be listed as contacts because they were involved in making changes to “the Harris County African-American district the night that the map was being debated on the floor.” US Ex. 194A at 26 (Draft Informal Submission, Interiano comments). Interiano acknowledged, however, that these minority legislators “were not as involved throughout the rest of the process.” *Id.*

562. The Harris County map systematically overpopulated minority opportunity districts, while Anglo-controlled districts had lower average populations. Trial Tr. 340:17-342:6, 344:18-345:23, Sept. 7, 2011 (Kousser); US Ex. 356 at 28 (Feb. 2014 Arrington Report).

563. Overall, minority members eventually were permitted to play a role in the Harris County process only as a means of easing the effect of Representative Woolley’s retaliatory amendment, intended to punish Representative Coleman, a Black legislator who spoke out against the Anglo-controlled process. *Supra* ¶¶ 544-562.

b. Intentional Diminution of Minority Voting Strength in House District 149

564. Prior to the 2011 redistricting, HD 149 was located in southwestern Harris County and encompassed the Alief community in the City of Houston. Trial Tr. 1342:23-1343:13, July 17, 2014 (Vo); US Ex. 319 (SW Harris Cnty. Map, Plan H100).

565. The net growth in Harris County was due solely to the increase in the minority populations in Harris County. Trial Tr. 338:6-25, Sept. 7, 2011 (Martin).

566. Representative Talmadge Heflin, an Anglo Republican and the chairman of the House Appropriations Committee, first represented District 149 after the 2001 redistricting. Trial Tr. 1342:16-22, July 17, 2014 (Vo); Trial Tr. 354:7-10, Sept. 7, 2011 (Martin).

567. In 2004, Democratic Representative Hubert Vo, the first Vietnamese American in the Texas House, defeated Representative Heflin in HD 149, drawing widespread support from an emerging coalition of Asian-American, African-American, and Hispanic voters. Trial Tr. 1341:1-4, 1342:10-1343:23, 1346:10-21, July 17, 2014 (Vo); Trial Tr. 354:1-355:19, Sept. 7, 2011 (Martin); Trial Tr. 890:23-891:18, Sept. 8, 2011 (Murray).

568. In 2004, Representative Vo defeated Representative Heflin by only 32 votes. US Ex. 366 at 91 (RED-225, Plan H100, 2004 General Election).

569. That coalition continued to perform, reelecting Representative Vo three times and most recently in 2010, when Vo survived a spirited challenge. Trial Tr. 890:23-891:18, Sept. 8, 2011 (Murray).

570. In 2006, Representative Heflin challenged Representative Vo in an attempt to retake HD 149, but Representative Vo won the general election by almost 2,000 votes. US Ex. 368 at 184 (RED-225, Plan H100, 2006 General Election).

571. In 2008, Representative Vo was challenged by Republican Greg Meyers, but Representative Vo expanded upon his past margin of victory once again and won the general election by nearly 6,000 votes. US Ex. 370 at 181 (RED-225, Plan H100, 2008 General Election).

572. In 2010, Representative Vo was challenged by Republican Jack O'Connor and, despite the strong year for Republican challengers, Representative Vo won the general election

by approximately 1,300 votes. US Ex. 363 at 284 (RED-225, Plan H100, 2010 General Election).

573. Prior to the 2011 redistricting, HD 149 had an Anglo VAP of 26.6 percent, a Black VAP of 22.9 percent, Hispanic VAP of 30.2 percent, and “Other” VAP of 21.1 percent. US Ex. 395 at 12 (RED-100, Plan H100).

574. Voting in general elections in HD 149 in Plan H100 was racially polarized along Anglo and non-Anglo lines. US Ex. 4 at 3557-60 (OAG RPVA).

575. In 2004, and in subsequent elections, Asian-American, African-American, and Hispanic citizens worked together in coalition to elect Representative Vo, as illustrated by voting patterns, volunteers, and endorsements. Trial Tr. 350:8-24, Sept. 7, 2011 (Martin); Trial Tr. 1342:23-1343:13, July 17, 2014 (Vo); Trial Tr. 1647:14-17, July 18, 2014 (Hochberg); US Ex. 351 at 3, 7, 13 n.19-20 (2011 Handley House Rep.); US Ex. 490 at 12 (Calvert Pre-Filed Direct).

576. The coalition that elected Representative Vo has also elected candidates of choice to local offices, such as District F of the Houston City Council and trustees of the Alief Independent School District. Trial Tr. 1348:7-24, July 17, 2014 (Vo); US Ex. 490 at 13 (Calvert Pre-Filed Direct).

577. Prior to the 2011 redistricting, HD 149 provided minority voters with the opportunity to elect their preferred candidates of choice to the Texas House of Representatives. US Ex. 351 at 3, 7, 13 n.19-20 (2011 Handley House Rep.).

578. The 2011 Plan included only 24 districts in Harris County and moved HD 149 to Williamson County, a majority-Anglo area north of Austin that would not provide minority voters with the opportunity to elect their preferred candidates to the Texas House. US Ex. 396 at 1, 10-11 (Plan Packet, H283); Trial Tr. 351:6-352:13, Sept. 7, 2011 (Martin); Trial Tr. 422:10-

25, Sept. 7, 2011 (Calvert); Trial Tr. 1352:5-18, July 17, 2014 (Vo); Tex. Ex. 351 at 13 (2011 Handley House Rep.).

579. The 2011 Plan thus unnecessarily paired Representative Vo with Representative Scott Hochberg, the minority-preferred Anglo incumbent of HD 137, in Representative Hochberg's district, despite Chairman Solomons's stated intent to "limit the pairings as much as possible." Trial Tr. 1352:10-1353:16, July 17, 2014 (Vo); Trial Tr. 1641:24-1642:17, 1658:25-1659:4, July 18, 2014 (Hochberg); US Ex. 198 at 3 (House Journal, Apr. 27, 2011).

580. The TLC advised House leadership that HDs 137 and 149 were protected under the Voting Rights Act regardless of whether they afforded an electoral opportunity to a single minority group or minority voters in coalition, but rather than follow that advice, the Redistricting Committee sought alternative legal advice from its litigation team. US Ex. 102 (Email, Feb. 18, 2011); US Ex. 357 at 96-97 (TLC Guidance); Archer Dep. 53:14-56:1, Oct. 12, 2011 (ECF No. 1182-3); US Ex. 113 at 3 (Email, Mar. 21, 2011).

581. The 2011 Plan excluded Representative Vo's base by removing a heavily Asian precinct from HD 137 and excluding most of the old HD 149 from HD 137. Trial Tr. 1354:4-25; 1367:9-1369:24, July 17, 2014 (Vo); Trial Tr. 1658:19-24, July 18, 2014 (Hochberg); US Ex. 34 at 139 (Oct. 2011 Price Decl.).

582. Several Anglo legislators told Representative Hochberg not to worry because he would be elected from HD 137, suggesting that the District had been drawn to favor him over Representative Vo. Trial Tr. 1659:25-1660:22, 1674:14-1675:14, July 18, 2014 (Hochberg).

583. In 2001, during redistricting, the majority party demonstrated a partisan intent by targeting senior members of the opposition, regardless of race. Trial Tr. 1661:8-1662:5, July 18, 2014 (Hochberg).

584. By contrast, the 2011 Plan favored Representative Hochberg, a vocal and senior Democrat—but an Anglo—over the first Vietnamese-American ever to serve in the Texas Legislature. Trial Tr. 1343:17-19, July 17, 2014 (Vo); Trial Tr. 1649:19-1650:2, July 18, 2014 (Hochberg).

585. Based on the foregoing, the removal of HD 149 and the configuration of HD 137 purposefully eliminated the opportunity for Asian voters, alone or in coalition with other minority voters, to elect their candidate of choice. *Supra* ¶¶ 564-584.

VII. TOTALITY OF CIRCUMSTANCES

A. History of Discrimination

586. The first Senate Factor concerns whether a history of official discrimination “touched” a minority group’s voting rights or otherwise affected their ability to participate in the democratic process. *Gingles*, 478 U.S. at 37 (quoting S. Rep. No. 97-417 at 28-29).

587. The State of Texas has a long, well-documented history of discrimination that has hindered the rights of African Americans and Hispanics to register, to vote, and to participate otherwise in the electoral process. *LULAC v. Perry*, 548 U.S. 399, 439 (2006); US Ex. 356 at 33-40, 45-48 (Feb. 2014 Arrington Rep.); ECF No. 149-6 (Aug. 2011 Tijerina Rep.); Trial Tr. 581:17-582:14, Sept. 7, 2011 (Tijerina).

588. These discriminatory election practices include poll taxes, all-white primaries, restrictive voter-registration periods, dilutive racial gerrymanders, and even a bar on the election of minority officeholders. *See LULAC v. Perry*, 548 U.S. at 439-40; Trial Tr. 555:2-23, Sept. 7, 2011 (Bernal).

589. Repeated federal intervention was necessary to eliminate a series of mechanisms to exclude minority voters from participating in Democratic primary elections, the only meaningful election in a state then dominated by the Democratic party. *Terry v. Adams*, 345

U.S. 461 (1953); *Smith v. Allwright*, 321 U.S. 649 (1944); *Nixon v. Condon*, 286 U.S. 73 (1932); *Nixon v. Herndon*, 273 U.S. 536 (1927).

590. For more than 60 years, Texas maintained a poll tax that, in conjunction with other restrictions, “operated to effectively deny Mexican-Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary.” *White v. Regester*, 412 U.S. 755, 768 (1973) (quoting *Graves v. Barnes*, 343 F. Supp. 704, 731 (W.D. Tex. 1972)).

591. The Twenty-Fourth Amendment barred use of the poll tax in federal elections in 1964, and this Court struck down Texas’s poll tax as a violation of Due Process two years later. *See Texas v. United States*, 252 F. Supp. 234 (W.D. Tex. 1966) (three-judge court), *aff’d*, 384 U.S. 155 (1966).

592. In the wake of that decision the Texas legislature proposed—and the voters of Texas ratified—an amendment to the Texas Constitution providing for annual registration of Texas voters months before Election Day, but a federal court in turn struck down that requirement as a violation of the Equal Protection Clause of the Fourteenth Amendment. *Beare v. Smith*, 321 F. Supp. 1100 (W.D. Tex. 1971) (three-judge court), *aff’d*, 498 F.2d 244 (5th Cir. 1974); US Ex. 356 ¶ 71 (Feb. 2014 Arrington Rep.).

593. The State of Texas’s lengthy and intolerable history of discrimination in redistricting has continued unabated into the twenty-first century, as the Supreme Court recognized when holding that the 2003 Congressional redistricting plan “undermined the progress of a racial group that has been subject to significant voting-related discrimination.” *LULAC v. Perry*, 548 U.S. at 438-40; US Ex. 637 (Tex. Redistricting Submission, Oct. 20, 2003).

594. In every redistricting cycle since 1970, courts have found that one or more of Texas's statewide redistricting plans violated the U.S. Constitution or the Voting Rights Act. *See Texas v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2012) (three-judge court), vacated on other grounds, 133 S. Ct. 2885 (2013); *LULAC v. Perry*, 548 U.S. 399 (2006); *Balderas v. Texas*, No. 6:01-cv-158, 2001 WL 36403750 (E.D. Tex. Nov. 14, 2001) (three-judge court) (per curiam); *Bush v. Vera*, 517 U.S. 952 (1996); *Terrazas v. Slagle*, 789 F. Supp. 828 (W.D. Tex. 1991) (three-judge court), *aff'd sub nom. Richards v. Terrazas*, 505 U.S. 1214 (1992); *Upham v. Seamon*, 456 U.S. 37 (1982); *Terrazas v. Clements*, 537 F. Supp. 514 (N.D. Tex. 1982) (three-judge court) (per curiam); *McDaniel v. Sanchez*, 452 U.S. 130 (1981); *White v. Regester*, 412 U.S. 755 (1973); *White v. Weiser*, 412 U.S. 783 (1973).

595. The State of Texas became covered by Section 5 of the Voting Rights Act in 1975, and the Attorney General objected to 206 voting changes submitted by Texas jurisdictions from that date until 2013, more often than for any other covered state. US Ex. 356 ¶¶ 79-82 & tbl.2 (Feb. 2014 Arrington Rep.).

596. Of the 206 objection letters issued to Texas jurisdictions, 58 (28.2%) referenced proposed districting or redistricting plans, and 93 (45.1%) referenced changes to methods of election, such as the adoption of numbered posts, institution of at-large elections, and changes to the number of districts. US Ex. 356 at 39 & tbl.2 (Feb. 2014 Arrington Rep.).

597. After each census since Congress extended Section 5 to cover Texas, the state has enacted redistricting plans for the House of Representatives that violated Section 5. US Ex. 263 (2001 House Plan Objection); US Ex. 238 (1991 House Plan Objection); US Ex. 224 (1981 House Plan Objection); Ex. 200 (1976 House Plan Objection: Nueces); US Ex. 201 (1976 House Plan Objection: Jefferson and Tarrant).

598. Following the 1980 and 1990 Censuses, Texas also submitted plans for the Texas Senate or the Texas Congressional delegation that violated Section 5. US Ex. 225 (1981 Senate Plan); US Ex. 226 (1981 Congressional Plan); US Ex. 239 (1991 Senate Plan); *see also* US Ex. 240 (objection to post-redistricting election procedures).

599. The US Attorney General has issued dozens of additional objection letters concerning redistricting changes to state judicial districts, state hospital districts, and local legislative bodies. US Exs. 202-13, 215-21, 223, 227-33, 235-37, 241-61, 264 (Section 5 objection letters).

600. The US Attorney General has also objected to approximately 170 voting changes in Texas unrelated to redistricting. US Exs. 214, 222, 234 (Section 5 submissions and objection letters).

601. Courts have entered at least 10 consent decrees establishing violations of Voting Rights Act provisions requiring assistance for limited-English-proficient voters, such as failures to provide written election materials in Spanish or to hire bilingual election workers. US Exs. 50-51, 53-58, 60-61 (Section 203 Consent Decrees).

602. Texas's continues to discriminate against its minority citizens. On October 9, 2014, the Court in *Veasey v. Perry*, 13-cv-00193, 2014 WL 5090258 (S.D. Tex. Oct. 9, 2014), held that the new law enacting voter identification in Texas, SB 14, "creates an unconstitutional burden on the right to vote, has an impermissible discriminatory effect against Hispanics and African-Americans, and was imposed with an unconstitutional discriminatory purpose, *id.* at *1. The Court further held that "SB 14 constitutes an unconstitutional poll tax." *Id.*

B. Extent of Racial Polarization

603. The second Senate Factor concerns the extent to which elections in Texas are racially polarized. *Gingles*, 478 U.S. at 37 (quoting S. Rep. No. 97-417 at 28-29).

604. Racially polarized voting is a practical inquiry into whether racial voting patterns impede the election of minority-preferred candidates. In order to be racially polarized, voting patterns need not be extreme. *Clark v. Calhoun Cnty., Miss.*, 88 F.3d 1393 (5th Cir. 1996) (citing to 71 percent cohesive voting by Black voters); *Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1191 (5th Cir. 1991) (reversing district court's finding of no polarized voting and pointing to election in which 89 percent of the city's Black voters cast ballots for the Black candidate and 84 percent of the city's white voters did not).

605. Many courts, including the United States Supreme Court, have confirmed that voting in Texas is racially polarized. *See Veasey*, 2014 WL 5090258 at *4 n.32 (“The District Court found ‘racially polarized voting’ in south and west Texas, and indeed ‘throughout the State.’”) (citing *LULAC v. Perry*, 548 U.S. at 427); *Bush v. Vera*, 517 U.S. 952, 994, (1996) (“Dallas County has a history of racially polarized voting.”); *Benavidez v. Irving Indep. Sch. Dist.*, 3:13-cv-0087-D, 2014 WL 4055366, at *12 (N.D. Tex. 2014) (“The court finds that plaintiffs have proved racial bloc voting through statistical evidence from eight elections [in Irving.]”); *Rodriguez v. Harris Cnty.*, 964 F. Supp. 2d 686, 780 (S.D. Tex. 2013) (“[T]he Court finds that Plaintiffs have produced significant evidence that voting in Harris County is very racially polarized.”); *Fabela v. City of Farmers Branch, Tex.*, 3:10-cv-1425-D, 2012 WL 3135545, at *11, *13 (N.D. Tex. 2012) (“Plaintiffs have proved that the City Council elections in 2007, 2008, 2009, and 2011 were moderately to highly racially polarized”).

606. Analyses conducted in 2011 by the state through the Office of the Attorney General documented racially polarized voting patterns in statewide elections from 2002 to 2010, *see* Trial Tr. 1957:25-1958-11, July 19, 2014 (Bruce); US Exs. 1-4 (OAG RPVA), and State

Defendants have conceded that, as a general matter, racially polarized voting persists in the state. Trial Tr. 114:18-115:17, July 14, 2014 (Arrington).

607. Expert witnesses presented statistical evidence establishing that there is persistent racially polarized voting in Texas. Trial Tr. 1114:24-1122:3, Sept. 10, 2011 (Ansolabehere). Lay witnesses provided anecdotal evidence corroborating the racially polarized voting data. Trial Tr. 64:21-65:10, Sept. 6, 2011 (Fischer).

C. Practices or Procedures that Enhance Discrimination

608. The third Senate Factor concerns the extent to which Texas has used voting practices or procedures that enhance the opportunity for discrimination against a minority group. *Gingles*, 478 U.S. at 37 (quoting S. Rep. No. 97-417 at 28-29).

609. “Texas has a long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process.” *Vera v. Richards*, 861 F. Supp. 1304, 1317 (S.D. Tex. 1994), *aff’d sub nom. Bush v. Vera*, 517 U.S. 952 (1996). The state’s prior use of discriminatory voting practices or procedures, including in the redistricting context, is fully outlined above. *See supra* ¶¶ 586-602; *see also LULAC v. Perry*, 548 U.S. at 439; US Ex. 356 at 33-40, 45-48 (Feb. 2014 Arrington Rep.).

D. Socioeconomic Disparities

610. The fifth Senate factor concerns the extent to which the minority group bears the effects of discrimination, in such areas as education, employment and health, which hinder its ability to participate effectively in the political process. *Gingles*, 478 U.S. at 37 (quoting S. Rep. No. 97-417 at 28-29).

611. [C]ourts have recognized that disproportionate educational, employment, income levels and living conditions arising from past discrimination tend to depress minority political

participation [Therefore,] plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation.” S. Rep. at 29 n. 114 (citing *White v. Regester*, 412 U.S. 755, 768 (1973)); *see also Teague v. Attala Cnty.*, 92 F.3d 283, 294 (5th Cir. 1996) (stating that once proven, evidence of socioeconomic and political disparities argues against the assertion that minority voter apathy is the reason for generally lower minority political participation); *LULAC v. Clements*, 999 F.2d at 866 (“Inequality of access is an inference which flows from the existence of economic and educational inequalities.”) (citing *Kirksey v. Bd. of Supervisors*, 554, F.2d 139, 145 (5th Cir. 1977) (en banc)).

612. According to 2010-2012 ACS data, Blacks and Hispanics in Texas experience poverty at roughly three times the rates of Anglos, and Anglo median per capita income is approximately double Black and Hispanic median income levels. The State of Texas had a poverty rate of 18.1 percent, with 9.4 percent of Anglos below the poverty line but 26.9 percent of Hispanics and 24.7 percent of Blacks below the poverty line. Mot. for Judicial Notice ¶ 9 (ECF No. 1085); 6/20/14 Minute Order (reserving decision concerning socioeconomic facts); *see also* ECF No. 150-1 at 36-37 (Aug. 2011 Burton Rep.) (earlier data); ECF No. 966-3 at 24 (Feb. 2014 Korbel Rep.) (same).

613. According to the 2010-2012 ACS, the median per capita income in the State of Texas was approximately 25,268 dollars, with the median per capita income at 35,598 dollars for Anglos but only 14,768 dollars for Hispanics and 19,133 dollars for Blacks. Mot. for Judicial Notice ¶ 12 (ECF No. 1085); *see also* ECF No. 150-1 at 37 (Aug. 2011 Burton Rep.) (earlier data); ECF No. 966-3 at 24 (Feb. 2014 Korbel Rep.) (same).

614. Blacks and Hispanics are roughly three times more likely to receive Supplemental Nutrition Assistance Program (SNAP) benefits than Anglos. Mot. for Judicial Notice ¶ 14 (ECF No. 1085).

615. Employed citizens are more likely to vote than their unemployed counterparts, and citizens below the poverty line vote at lower rates than those with higher income levels. ECF No. 150-1 at 33-36 (Aug. 2011 Burton Rep.).

616. In Texas, Anglos have considerably higher levels of economic prosperity and education than Hispanics and Blacks. ECF No. 150-1 at 36 (Aug. 2011 Burton Rep.); ECF No. 966-3 at 23-24 (Feb. 2014 Korbel Rep.).

617. According to the 2010-2012 ACS, the State of Texas had an unemployment rate of approximately 8.4 percent within the civilian labor force, with 6.7 percent of Anglos unemployed but 9.2 percent of Hispanics and 14.1 percent of Blacks unemployed. Mot. for Judicial Notice ¶ 13 (ECF No. 1085); *see also* ECF No. 150-1 at 37 (Aug. 2011 Burton Rep.) (earlier data).

618. According to the 2010-2012 ACS, 18.9 percent of Texans 25 years of age and older lack a high school diploma or equivalent, and 7.6 percent of Anglos lack a high school diploma, whereas 39.5 percent of Hispanics and 13.4 percent of Blacks lack a high school diploma. Mot. for Judicial Notice ¶ 10 (ECF No. 1085); *see also* ECF No. 150-1 at 42 (Aug. 2011 Burton Rep.) (overall educational attainment).

619. Anglo students in Texas schools experience higher passing rates, lower drop-out rates, higher graduation rates, and lower rates of discretionary disciplinary action than their Hispanic and Black peers. ECF No. 150-1 at 38-41 (Aug. 2011 Burton Rep.).

620. Hispanic and Black Texans have lower literacy rates than Anglo Texans, as well as less access to media, increasing the difficulty for Hispanic and Black voters to obtain political knowledge and practical information necessary to participate in elections. ECF No. 150-1 at 43-44 (Aug. 2011 Burton Rep.).

621. In the area of housing, renting creates obstacles to voting because renters are more likely than homeowners to experience frequent moves and—as a result—re-registration requirements at new addresses. As a result, individuals who own their own homes demonstrate higher political participation rates than renters. ECF No. 150-1 at 44-45 (Aug. 2011 Burton Rep.).

622. According to the 2005-2009 ACS, 72.4 percent of households in Texas headed by an Anglo U.S. citizen were owner-occupied, while ownership rates for households headed by Hispanic U.S. citizens and Black U.S. citizens were only 57.9 percent and 45.6 percent respectively. ECF No. 150-1 at 44-46 (Aug. 2011 Burton Rep.).

623. Socioeconomic factors have a direct influence on participation in elections by increasing the barriers to accessing the political process for Hispanic and Black citizens. Trial Tr. 189:7-16, Sept. 6, 2011 (Chapa); ECF No. 150-1 at 35-39 (Aug. 2011 Burton Rep.); ECF No. 966-3 (Feb. 2014 Korbelt Rep.); ECF No. 128-5 at 4-5, 15-16 (Aug. 2011 Chapa Rep.).

624. The effects of discrimination on Hispanic and African-American citizens in Texas, including their markedly lower socioeconomic conditions relative to whites, continue to hinder their ability to participate effectively in the political process in Texas. *See LULAC v. N. E. Indep. Sch. Dist.*, 903 F. Supp. at 1086 (“The Court finds that plaintiffs have shown that Blacks and Hispanics still bear the effects of past discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political

process.”); *Benavidez v. Irving Indep. Sch. Dist.*, 3:13-cv-0087-D, 2014 WL 4055366 at *13,22 (N.D. Tex. Aug. 15, 2014) (“Hispanics residing in the Irving ISD exhibit lower educational attainment, lower income, and higher poverty rates....These lingering effects can hinder the ability of Hispanics to participate effectively in the political process”); Trial Tr. 63:5-15, Sept. 6, 2011 (Fischer); *see* Mot. for Judicial Notice ¶¶ 9-14 (ECF No. 1085).

E. Ability of Minority Candidates to be Elected to Public Office

625. The seventh Senate Factor examines the extent to which members of the minority group have been elected to public office. *Gingles*, 478 U.S. at 37 (quoting S. Rep. No. 97-417 at 28-29).

626. Very few African-American and Hispanic candidates win election in non-Hispanic-majority districts in Texas. Trial Tr. 780:11-12, Sept. 8, 2011 (Rodriguez); ECF No. 150-1 at 26-31(Aug. 2011 Burton Rep.).

627. Minority ability-to-elect districts have been created in Texas only after involvement by the Attorney General or a federal court. ECF No. 150-1 at 54-56 (Aug. 2011 Burton Rep.).

628. As a result, there are significant disparities between minority population and representation in the U.S. Congress and in the State House. While Hispanics make up approximately 30.3 percent of the citizen population of Texas and African Americans make up 13.3 percent, at the start of the 2013 legislative session, Hispanics held 21.1 percent of legislative seats and African Americans held 11.1 percent of seats. *Veasey*, 2014 WL 5090258, at *5; *see also* Number of Black Elected Officials in Texas, 1970-2000, *available at* http://www.laits.utexas.edu/txp_media/html/vce/features/0503_03/blacks.html (last visited Oct. 24, 2014); Number of Latino Elected Officials in Texas, 1974-2003, *available at*

http://www.laits.utexas.edu/txp_media/html/vce/features/0503_04/latinos.html (last visited Oct. 24, 2014).

F. Proportionality of Electoral Opportunity

629. In *Johnson v. De Grandy*, the Supreme Court held that another relevant factor to consider is proportionality, *i.e.*, whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population. 512 U.S. at 1000.

630. Black and Hispanic citizens combined constitute 38.2 percent of the state's citizen voting-age population. Mot. for Judicial Notice ¶ 8 (ECF No. 1085).

631. Proportionality of electoral opportunity—as measured by the share of districts that provide minority voters the opportunity to elect their candidates of choice—would be 57 minority opportunity districts in the 150-district 2011 House map ($38.2\% \times 150 = 57.3$) and 14 seats in the 36-district 2011 Congressional map ($38.2\% \times 36 = 13.75$).

632. The 2011 House Plan contained only 45 districts in which minority voters have the opportunity to elect their candidates of choice, Trial Tr. 118:16-24, July 14, 2014 (Arrington); 11/23/11 Order at 7 (ECF No. 528); US Ex. 351 at 8-13 (2011 Handley House Rep.).

633. The 2011 Congressional Plan included only 10 districts in which minority voters have the opportunity to elect their preferred candidate of choice. US Ex. 686 at 7-8 (2011 Handley Cong. Rep.); US Ex. 608 (Article, June 7, 2011).

634. Therefore, the number of districts in which the minority group forms an effective majority is not roughly proportional to its share of the population Minority in either the Texas House and the U.S. House of Representatives. US Ex. 351 at 13-14 & n.21 (2011 Handley House Rep.); US Ex. 686 at 1-2, 6, 10-11 (2011 Handley Cong. Rep.); US Ex. 636

(Proportionality Objection Under Sec. 5); Mot. for Judicial Notice ¶¶ 6, 8 (ECF No. 1085); *supra* ¶ 45.

635. The 2011 Congressional Plan was farther from achieving rough proportionality of electoral opportunity than the 2006 Congressional Plan, which included 10 minority opportunity districts out of 32 total districts. US Ex. 686 at 1-2, 5-6, 10-11 (2011 Handley Cong. Rep.).

VIII. WITNESS CREDIBILITY

A. The United States' Witnesses

636. The United States presented live testimony from a number of lay witnesses, including the following individuals: Jeffrey Archer, Representative Garnet Coleman, Representative Dawnna Dukes, Clare Dyer, Representative Joe Farias, David Hanna, Representative Abel Herrero, Representative Scott Hochberg, Jaime Longoria, John Lopez, Michael McPhail, U.S. Representative Marc Veasey, and Representative Hubert Vo. Having observed and considered the testimony presented, the Court concludes that these witnesses provided credible testimony.

637. The United States presented live testimony from two experts: Dr. Theodore Arrington, an expert in redistricting, voting behavior, and legislative process; and Dr. Lisa Handley, an expert in redistricting and the analysis of voting behavior, including racially polarized voting. The experts' knowledge, demeanor, and responsiveness showed their comfort and facility with the subjects of their expertise. For these reasons, the Court finds that these experts offered credible opinion testimony.

B. Witnesses Offered by the Defendants Lacked Credibility

1. Gerardo Interiano

638. Having observed and considered the testimony of Gerardo Interiano, one of the primary map drawers for the state, the Court finds that several parts of his testimony are not credible.

639. First, Interiano tried to obtain data from the TLC for Opiela. When questioned about his attempts to obtain the data that Opiela requested in the “nudge factor” email, US Ex. 75 (Email, Nov. 19, 2010), Interiano testified that he thought it was “perfectly in [his] role” as counsel to the Speaker to ask the TLC for data on behalf of a political campaign without informing the TLC of the true source of the request. Trial Tr. 1483:15-22, July 18, 2014 (Interiano). Interiano said that he saw it as part of his role “to provide information to constituents and help them navigate the process.” Trial Tr. 1483:21-22, July 18, 2014 (Interiano).

640. Interiano testified that he forwarded the requested data from his official email account to his personal account and from there to various political operatives because he considered it “political in nature.” Trial Tr. 1484:1-1485:17, July 18, 2014 (Interiano).

641. Interiano did not tell the TLC why he wanted the data even though the request was unusual and the preparation of the data required computer programming by the TLC staff. Trial Tr. 257:6-258:11, 260:18-24, 264:10-265:12, July 14, 2014 (Dyer); US Ex. 81 (Email, Dec. 7, 2010).

642. Opiela could have requested the data from the TLC on his own behalf, but there would have been a written record of the requestor and the request. Trial Tr. 753:18-762:15, Aug. 13, 2014 (Dyer); US Ex. 730 (Opiela Rep. Request).

643. Interiano also admitted to funneling another data request from Opiela, telling Clare Dyer that it came from “another office.” Trial Tr. 1486:2-1487:24, July 18, 2014 (Interiano); US Ex. 94 (Email, Jan. 17, 2011).

644. The Court finds that funneling data requests to the TLC on behalf of political operatives was not part of Interiano’s official role as counsel to the Speaker. While the requests may or may not be unlawful or even improper, the Court finds that Interiano was trying to hide the true source of the requests. To the extent that his testimony suggests otherwise, we do not find it to be credible.

645. Second, Interiano testified that he did not consult with Opiela on the House map. Trial Tr. 1493:23-1494:2, 1623:8-22, July 18, 2014 (Interiano).

646. This appears not to be true. Interiano emailed Opiela on March 4, 2011, asking for help regarding the use of 2008 data in redistricting. US Ex. 104 (Email, Mar. 4, 2011); Trial Tr. 1494:3-16, July 18, 2014 (Interiano). That was before the introduction of the Congressional map and Interiano was working on the House map—not the Congressional map—at that time. Trial Tr. 1494:10-12, 1495:3-15, July 18, 2014 (Interiano); *see also* US Ex. 439B (Straus Plan List); US Ex. 664 (Straus (Part I) Plan List); US Ex. 665 (Straus (Part II) Plan List).

647. Interiano also sent an email to Opiela regarding an assessment of the Nixon House Plan as compared to the House Committee plan. US Ex. 515 (Email, Apr. 25, 2011); Trial Tr. 2085:20-2086:21, July 19, 2014 (Downton).

648. The Court finds that Interiano consulted with Opiela on the House map. To the extent that his testimony suggests otherwise, we do not find it to be credible.

649. Third, Interiano testified that he received an email from David Hanna, who was at the time a senior legislative counsel at the TLC, which Interiano and his team viewed as a “green

light to go to the floor.” Trial Tr. 1531:24-1532:22, July 18, 2014 (Interiano). The email compares Plan H153 (the committee substitute plan) with Plans H100 (the benchmark plan) and Plan H115 (a MALDEF plan) on various demographic metrics. US Ex. 126 (Email, Apr. 21, 2011). Interiano implied that he and his team determined that, based on those metrics, Plan H153 complied with Section 2 of the Voting Rights Act. Trial Tr. 1531:24-1532:22, July 18, 2014 (Interiano). We do not find this testimony to be credible.

650. The email, on its face, suggests that MALDEF was able to draw more majority-Latino districts than existed in Plan H153. US Ex. 126 (Email, Apr. 21, 2011). Based on Interiano’s training, he would have known or should have known that metrics suggested that his plan might not comply with Section 2.

651. Interiano was unable to articulate how any of the metrics contained in the email demonstrated compliance with Section 2. Trial Tr. 1532:23-1533:1, July 18, 2014 (Interiano). He was also unable to articulate his general understanding of what Section 2 requires. Trial Tr. 1530:24-1531:9, July 18, 2014 (Interiano). Although he apparently had very clear and detailed memories of other events that occurred during the redistricting process, he could not remember how he had determined that the plan complied with the Voting Rights Act. Trial Tr. 1532:23-1533:1, July 18, 2014 (Interiano).

652. Moreover, Interiano’s testimony about the email was inconsistent with Hanna’s testimony about the email. Trial Tr. 1172:2-1174:10, July 17, 2014 (Hanna). Hanna testified that the point of the email was to alert the map drawers that Plan H153 was potentially vulnerable under Section 2 and Section 5 of the Voting Rights Act. *Id.* at 1174:7-10. That is not a “green light.”

653. As a result, we give no weight to Interiano's testimony that he and his team thought they had a "green light" with respect to Section 2. Instead, we credit Hanna's testimony and find that Interiano and his team were warned that Plan H153 potentially violated Section 2.

2. Ryan Downton

654. Having observed and considered the testimony of Ryan Downton, one of the primary map drawers for the state, the Court finds that several parts of his testimony are not credible.

655. Downton admits to using ethnic shading to put Hispanic voters in Fort Worth into a configuration in CD 26 known as the "lightning bolt." Trial Tr. 1710:4-20, 1711:11-1712:20, Aug. 15, 2014 (Downton). He also admits that he knew nothing about the voters, except that they were Hispanic. *Id.* at 1710:9-13.

656. Downton claimed that Hispanic voters in Fort Worth needed to be kept together in CD 26 in the 2011 Plan to comply with the Voting Rights Act, even though as he admitted that CD 26 would not allow Hispanic voters to elect their candidate of choice. Trial Tr. 1744:20-1745:10, Aug. 15, 2014 (Downton).

657. Downton said that Hispanic voters in other areas did not need to be kept together because "it is one traditional redistricting principle. There are others." Trial Tr. 1752:2-12, Aug. 15, 2014 (Downton).

658. Downton did not think that splitting Eagle Pass, a heavily Hispanic community, would violate the Voting Rights Act. Trial Tr. 1754:14-1755:8, Aug. 15, 2014 (Downton).

659. This Court finds that it is not credible that Downton used ethnic shading to draw the Hispanic population of Fort Worth into CD 26 in order to comply with the Voting Rights Act.

660. The Court also finds that to the extent that Downton was told not to split Hispanic or African-American communities by TLC Counsel or anyone else, he disregarded the instruction in areas including CD 23 and Dallas County in both the Congressional and House redistricting plans.

661. Downton said at trial that, in assessing compliance with Section 5 of the Voting Rights Act, he used election analysis (OAG 10) conducted by the Office of Attorney General regarding the performance of candidates preferred by Hispanic voters. Downton said that he did not use the OAG 10 to assess compliance with Section 2 because in his view, if the district was over 50 percent HCVAP, it was an opportunity district. Trial Tr. 1743:17-1744:1, Aug. 15, 2014 (Downton).

662. Downton testified in from the three-judge court in the District of Columbia that he did not look at the OAG election analysis for Section 5 because he had a bright line test of 50 percent HCVAP, but he looked at the elections data in connection with Section 2. Trial Tr. 1744:2-19, Aug. 15, 2014 (Downton).

3. Burt Solomons

663. Having observed and considered the testimony of Burt Solomons, the former Chairman of the House Redistricting Committee, the Court finds that parts of his testimony are not credible.

664. Chairman Solomons testified that his role during the 2011 redistricting process was “to run the committee . . . [and] give guidance.” Trial Tr. 1072:6-13, July 17, 2014 (Solomons). Chairman Solomons stated that he never drew or reviewed any district lines, instead relying on his staff “to do the detailed work” and trusting them “not to take proposals from psychics or from crazy people.” Trial Tr. 1071:25-1072:18, July 17, 2014 (Solomons); Trial Tr. 1305:6-10, Aug. 14, 2014.

665. Chairman Solomons further stated that he did not know why the lightning bolt configuration was drawn in CD 26, and he could not explain why CD 26 splits 38 precincts in Tarrant County, his home county. Trial Tr. 1306:9-1307:15, Aug. 14, 2014 (Solomons).

666. Despite what his testimony suggests, Chairman Solomons played a prominent role in shaping the debate on the House and Congressional maps.

667. Chairman Solomons tabled nearly every amendment to the Congressional plan offered by African-American or Hispanic representatives. Trial Tr. 900:9-17, Aug. 13, 2014 (Dukes). He rejected Representative Peña's proposed amendment to CD 23, as noted above, before it could be considered by the House. US Ex. 757 (Email, June 15, 2011); Trial Tr. 1349:2-1353:4, Aug. 14, 2014 (Solomons).

668. Chairman Solomons similarly rejected a proposal by Representative Lamar Smith to create an additional minority opportunity district in Tarrant and Dallas counties. Trial Tr. 380:15-5, Aug. 11, 2014 (Interiano); Trial Tr. 1300:3-14, Aug. 14, 2014 (Solomons). Chairman Solomons stated that the proposed map stood little chance of passing the House, but later admitted that he made the decision based "on other criteria." Trial Tr. 1323:10-1324:1, 1367:24-1368:4, Aug. 14, 2014 (Solomons).

669. Finally, Chairman Solomons spoke out against an amendment proposed by Representative Farias that would have returned Somerset and Whispering Winds to HD 118 in the House plan. Trial Tr. 332:18-334:3, July 15, 2014 (Farias).

670. The Court finds that Chairman Solomons wielded considerable influence over the 2011 redistricting process, which he used to limit the contributions of minority members to the House and Congressional plans. To the extent that his testimony suggests otherwise, we find it not credible.

671. Chairman Solomons testified that he never instructed other members to refrain from splitting precincts when drawing their districts. Trial Tr. 1074:18-22, 1084:8-17, July 17, 2014 (Solomons).

672. According to Representative Pickett, however, Chariman Solomons “put the fear of God” into members, “as much as possible,” not to split precincts. Trial Tr. 734:11-17, July 16, 2014 (Pickett).

673. When confronted with this testimony, Chairman Solomons agreed that Representative Pickett was telling the truth. Trial Tr. 1087:2-12, July 17, 2014 (Solomons). Accordingly, the Court finds Representative Solomons’s testimony not credible.

674. Chairman Solomons also testified that the Senate drew the Congressional map, which Solomons stated “wasn’t a priority for [him].” Trial Tr. 1564:11-20, Sept. 13, 2011 (Solomons); Trial Tr. 1263:12-19, 1275:16-1276:5, 1302:3-9, Aug. 14, 2014 (Solomons). We find this testimony not credible.

675. Senator Seliger has testified on multiple occasions that the House was primarily responsible for the 2011 Congressional Plan. *E.g.*, Trial Tr. 275:7-10, Aug. 11, 2014 (Seliger).

676. When confronted with Senator Seliger’s deposition testimony, Chairman Solomons previously stated that he did not find it surprising and acknowledged that Ryan Downton and Gerardo Interiano had developed the Congressional map in large part. Trial Tr. 1607:3-15, 1608:15-20, Sept. 13, 2011 (Solomons). We therefore give no weight to Chairman Solomons’s testimony on that point.

4. John Garza

677. Based on both his demeanor on the stand and his dubious attempts to undermine damaging admissions made during his deposition, the Court finds that several parts of Representative John Garza’s testimony were not credible. *Infra* ¶¶ 678-680.

678. Representative Garza admitted that his staff had analyzed turnout levels during the redistricting process. At trial, he claimed that Hispanic turnout rates were comparable in urban and rural areas. When confronted with his sworn deposition testimony that turnout rates are lower among rural Hispanic voters, he implausibly claimed that he had meant only that aggregate turnout is lower among rural Hispanics due to lower population density. Trial Tr. 373:12-374:13, July 15, 2014 (Garza).

679. Representative Garza refused to answer the Court's question directly as to whether he had ever told Representative Farias that he needed to "pick up more Mexicans" in HD 117. Trial Tr. 425:23-427:13, July 15, 2014 (Garza).

680. The Court finds that Representative Garza wanted to add the communities of Somerset and Whispering Winds to his district in an effort to diminish Hispanic voters' opportunity to elect their preferred candidates while maintaining Hispanic population majorities. His testimony to the contrary is not credible.

5. Aaron Peña

681. Based on both his demeanor on the stand and his repeated attempts to undermine the statements he made at his deposition, the Court finds that several parts of Representative Aaron Peña's testimony were not credible. *Infra* ¶¶ 682-686.

682. At trial, Representative Peña claimed for the first time that his district had been drawn based on a voting history database in the possession of Representative Ryan Guillen. At his deposition, he testified that he was unaware of any way to determine within a single precinct which voters were conservative or liberal. Trial Tr. 110:12-112:5, 163:11-165:19, Aug. 11, 2014 (Peña).

683. Representative Peña testified at trial that he had seen Ryan Downton, counsel to the House Redistricting Committee, draw District 41. When confronted with his prior sworn

deposition testimony to the contrary, he quibbled about the meaning of his word “draw.” Trial Tr. 88:17-92:25, Aug. 11, 2014 (Peña).

684. Representative Peña also testified that he was aware that particular portions of precincts divided by the boundaries of District 41 in the 2011 House Plan would be more or less politically favorable to him, notwithstanding prior sworn testimony to the contrary. Trial Tr. 95:17-96:21, 98:16-99:12, Aug. 11, 2014 (Peña).

685. Under questioning by the Court, Representative Peña also retracted testimony concerning the reason why a specific precinct was split and admitted that he had no personal knowledge for the testimony he had offered. Trial Tr. 148:13-149:2, Aug. 11, 2014 (Peña).

686. The Court finds Representative Peña’s explanation of why the map was changed to add fourteen precinct splits were added to HD 41 after Representative Peña had signed off on the map not to be credible.

PROPOSED CONCLUSIONS OF LAW

I. THE UNITED STATES' CLAIMS AGAINST THE 2011 PLANS ARE NOT MOOT

A. This Court Can Still Grant Effectual Relief.

1. The United States' claims against the 2011 Congressional and House redistricting plans are not moot because this Court may grant relief under Section 3(c) of the Voting Rights Act, 52 U.S.C. § 10302(c). *See, e.g., Dailey v. Vought Aircraft Co.*, 141 F.3d 224, 227 (5th Cir. 1998) (“The availability of even partial relief is enough to prevent mootness.”).

2. A case “becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *Chafin v. Chafin*, 133 S. Ct. 1017, 1023 (2013) (internal quotation marks and citations omitted).

3. A case is not moot if the court can grant even a “partial remedy.” *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992); *see also, e.g., Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 327-28 (2000) (“*Bossier Parish II*”) (holding that a preclearance action under Section 5 of the Voting Rights Act was not moot even though the districts at issue would not be used in any future elections).

4. The United States has requested relief under Section 3(c) of the Voting Rights Act, 52 U.S.C. § 10302. *See* U.S. Compl. (ECF No. 907).

5. Accordingly, the United States still has a cognizable interest in the outcome of this case, and this Court may still grant effectual relief if the United States prevails on its claims. *See Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

B. The Voluntary Cessation Doctrine Bars Mootness in This Case.

6. The voluntary cessation doctrine is an independent and adequate basis to determine that the United States' claims regarding the 2011 Congressional and House

redistricting plans are not moot. *See, e.g., Already, LLC v. Nike, Inc.*, 133 S. Ct. 721, 727-29 (2013) (applying the voluntary cessation doctrine even where no further relief was available to remedy injury that was not ongoing).

7. Texas has failed to meet its burden under the voluntary cessation doctrine to moot this litigation. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (“It is well settled that ‘a defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.’”) (citing *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 (1982)).

8. “Mere voluntary cessation of allegedly illegal conduct does not moot a case; if it did, the courts would be compelled to leave ‘(t)he defendant . . . free to return to his old ways.’” *U.S. Concentrated Phosphate Export Ass’n*, 393 U.S. 199, 203 (1968) (citing *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953)).

9. “[T]he repeal of a challenged law does not render a case moot if there is a reasonable possibility that the government would reenact the law if the proceedings were dismissed.” *Perez v. Texas*, 970 F. Supp. 2d 593 at 602; *see also Aladdin’s Castle*, 455 U.S. at 289.

10. The voluntary cessation doctrine applies to public entities, and public defendants, like private ones, have the burden of showing that their conduct cannot reasonably be expected to recur. *See Sossamon v. Texas*, 560 F.3d 316, 325 (5th Cir. 2009), *aff’d*, 131 S. Ct. 1651 (2011).

11. Texas has failed to meet its burden to establish that, in the next redistricting cycle, it will not engage in the same conduct challenged by the United States’ claims against the 2011 Congressional Plan and 2011 House Plan. *See* 9/6/13 Order at 14 (ECF No. 886); 7/17/14 Order at 11-15 (ECF No. 1104).

12. Taking into consideration Texas’s consistent history of race-based voting discrimination and, in particular, its recurrent pattern of voting-rights violations with respect to statewide redistricting, *supra* ¶¶ 586-602, there is a reasonable possibility that the Texas Legislature will adopt a discriminatory redistricting plan in the next legislative session or a subsequent one. *See, e.g., LULAC v. Perry*, 548 U.S. 399, 425-42 (2006) (finding that Texas’s mid-decade congressional redistricting plan resulted in the diminution of Hispanic voting strength in violation of Section 2 of the Voting Rights Act).

13. Therefore, in the absence of relief under Section 3(c), there is a danger that Texas will continue to violate the Voting Rights Act and the voting guarantees of the Fourteenth and Fifteenth Amendments.

II. SECTION 2 STANDARD

14. Section 2 of the Voting Rights Act of 1965, as amended, 52 U.S.C. §10301, prohibits voting practices and procedures that discriminate on the basis of race, color, or membership in a language minority group.

15. The Attorney General may institute an action to enforce Section 2 of the Act on behalf of the United States. *See* 52 U.S.C. §10308(d).

16. Section 2’s prohibition against racial discrimination in voting applies to any voting standard, practice or procedure nationwide, including redistricting plans. *See, e.g., Growe v. Emison*, 507 U.S. 25, 40 (1993) (Section 2 challenge to single-member districts).

17. Section 2, as amended in 1982, prohibits any voting practice that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or [membership in a language minority].” 52 U.S.C. §10301(a).

18. Section 14(c)(3) of the Voting Rights Act, 52 U.S.C. § 10310(c)(3), defines “language minority group” to include “persons who are American Indian, Asian American,

Alaskan Natives or of Spanish heritage.”

19. Although proof of a discriminatory purpose is not required to establish a violation of Section 2, courts have consistently held that discriminatory-intent claims remain cognizable under the amended statute. *See, e.g., United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009); *Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 769 (9th Cir. 1990); *United States v. Dallas Cnty. Comm’n*, 739 F.2d 1529, 1541 (11th Cir. 1984); *Perkins v. City of West Helena*, 675 F.2d 201, 206 (8th Cir. 1982), *aff’d mem.*, 459 U.S. 801 (1982).

A. Section 2 “Results” Standard

20. Under Section 2, a “results” claim is established “if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b).

21. Section 2 thus prohibits any practice or procedure that impairs the ability of a protected class to elect its candidate of choice on an equal basis with other voters. *See Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

22. The most common way of impairing electoral opportunity is through vote dilution, which occurs where an election system “interacts with social and historical conditions . . . to minimize or cancel out the voting strength of racial minorities in the voting population.” *Gingles*, 478 U.S. at 47-48 (internal alterations, citations, and quotation marks omitted).

23. “The theoretical basis for this type of impairment is that where minority and majority voters consistently prefer different candidates, the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.” *Gingles*, 478 U.S. at 48; *see*

also *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994) (recognizing that “manipulation of district lines can dilute the voting strength of politically cohesive minority group members . . . by fragmenting the minority voters among several districts where a bloc-voting majority can routinely out-vote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door”).

24. In *Gingles*, the Supreme Court set out three preconditions to a vote dilution claim. “First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.” *Gingles*, 478 U.S. at 50. “Second, the minority group must be able to show that it is politically cohesive.” *Id.* at 51. “Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority’s preferred candidate.” *Id.* (internal citations omitted).

25. If a plaintiff succeeds in satisfying the three *Gingles* preconditions, Section 2 then requires a court to consider the “totality of circumstances” to determine whether members of a minority group have less opportunity than other members of the electorate. 52 U.S.C. § 10301(b); see also *De Grandy*, 512 U.S. at 1010-12.

26. The Senate Judiciary Committee report that accompanied the 1982 Voting Rights Act Amendments identified a number of factors that are typically relevant to a results claim. S. Rep. No. 97-417, at 27-29 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 204-07.

27. These so-called “Senate Factors” include:

1. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

2. The extent to which voting in the elections of the state or political subdivision is racially polarized;
3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. If there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. Whether political campaigns have been characterized by overt or subtle racial appeals; [and]
7. The extent to which members of the minority group have been elected to public office in the jurisdiction.

Id.

28. In addition, the Senate Report identified two other factors that have had “probative value” and that are often considered alongside with the other factors, namely:

8. Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; [and]
9. Whether the policy underlying the state or political subdivision’s use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

Id. at 29.

29. The Supreme Court has recognized the 1982 Senate Report as “the authoritative source for legislative intent” about Section 2, as amended. *Gingles*, 478 U.S. at 43 n.7; *see also id.* at 44-45 (adopting Senate factors as a component of vote dilution analysis).

30. The Senate Factors are neither exhaustive nor exclusive. *See Miss. State Chapter Operation Push v. Mabus*, 932 F.2d 400, 405 (5th Cir. 1991) (*Operation Push II*); *Jones v. City of Lubbock*, 727 F.2d 364, 381 (5th Cir. 1984).

31. “[T]here is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” S. Rep. No. 97-417, at 28-29; *accord Gingles*,

478 U.S. at 45; *NAACP v. Fordice*, 252 F.3d 361, 367 (5th Cir. 2001).

32. In *Johnson v. De Grandy*, the Supreme Court held that another relevant factor is proportionality, *i.e.*, whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area. 512 U.S. at 1000.

33. In the Fifth Circuit, a court must also weigh the state's interest in maintaining a challenged electoral practice against the proof of vote dilution. *See LULAC v. Clements*, 999 F.2d 831, 868-76 (5th Cir. 1993) (*en banc*); *see also id.* at 868 (holding that a "substantial state interest may be overcome only by evidence that amounts to substantial proof of racial dilution").

B. Section 2 Intent Standard

34. Section 2 prohibits voting practices or procedures adopted or maintained for the purpose of denying or abridging the right to vote on the basis of race, color, or membership in a language minority. *See, e.g., Brown*, 561 F.3d at 433.

35. The Fourteenth and Fifteenth Amendments to the Constitution similarly prohibit the implementation of voting practices enacted with a racially discriminatory purpose. *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 481 (1997).

36. Intentional vote dilution thus violates both Section 2 and the Equal Protection Clause of the Fourteenth Amendment. *See Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 766 (9th Cir. 1990) ("To the extent that a redistricting plan deliberately minimizes minority political power, it may violate both the Voting Rights Act and the Equal Protection Clause of the [F]ourteenth [A]mendment."); *see also LULAC v. Perry*, 548 U.S. at 440 (noting that intentional discrimination in redistricting "could give rise to an equal protection violation").

37. Intentional vote dilution requires allegations "that the State has enacted a particular voting scheme as a purposeful device 'to minimize or cancel out the voting potential of

racial or ethnic minorities,’ an action disadvantaging voters of a particular race.” *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (quoting *Mobile v. Bolden*, 446 U.S. 55, 66 (1980)).

38. The House and Senate Reports accompanying the 1982 Amendment to the Voting Rights Act adopt the standard for proving discriminatory purpose established in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 264-68 (1977).

39. According to the Senate Report: “Plaintiff may establish discriminatory intent for purposes of this section through direct or indirect circumstantial evidence, including the normal inferences to be drawn from the foreseeability of defendant’s actions which is one type of quite relevant evidence of racially discriminatory purpose.” S. Rep. No. 97-417, at 27 n.108; *see also* H.R. Rep. No. 227, at 30 n.101 (1982).

40. The legal standard for an intent claim under Section 2 thus parallels the requirements under the Equal Protection Clause of the Fourteenth Amendment. *See Garza*, 918 F.2d at 771.

41. In *Arlington Heights*, the Supreme Court identified a non-exhaustive list of factors to consider in determining whether racially discriminatory purpose exists, including: whether the impact of the decision bears more heavily on one racial group than another; contemporaneous statements by the decisionmakers; the historical background of the decision; the sequence of events leading up to the decision; and whether the decision departs from the normal practice. 429 U.S. at 266-68; *see also, e.g., Brown*, 541 F.3d. at 433; *Terrazas v. Clements*, 581 F. Supp. 1329, 1347 (N.D. Tex. 1984) (three-judge court) (applying the *Arlington Heights* factors to intent analysis under Section 2).

42. Under the intent-based approach, “racial discrimination need only be one purpose, and not even a primary purpose, of an official act” to violate Section 2. *Brown*, 561 F.3d at 433;

see also Garza, 918 F.2d at 771 (affirming that fragmenting Hispanic population in pursuit of a non-racial objective was nevertheless purposeful discrimination); H.R. Rep. No. 97-226, at 30 n.101 (barring voting practices under Section 2 “if a discriminatory purpose was a motivating factor”).

43. Evidence regarding a particular decision-maker’s individual intent in seeking to enact a voting change is relevant evidence in a purpose analysis, particularly where that decision-maker played a key role in the enactment of the voting change. *See, e.g., Busbee v. Smith*, 549 F. Supp. 494, 500 (D.D.C. 1982) (three-judge court), *aff’d mem.* 459 U.S. 1166 (1983).

44. The Fifth Circuit has further held that the Senate Factors, described above, are also relevant in assessing intent in the voting context. *Brown*, 541 F.3d. at 433 (citations omitted); *see also Rogers v. Lodge*, 458 U.S. 613, 623-27 (1982) (holding that intent finding based on similar factors set out in *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973), was not clearly erroneous).

III. THE 2011 CONGRESSIONAL PLAN VIOLATED SECTION 2

45. Texas’s 2011 Congressional redistricting plan, Plan C185, was adopted with the purpose of diluting minority voting strength in violation of Section 2 of the Voting Rights Act and the voting guarantees of the Fourteenth and Fifteenth Amendments. *See* US PFOF ¶¶ 116, 146-47, 200-06, 216-44.

46. The 2011 Congressional Plan had the effect of diluting minority voting strength across the State of Texas. *See* US PFOF ¶¶ 183, 216, 221.

47. Additional minority opportunity districts could have been created that would have satisfied the first *Gingles* precondition, both by leaving in place District 23 as a functioning minority opportunity district and creating a new district to reflect reflect minority population growth. *See* US PFOF ¶¶ 167-169, 213-215, 235.

48. Because African-American voters in Texas are politically cohesive, Hispanic voters in Texas are politically cohesive, and African-American and Hispanic voters in the Dallas-Fort Worth Metroplex are politically cohesive, the United States has satisfied the second *Gingles* precondition with regard to each of these additional districts. *See* US PFOF ¶¶ 98-100, 131.

49. There is significant racially polarized voting in Texas, and in districts in which minority voters lack an opportunity to elect their preferred candidates of choice, the Anglo majority votes as a bloc to enable it to defeat the minority-preferred candidate, satisfying the third *Gingles* precondition. *See* US PFOF 101-104, 304, 603-607.

50. The “nudge factor” emails and related testimony, racially focused statements, and the division of precincts along racial lines constitute direct evidence that Texas intended the 2011 Congressional Plan to minimize minority voting strength. *See* US PFOF ¶¶ 105-116, 118-124, 146-159.

51. Unheeded warnings given by the TLC, analysis provided by the Office of the Texas Attorney General, and alternative plans offered by minority legislators establish that vote dilution was a foreseeable consequence of the 2011 Congressional Plan. *See* US PFOF ¶¶ 96, 160-66, 284.

52. The specific sequence of events leading up to the adoption of the 2011 Congressional Plan—including the 2010 wave election, the release of 2010 Census data establishing the extent of minority growth in Texas, the exclusion of minority-preferred legislators from development of the map, and limitations on opportunities for input after release of a draft map—gives rise to an inference that the defendants intended to dilute minority voting strength. *See* US PFOF ¶¶ 34-35, 46-58, 265-292.

53. There were deviations from the normal procedural sequence in adopting the 2011

Congressional Plan, including committee review of a plan released the evening before the sole hearing in the Senate and only 48 hours notice before the sole hearing in the House. *See* US PFOF ¶¶ 59-70, 265-292.

54. There were deviations from the normal substantive standards governing redistricting in adopting the 2011 Congressional Plan, including unnecessary division of precincts on the basis of race, cracking and packing of minority communities, and exclusion of incumbents or their offices from newly drawn districts. *See* US PFOF ¶¶ 118-124, 216-264.

55. The Plaintiffs/Plaintiff-Intervenors have established that decision-makers made contemporaneous statements during the redistricting process regarding the Congressional redistricting plan that give rise to an inference of racial bias, including statements categorizing voters by race rather than simply by partisan affiliation. *See* US PFOF ¶¶ 117.

56. In sum, this direct and circumstantial evidence establishes Texas enacted the 2011 Congressional Plan with intent to dilute minority voting strength. *See Arlington Heights*, 429 U.S. at 266-68.

IV. THE 2011 STATE HOUSE PLAN VIOLATED SECTION 2

57. Texas's 2011 State House redistricting plan, Plan H283, was adopted with the purpose of diluting minority voting strength in violation of Section 2 of the Voting Rights Act and the voting guarantees of the Fourteenth and Fifteenth Amendments. *See* US PFOF ¶¶ 397-432, 443-468, 481-512.

58. The 2011 House Plan had the effect of diluting minority voting strength across the State of Texas. *See* US PFOF ¶¶ 397-432, 481-512.

59. Additional minority opportunity districts could have been created that would have satisfied the first *Gingles* precondition, both by leaving in place existing opportunity districts and by crafting new opportunity districts to reflect minority population growth. *See* US PFOF ¶¶

408-418, 494-503, 526-539.

60. Because African-American voters in Texas are politically cohesive; Hispanic voters in Texas are politically cohesive in Texas; and African-American, Hispanic, and Asian American voters are politically cohesive in Southwest Harris County, the United States has satisfied the second *Gingles* precondition with regard to these additional opportunity districts. *See* US PFOF ¶¶ 98-100, 131, 567-569.

61. There is significant racially polarized voting in Texas, and in districts in which minority voters lack an opportunity to elect their preferred candidates of choice, the Anglo majority votes as a bloc to enable it to defeat the minority preferred candidate, satisfying the third *Gingles* precondition. *See* US PFOF ¶¶ 101-104, 304, 603-607.

62. The “nudge factor” emails and related testimony, racially focused statements, and the division of precincts along racial lines constitute direct evidence that Texas intended the 2011 House Plan to minimize minority voting strength. *See* US PFOF ¶¶ 365-379, 419.

63. Unheeded warnings given by the TLC, analysis provided by the Office of the Texas Attorney General, and alternative plans offered by minority legislators establish that vote dilution was a foreseeable consequence of the adoption of the 2011 House Plan. *See* US PFOF ¶¶ 319-327, 479-480, 501.

64. The specific sequence of events leading up to the adoption of the 2011 House Plan—including the 2010 wave election, the release of 2010 Census data establishing the extent of minority growth in Texas, the exclusion of minority-preferred legislators from development of the map, and limitations on opportunities for input after release of a draft map—gives rise to an inference that the defendants intended to dilute minority voting strength. *See* US PFOF ¶¶ 34-35, 46-58, 327-334

65. There were deviations from the normal procedural sequence in adopting the 2011 House Plan, including limitations on minority input during the development of a statewide proposal and a highly irregular hearing schedule that limited public input. *See* US PFOF ¶¶ 335-344.

66. That there were deviations from the normal substantive standards governing redistricting in adopting the 2011 House Plan, including selective application of the “member-driven” process, unnecessary division of precincts along racial lines, inconsistent application of the Texas County Line Rule, and selective overpopulation of minority opportunity districts in specific counties. *See* US PFOF ¶¶ 419-442, 469-471, 504-512.

67. Legislators in key positions made contemporaneous statements during the House redistricting process that give rise to an inference of racial bias, most notably statements regarding the need to increase the Anglo vote share in a Harris County district and justification of an Anglo-controlled redistricting process as necessary to counteract the protections afforded by the Voting Rights Act. *See* US PFOF ¶¶ 361, 554-559.

68. In sum, this direct and circumstantial evidence establishes Texas enacted the 2011 House Plan with intent to dilute minority voting strength. *See Arlington Heights*, 429 U.S. at 266-68.

V. TOTALITY OF CIRCUMSTANCES

69. The Court finds that the totality of the circumstances weighs in favor of a finding of intentional discrimination underlying both the 2011 Congressional Plan and the 2011 House Plan.

70. The State of Texas has a long, well-documented history of discrimination that has touched upon the rights of African Americans and Hispanics to register, to vote, and to participate otherwise in the electoral process. *LULAC v. Perry*, 548 U.S. 399, 439 (2006); US

PFOF ¶¶ 586-602.

71. Polarized voting in Texas is pervasive, and the degree of polarized voting is high. US PFOF ¶¶ 101-104, 304, 603-607. This is one of the two most important Senate factors and strongly bolsters the United States' claims. *See Gingles* 478 U.S. at 48 n.15, and this Court considers it significant that this factor strongly bolsters Plaintiffs/Plaintiff-Intervenors' position in this matter.

72. There are substantial differences in education and income between Anglo and minority group members. US PFOF ¶¶ 610-624. “[P]olitical participation by minorities tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities, and low incomes.” *Gingles* 478 U.S. at 69.

73. Hispanic and African-American voters continue to be underrepresented at all levels of government in Texas. US PFOF ¶¶ 625-635. This is also one of the two most important Senate factors and weighs in favor of the United States. *See Gingles* 478 U.S. at 48 n.15.

VI. DEFENSES BY THE STATE OF TEXAS

A. Opportunity to Elect a Preferred Candidate Is Defined by Electoral Outcomes, Not Demographic Concentrations

74. The opportunity to elect a preferred candidate of choice is defined by actual electoral opportunity, rather than a simple demographic majority. *See, e.g., LULAC v. Perry*, 548 U.S. at 428

75. Election analysis was an integral part of Texas's own analysis under the Voting Rights Act. US PFOF ¶¶ 152, 321-322.

76. By enacting the 2011 Congressional Plan, the State of Texas maintained the same number of minority opportunity districts statewide while increasing the total number of districts

from 32 to 36, increasing the degree of underrepresentation statewide. US PFOF ¶¶ 89-92, 635.

77. This Court's interim plans and the 2013 Congressional Plan establish that it was possible to increase the number of minority opportunity districts during the 2011 Congressional redistricting. US PFOF ¶ 88.

78. By enacting the 2011 House Plan the State of Texas reduced the number of minority opportunity districts from 50 to only 45 or possibly 46, diluting the minority vote. US PFOF ¶ 294, 296.

79. This Court's interim plans and the 2013 House Plan establish that it was possible to increase the number of minority opportunity districts during the 2011 House redistricting. US PFOF ¶ 295.

80. The mere fact of that minority voters make up a majority of the citizen voting-age population of a district does not establish an opportunity for minority voters to elect representatives of their choice. *See LULAC v. Perry*, 548 U.S. at 428 (“[I]t may be possible for a citizen voting-age majority to lack real electoral opportunity.”); *see also Voinovich v. Quilter*, 407 U.S. 146, 158 (1993) (noting that the *Gingles* requirements “cannot be applied mechanically and without regard to the nature of the claim”); *Major v. Treen*, 574 F. Supp. 325, 339 (E.D. La. 1983) (three-judge court) (recognizing that under certain circumstances “a 50/50 ratio of black to white population gives rise to a safe white district”).

81. Rather, the Fifth Circuit has “consistently recognized that ‘access to the political process and not population is the barometer of dilution of voting strength.’” *Kirksey v. Bd. of Supervisors*, 554 F.2d 139, 150 (5th Cir. 1977) (en banc) (quoting *Bradas v. Rapides Parish Police Jury*, 508 F.2d 1109, 1112 (5th Cir. 1975)), other aspect superseded by statute as recognized in *LULAC v. Clements*, 999 F.2d 831, 866-67 (5th Cir. 1993) (en banc).

82. The fact that minority voters participate at lower rates than Anglo voters cannot simply be ascribed to “lack of interest or apathy.” *Kirksey*, 554 F.2d at 145; *see also Teague v. Attala Cnty.*, 92 F.3d 283, 294-95 (5th Cir. 1996) (holding that ascription of depressed minority turnout to “voter apathy” was clear error and attributing low turnout to socioeconomic disadvantages); *United States v. Marengo Cnty. Comm’n*, 731 F.2d 1546, 1563 (11th Cir. 1984) (Wisdom, J.) (holding an attribution of the lack of Black electoral success to “failure of the Blacks to turn out” to be “based on a misconception of law” and “clearly erroneous”).

83. The evidence shows that minority voters in Texas have significant socioeconomic disadvantages as compared to Anglo voters. *See* US PFOF ¶¶ 610-624.

84. In the 2011 Congressional Plan and the 2011 House Plan, Congressional District 23, House Districts 35 and 117, and possibly House District 41 are not Hispanic opportunity districts for purposes of assessing intentional vote dilution, notwithstanding the fact that a majority of registered voters in each of those districts has a Spanish surname. *See* US PFOF ¶¶ 138, 167-169, 351-379, 397-407, 419-442.

85. In fact, the use of a marginal Hispanic majority—in concert with analysis to ensure that Hispanic-preferred candidates were likely to be defeated at the polls—evinces an intent to dilute the minority vote and opportunistic exploitation of depressed political participation rates stemming in part from the lingering effects of discrimination. *See Moore v. Leflore Cnty. Bd. of Educ.*, 502 F.2d 621, 624 (5th Cir. 1974) (holding that slim population and registered voter majorities “enhanced the possibility of continued Black political impotence”); *see also LULAC v. Perry*, 548 U.S. at 440-41 (noting the “use of race to create the facade of a Latino district” that was actually designed “to protect [incumbent] Congressman Bonilla from a constituency that was increasingly voting against him”); *Busbee v. Smith*, 549 F. Supp. 495, 498-

99 (D.D.C. 1982) (three-judge court), *aff'd*, 103 S. Ct. 809 (1983) (finding intentional discrimination in the creation of a district with a Black population and voting-age population majority that would not afford Black voters with the opportunity to elect their preferred candidate).

B. Partisanship Is Not a Defense to Intentional Discrimination

1. Incumbency Protection and Partisanship Are Not Defenses to Intentional Vote Dilution.

86. Partisanship is not a legal defense to intentional race-based vote dilution, as legislators may not purposefully dismantle minority opportunity districts merely to fulfill partisan objectives. *See, e.g., Barnett v. Daley*, 32 F.3d 1196, 1199 (7th Cir. 1994).

87. The use of intentional race discrimination to achieve a majority for a particular political party will “give rise to an equal protection violation.” *LULAC v. Perry*, 548 U.S. at 440

88. Because “[r]acial discrimination need only be one purpose, and not even a primary purpose, of an official act” to violate Section 2, *Brown*, 561 F.3d at 433 (quoting *Velasquez v. City of Abilene*, 725 F.2d 1017, 1022 (5th Cir. 1984)), a redistricting plan that intentionally dilutes minority voting strength will violate the Voting Rights Act even if its principal purpose is partisan.

89. Thus, numerous courts have held that “[i]f . . . in order to protect incumbents of whatever race [a] redistricting authority deliberately adopted devices for limiting [minority] representation . . . , they would be engaged in deliberate racial discrimination.” *Barnett v. Daley*, 32 F.3d 1196, 1199 (7th Cir. 1994); *see also Garza*, 918 F.2d at 771 (upholding a finding of discriminatory intent where incumbents “chose fragmentation of the Hispanic voting population as the avenue by which to achieve . . . self-preservation”); *Ketchum v. Byrne*, 740 F.2d 1398, 1408 (7th Cir. 1984) (upholding a finding of discriminatory intent where “racial discrimination

was the necessary accompaniment of the action taken to protect incumbencies”).

90. Partisanship is not a defense to intentional vote dilution. *McMillian v. Escambia Cnty., Fla.*, 688 F.2d 960, 969 n.19 (5th Cir. 1982) (holding that incumbency protection does not justify or protect from invalidation a law that is purposefully discriminatory), *cert. denied*, 464 U.S. 830 (1983); *Ketchum v. Byrne*, 740 F.2d 1398, 1408 (7th Cir. 1984) (holding many strategies used to protect white incumbents in high African-American populations were “necessarily racially discriminatory.”).

91. Deliberate fragmentation of Hispanic communities to perpetuate incumbencies constitutes intentional discrimination in violation of Section 2. *See Garza*, 918 F.2d at 769; *see also Rybicki v. State Bd. of Elections*, 574 F. Supp. 1082, 1109 (N.D. Ill. 1982) (finding intentional discrimination “where requirements of incumbency are so closely intertwined with the need for racial dilution that an intent to maintain a safe, primarily white, district for [a particular incumbent] is virtually coterminous with a purpose to practice racial discrimination”).

92. Purposeful discrimination may occur even in the absence of racial animus. *See, e.g., Garza*, 918 F.2d at 778 n.1 (Kozinski, J., concurring in relevant part) (explaining by analogy).

93. The Supreme Court already warned Texas in *LULAC v. Perry* against using racial vote dilution to partisan ends, explaining that incumbency protection cannot justify “act[ing] against those Latinos who were becoming most politically active.” 548 U.S. at 440. Similarly, in this case, Texas’s use of race to achieve partisan ends transformed purported political gerrymanders into prohibited racial discrimination under Section 2 of the Voting Rights Act. *See LULAC v. Perry*, 548 U.S. at 442 (Texas’s “troubling blend of politics and race—and the resulting vote dilution of a [minority] group that was beginning to achieve § 2’s goal of

overcoming prior electoral discrimination—cannot be sustained.”).

94. Texas’s deliberate use of vote dilution to achieve its partisan ends and establishes that discriminatory purpose was at least one of the motivating factors in the development of the 2011 Congressional and House redistricting plans. *See LULAC v. Perry*, 548 U.S. at 440-42; *McMillian*, 688 F.2d at 969 n.19; *Garza*, 918 F.2d at 769; *Ketchum*, 740 F.2d at 1408; *Rybicki*, 574 F. Supp. at 1109.

2. Shaw Claims Are Analytically Distinct from Intentional Vote Dilution.

95. *Hunt v. Cromartie*, 526 U.S. 541 (1999) (“*Cromartie I*”), a decision from the line of cases beginning with *Shaw v. Reno*, 509 U.S. 630 (1993), does not establish a partisanship defense to a claim of intentional vote dilution.

96. The United States has claimed that the 2011 Congressional Plan and the 2011 House Plan intentionally dilute minority voting strength. It has not asserted a *Shaw* claim. *See* U.S. Compl. (ECF No. 907).

97. An intentional vote dilution claim and a claim under the doctrine established in *Shaw v. Reno*, 509 U.S. 630 (1993), are “analytically distinct.” *Shaw*, 509 U.S. at 652; *see also Miller*, 515 U.S. at 911.

98. Intentional vote dilution—the United States’ claim in this case—occurs when “the State has enacted a particular voting scheme as a purposeful device ‘to minimize or cancel out the voting potential of racial or ethnic minorities,’ an action disadvantaging voters of a particular race.” *Miller*, 515 U.S. at 911 (quoting *City of Mobile v. Bolden*, 446 U.S. 55, 66 (1980))

99. The manipulation of district lines to dilute minority voting strength is no less intentional or harmful to minority voters simply because it benefits a party and its incumbents. *Cf. Garza*, 918 F.2d at 778 & n.1 (Kozinski, J., concurring in relevant part)

100. “[T]he essence of the equal protection claim recognized in *Shaw* is that the state

has used race as a basis for separating voters into districts,” *Miller*, 515 U.S. at 911, without a compelling justification, *Cromartie I*, 526 U.S. at 543.

101. *Shaw* claims require proof that “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district,” *Miller*, 515 U.S. at 916, so proof that race was simply “a motivation for the drawing” of a challenged district is insufficient. *Easley v. Cromartie*, 532 U.S. 234, 241 (2001) (*Cromartie II*) (quoting *Bush v. Vera*, 517 U.S. 952, 959 (1996) (plurality op.)).

102. Thus, while proof that partisanship was the primary purpose of a redistricting plan will defeat a *Shaw* claim, see *Cromartie I*, 526 U.S. at 551-53; *Cromartie II*, 532 U.S. at 241-43, 257-58, it is not a defense to a claim of intentional vote dilution, where “[r]acial discrimination need only be one purpose, and not even a primary purpose,” to establish liability. *Brown*, 561 F.3d at 433; see also *Arlington Heights*, 429 U.S. at 265-66.

C. The Voting Rights Act Protects Minority Voters Who Live outside of Single-Minority Majority Districts

103. The State of Texas’s claim that minority citizens who reside in communities in which no single minority group makes up a majority of eligible voters receive no protection under the Voting Rights Act is legally erroneous.

1. Section 2 Protects Coalition Districts from Intentional Vote Dilution.

104. Deliberate elimination of minority electoral opportunity achieved by a cohesive coalition of minority voters violates the prohibition on intentional discrimination under Section 2 of the Voting Rights Act. *Cf. Bartlett*, 556 U.S. at 24.

105. Under certain circumstances, Section 2 of the Voting Rights Act requires the drawing of “coalition districts” in which two or more racial-minority groups together form a numerical majority. See *LULAC v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (en banc);

Campos v. City of Baytown, 840 F.2d 1240, 1244 (5th Cir. 1988).

106. “[I]f blacks and Hispanics vote cohesively, they are legally a single minority group, and elections with a candidate from this single minority group are elections with a viable minority candidate.” *LULAC v. Clements*, 999 F.2d at 86; *see also Campos*, 840 F.2d at 1244 (holding that a claim brought by a cohesive coalition of minority voters is analytically indistinct from a claim brought by single minority group)

107. After a factual finding that a coalition of minority voters is politically cohesive, “nothing in the law . . . prevents the plaintiffs from identifying the protected aggrieved minority to include” minority voters of multiple races. *Campos*, 840 F.2d at 1244; *cf. Large v. Fremont Cnty.*, 709 F. Supp. 2d 1176, 1195-1202 (D. Wyo. 2010), *remedy aff’d*, 670 F.3d 1133 (10th Cir. 2012) (finding Native American voters to be cohesive notwithstanding division into two tribes)

108. A jurisdiction may not intentionally minimize electoral opportunities for minority voters, regardless of whether those voters reside in an opportunity district or could be drawn into a single-minority majority district. *See, e.g., Garza*, 918 F.2d at 765.

109. In *Bartlett v. Strickland*, 556 U.S. 1 (2009), the Supreme Court stated that 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.” 556 U.S. at 24 (*citing Bossier Parish I*, 520 U.S. at 481-82).

110. If the Reconstruction Amendments bar intentionally discriminatory elimination of crossover districts—districts in which minority voters have the opportunity to “elect the candidate of [their] choice with help from voters who are members of the majority and who cross over to support the minority’s preferred candidate,” *id.* at 13—then those Amendments also must bar intentionally discriminatory elimination of coalition districts “in which two minority groups

form a coalition to elect the candidate of the coalition's choice," *id.*; *see also id.* at 13-14 (placing coalitions districts on a spectrum closer to single-minority majority districts than either crossover districts or influence districts).

111. Because a minority coalition is legally identical a single racial minority group if the coalition is cohesive, *see LULAC v. Clements*, 999 F.2d at 86, this protection must extend to a coalition of three minority groups that have been proven to be cohesive.

112. Because Section 2 enforces the constitutional bar on intentional discrimination in voting, *see, e.g., Brown*, 561 F.3d at 433, the statute forbids jurisdictions from intentionally eliminating the opportunity of a group of minority voters to elect their candidate of choice, alone or in combination with other racial groups, by dismantling an effective multi-minority coalition district.

113. The Supreme Court's decision in *Perez v. Perry*, 132 S. Ct. 934 (2012) (per curiam), did not establish that Section 2 can never require the drawing of coalition districts.

114. *Perez* establishes only that Section 2 requires a specified factual basis, principally findings of minority cohesion, prior to recognizing a claim of vote dilution based on the failure to create minority coalition districts. *See* 132 S. Ct. at 944.

115. Therefore, the intentional fragmentation of a cohesive coalition of African-American, Hispanic, and Asian American voters that had demonstrated their opportunity to elect their preferred candidate of choice in House District 149 constitutes intentional discrimination under the Voting Rights Act. *See* US PFOF ¶¶ 564-585.

2. The Voting Rights Act Protects Minority Voters Who Do Not Reside in Areas in Which a Minority-Majority District Can be Drawn.

116. The State of Texas did not have *carte blanche* to pack and crack the minority population of the Dallas-Fort Worth Metroplex in the 2011 Congressional map, regardless of

whether it was possible to create a second reasonably compact minority opportunity district in that region in which a single minority group made up a majority of eligible voters.

117. “To the extent that a redistricting plan deliberately minimizes minority political power, it may violate both the Voting Rights Act and the Equal Protection Clause of the [F]ourteenth [A]mendment.” *Garza*, 918 F.2d at 766; *see also LULAC v. Perry*, 548 U.S. at 440; *Brown*, 561 F.3d at 424.

118. Regardless of the potential to craft a single-minority majority district, a jurisdiction may not deliberately split minority communities to create a situation in which minority voters have less opportunity than other citizens to participate in the political process and to elect legislators of their choice. *See Garza*, 917 F.2d at 771.

119. Even “to the extent that *Gingles* does require a majority showing, it does so only in a case where there has been no proof of intentional dilution of minority voting strength.” *Garza*, 918 F.2d at 769.

120. The Supreme Court has declined to “consider whether intentional discrimination affects the *Gingles* analysis,” but expressly declined to apply a majority-minority requirement “to cases in which there is intentional discrimination against a racial minority.” *Bartlett*, 556 U.S. at 20 (citing *Garza*, 918 F.2d at 771).

121. Regardless of whether an additional minority opportunity district could be drawn in the Dallas-Fort Worth Metroplex Texas in the 2011 Congressional Plan, that map violated the Voting Rights Act by intentionally segregating Hispanic voters in District 26, segregating African-American voters in District 33, and packing minority voters in District 30 in a manner that is inexplicable on any basis other than race. *See US PFOF ¶¶ 216-240.*

* * * * *

122. In sum, the evidence before this Court establishes that the Texas Legislature enacted the 2011 Congressional and State House redistricting plans with a discriminatory purpose in violation of Section 2 of the Voting Rights Act and the voting guarantees of the Fourteenth and Fifteenth Amendments.

Date: October 30, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2014, I served a true and correct copy of the foregoing via the Court's ECF system on the following counsel of record:

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