IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA and ERIC H. HOLDER, JR., in his official capacity as Attorney General of the United States, Defendants. WENDY DAVIS *et al.*, Defendant-Intervenors, MEXICAN AMERICAN LEGISLATIVE CAUCUS, Defendant-Intervenor, GREG GONZALES *et al.*, Defendant-Intervenors, TEXAS LEGISLATIVE BLACK CAUCUS, Defendant-Intervenor, TEXAS LATINO REDISTRICTING TASK FORCE, Defendant-Intervenor, TEXAS STATE CONFERENCE OF NAACP BRANCHES *et al.*, Defendant-Intervenors.	)	Civil Action No. 1:11-cv-1303 (RMC-TBG-BAH) Three-Judge Court

DEFENDANTS' BRIEF REGARDING THE PLAINTIFF'S ASSERTION OF VARIOUS PRIVILEGES

Pursuant to the minute order entered December 23, 2011, Defendants the United States and Eric J. Holder, Jr., the Attorney General of the United States (collectively "United States"), hereby submit this brief regarding the Plaintiff's assertion of various privileges as the bases for withholding information sought by the United States in discovery.

BACKGROUND

In this action for a declaratory judgment under Section 5 of the Voting Rights Act, as amended, 42 U.S.C. § 1973c, the State of Texas has alleged that the redistricting plans at issue do not have a discriminatory purpose. The United States has sought to discover documents and information regarding legislative purpose, and Texas has broadly asserted various privileges to shield those documents and that information from disclosure. The United States now seeks a ruling on the validity of the State's assertions of privilege.

The disputed material falls into three categories.

First are communications between key members of the legislature and the three legislative staffers who drew the maps at issue: Doug Davis, Ryan Downton, and Gerardo Interiano. Texas has built its intent case in large part on declarations from the map-drawers who attested to what legislators told them (or did not tell them) to do, and it has recently announced that the three map-drawers will be among its five witnesses during the three-judge portion of the trial. The United States propounded a request for the production of documents reflecting these communications. *See* Exhibit 1 (U.S. discovery requests). Texas objected, broadly claiming that all such communications between the legislators and the map-drawers are protected by the attorney-client privilege, the work-product privilege, and the legislative privilege. *See* Exhibit 2 (Texas discovery responses).

Second are communications between the Texas Legislative Council ("TLC" or

"Council") and key members of the legislature or their staff. The TLC is a non-partisan legislative agency that provided service and support to the Legislature during the redistricting process, and the State has indicated its intention to call a key Council employee, David Hanna, as one of its five witnesses during the three-judge court portion of the trial.[1] The United States seeks to determine, among other things, whether the State of Texas ignored warnings from the TLC that the configuration of its proposed districts risked running afoul of the Voting Rights Act. To that end, the United States asked about communications between the TLC and members of the Legislature and their staff during a Rule 30(b)(6) deposition of the Council. *See* Exhibit 3 (deposition excerpts). The United States also propounded several discovery requests seeking similar information. *See* Exhibit 1 (U.S. discovery requests). Texas objected, broadly claiming that all such communications between the legislature and the Council are protected by the attorney-client privilege, the work-product privilege, the legislative privilege, and privilege based on Texas Government Code § 323.017.[2] *See* Exhibit 2 (Texas discovery responses).

Third are documents containing summaries of racially polarized voting analyses prepared by the technical staff of the Office of the Texas Attorney General ("OAG"). These summaries, which came to light during a Rule 30(b)(6) deposition of the OAG, will show that the State was

[1] According to its website, "[t]he Texas Legislative Council is a nonpartisan legislative agency that provides bill drafting, computing, research, publishing, and document distribution services to the Texas Legislature and the other legislative agencies." Texas Legislative Council, (Dec. 26, 2011), http://www.tlc.state.tx.us/.

[2] Texas Government Code § 323.017 provides as follows: "Communications, including conversations, correspondence, and electronic communications, between a member of the legislature or the lieutenant governor and an assistant or employee of the council that relate to a request by the official for information, advice, or opinions from an assistant or employee of the council are confidential. Information, advice, and opinions given privately by an assistant or employee of the council to a member of the legislature, or the lieutenant governor, acting in the person's official capacity, are confidential. However, the member or lieutenant governor may choose to disclose all or a part of the communications, information, advice, or opinions to which this section applies, and such a disclosure does not violate the law of this state."

intently focused on electoral performance when it drew its maps, and they will show that the State was aware that its proposed maps would decrease minority electoral performance in the elections on which it chose to focus. *See* Exhibit 3 (deposition excerpts). They were prepared by Todd Giberson, who will be one of the State's five witnesses during the three-judge portion of the trial. The United States propounded a request for those summaries, and the State objected on the basis of attorney-client privilege and work-product privilege.

The United States has asked the Court to resolve these claims of privilege by the morning of January 4, 2012, when the United States has scheduled the depositions of David Hanna and Clare Dyer, both of whom are employees of the TLC, during which the United States expects to ask additional questions about communications between the legislature and the Council.

LEGAL STANDARDS

It is now well established that the proponent of a privilege in federal court bears the burden of demonstrating facts sufficient to establish the privilege's applicability. *In re Subpoena Duces Tecum*, 439 F.3d 740, 750 (D.C. Cir. 2006). The "basis of [a] privilege" must be "adequately established in the record," *Liberty Lobby, Inc. v. Dow Jones & Co., Inc.*, 838 F.2d 1287, 1303 (D.C. Cir. 1988), through evidence "sufficient ... to establish the privilege ... with reasonable certainty," *FTC v. TRW, Inc.*, 628 F.2d 207, 213 (D.C. Cir. 1980).

1. Attorney-Client Privilege

A party asserting the attorney-client privilege must demonstrate that: (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or her subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for

the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client. *In re Sealed Case*, 737 F.2d 94, 98-99 (D.C. Cir. 1984). "A blanket assertion of the privilege will not suffice. Rather, the proponent must conclusively prove each element of the privilege." *In re Lindsey*, 148 F.3d 1100, 1106 (D.C. Cir. 1998) (internal citation and quotation omitted) (rejecting an assertion of attorney client privilege for an advisor to the President who was also served as a policy advisor).

2. Work-Product

The Federal Rules of Civil Procedure protect from discovery "documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative." Fed. R. Civ. P. 26(b)(3). "The party invoking the privilege, however, has the burden of proving that the memoranda qualify as work product." *Hager v. Bluefield Regional Medical Center, Inc.*, 170 F.R.D. 70, 76 (D.D.C.1997). "In reviewing documents claimed to be protected by the work-product privilege, the court must determine whether, in light of the nature of the document or the factual situation in a particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation." *Jinks-Umstead v. England*, 231 F.R.D. 13, 19 (D.D.C. 2005). The work-product protection is not absolute, though, and it can be overcome if the party seeking the materials "shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means." Fed. R. Civ. P. 26(b)(3)(A)(ii).

3. State Legislative Privilege

There is no state legislative privilege in the Federal Rules of Evidence. The Supreme

Court has concluded that no state legislative privilege exists in federal criminal cases. *See United States v. Gillock*, 445 U.S. 360 (1980). The D.C. Circuit has never recognized a state legislative privilege in federal civil cases,[3] and this Court should deny the State's invitation to create one.

Evidentiary privileges are strongly disfavored, and the Supreme Court has repeatedly cautioned lower courts against recognizing new ways of excluding probative evidence. *See, e.g., University of Pennsylvania v. E.E.O.C.* 493 U.S. 182 (1990) (rejecting an academic peer-review privilege); *United States v. Nixon*, 418 U.S. 683, 710 (1974) (deny an absolute testimonial privilege to the President of the United States); *Couch v. United States*, 409 U.S. 322 (1973) (rejecting an accountant-client privilege); *Branzburg v. Hayes*, 408 U.S. 665, 688 (1972) (denying a testimonial privilege to reporters).

As a result, the standard for establishing a new privilege is quite high. "[W]hen evaluating a novel claim of privilege we start with the primary assumption that there is a general duty to give what testimony one is capable of giving." *In re Sealed Case*, 148 F.3d 1073, 1075 (D.C. Cir. 1998) (rejecting a "protective function privilege" for Secret Service Agents protecting the President of the United States) (internal quotation omitted). "The Supreme Court requires that a party seeking judicial recognition of a new evidentiary privilege under Rule 501 demonstrate with a high degree of clarity and certainty that the proposed privilege will effectively advance a public good." *Id*. at 1076. "[T]he Supreme Court has demanded that the proponent come forward with a compelling empirical case for the necessity of the privilege." *Id.* This Court is "constrained not to recognize any new privilege the need for which is less than

[3] The D.C. Circuit has recognized an evidentiary privilege for members of the United States House or Representative and Senate. *See Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408 (D.C. Cir. 1995). Those privileges are rooted in the Speech and Debate Clause of the United Constitution and federal statutes. *Id.*

clear and convincing." *Id*. at 1078-79.

Although the D.C. Circuit has never recognized it, a handful of district courts in other circuits have recognized some form of a state legislative privilege. *See e.g. Committee for a Fair and Balanced Map v. Illinois State Bd. of Elections*, 2011 WL 4837508 at *7 (N.D.Ill. Oct. 12, 2011) (unreported) (concluding that the enforcement of the Constitution and the Voting Rights Act outweighs a qualified legislator privilege); *Rodriguez v. Pataki*, 280 F.Supp.2d 89 (S.D.N.Y. 2003 (a redistricting case); *Cano v. Davis*, 193 F. Supp. 2d 1177 (C.D. Cal. 2002) (three-judge district court); *United States v. Irvin*, 127 F.R.D. 169 (C.D.Cal. 1989). These courts have generally adopted a case-by-case approach to determine the applicability of the privilege. In *Rodriguez*, 280 F.Supp.2d at 100-01, the district court identified five factors to determine whether a legislator's privilege prevents the introduction of testimonial and documentary evidence. The factors included: (1) the relevance of the evidence sought to be protected; (2) the availability of other evidence; (3) the seriousness of the litigation and the issues involved; (4) the role of the government in the litigation; and (5) the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable. *Id*.

4. Texas Government Code § 323.017

There is no federal privilege based on Texas Government Code § 323.017. Texas law provides some degree of confidentiality for communications between the TLC and members of the legislature. Texas Gov. Code Ann. § 323.017. It is not clear whether Texas courts recognize that confidentiality as an evidentiary privilege, but Rule 501 of the Federal Rules of Evidence requires federal court to recognize a state-based privilege only in cases where the court has diversity jurisdiction under 28 U.S.C § 1332. *Samuelson v. Susen*, 576 F.2d 546, 549 (3d Cir.1978) ("Rule 501 requires a district court exercising diversity jurisdiction to apply the law of

privilege which would be applied by the courts of the state in which it sits"). Otherwise, federal courts are not bounds to recognize a privilege found in state law. *See e.g. United States v. Chiarella*, 588 F.2d 1358, 1372 (2d Cir.1978) (evidentiary privilege under New York labor law does not provide privilege under Rule 501); *United States v. Cartledge*, 928 F.2d 93 (4th Cir. 1991). Further, in *Gillock*, the Supreme Court rejected an argument that Tennessee's legislator's privilege created a federal privilege. *Gillock*, 445 U.S. at 368 ("Thus, the fact that there is an evidentiary privilege under the Tennessee Constitution, Art. II, § 13, which Gillock could assert in a criminal prosecution in state court does not compel an analogous privilege in a federal prosecution.").

In order for Texas Government Code § 323.017 to provide a privilege here, the State must meet the high standard for recognizing a new privilege described above.

DISCUSSION

Under Section 5, the State of Texas bears the burden of proving that the redistricting plans adopted by the Texas Legislature do not have a discriminatory purpose and will not have a discriminatory effect. 42 U.S.C. § 1973c(a); *see Georgia v. United States*, 411 U.S. 526 (1973). The State has the great bulk of the information relevant to this proceeding in its possession or under its control. It cannot selectively disclose some of that information while withholding others from scrutiny with blanket assertions of privilege.

At this point, the State of Texas has made only a blanket assertion of the various privileges. Texas' objections to written discovery are boilerplate and points to no facts or evidence in the record. It hasn't offered any detailed bases for its assertions during telephone conferences or correspondence between the parties. That makes it difficult for the United States to articulate its position except in the most general terms.

I. Communications between Legislators and the Map-Drawers

Request for Production No. 7 is targeted at emails and other documents exchanged between the three map-drawers and certain key members of the legislature during the redistricting process.[4] *See* Exhibit 1 (U.S. discovery requests). Each of the map-drawers is, in fact, an attorney. Davis was counsel to Senator Seliger. Downton was counsel to the House redistricting committee. And Interiano was counsel to the Speaker of the House. Together they had primary responsibility for drawing the maps at issue here. Texas claims that these documents are protected by the attorney-client privilege, the work-product privilege, and a state legislative privilege. *See* Exhibit 2 (Texas discovery responses).[5]

The attorney-client privilege doesn't apply here because Texas has waived it by putting the communications directly at issue. Texas is seeking a declaration that redistricting plans enacted by its own legislature do not have a discriminatory purpose. At the summary judgment stage, the State submitted declarations from the map drawers stating that no legislators ever asked them to make a change for the purpose of harming minority voters. *See* Exhibit 4 (declarations). Texas has more recently indicated its intention to call the map-drawers as witnesses during the credibility phase of the trial to testify on the question of legislative intent. But it is well established that a party cannot use privilege as both a sword and a shield. *See Koch v. Cox*, 489 F.3d 384, 390 (D.C. Cir. 2007); *Ideal Electronic Sec. Co. v. International Fidelity Ins. Co.*, 129 F.3d 143, 151 (D.C. Cir. 1997); *S.E.C. v. Lavin*, 111 F.3d 921, 933 (D.C. Cir. 1997); *see also In re Sealed Case*, 676 F.2d 793, 818 (D.C. Cir. 1982) ("Courts need not allow a claim of [attorney-client or work product] privilege when the party claiming the privilege seeks

[4] The United States is not seeking emails created after the redistricting process in anticipation of this declaratory judgment action.

[5] The State's privilege log, included in Exhibit 2, does not identify any emails that would be responsive to this request.

to use it in a way that is not consistent with the purpose of the privilege"). As a result, Texas waived any privilege that might have applied when it relied on the communications as evidence of the legislature's benign intent.[6]

In addition, there is no evidence at this point that the map-drawers had an attorney-client relationship with every one of the key legislators identified in the discovery request or that the communications were made for the purpose of receiving legal advice and not for the purpose of receiving technical or political assistance with redistricting. It is therefore unlikely that the State will be able to establish the existence of an attorney-client privilege with the certainty necessary to sustain it.

Similarly, the work-product privilege doesn't apply because Texas hasn't established the existence of an attorney-client relationship or that any withheld documents were created by attorneys in anticipation of litigation. Given the nature of the United States' request, it is more likely that any responsive documents were created for the purpose of drawing maps.

Finally, any responsive documents are not protected by a state legislative privilege because that privilege does not exist in this circuit. Texas is unlikely to be able to meet the high standard for establishing a new state legislative privilege, and it is not even clear at this point in the briefing that Texas intends to try. But even if the State does convince this Court to recognize a new privilege, that privilege is unlikely to be absolute and would be outweighed by the United States' interest in enforcing the Voting Rights Act. *See, e.g., Committee for a Fair and Balanced*

[6] In the trial in *Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex.), Downton purposefully disclosed his conversations with Rep. Veasey (p.908: 14-24); Reps. Villareal and Castro (p. 916:18 – 917:7) ; Rep. Kuempel (p. 919:14-22); Rep. Pickett (p. 920:14-25 and 923: 17-23); Rep. Solomons (p. 922:10-923:16); Dallas County house delegation (p. 924:13-925:1, 926:15-927:11); Tarrant County house delegation (p. 929:9-930:10); the Harris County house delegation (p. 930:11-932-4 and 933:12-934:20); and legal discussions with Texas Legislative Council (931:3-7). See Exhibit 5 (trial transcript excerpts).

Map v. Illinois State Bd. of Elections, 2011 WL 4837508 at *7 (N.D.Ill. Oct. 12, 2011) (concluding that the enforcement of the Constitution and the Voting Rights Act outweighs a qualified legislator privilege). Moreover, Texas waived the legislative privilege in the Section 2 trial.[7]

II. Communications between the Texas Legislature and the Texas Legislative Council

1. Request for Production No. 6 targets emails and other documents exchanged between the TLC and certain key legislators and staff during the redistricting process.[8] *See* Exhibit 1 (U.S. discovery requests). Responsive documents include emails sent to or from David Hanna, an employee of the TLC whom the State has identified as one of its five witnesses during the credibility phase of the trial to testify on the question of legislative intent. Texas claims that these documents are protected by the attorney-client privilege, the work-product privilege, the legislative privilege, and privilege based on Texas Government Code § 323.017. *See* Exhibit 2 (Texas discovery responses).

The attorney-client privilege doesn't apply here because the TLC doesn't have an automatic attorney-client relationship with every member of the Texas Legislature, every employee of members of the Texas Legislature, and every employee of every committee of the Texas Legislature. That would stretch the privilege, which is to be narrowly construed, too far. *See In re Lindsay*, 158 F.3d 1263, 1272 (D.C. Cir. 1998); *In re Sealed Case*, 676 F.2d 793, 807 n.44 (D.C. Cir. 1982) (the "attorney-client privilege must be 'strictly confined within the narrowest possible limits consistent with the logic of its principle,'"). That is particularly true

[7] In the trial in *Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex.), David Mattax, attorney for the State of Texas, explicitly waived the legislative privilege with respect to legislators that had conversations with Ryan Downton. See Trial Transcript at 901: lines 7-21, included in Exhibit 5 attached hereto.

[8] The United States is not seeking emails created after the redistricting process in anticipation of this declaratory judgment action.

where the attorney-client relationship is not even within the TLC's statutory mandate. *See* Tex Gov. Code Ann. § 323.006.[9] Nor is there any evidence here that any of the key legislators listed in the discovery request actually sought to establish an attorney-client relationship with the TLC.

In addition, Texas has waived any attorney-client privilege by indicating its intention to call Hanna to testify about legislative intent. It is clear from the United States' Rule 30(b)(6) deposition of the TLC that Hanna was a central figure in the redistricting process. The TLC's designee, Jeffrey Archer, indicated that Hanna was primarily responsible at the TLC for answering questions from the legislature on compliance with the Voting Rights Act. *See* Exhibit 3 (deposition excerpts). The United States doesn't yet know what Hanna might say because he hasn't yet been deposed, and he has thus far offered no testimony. But Texas may not, without waiving the attorney-client privilege, put Hanna on the stand as a fact witness to testify about the legislature's benign intent based on knowledge gained while allegedly serving as the legislature's attorney. *See Koch*, 489 F.3d at 390.

The work-product privilege doesn't apply because Texas hasn't established the existence of an attorney-client relationship or that any withheld documents were created by attorneys in anticipation of litigation. Litigation is most definitely not part of the TLC's mandate. Any

[9] The Council shall: "(1) study and investigate the functions and problems of state departments, agencies, and officers; (2) conduct investigations and studies and make reports that may be considered useful to the legislative branch of state government; (3) gather and disseminate information for the legislature's use; (4) meet and perform council functions during the legislative interim; (5) make periodic reports to all members of the legislature and keep the legislature fully informed of all issues that may come before the council, any action taken on an issue, and the progress made on an issue; (6) report council recommendations to the legislature and, if appropriate, provide drafts of legislation with the report; (7) assist the legislature in drafting proposed legislation; and (8) provide data-processing services to aid members and legislative committees in accomplishing their legislative duties." The statute also provides "By agreement with either house of the legislature or a legislative agency, the council may perform other services or functions for or on behalf of the house or agency."

responsive documents would have been created for the purpose of drawing maps.

The state legislative privilege doesn't apply for the reasons discussed above.

Finally, Texas Government Code § 323.017 also doesn't protect the disputed material from disclosure because state law doesn't create a federal privilege. Indeed, the Supreme Court rejected that argument in *Gillock*, 445 U.S. at 368 (holding that a clear evidentiary privilege enshrined in the Tennessee Constitution did not create an analogous privilege in federal criminal cases). Texas can argue that the Court should create a new privilege based on Texas Government Code § 323.017, but it is unlikely to succeed because it won't be able to demonstrate the broad-based empirical need for such a privilege in order to advance the public good. Any privilege would likely be qualified and more than overcome by the United States' interest in enforcing the Voting Rights Act.

2. During a Rule 30(b)(6) deposition of the Texas Legislative Council, the United States asked the TLC's designee, Jeffrey Archer, a number of questions about communications between legislature and the TLC. *See* Exhibit 3 (deposition excerpts). He refused to answer, citing the attorney-client privilege and legislative privilege. At some points, he also relied on the confidentiality provision in Texas Government Code § 323.017. Those privileges don't protect these deposition questions for the same reasons they don't protect documents responsive to Request for Production No. 6, as discussed immediately above.

3. Interrogatory No. 2 and Interrogatory No. 3 seek lists of people who requested certain technical reports produced by the TLC's redistricting software. *See* Exhibit 1 (U.S. discovery requests). The lists are likely to show that key personnel involved in the redistricting process were keenly focused on electoral performance and were aware of the electoral impact of the proposed maps. Texas objects that the lists are protected by the attorney-client privilege, the

work-product privilege, the legislative privilege, and privilege based on Texas Government Code § 323.017. *See* Exhibit 2 (Texas discovery responses). In addition to all of the reasons discussed above, these lists aren't protected by any work-product privilege because they are not tangible things prepared by attorneys in anticipation of litigation.

III. Summaries of Racially Polarized Voting Analyses

During a Rule 30(b)(6) deposition of the OAG, the United States discovered that Todd Giberson, an OAG employee, had prepared brief summaries of lengthy statistical analyses of racially polarized voting ("RPVA") prepared by the OAG's statistician based on data provided to the public by the Texas Legislative Council. *See* Exhibit 3 (deposition excerpts). Those summaries, rather than the lengthy statistical analyses, are what the OAG routinely provided to the map-drawers and other key staffers. The OAG has voluntarily disclosed the lengthy statistical analyses, and one summary was disclosed in the *Perez* case. Request for Production No. 3 asks for a copy of all such RPVA summaries. *See* Exhibit 1 (U.S. discovery requests). Texas now claims in its discovery responses that the summaries are protected by the attorney-client and work-product privileges. *See* Exhibit 2 (Texas discovery responses).

The attorney-client privilege doesn't apply here because the summaries don't contain any confidential communications from a client. They contain summaries of statistical analyses generated completely within the OAG from public data sources and provided by the OAG to alleged clients. While communications from an attorney to a client can be protected, they are only protected to the extent that they relate to facts conveyed in confidence by the client. *See United States v. Sayan*, 968 F.2d 55, 63 (D.C.Cir. 1992). There are no such facts in the summaries.

Similarly, the work-product doctrine doesn't protect the summaries because the timing of

their preparation (during the legislative session) and their distribution (to the map-drawers) suggests that they were prepared to aid in the legislative process – not because of anticipated litigation. But even if they were protected, Texas has waived that protection by disclosing the racially polarized voting analyses on which they're based. "Disclosure waives the privilege for those documents that are disclosed and as to other documents relating to the same subject matter so long as disclosure of the additional documents would not defeat the purpose of the work product doctrine, which is the promotion of the adversary system by safeguarding the fruits of an attorney's trial preparations from the opponent." *Elkins v. District of Columbia*, 250 F.R.D. 20, 26 (D.D.C.) (Collyer, J.) (internal quotation marks omitted).

CONCLUSION

The Court should overrule the State's objections based on the attorney-client privilege, the work-product privilege, the legislative privilege, and privilege based on Texas Government Code § 323.017.

Date: December 28, 2011

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CERTIFICATE OF SERVICE OF DISCOVERY

I hereby certify that on December 28, 2011, 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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UNITED STATES' FIRST SET OF REQUESTS FOR ADMISSIONS

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Defendants UNITED STATES OF AMERICA and ERIC J. HOLDER, JR. ask the Plaintiff STATE OF TEXAS to respond to these requests by December 23, 2011, by admitting that the statements contained in the following numbered paragraphs are true.

As required by Rule 36(a)(4) of the Federal Rules of Civil Procedure, if the State must in good faith qualify an answer or deny only part of a statement, the response must specify the part admitted and qualify or deny the rest. For example, if the State admits that a statement is true with respect to some districts listed in a paragraph but not to others, it must specifically identify those districts as to which the statement is admitted and those districts as to which the statement is denied or qualified.

REQUESTS FOR ADMISSION

1. According to the 2010 Census, the State of Texas has a total population of 25,145,561 persons, of whom 11,397,354 (45.3%) are non-Hispanic White; 9,460,921 (37.6%) are Hispanic; 2,975,739 (11.8%) are non-Hispanic Black; and 1,027,956 (4.1%) are non-Hispanic Asian.
2. According to the 2010 Census, the State of Texas has a total voting-age population (VAP) of 18,279,737, of whom 9,074,684 (49.6%) are non-Hispanic White; 6,143,144 (33.6%) are Hispanic; 2,102,474 (11.5%) are non-Hispanic Black; and 758,636 (4.2%) are non-Hispanic Asian.
3. Between the 2000 Census and the 2010 Census, the State's total population increased by 4,293,741 persons, an increase of 20.6%.
4. Between the 2000 Census and the 2010 Census, the State's voting-age population increased by 3,314,676 persons, an increase of 22.1%.

5. Between the 2000 Census and the 2010 Census, the State's non-Hispanic White population increased by 464,032 persons, an increase of 4.2%.
6. Between the 2000 Census and the 2010 Census, the non-Hispanic White proportion of the State's total population decreased from 52.4% to 45.3%.
7. Between the 2000 Census and the 2010 Census, the State's non-Hispanic White voting-age population increased by 648,518 persons, an increase of 7.7%
8. Between the 2000 Census and the 2010 Census, the non-Hispanic White proportion of the State's voting-age population decreased from 56.3% to 49.6%.
9. Between the 2000 Census and the 2010 Census, the State's Hispanic population increased by 2,791,255 persons, an increase of 41.8%.
10. Between the 2000 Census and the 2010 Census, the Hispanic proportion of the State's total population increased from 32.0% to 37.6%.
11. Between the 2000 Census and the 2010 Census, the State's Hispanic voting-age population increased by 1,860,243 persons, an increase of 43.4%
12. Between the 2000 Census and the 2010 Census, the Hispanic proportion of the State's voting-age population increased from 28.6% to 33.6%.
13. Between the 2000 Census and the 2010 Census, the State's non-Hispanic Black population increased by 576,656 persons, an increase of 24.0%.
14. Between the 2000 Census and the 2010 Census, the non-Hispanic Black proportion of the State's total population increased from 11.5% to 11.8%.
15. Between the 2000 Census and the 2010 Census, the State's non-Hispanic Black voting-age population increased by 463,301 persons, an increase of 28.3%.

16. Between the 2000 Census and the 2010 Census, the non-Hispanic Black proportion of the State's voting-age population increased from 11.0% to 11.5%.
17. Between the 2000 Census and the 2010 Census, the State's non-Hispanic Asian population increased by 433,024 persons, an increase of 72.8%.
18. Between the 2000 Census and the 2010 Census, the non-Hispanic Asian proportion of the State's total population increased from 2.8% to 4.1%.
19. Between the 2000 Census and the 2010 Census, the State's non-Hispanic Asian voting-age population increased by 321,421 persons, an increase of 73.5%.
20. Between the 2000 Census and the 2010 Census, the non-Hispanic Asian proportion of the State's voting-age population increased from 2.9% to 4.2%.
21. Non-Hispanic White persons made up 10.8% of the increase in the State's total population between the 2000 Census and the 2010 Census.
22. Non-Hispanic White persons made up 19.6% of the increase in the State's voting-age population between the 2000 Census and the 2010.
23. Hispanic persons made up 65.0% of the increase in the State's total population between the 2000 Census and the 2010 Census.
24. Hispanic persons made up 56.1% of the increase in the State's voting-age population between the 2000 Census and the 2010 Census.
25. Non-Hispanic Black persons made up 13.4% of the increase in the State's total population between the 2000 Census and the 2010 Census.
26. Non-Hispanic Black persons made up 14.0% of the increase in the State's voting-age population between the 2000 Census and the 2010 Census.

27. Non-Hispanic Asian persons made up 10.1% of the increase in the State's total population between the 2000 Census and the 2010 Census.

28. Non-Hispanic Asian persons made up 9.7% of the increase in the State's voting-age population between the 2000 Census and the 2010 Census.

29. According to the Census Bureau's 2006-2010 American Community Survey, the State of Texas has an estimated citizen voting-age population (CVAP) of 15,276,966 persons, of whom 8,938,816 (57.6%) are non-Hispanic White; 3,889,571 (25.5%) are Hispanic; 1,961,742 (12.8%) are non-Hispanic Black; and 426,108 (2.8%) are non-Hispanic Asian.

United States House of Representatives

30. The United States House of Representatives consists of 435 members apportioned among the States according to population after each decennial census. After the 2000 Census, the State of Texas was entitled to 32 representatives, and federal law then required the State to redistrict.

31. On August 4, 2006, a three-judge district court, in *LULAC v. Perry*, 2006 WL 3069542, Civ. No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006) (per curiam), adopted a redistricting plan for Texas' congressional delegation based on the 2000 Census. As a court-ordered plan, that plan was not subject to preclearance under Section 5 of the Voting Rights Act. That plan was the last plan in force or effect and is therefore the benchmark plan for purposes of this case.

32. The *LULAC v. Perry* plan is also known as Plan C100.

33. After the 2010 Census, the State of Texas was entitled to four additional representatives in Congress, for a total of 36 representatives, and federal law once again required the State to redistrict.

34. On June 24, 2011, the Texas Legislature passed Senate Bill 4, containing a new congressional redistricting plan based on the 2010 Census, and the Governor signed it on July 18, 2011.

35. The plan contained in Senate Bill 4 is the proposed plan for purposes of this case.

36. The plan contained in Senate Bill 4 is also known as Plan C185.

37. The proposed redistricting plan for the Texas delegation to the United States House of Representatives is a "standard, practice, or procedure with respect to voting" within the meaning of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c.

38. Hispanic citizens have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following seven districts in Plan C100: 15, 16, 20, 23, 27, 28, and 29.

39. Hispanic citizens will have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following seven districts in Plan C185: 15, 16, 20, 28, 29, 34 and 35.

40. Black citizens have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following three districts in Plan C100: 9, 18 and 30.

41. Black citizens will have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following three districts in Plan C185: 9, 18 and 30.

42. Minority citizens do not have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following 22 districts in Plan C100: 1 through 8, 10, 11, 12, 13, 14, 17, 19, 21, 22, 24, 25, 26, 31, and 32.

43. Minority citizens will not have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following 26 districts in Plan C185: 1 through 8, 10, 11, 12, 13, 14, 17, 19, 21 through 27, 31, 32, 33, and 36.

44. In Plan C100, proportionality in relation to the Black share of the State's citizen voting-age population would exist if Black voters formed an effective voting majority in 4 districts.

45. In Plan C100, proportionality in relation to the Hispanic share of the State's citizen voting-age population would exist if Hispanic voters formed an effective voting majority in 8 districts.

46. In Plan C100, proportionality in relation to the combined Black and Hispanic share of the State's citizen voting-age population would exist if Black and Hispanic voters formed an effective voting majority in 12 districts.

47. In Plan C185, proportionality in relation to the Black share of the State's citizen voting-age population would exist if Black voters formed an effective voting majority in 5 districts.

48. In Plan C185, proportionality in relation to the Hispanic share of the State's citizen voting-age population would exist if Hispanic voters formed an effective voting majority in 9 districts.

49. In Plan C185, proportionality in relation to the combined Black and Hispanic share of the State's citizen voting-age population would exist if Black and Hispanic voters formed an effective voting majority in 14 districts.

50. Compared to Plan C100, Plan C185 increases the whole number of seats by which Black voters are underrepresented in the State's congressional delegation in relation to the Black proportion of the State's citizen voting-age population.

51. Compared to Plan C100, Plan C185 increases the whole number of seats by which Hispanic voters are underrepresented in the State's congressional delegation in relation to the Hispanic proportion of the State's citizen voting-age population.

52. Compared to Plan C100, Plan C185 increases the whole number of seats by which Black and Hispanic voters, combined, are underrepresented in the State's congressional delegation in relation to the combined Black and Hispanic proportion of the State's citizen voting-age population.

53. In the 2010 general election for U.S. Representative in congressional district 23, Congressman Ciro D. Rodriguez, who is Hispanic, was the preferred candidate of choice of a majority of Hispanic voters.

54. In the 2008 general election for U.S. Representative in congressional district 23, Congressman Ciro D. Rodriguez, who is Hispanic, was the preferred candidate of choice of a majority of Hispanic voters.

55. In the 2006 special election for U.S. Representative in congressional district 23, Congressman Ciro D. Rodriguez, who is Hispanic, was the preferred candidate of choice of a majority of Hispanic voters.

56. In the 2002, 2004, 2006, 2008 and 2010 general elections for U.S. Representative in congressional district 27, Congressman Solomon P. Ortiz, an Hispanic, was the preferred candidate of choice of a majority of Hispanic voters.

Texas House of Representatives

57. The Texas House of Representatives consists of 150 members elected from single-member districts in even-numbered years to two-year terms

58. On November 28, 2001, in *Balderas v. Texas*, 2001 WL 34104833, Civ. No. 6:01CV158 (E.D. Tex. Nov. 28, 2001) (per curiam), a three-judge district court adopted a court-ordered redistricting plan for the Texas House of Representatives based on the 2000 Census. As a court-ordered plan, that plan was not subject to preclearance under Section 5 of the Voting Rights Act. That plan was the last plan in force or effect and is therefore the benchmark plan for purposes of this case.

59. The *Balderas* plan is also known as Plan H100.

60. On May 23, 2011, the Texas Legislature passed House Bill 150, containing a new redistricting plan for the Texas House of Representatives based on the 2010 Census, and the Governor signed it on June 17, 2011.

61. The plan contained in House Bill 150 is the proposed plan for purposes of this case.

62. The plan contained in House Bill 150 is also known as Plan H283.

63. The proposed redistricting plan for the Texas House of Representatives is a "standard, practice, or procedure with respect to voting" within the meaning of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c.

64. Compared to Plan H100, Plan H283 will not "have the effect of diminishing the ability of any citizens of the United States on account of race or color, or [membership in a language minority group], to elect their preferred candidates of choice" to the Texas House of Representatives in the following 145 districts: 1 through 32, 34, 36 through 40, 42 through 116, 118 through 148, and 150. 42 U.S.C. § 1973c(b). To the extent that minority citizens have the ability to elect their preferred candidates of choice in these districts in Plan H100, they will have the ability to do so in the corresponding districts in Plan H283. To the extent that minority citizens do not have the ability to elect their preferred candidates of choice in

these districts in Plan H100, they will not have the ability to do so in the corresponding districts in Plan H283. These districts are not "at issue" in the retrogression portion of this case.

65. Hispanic citizens have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 33 districts in Plan H100: 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90, 103, 104, 116, 117, 118, 119, 123, 124, 125, 140, 143, 145, and 148.

66. Hispanic citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 29 districts in Plan H283: 31, 34, 36, 37, 38, 39, 40, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90, 103, 104, 116, 118, 119, 123, 124, 125, 140, 143, 145, and 148.

67. Black citizens have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 12 districts in Plan H100: 22, 95, 100, 109, 110, 111, 131, 139, 141, 142, 146, and 147.

68. Black citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 12 districts in Plan H283: 22, 95, 100, 109, 110, 111, 131, 139, 141, 142, 146, and 147.

69. Minority citizens do not have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 100 districts in Plan H100: 1 through 21, 23, 24, 25, 26, 28, 29, 30, 32, 44, 45, 47, 48, 49, 50, 52 through 73, 78, 81 through 89, 91, 92, 93, 94, 96, 97, 98, 99, 101, 102, 105, 106, 107, 108, 112, 113, 114, 115, 121, 122, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 138, 144, and 150.

70. Minority citizens will not have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 105 districts in Plan H283: 1 through 21, 23, 24, 25, 26, 28, 29, 30, 32, 33, 35, 41, 44, 45, 47, 48, 49, 50, 52 through 73, 78, 81 through 89, 91, 92, 93, 94, 96, 97, 98, 99, 101, 102, 105, 106, 107, 108, 112, 113, 114, 115, 117, 121, 122, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 138, 144, 149, and 150.

71. In 2007, the Texas Legislature created the International Management District, which allows property owners within the Alief community to organize their efforts to pursue common objectives.

72. In the 2004, 2006, 2008 and 2010 general elections for State Representative in House District 149, Representative Hubert Vo, who is Asian, was the preferred candidate of choice of a majority of minority voters.

Date: December 16, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE OF DISCOVERY

I hereby certify that on December 16, 2011, I served a true and correct copy of the foregoing via electronic mail on the following counsel of record:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA and ERIC H. HOLDER, JR., in his official capacity as Attorney General of the United States, Defendants. WENDY DAVIS, *et al.*, Defendant-Intervenors, MEXICAN AMERICAN LEGISLATIVE CAUCUS, Defendant-Intervenor, GREG GONZALES, *et al.*, Defendant-Intervenors, TEXAS LEGISLATIVE BLACK CAUCUS, Defendant-Intervenor, TEXAS LATINO REDISTRICTING TASK FORCE, Defendant-Intervenor, TEXAS STATE CONFERENCE OF NAACP BRANCHES *et al.*, Defendant-Intervenors.	Civil Action No. 1:11-cv-1303 (RMC-TBG-BAH) Three-Judge Court

UNITED STATES' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendants UNITED STATES OF AMERICA and ERIC J. HOLDER, JR. request that Plaintiff STATE OF TEXAS identify and produce the documents and items requested below for inspection and copying and deliver copies to counsel for United States by December 23, 2011, as required by the Court's December 13, 2011 scheduling order. This request is continuing in nature as provided by Rule 26(e) of the Federal Rules of Civil Procedure.

INSTRUCTIONS

1. In responding to these requests, please produce all responsive documents in the possession, custody, or control of the State of Texas, or documents known to be available to the State, regardless of whether such documents are possessed directly by the State or its past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on behalf of the State or subject to the State's control.

2. All references in these requests to an individual person or officer include any and all past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, predecessors in office or position, and all other persons or entities acting on behalf of or under control of such a person.

3. All references in these requests to any corporation, governmental entity, or any other type of organization include its past and present officers, executives, directors, employees, agents, representatives, attorneys, consultants, contractors and all other persons acting or purporting to act on behalf of such an organization.

4. All documents shall be organized to correspond to each request below or be produced in the order as they are kept in the ordinary course of business. For all items produced, the names of the person from whom such files were provided shall be identified.

5. Please respond to each request separately and label or otherwise designate which documents are responsive to each request. If a document is responsive to more than one request, please identify each of the requests as to which that document is responsive.

6. No portion of a document request may be left unanswered because an objection is interposed to another part of that request. If Texas objects to any portion of a document request, the State must state with specificity the grounds of any objections. Any ground not stated will be waived.

7. All documents produced must include all attachments and enclosures.

8. To the extent the identification of any document is objected to or otherwise withheld, please set forth the basis for objection. Whenever an objection is asserted based on privilege, please state the basis or bases for the claimed privilege and identify the information or document as to which the privilege is asserted. For any document as to which a privilege is asserted, please state the type of document (*e.g.*, letter, memorandum, correspondence, etc.); the title, date, authors, signatories, senders, and recipients of the document; the general subject matter of the document; the recipients of any copies of the document; the names appearing on any circulation lists associated with the document; and the factual basis for the claim of privilege in sufficient detail to permit the Court to ascertain the validity of any such claim.

9. If the State contends that it would be unreasonably burdensome to obtain and provide all of the documents called for in response to any portion of these requests, then in response to each such request Texas shall:

(a) Produce all documents and requested information that may be provided without undertaking what the State contends to be an unreasonable burden; and

(b) Set forth the specific steps that would be required to obtain and produce all additional responsive documents and as explain why the State contends that each of these additional steps would be unreasonably burdensome.

10. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

11. In the event that a responsive document has been destroyed or has passed out of the State's custody or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

12. These requests are continuing in nature. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, the State of Texas's attorneys are under a continuing duty to supplement their responses and production with documents obtained after the service of a response to these requests. Supplemental responses shall be served and additional documents made available promptly upon discovery of such information.

13. Unless otherwise specified, all document requests concern the period of time from January 1, 2010, to the present.

METHODS OF PRODUCTION

Documents available only in paper or hardcopy format shall be scanned into electronic format and produced via a secure FTP site.

DEFINITIONS

1. "The State," "Texas," or "Plaintiff" means the State of Texas.

2. "Redistricting" means any consideration of the alignment of district boundaries for the Texas House of Representatives and the Texas delegation to the United States House of Representatives. It does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

3. "Census" means any data released by the United States Census Bureau, including but not limited to the decennial census and the American Community Survey.

4. "Outside consultant" means any individual not employed by the Texas House of Representatives or the Texas Senate who provides advice or counsel without entering into an attorney/client relationship with the advisee.

4. "Document" is intended to have the broadest permissible meaning under the Federal Rules of Civil Procedure and refers to tangible things now or ever in the possession or control of the State of Texas. By way of example, "Document" includes, but is not limited to, computer discs, tapes, printouts and emails, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

REQUESTS FOR PRODUCTION

1. Each RED report and PAR report produced by or available from the Texas Legislative Council concerning redistricting plans C100, H100, C185, and H283. Jeffrey Archer discussed these reports during the October 12, 2011, deposition of the Texas Legislative Council. *See* Archer Dep. at 32-33, Oct. 12, 2011.

2. The bivariate racially polarized voting analysis compiled by the Texas Office of the Attorney General concerning redistricting plans C100, H100, C185, and H283. Joshua Zahn

identified this analysis during the October 18, 2011 deposition of the Office of the Attorney General of Texas. *See* Zahn Dep. at 70-73, Oct. 18, 2011.

3. All documents prepared by the Office of the Attorney General summarizing any racially polarized voting report, all documents transmitting such summaries, and all documents listing recipients of such summaries. Todd Giberson identified these summaries during the October 18, 2011 deposition of the Office of the Attorney General of Texas. *See* Giberson Dep. at 19-21.

4. All contracts or agreements between Representative Joe Straus, the Texas House of Representatives, or any agent thereof and the law firm of Baker Botts L.L.P., Thomas R. Phillips, or any agent thereof. Lisa Kaufman of the Office of the Speaker of the Texas House of Representatives and Justice Phillips identified such an agreement during the October 21, 2011 deposition of Representative Todd Hunter. *See* Hunter Dep. at 92-94.

5. All documents concerning, addressing, or mentioning redistricting or the census exchanged between Jose Aliseda, Doug Davis, Ryan Downton, Linda Harper-Brown, John Garza, Harvey Hilderbran, Todd Hunter, Gerardo Interiano, Ken Legler, Dee Margo, Eric Opiela, Aaron Peña, Connie Scott, Wayne Smith, Burt Solomons, Joe Straus, Raul Torres, or Beverly Woolley and Mike Baselice, Tom Hofeller, Mike Hull, Steve Ray, Scott Sims, or any other outside consultant.

6. All documents concerning, addressing, or mentioning redistricting or the census exchanged between Jose Aliseda, Roberto Alonzo, Carol Alvarado, Joaquin Castro, Jimmie Don Aycock, Dan Branch, Rob Eissler, Doug Davis, Ryan Downton, John Garza, Charlie Geren, Patricia Harless, Linda Harper-Brown, Harvey Hilderbran, Todd Hunter, Gerardo Interiano, James Keffer, Ken Legler, Jerry Madden, Dee Margo, Eric Opiela, Aaron Peña, Larry Phillips,

Joe Pickett, Connie Scott, Wayne Smith, Burt Solomons, Joe Straus, Raul Torres, Marc Veasey, Mike Villarreal, or Beverly Woolley and the Texas Legislative Council.

7. All documents concerning, addressing, or mentioning redistricting or the census exchanged between Jose Aliseda, Roberto Alonzo, Carol Alvarado, Jimmie Don Aycock, Dan Branch, Joaquin Castro, Rob Eissler, John Garza, Charlie Geren, Patricia Harless, Linda Harper-Brown, Harvey Hilderbran, Todd Hunter, James Keffer, Ken Legler, Jerry Madden, Dee Margo, Eric Opiela, Aaron Peña, Larry Phillips, Joe Pickett, Connie Scott, Wayne Smith, Burt Solomons, Joe Straus, Raul Torres, Marc Veasey, Mike Villarreal, or Beverly Woolley and Gerardo Interiano, Ryan Downton, or Doug Davis.

8. All documents responsive to, identified in, and/or relied upon in responding to any interrogatory in the United States' First Set of Interrogatories.

9. All documents responsive to, identified in, and/or relied upon in responding to any request for admission served upon you by the United States in relation to this action.

By:

Date: December 16, 2011

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CERTIFICATE OF SERVICE OF DISCOVERY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA and ERIC H. HOLDER, JR., in his official capacity as Attorney General of the United States, Defendants. WENDY DAVIS, *et al.*, Defendant-Intervenors, MEXICAN AMERICAN LEGISLATIVE CAUCUS, Defendant-Intervenor, GREG GONZALES, *et al.*, Defendant-Intervenors, TEXAS LEGISLATIVE BLACK CAUCUS, Defendant-Intervenor, TEXAS LATINO REDISTRICTING TASK FORCE, Defendant-Intervenor, TEXAS STATE CONFERENCE OF NAACP BRANCHES *et al.*, Defendant-Intervenors.	Civil Action No. 1:11-cv-1303 (RMC-TBG-BAH) Three-Judge Court

UNITED STATES' FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendants UNITED STATES OF AMERICA and ERIC J. HOLDER, JR. request that Plaintiff STATE OF TEXAS answer the following interrogatories, separately and fully, in writing and under oath, and serve a copy of the answers and objections, if any on counsel for United States by December 23, 2011, as required by the Court's December 13, 2011 scheduling order. These interrogatories shall be deemed continuing in nature, to the extent permitted under the Federal Rules of Civil Procedure.

DEFINITIONS AND INSTRUCTIONS

1. "The State," "Texas," or "Plaintiff" means the State of Texas.

2. "Redistricting" means any consideration of the alignment of district boundaries for the Texas House of Representatives and the Texas delegation to the United States House of Representatives. It does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

3. "Person," unless otherwise specified, shall mean and include natural persons, corporations, firms, partnerships, proprietorships, associations, trusts, estates, government bodies, government agencies and commissions, and any other organization or entity.

4. Whenever reference is made to a person, it includes any and all of such persons' predecessors in office or position, past or present principals, employees, agents, attorneys, consultants, contractors, and other representatives.

5. "Document" is intended to have the broadest permissible meaning under the Federal Rules of Civil Procedure and refers to tangible things now or ever in your possession. By way of example, "Document" includes, but is not limited to, computer discs, tapes, printouts and e-mails, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic,

machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

6. Whenever the identity of a document is requested or provided in response to any interrogatory, that response shall include the nature of the document (*e.g.*, memorandum, correspondence, report, etc.); the title, date, authors, signatories, senders, and recipients of such document; a general description of such document sufficient to permit it to be identified with particularity in a request for production of documents or a subpoena; the present or last known location of such document; and the identity of the person or persons having custody, control, or possession thereof.

7. Whenever a description of a statement or communication is requested in these interrogatories, your response shall include:

a) the date of the statement or communication;

b) the identity of each person making or participating in the statement or communication and each person who was present; and

c) a description of what was said or the substance of the statement or communication.

8. To the extent the identification of any document is objected to or otherwise withheld, please set forth the basis for objection. Whenever an objection is asserted based on privilege, please state the basis or bases for the claimed privilege and identify the information or document as to which the privilege is asserted. For any document as to which a privilege is asserted, please state the type of document (*e.g.*, letter, memorandum, correspondence, etc.); the title, date, authors, signatories, senders, and recipients of the document; the general subject matter of the

document; the recipients of any copies of the document; the names appearing on any circulation lists associated with the document; and the factual basis for the claim of privilege in sufficient detail to permit the Court to ascertain the validity of any such claim.

9. Unless otherwise specified, the time frame, for purposes of these interrogatories, is the period from January 1, 2010, through the present and continuing through the end of trial.

INTERROGATORIES

1. List all RED and PAR reports produced by or available from the Texas Legislative Council. Jeffrey Archer discussed these lists during the October 12, 2011, deposition of the Texas Legislative Council. *See* Archer Dep. at 32-33, Oct. 12, 2011.

2. Identify each person who requested that the Texas Legislative Council produce a custom PAR report concerning redistricting of the Texas House of Representatives or the Texas delegation to the U.S. House of Representatives.

3. Identify each person who requested a standard package of reports concerning redistricting and identify the contents of that standard package of reports. To the extent that different individuals had different standard packages of reports, identify the contents of each requestor's standard package of reports. Jeffrey Archer discussed these standard packages during the October 12, 2011, deposition of the Texas Legislative Council. *See* Archer Dep. at 32, Oct. 12, 2011.

4. Identify each person to whom the Office of the Attorney General sent summaries of any racially polarized voting report concerning redistricting and the district or districts addressed in the summaries sent to each individual. Todd Giberson identified these summaries during the October 18, 2011 deposition of the Office of the Attorney General of Texas. *See* Giberson Dep. at 19-21.

5. Identify each document or other exhibit that the State of Texas may offer at the trial of this case.

6. State all facts and identify all documents that support each denial or qualification contained in the State's response to the United States' First Set of Requests for Admissions.

By:

Date: December 16, 2011

RONALD C. MACHEN, JR.
United States Attorney
District of Columbia

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

/s/ Timothy Mellett
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CERTIFICATE OF SERVICE OF DISCOVERY

I hereby certify that on December 16, 2011, I served a true and correct copy of the foregoing via electronic mail on the following counsel of record:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA, and ERIC H. HOLDER, JR. in his official capacity as Attorney General of the United States, Defendants, WENDY DAVIS, *et al.*, Defendant-Intervenors.	)	Case No. 1:11-CV-01303 (RMC-TBG-BAH) [Three-Judge Panel]

PLAINTIFF'S OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES

TO: Defendants United States of America and Eric H. Holder, Jr. by and through their attorney of record, Timothy F. Mellett, U.S. Department of Justice, Voting Rights Division, 950 Pennsylvania Avenue, NW Room 7203, Washington, DC 20530.

Plaintiff State of Texas ("Plaintiff") hereby files this its Objections and Responses to Defendants' First Set of Interrogatories, pursuant to Federal Rule of Civil Procedure 33.

GENERAL OBJECTIONS

Plaintiff objects to each and every interrogatory: (1) insofar as it seeks information not in its possession, custody, or control; (2) insofar as it seeks information that was prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client communications, or are otherwise privileged; (3) insofar as it seeks information which is/are publicly available or otherwise equally available and/or uniquely or equally available from third parties; (4) insofar as it seeks information that do/does not specifically refer to the events which

are the subject matter of this litigation; and (5) insofar as it seeks information which is neither relevant to the subject matter of this litigation, nor reasonably calculated to lead to the discovery of admissible evidence.

The responses and objections contained herein are made on the basis of information now known to Plaintiff and are made without waiving any further objections to or admitting the relevancy or materiality of any of the information requested. Plaintiff's investigation, discovery and preparation for proceedings are continuing and all answers are given without prejudice to Plaintiff's right to introduce or object to the discovery of any documents, facts or information discovered after the date hereof.

Plaintiff will provide its responses based on terms as they are commonly understood, and consistent with the Federal Rules of Civil Procedure. Plaintiff objects to and will refrain from extending or modifying any words employed in the requests to comport with expanded definitions or instructions.

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

List all RED and PAR reports produced by or available from the Texas Legislative Council. Jeffrey Archer discussed these lists during the October 12, 2011, deposition of the Texas Legislative Council. *See* Archer Dep. at 32-33, Oct. 12, 2011.

RESPONSE: Plaintiff objects to this interrogatory to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to the extent the interrogatory seeks the production of information or documents that are not relevant or likely to lead to the discovery of admissible evidence. Plaintiff objects to the extent this interrogatory is duplicative of other discovery requests.

Subject to and without waiving the foregoing objections, Plaintiff states that pursuant to Federal Rule of Civil Procedure 33(d), the requested information may be derived from documents that were produced in response to Request for Production No. 1 and the burden of deriving or ascertaining the answer to this interrogatory is the same for Plaintiff as it is for Defendants.

INTERROGATORY NO. 2:

Identify each person who requested that the Texas Legislative Council produce a custom PAR report concerning redistricting of the Texas House of Representatives or the Texas delegation to the U.S. House of Representatives.

RESPONSE: Plaintiff objects to this interrogatory to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to the extent the interrogatory seeks the production of information or documents that are not relevant or likely to lead to the discovery of admissible evidence. Plaintiff objects to the extent this interrogatory is duplicative of other discovery requests. Plaintiff objects to the extent this request calls for the disclosure of information that implicates the attorney-client or work product privileges, the legislative privilege, and/or are protected from disclosure by Texas Government Code § 323.017.

Subject to and without waiving the foregoing objections, Plaintiff states that pursuant to Federal Rule of Civil Procedure 33(d), the requested information may be derived from documents have been produced on the FTP site in the folder entitled "Responses to DOJ Interrogatory Nos. 2 and 3" and the burden of deriving or ascertaining the answer to this interrogatory is the same for Plaintiff as it is for Defendants. These documents reflect business records maintained by the Texas Legislative Council regarding members of the public who contacted the Council and/or requested reports.

INTERROGATORY NO. 3:

Identify each person who requested a standard package of reports concerning redistricting and identify the contents of that standard package of reports. To the extent that different individuals had different standard packages of reports, identify the contents of each requestor's standard package of reports. Jeffrey Archer discussed these standard packages during the October 12, 2011, deposition of the Texas Legislative Council. *See* Archer Dep. at 32, Oct. 12, 2011.

RESPONSE: Plaintiff objects to this interrogatory to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to the extent the interrogatory seeks the production of information or documents that are not relevant or likely to lead to the discovery of admissible evidence. Plaintiff objects to the extent this interrogatory is duplicative of other discovery requests. Plaintiff objects to the extent this request calls for the disclosure of information that implicates the attorney-client or work product privileges, the legislative privilege, and/or are protected from disclosure by Texas Government Code § 323.017.

Subject to and without waiving the foregoing objections, Plaintiff states that pursuant to Federal Rule of Civil Procedure 33(d), the requested information may be derived from documents have been produced on the FTP site in the folder entitled "Responses to DOJ Interrogatory Nos. 2 and 3" and the burden of deriving or ascertaining the answer to this interrogatory is the same for Plaintiff as it is for Defendants.

INTERROGATORY NO. 4:

Identify each person to whom the Office of the Attorney General sent summaries of any racially polarized voting report concerning redistricting and the district or districts addressed in the summaries sent to each individual. Todd Giberson identified these summaries during the October 18, 2011 deposition of the Office of the Attorney General of Texas. *See* Giberson Dep. at 19-21.

RESPONSE: Plaintiff objects to this interrogatory to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to the extent the interrogatory seeks the production of information or documents that are not relevant or likely to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Plaintiff states as follows: Plaintiff provided summaries of racially polarized voting reports for various House and Congressional plans considered by the Texas Legislature to Gerardo Interiano, Ryan Downton, Doug Davis, and Bonnie Bruce.

INTERROGATORY NO. 5:
Identify each document or other exhibit that the State of Texas may offer at the trial of this case.

RESPONSE: Plaintiff objects to this interrogatory to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to this interrogatory because it is premature in light of the fact that discovery is still ongoing. Plaintiff will identify such information pursuant to the court's scheduling order requiring the parties to exchange exhibit lists.

INTERROGATORY NO. 6:

State all facts and identify all documents that support each denial or qualification contained in the State's response to the United States' First Set of Requests for Admissions.

RESPONSE: Plaintiff objects to this interrogatory to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to this interrogatory because it contains multiple subparts. Defendants have served Plaintiff with 72 requests for admissions, some of which are compound requests and contain multiple subparts. Plaintiff objects because Defendants have exceeded the maximum number of interrogatories in this request. Plaintiff objects to the extent the interrogatory seeks the production of information or documents that are not relevant or likely to lead to the discovery of admissible evidence.

a. Request for Admission No. 1:

    1. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show the non-Hispanic White population of Texas is 11,397,345.

2. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show the non-Hispanic Black population is 2,886,825.
3. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, 11.5% of the Texas population is non-Hispanic Black, the non-Hispanic Asian population is 948,426, and 3.8% of the Texas population is non-Hispanic Asian.
4. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show the non-Hispanic Asian population is 948,426.
5. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, 3.8% of the Texas population is non-Hispanic Asian.

b. Request for Admission No. 2:

6. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show the non-Hispanic Black VAP is 2,076,282.
7. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show that 11.4% of the total Texas VAP is non-Hispanic Black.
8. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show the non-Hispanic Asian VAP is 716,968.
9. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show that 3.9% of the total Texas VAP is non-Hispanic Asian.

c. Request for Admission No. 13:

10. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show Texas's non-Hispanic Black population increased 522,570.
11. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show Texas's non-Hispanic Black population increased 22.1%.

d. Request for Admission No. 14:

12. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show that the non-Hispanic Black proportion of Texas's total population increased from 11.3% to 11.5%.

e. Request for Admission No. 15:

13. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show Texas's non-Hispanic Black voting age population increased by 444,834 persons.
14. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show Texas's non-Hispanic Black voting age population increased 27.3%.

f. Request for Admission No. 16:

15. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census Data show that the non-Hispanic Black proportion of the State's voting-age population increased from 11.0% to 11.6% between the 2000 Census and the 2010 Census.

g. Request for Admission No. 17:

16. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census data show that the State's non-Hispanic Asian population increased by 402,277 persons.
17. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census data show that the State's non-Hispanic Asian population increased by 71.5%.

h. Request for Admission No. 18:

18. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census data show that the non-Hispanic Asian proportion of the State's total population increased from 2.7% to 3.8%.

i. Request for Admission No. 19:

19. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census data show that the State's non-Hispanic Asian voting-age population increased by 306,411 persons.
20. According to information available from the Census Website, http://2010.census.gov/news/releases/operations/cb11-cn37.html, the 2010 Census data show that the State's non-Hispanic Asian voting-age population increased by 73.0%.

j. Request for Admission No. 37: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

k. Request for Admission No. 38: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

l. Request for Admission No. 39: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

m. Request for Admission No. 40: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

n. Request for Admission No. 41: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

o. Request for Admission No. 42: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

p. Request for Admission No. 43: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

q. Request for Admission No. 44: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

r. Request for Admission No. 45: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

s. Request for Admission No. 46: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

t. Request for Admission No. 47: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

u. Request for Admission No. 48: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

v. Request for Admission No. 49: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

w. Request for Admission No. 50: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

x. Request for Admission No. 51: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

y. Request for Admission No. 52: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

z. Request for Admission No. 53: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

aa. Request for Admission No. 54: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

bb. Request for Admission No. 55: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

cc. Request for Admission No. 56: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

dd. Request for Admission No. 63: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

ee. Request for Admission No. 64: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

ff. Request for Admission No. 65: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

gg. Request for Admission No. 66: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

hh. Request for Admission No. 67: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

ii. Request for Admission No. 68: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

jj. Request for Admission No. 69: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

kk. Request for Admission No. 70: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

ll. Request for Admission No. 72: Defendant has exceeded the maximum number of interrogatories available under Federal Rule of Civil Procedure 33(a). Plaintiff therefore objects to this interrogatory and declines to answer it.

Dated: December 23, 2011

Respectfully Submitted,

FOR THE PLAINTIFF:

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Attorney General of Texas

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First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil Litigation

DAVID C. MATTAX
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/s/ David J. Schenck
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Attorneys for the State of Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via email to the following parties on December 23, 2011:

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/s/ David J. Schenck
DAVID J. SCHENCK
Deputy Attorney General for Legal Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:11-CV-01303
	)	(RMC-TBG-BAH)
UNITED STATES OF AMERICA,	)	[Three-Judge Panel]
and ERIC H. HOLDER, JR. in his	)	
official capacity as Attorney General	)	
of the United States,	)	
	)	
Defendants,	)	
	)	
WENDY DAVIS, *et al.*,	)	
	)	
Defendant-Intervenors.	)	

PLAINTIFF'S OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST REQUEST FOR PRODUCTION

TO: Defendants United States of America and Eric H. Holder, Jr. by and through their attorney of record, Timothy F. Mellett, U.S. Department of Justice, Voting Rights Division, 950 Pennsylvania Avenue, NW Room 7203, Washington, DC 20530.

Plaintiff State of Texas ("Plaintiff"), pursuant to Federal Rule of Civil Procedure 34(a), submits these Objections and Responses to Defendants' First Request for Production.

GENERAL OBJECTIONS

1. Plaintiff objects to the Requests to the extent that they call for the production of documents protected by the attorney-client privilege, the work-product privilege, or any other privilege. The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Plaintiff reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced.

2. Plaintiff objects to the Requests as seeking the production of irrelevant documents not reasonably calculated to lead to the discovery of admissible or relevant evidence.

3. Plaintiff objects to the Requests to the extent they call for documents or information not in Plaintiff's possession, custody or control, or otherwise already available to Defendants.

4. Plaintiff submits these responses and objections without conceding the relevancy or materiality of the subject matter of any request or of any document, or that any responsive materials exist, and without prejudice to all objections to the use of any document or information provided in response.

5. Plaintiff's responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiff's characterization of any facts, circumstances, or legal obligations. Plaintiff reserves the right to contest any such characterization as inaccurate. Plaintiff also objects to the Requests to the extent they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

6. Plaintiff objects to the production of electronic or magnetic data responsive to the Requests on the grounds that it is unduly burdensome.

7. Plaintiff reserves the right to supplement its responses, and to make further objections, as additional information and documents are obtained.

OBJECTIONS AND RESPONSES TO REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Each RED report and PAR report produced by or available from the Texas Legislative Council concerning redistricting plans C100, H100, C185, and H283. Jeffrey Archer discussed these reports during the October 12, 2011, deposition of the Texas Legislative Council. *See* Archer Dep. at 32-33, Oct. 12, 2011.

RESPONSE:

Plaintiff objects to this request to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to the extent the request seeks the production of documents that are not relevant or likely to lead to the discovery of admissible evidence. Plaintiff further objects to this request because it is duplicative of documents that have previously been produced to Defendant.

Subject to and without waiving the foregoing objections, Plaintiff states that it has already produced relevant and non-privileged documents that are responsive to this request. Please see the documents that were submitted with Plaintiff's informal submission for preclearance to the Department of Justice. Plaintiff will produce other relevant, non-privileged documents that are responsive to this request. Plaintiff will make such documents available on the FTP site in the folder entitled "Responses to DOJ RFP #1."

REQUEST FOR PRODUCTION NO. 2:

The bivariate racially polarized voting analysis compiled by the Texas Office of the Attorney General concerning redistricting plans C100, H100, C185, and H283. Joshua Zahn identified this analysis during the October 18, 2011 deposition of the Office of the Attorney General of Texas. *See* Zahn Dep. at 70-73, Oct. 18, 2011.

RESPONSE:

Plaintiff objects to this request to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to the extent the request seeks the production of documents that are not relevant or likely to lead to the discovery of admissible evidence. Plaintiff further objects because this request is not limited in time or scope to the facts of this case. Plaintiff also objects to the extent that this request calls for the production of attorney-client and/or work-product privileged information. Plaintiff further objects to this request because it is duplicative of documents that have previously been produced to Defendant.

Subject to and without waiving the foregoing objections, Plaintiff states that it has already produced all relevant and non-privileged documents that are responsive to this request. Please see the FTP site in the folder entitled "OAG Racially Polarized Voting Reports."

REQUEST FOR PRODUCTION NO. 3:

All documents prepared by the Office of the Attorney General summarizing any racially polarized voting report, all documents transmitting such summaries, and all documents listing recipients of such summaries. Todd Giberson identified these summaries during the October 18, 2011 deposition of the Office of the Attorney General of Texas. *See* Giberson Dep. at 19-21.

RESPONSE:

Plaintiff objects to this request to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to the extent the request seeks the production of documents that are not relevant or likely to lead to the discovery of admissible evidence. Plaintiff further objects because this request is not limited in time or scope to the facts of this case. Plaintiff also objects to the extent that this request calls for the production of attorney-client and/or work-product privileged information. Plaintiff further objects to this request because it is duplicative of documents that have previously been produced to Defendant.

Subject to and without waiving the foregoing objections, Plaintiff states that it has produced a racially polarized voting analysis summary that related to a plan that was considered by the Legislature during the session. Please see Exhibit 5 of the Deposition of Gerardo Interiano. To the extent that any other racially polarized voting analysis summaries exist, they are protected by the attorney-client and work product privileges.

REQUEST FOR PRODUCTION NO. 4:

All contracts or agreements between Representative Joe Straus, the Texas House of Representatives, or any agent thereof and the law firm of Baker Botts L.L.P., Thomas R. Phillips, or any agent thereof. Lisa Kaufman of the Office of the Speaker of the Texas House of Representatives and Justice Phillips identified such an agreement during the October 21, 2011 deposition of Representative Todd Hunter. *See* Hunter Dep. at 92-94.

RESPONSE:

Subject to and without waiving the foregoing general objections, Plaintiff will produce relevant, non-privileged documents that are responsive to this request. Plaintiff will make such documents available on the FTP site in the folder entitled "Response to DOJ RFP #4."

REQUEST FOR PRODUCTION NO. 5:

All documents concerning, addressing, or mentioning redistricting or the census exchanged between Jose Aliseda, Doug Davis, Ryan Downton, Linda Harper-Brown, John Garza, Harvey Hilderbran, Todd Hunter, Gerardo Interiano, Ken Legler, Dee Margo, Eric Opiela, Aaron Peña, Connie Scott, Wayne Smith, Burt Solomons, Joe Straus, Raul Torres, or Beverly Woolley and Mike Baselice, Tom Hofeller, Mike Hull, Steve Ray, Scott Sims, or any other outside consultant. Plaintiff objects to this request to the extent such documents are not in its possession, custody, or control.

RESPONSE:

Plaintiff objects to this request to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to the extent the request seeks the production of documents that are not relevant or likely to lead to the discovery of admissible evidence. Plaintiff further objects because this request is not limited in time or scope to the facts of this case.

Subject to and without waiving the foregoing general objections, Plaintiff will produce relevant, non-privileged documents that are responsive to this request. Plaintiff will make such documents available on the FTP site in the folder entitled "Response to DOJ RFP #5."

REQUEST FOR PRODUCTION NO. 6:

All documents concerning, addressing, or mentioning redistricting or the census exchanged between Jose Aliseda, Roberto Alonzo, Carol Alvarado, Joaquin Castro, Jimmie Don Aycock, Dan Branch, Rob Eissler, Doug Davis, Ryan Downton, John Garza, Charlie Geren, Patricia Harless, Linda Harper-Brown, Harvey Hilderbran, Todd Hunter, Gerardo Interiano, James Keffer, Ken Legler, Jerry Madden, Dee Margo, Eric Opiela, Aaron Peña, Larry Phillips, Joe Pickett, Connie Scott, Wayne Smith, Burt Solomons, Joe Straus, Raul Torres, Marc Veasey, Mike Villarreal, or Beverly Woolley and the Texas Legislative Council.

RESPONSE:

Plaintiff objects to this request to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to the extent the request seeks the production of documents that are not relevant or likely to lead to the discovery of admissible evidence. Plaintiff further objects because this request is not limited in time or scope to the facts of this case. Plaintiff objects to this request to the extent such documents are not in its possession, custody, or control.Plaintiff also objects to the extent that this request calls for the production of attorney-client and/or work-product privileged information. Plaintiff objects to the extent this request calls for the production of documents that implicate legislative privilege and are protected from disclosure by Texas Government Code § 323.017.

REQUEST FOR PRODUCTION NO. 7:

All documents concerning, addressing, or mentioning redistricting or the census exchanged between Jose Aliseda, Roberto Alonzo, Carol Alvarado, Jimmie Don Aycock, Dan Branch, Joaquin Castro, Rob Eissler, John Garza, Charlie Geren, Patricia Harless, Linda Harper-Brown, Harvey Hilderbran, Todd Hunter, James Keffer, Ken Legler, Jerry Madden, Dee Margo, Eric Opiela, Aaron Peña, Larry Phillips, Joe Pickett, Connie Scott, Wayne Smith, Burt Solomons, Joe Straus, Raul Torres, Marc Veasey, Mike Villarreal, or Beverly Woolley and Gerardo Interiano, Ryan Downton, or Doug Davis.

RESPONSE:

Plaintiff objects to this request to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to the extent the request seeks the production of documents that are not relevant or likely to lead to the discovery of admissible evidence. Plaintiff further objects because this request is not limited in time or scope to the facts of this case. Plaintiff objects to this request to the extent such documents are not in its possession, custody, or control. Plaintiff also objects to the extent that this request calls for the production of attorney-client and/or work-product privileged information. Plaintiff objects to the extent this request calls for the production of documents that implicate legislative privilege.

REQUEST FOR PRODUCTION NO. 8:

All documents responsive to, identified in, and/or relied upon in responding to any interrogatory in the United States' First Set of Interrogatories.

RESPONSE:

Plaintiff objects to this request to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to the extent the request seeks the production of documents that are not relevant or likely to lead to the discovery of admissible evidence. Plaintiff further objects because this request is not limited in time or scope to the facts of this case. Plaintiff also objects to the extent that this request calls

for the production of attorney-client and/or work-product privileged information. Plaintiff objects to the extent this request calls for the production of documents that implicate legislative privilege and/or are protected from disclosure by Texas Government Code § 323.017. Plaintiff objects to this request to the extent such documents are not in its possession, custody, or control.

Subject to and without waiving the foregoing objections, Plaintiff directs Defendants to its informal submission for preclearance submitted to the Department of Justice, the expert report of Dr. John Alford, data relied upon by Dr. Alford, all depositions in this case, its motion for summary judgment, its reply in support of its motion for summary judgment and supporting exhibits, and all documents it is producing in response to these requests for production for relevant and non-privileged documents that are responsive to this request.

REQUEST FOR PRODUCTION NO. 9:

All documents responsive to, identified in, and/or relied upon in responding to any request for admission served upon you by the United States in relation to this action.

RESPONSE:

Plaintiff objects to this request to the extent the information sought is overly broad, unduly burdensome, vague, ambiguous, and not reasonably specific. Plaintiff objects to the extent the request seeks the production of documents that are not relevant or likely to lead to the discovery of admissible evidence. Plaintiff further objects because this request is not limited in time or scope to the facts of this case. Plaintiff also objects to the extent that this request calls for the production of attorney-client and/or work-product privileged information. Plaintiff objects to the extent this request calls for the production of documents that implicate legislative privilege and/or are protected from disclosure by Texas Government Code § 323.017. Plaintiff objects to this request to the extent such documents are not in its possession, custody, or control.

Subject to and without waiving the foregoing objections, Plaintiff directs Defendants to its informal submission for preclearance submitted to the Department of Justice, the expert report of Dr. John Alford, data relied upon by Dr. Alford, all depositions in this case, its motion for summary judgment, its reply in support of its motion for summary judgment and supporting exhibits, and all documents it is producing in response to these requests for production for relevant and non-privileged documents that are responsive to this request.

Dated: December 23, 2011

Respectfully Submitted,

FOR THE PLAINTIFF:

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Attorney General of Texas

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/s/ David J. Schenck
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via email to the following parties on December 23, 2011:

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/s/ David J. Schenck
DAVID J. SCHENCK
Deputy Attorney General for Legal Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:11-CV-01303
	)	(RMC-TBG-BAH)
UNITED STATES OF AMERICA,	)	[Three-Judge Panel]
and ERIC H. HOLDER, JR. in his	)	
official capacity as Attorney General	)	
of the United States,	)	
	)	
Defendants,	)	
	)	
WENDY DAVIS, *et al.*,	)	
	)	
Defendant-Intervenors.	)	

PLAINTIFF'S OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION

TO: Defendants United States of America and Eric H. Holder, Jr. by and through their attorney of record, Timothy F. Mellett, U.S. Department of Justice, Voting Rights Division, 950 Pennsylvania Avenue, NW Room 7203, Washington, DC 20530.

Plaintiff State of Texas ("Plaintiff") hereby files this its Objections and Responses to Defendants' First Set of Requests for Admission, pursuant to Pursuant to Federal Rule of Civil Procedure 36.

OBJECTIONS AND RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

According to the 2010 Census, the State of Texas has a total population of 25,145,561 persons, of whom 11,397,354 (45.3%) are non-Hispanic White; 9,460,921 (37.6%) are Hispanic; 2,975,739 (11.8%) are non-Hispanic Black; and 1,027,956 (4.1%) are non-Hispanic Asian.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff responds as follows:

Plaintiff admits that the total population of Texas is 25,145,561. Plaintiff denies that the non-Hispanic White population of Texas is 11,397,354. The 2010 Census Data show the non-Hispanic White population of Texas to 11,397,345. Plaintiff admits that 45.3% of the Texas population is non-Hispanic White. Plaintiff admits that the Hispanic population of Texas is 9,460,921, which equals 37.6% of the Texas population. Plaintiff denies that the non-Hispanic Black population of Texas is 2,975,739. The 2010 Census Data show the non-Hispanic Black population to be 2,886,825. Plaintiff denies that 11.8% of the Texas population is non-Hispanic Black. The 2010 Census Data show that 11.5% of the Texas population is non-Hispanic Black. Plaintiff denies that the non-Hispanic Asian population of Texas is 1,027,956. The 2010 Census Data show the non-Hispanic Asian population to be 948,426. Plaintiff denies that 4.1% of the Texas Population is non-Hispanic Asian. The 2010 Census Data show that 3.8% of the Texas population is non-Hispanic Asian.

REQUEST FOR ADMISSION NO. 2:

According to the 2010 Census, the State of Texas has a total voting-age population (VAP) of 18,279,737, of whom 9,074,684 (49.6%) are non-Hispanic White; 6,143,144 (33.6%) are Hispanic; 2,102,474 (11.5%) are non-Hispanic Black; and 758,636 (4.2%) are non-Hispanic Asian.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff responds as follows:

Plaintiff admits that Texas has a VAP of 18,279,737. Plaintiff admits that the non-Hispanic White VAP of Texas is 9,074,684, which equals 49.6% of the total Texas VAP. Plaintiff admits that the Hispanic VAP of Texas is 6,143,144, which equals 33.6% of the total Texas VAP. Plaintiff denies that the non-Hispanic Black VAP of Texas is 2,102,474. The 2010 Census Data show the non-Hispanic Black VAP to be 2,076,282. Plaintiff denies that 11.5% of the total Texas VAP is non-Hispanic Black. The 2010 Census Data show that 11.4% of the total Texas VAP is non-Hispanic Black. Plaintiff denies that the non-Hispanic Asian VAP of Texas is 758,636. The 2010 Census Data show the non-Hispanic Asian VAP to be 716,968. Plaintiff denies that 4.2% of the total Texas VAP is non-Hispanic Asian. The 2010 Census Data show that 3.9% of the total Texas VAP is non-Hispanic Asian.

REQUEST FOR ADMISSION NO. 3:

Between the 2000 Census and the 2010 Census, the State's total population increased by 4,293,741 persons, an increase of 20.6%.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objection Plaintiff admits that this request accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 4:

Between the 2000 Census and the 2010 Census, the State's voting-age population increased by 3,314,676 persons, an increase of 22.1%.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objection Plaintiff admits that this request accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 5:

Between the 2000 Census and the 2010 Census, the State's non-Hispanic White population increased by 464,032 persons, an increase of 4.2%.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objection, Plaintiff admits that this request accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 6:

Between the 2000 Census and the 2010 Census, the non-Hispanic White proportion of the State's total population decreased from 52.4% to 45.3%.

RESPONSE: Plaintiff admits that this request accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 7:

Between the 2000 Census and the 2010 Census, the State's non-Hispanic White voting-age population increased by 648,518 persons, an increase of 7.7%.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objection, Plaintiff admits that this request accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 8:

Between the 2000 Census and the 2010 Census, the non-Hispanic White proportion of the State's voting-age population decreased from 56.3% to 49.6%.

RESPONSE: Plaintiff admits that this request accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 9:

Between the 2000 Census and the 2010 Census, the State's Hispanic population increased by 2,791,255 persons, an increase of 41.8%.

RESPONSE: Plaintiff admits that this request accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 10:

Between the 2000 Census and the 2010 Census, the Hispanic proportion of the State's total population increased from 32.0% to 37.6%.

RESPONSE: Plaintiff admits that this request accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 11:

Between the 2000 Census and the 2010 Census, the State's Hispanic voting-age population increased by 1,860,243 persons, an increase of 43.4%.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objection, Plaintiff admits that this request accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 12:

Between the 2000 Census and the 2010 Census, the Hispanic proportion of the State's voting-age population increased from 28.6% to 33.6%.

RESPONSE: Plaintiff admits that this request accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 13:

Between the 2000 Census and the 2010 Census, the State's non-Hispanic Black population increased by 576,656 persons, an increase of 24.0%.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objection:

Plaintiff denies that the State's non-Hispanic Black voting age population increased by 576,656 persons. According to the 2010 Census Data, Texas's non-Hispanic Black VAP increased by 522,570 persons.

Plaintiff denies that the State's non-Hispanic Black population increased by 24.0%. According to the 2010 Census Data, Texas's non-Hispanic Black VAP increased 22.1%.

REQUEST FOR ADMISSION NO. 14:

Between the 2000 Census and the 2010 Census, the non-Hispanic Black proportion of the State's total population increased from 11.5% to 11.8%.

RESPONSE: Plaintiff denies the information contained in this request. According to the 2010 Census Data, the non-Hispanic Black proportion of Texas's total population increased from 11.3% to 11.5%.

REQUEST FOR ADMISSION NO. 15:

Between the 2000 Census and the 2010 Census, the State's non-Hispanic Black voting-age population increased by 463,301 persons, an increase of 28.3%.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objection:

Plaintiff denies that the State's non-Hispanic Black voting age population increased by 463,301 persons. According to the 2010 Census Data, Texas's non-Hispanic Black VAP increased by 444,834 persons.

Plaintiff denies that the State's non-Hispanic Black VAP increased by 28.3%. According to the 2010 Census Data, Texas's non-Hispanic Black VAP increased 27.3%.

REQUEST FOR ADMISSION NO. 16:

Between the 2000 Census and the 2010 Census, the non-Hispanic Black proportion of the State's voting-age population increased from 11.0% to 11.5%.

RESPONSE: Plaintiff denies the information contained in this request. The 2010 U.S. Census data show that the non-Hispanic Black proportion of the State's voting-age population increased from 11.0% to 11.6% between the 2000 Census and the 2010 Census.

REQUEST FOR ADMISSION NO. 17:

Between the 2000 Census and the 2010 Census, the State's non-Hispanic Asian population increased by 433,024 persons, an increase of 72.8%.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objection:

Plaintiff denies that the State's non-Hispanic Asian population increased by 433,024 persons between the 2000 and the 2010 Census. The 2010 Census data show that the State's non-Hispanic Asian population increased by 402,277 persons.

Plaintiff denies that the State's non-Hispanic Asian population increased by 72.8% between the 2000 and the 2010 Census. The 2010 Census data show that the State's non-Hispanic Asian population increased by 71.5%.

REQUEST FOR ADMISSION NO. 18:

Between the 2000 Census and the 2010 Census, the non-Hispanic Asian proportion of the State's total population increased from 2.8% to 4.1%.

RESPONSE: Plaintiff denies the information contained in this request. The 2010 Census data show that the non-Hispanic Asian proportion of the State's total population increased from 2.7% to 3.8%.

REQUEST FOR ADMISSION NO. 19:

Between the 2000 Census and the 2010 Census, the State's non-Hispanic Asian voting-age population increased by 321,421 persons, an increase of 73.5%.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objection:

Plaintiff denies that the State's non-Hispanic Asian voting-age population increased by 321,421 persons between the 2000 Census and the 2010 Census. The 2010 Census data show that the State's non-Hispanic Asian voting-age population increased by 306,411 persons.

Plaintiff denies that the State's non-Hispanic Asian voting-age population increased by 73.5% between the 2000 Census and the 2010 Census. The 2010 Census data show that the State's non-Hispanic Asian voting-age population increased by 73.0%.

REQUEST FOR ADMISSION NO. 20:

Between the 2000 Census and the 2010 Census, the non-Hispanic Asian proportion of the State's voting-age population increased from 2.9% to 4.2%.

RESPONSE: Plaintiff denies the information contained in this request. The 2010 Census data show that the non-Hispanic Asian proportion of the State's voting-age population increased from 2.8% to 4.0%.

REQUEST FOR ADMISSION NO. 21:

Non-Hispanic White persons made up 10.8% of the increase in the State's total population between the 2000 Census and the 2010 Census.

RESPONSE: Plaintiff admits that this accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 22:

Non-Hispanic White persons made up 19.6% of the increase in the State's voting-age population between the 2000 Census and the 2010.

RESPONSE: Plaintiff admits that this accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 23:

Hispanic persons made up 65.0% of the increase in the State's total population between the 2000 Census and the 2010 Census.

RESPONSE: Plaintiff admits that this accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 24:

Hispanic persons made up 56.1% of the increase in the State's voting-age population between the 2000 Census and the 2010 Census.

RESPONSE: Plaintiff admits that this accurately reflects Census Data.

REQUEST FOR ADMISSION NO. 25:

Non-Hispanic Black persons made up 13.4% of the increase in the State's total population between the 2000 Census and the 2010 Census.

RESPONSE: Plaintiff denies the information contained in this request. The 2010 Census data show that non-Hispanic Black persons made up 12.2% of the increase in the State's total population.

REQUEST FOR ADMISSION NO. 26:

Non-Hispanic Black persons made up 14.0% of the increase in the State's voting-age population between the 2000 Census and the 2010 Census.

RESPONSE: Plaintiff denies the information contained in this request. The 2010 Census data show that non-Hispanic Black persons made up 13.4% of the increase in the State's voting-age population between the 2000 Census and the 2010 Census.

REQUEST FOR ADMISSION NO. 27:

Non-Hispanic Asian persons made up 10.1% of the increase in the State's total population between the 2000 Census and the 2010 Census.

RESPONSE: Plaintiff denies the information contained in this request. The 2010 Census data show that non-Hispanic Asian persons made up 9.2% of the increase in the State's total population.

REQUEST FOR ADMISSION NO. 28:

Non-Hispanic Asian persons made up 9.7% of the increase in the State's voting-age population between the 2000 Census and the 2010 Census.

RESPONSE: Plaintiff denies the information contained in this request. The 2010 Census data show that non-Hispanic Asian persons made up 9.2% of the increase in the State's voting-age population.

REQUEST FOR ADMISSION NO. 29:

According to the Census Bureau's 2006-2010 American Community Survey, the State of Texas has an estimated citizen voting-age population (CVAP) of 15,276,966 persons, of whom 8,938,816 (57.6%) are non-Hispanic White; 3,889,571 (25.5%) are Hispanic; 1,961,742 (12.8%) are non-Hispanic Black; and 426,108 (2.8%) are non-Hispanic Asian.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objection:

Plaintiff lacks knowledge or information sufficient to admit or deny that according to the Census Bureau's 2006-2010 American Community Survey, the State of Texas has an estimated citizen voting-age population (CVAP) of 15,276,966 persons, of whom 8,938,816 (57.6%) are non-Hispanic White; 3,889,571 (25.5%) are Hispanic; 1,961,742 (12.8%) are non-Hispanic Black; and 426,108 (2.8%) are non-Hispanic Asian. The request for admission is therefore denied.

United States House of Representatives

REQUEST FOR ADMISSION NO. 30:

The United States House of Representatives consists of 435 members apportioned among the States according to population after each decennial census. After the 2000 Census, the State of Texas was entitled to 32 representatives, and federal law then required the State to redistrict.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections:

Plaintiff admits that the United States House of Representatives consists of 435 members apportioned among the States according to population after each decennial census;

Plaintiff admits that after the 2000 Census, the State of Texas was entitled to 32 representatives; and

Plaintiff admits that federal law required the State of Texas to redistrict after the 2000 Census.

REQUEST FOR ADMISSION NO. 31:

On August 4, 2006, a three-judge district court, in *LULAC v. Perry*, 2006 WL 3069542, Civ. No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006) (per curiam), adopted a redistricting plan for Texas' congressional delegation based on the 2000 Census. As a court-ordered plan, that plan was not subject to preclearance under Section 5 of the Voting Rights Act. That plan was the last plan in force or effect and is therefore the benchmark plan for purposes of this case.

RESPONSE: Plaintiff objects to this request it is vague, ambiguous, and not reasonably specific. Plaintiff also objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Plaintiff objects to this request insofar as it propounds a question of law. Subject to and without waiving the foregoing objections, Plaintiff admits this request.

REQUEST FOR ADMISSION NO. 32:

The *LULAC v. Perry* plan is also known as Plan C100.

RESPONSE: Plaintiff admits this request.

REQUEST FOR ADMISSION NO. 33:

After the 2010 Census, the State of Texas was entitled to four additional representatives in Congress, for a total of 36 representatives, and federal law once again required the State to redistrict.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff admits this request.

REQUEST FOR ADMISSION NO. 34:

On June 24, 2011, the Texas Legislature passed Senate Bill 4, containing a new congressional redistricting plan based on the 2010 Census, and the Governor signed it on July 18, 2011.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff admits this request.

REQUEST FOR ADMISSION NO. 35:

The plan contained in Senate Bill 4 is the proposed plan for purposes of this case.

RESPONSE: Plaintiff admits that Senate Bill 4 is the legislatively enacted plan.

REQUEST FOR ADMISSION NO. 36:

The plan contained in Senate Bill 4 is also known as Plan C185.

RESPONSE: Plaintiff admits this request.

REQUEST FOR ADMISSION NO. 37:

The proposed redistricting plan for the Texas delegation to the United States House of Representatives is a "standard, practice, or procedure with respect to voting" within the meaning of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 38:

Hispanic citizens have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following seven districts in Plan C100: 15, 16, 20, 23, 27, 28, and 29.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 39:

Hispanic citizens will have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following seven districts in Plan C185: 15, 16, 20, 28, 29, 34 and 35.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 40:

Black citizens have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following three districts in Plan C100: 9, 18 and 30.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 41:

Black citizens will have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following three districts in Plan C185: 9, 18 and 30.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 42:

Minority citizens do not have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following 22 districts in Plan C100: 1 through 8, 10, 11, 12, 13, 14, 17, 19, 21, 22, 24, 25, 26, 31, and 32.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 43:

Minority citizens will not have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following 26 districts in Plan C185: 1 through 8, 10, 11, 12, 13, 14, 17, 19, 21 through 27, 31, 32, 33, and 36.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 44:

In Plan C100, proportionality in relation to the Black share of the State's citizen voting-age population would exist if Black voters formed an effective voting majority in 4 districts.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law, and specifically objects to the use of the phrases "proportionality in relation" and "effective voting majority" as being vague and ambiguous and to the extent they propound questions of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 45:

In Plan C100, proportionality in relation to the Hispanic share of the State's citizen voting-age population would exist if Hispanic voters formed an effective voting majority in 8 districts.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law, and specifically objects to the use of the phrases "proportionality in relation" and "effective voting majority" as being vague and ambiguous and to the extent they propound questions of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 46:

In Plan C100, proportionality in relation to the combined Black and Hispanic share of the State's citizen voting-age population would exist if Black and Hispanic voters formed an effective voting majority in 12 districts.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law, and specifically objects to the use of the phrases "proportionality in relation" and "effective voting majority" as being vague and ambiguous and to the extent they propound questions of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 47:

In Plan C185, proportionality in relation to the Black share of the State's citizen voting-age population would exist if Black voters formed an effective voting majority in 5 districts.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law, and specifically objects to the use of the phrases "proportionality in relation" and "effective voting majority" as being vague and ambiguous and to the extent they propound questions of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 48:

In Plan C185, proportionality in relation to the Hispanic share of the State's citizen voting-age population would exist if Hispanic voters formed an effective voting majority in 9 districts.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law, and specifically objects to the use of the phrases "proportionality in relation" and "effective voting majority" as being vague and ambiguous and to the extent they propound questions of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 49:

In Plan C185, proportionality in relation to the combined Black and Hispanic share of the State's citizen voting-age population would exist if Black and Hispanic voters formed an effective voting majority in 14 districts.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law, and specifically objects to the use of the phrases "proportionality in relation" and "effective voting majority" as being vague and ambiguous and to the extent they propound questions of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 50:

Compared to Plan C100, Plan C185 increases the whole number of seats by which Black voters are underrepresented in the State's congressional delegation in relation to the Black proportion of the State's citizen voting-age population.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 51:

Compared to Plan C100, Plan C185 increases the whole number of seats by which Hispanic voters are underrepresented in the State's congressional delegation in relation to the Hispanic proportion of the State's citizen voting-age population.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 52:

Compared to Plan C100, Plan C185 increases the whole number of seats by which Black and Hispanic voters, combined, are underrepresented in the State's congressional delegation in

relation to the combined Black and Hispanic proportion of the State's citizen voting-age population.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 53:

In the 2010 general election for U.S. Representative in congressional district 23, Congressman Ciro D. Rodriguez, who is Hispanic, was the preferred candidate of choice of a majority of Hispanic voters.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law, and specifically objects to the use of the phrase "preferred candidate of choice" as vague and ambiguous and to the extent it propounds a question of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 54:

In the 2008 general election for U.S. Representative in congressional district 23, Congressman Ciro D. Rodriguez, who is Hispanic, was the preferred candidate of choice of a majority of Hispanic voters.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law, and specifically objects to the use of the phrase "preferred candidate of choice" as vague and ambiguous and to the extent it propounds a question of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 55:

In the 2006 special election for U.S. Representative in congressional district 23, Congressman Ciro D. Rodriguez, who is Hispanic, was the preferred candidate of choice of a majority of Hispanic voters.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law, and specifically objects to the use of the phrase "preferred candidate of choice" as vague and ambiguous and to the extent it propounds a question of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 56:

In the 2002, 2004, 2006, 2008 and 2010 general elections for U.S. Representative in congressional district 27, Congressman Solomon P. Ortiz, an Hispanic, was the preferred candidate of choice of a majority of Hispanic voters.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law, and specifically objects to the use of the phrase "preferred candidate of choice" as vague and ambiguous and to the extent it propounds a question of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

Texas House of Representatives

REQUEST FOR ADMISSION NO. 57:

The Texas House of Representatives consists of 150 members elected from single-member districts in even-numbered years to two-year terms.

RESPONSE: Plaintiff admits this request.

REQUEST FOR ADMISSION NO. 58:

On November 28, 2001, in *Balderas v. Texas*, 2001 WL 34104833, Civ. No. 6:01CV158 (E.D. Tex. Nov. 28, 2001) (per curiam), a three-judge district court adopted a court-ordered redistricting plan for the Texas House of Representatives based on the 2000 Census. As a court-ordered plan, that plan was not subject to preclearance under Section 5 of the Voting Rights Act. That plan was the last plan in force or effect and is therefore the benchmark plan for purposes of this case.

RESPONSE: Plaintiff objects to this request it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Plaintiff objects to this request insofar as it propounds a question of law. Subject to and without waiving the foregoing objections, Plaintiff admits this request.

REQUEST FOR ADMISSION NO. 59:

The *Balderas* plan is also known as Plan H100.

RESPONSE: Plaintiff admits this request.

REQUEST FOR ADMISSION NO. 60:

On May 23, 2011, the Texas Legislature passed House Bill 150, containing a new redistricting plan for the Texas House of Representatives based on the 2010 Census, and the Governor signed it on June 17, 2011.

RESPONSE: Plaintiff objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff admits this request.

REQUEST FOR ADMISSION NO. 61:

The plan contained in House Bill 150 is the proposed plan for purposes of this case.

RESPONSE: Plaintiff admits that House Bill 150 is the legislatively enacted plan.

REQUEST FOR ADMISSION NO. 62:

The plan contained in House Bill 150 is also known as Plan H283.

RESPONSE: Plaintiff admits this request.

REQUEST FOR ADMISSION NO. 63:

The proposed redistricting plan for the Texas House of Representatives is a "standard, practice, or procedure with respect to voting" within the meaning of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 64:

Compared to Plan H100, Plan H283 will not "have the effect of diminishing the ability of any citizens of the United States on account of race or color, or [membership in a language minority group], to elect their preferred candidates of choice" to the Texas House of Representatives in the following 145 districts: 1 through 32, 34, 36 through 40, 42 through 116, 118 through 148, and 150. 42 U.S.C. § 1973c(b). To the extent that minority citizens have the ability to elect their preferred candidates of choice in these districts in Plan H100, they will have the ability to do so in the corresponding districts in Plan H283. To the extent that minority citizens do not have the ability to elect their preferred candidates of choice in these districts in Plan H100, they will not have the ability to do so in the corresponding districts in Plan H283. These districts are not "at issue" in the retrogression portion of this case.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to this request insofar as it propounds a question of law. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 65:

Hispanic citizens have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 33 districts in Plan H100: 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90, 103, 104, 116, 117, 118, 119, 123, 124, 125, 140, 143, 145, and 148.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 66:

Hispanic citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 29 districts in Plan H283: 31, 34, 36, 37, 38, 39, 40, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90, 103, 104, 116, 118, 119, 123, 124, 125, 140, 143, 145, and 148.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 67:

Black citizens have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 12 districts in Plan H100: 22, 95, 100, 109, 110, 111, 131, 139, 141, 142, 146, and 147.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 68:

Black citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 12 districts in Plan H283: 22, 95, 100, 109, 110, 111, 131, 139, 141, 142, 146, and 147.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 69:

Minority citizens do not have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 100 districts in Plan H100: 1 through 21, 23, 24, 25, 26, 28, 29, 30, 32, 44, 45, 47, 48, 49, 50, 52 through 73, 78, 81 through 89, 91, 92, 93, 94, 96, 97, 98, 99, 101, 102, 105, 106, 107, 108, 112, 113, 114, 115, 121, 122, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 138, 144, and 150.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 70:

Minority citizens will not have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 105 districts in Plan H283: 1 through 21, 23, 24, 25, 26, 28, 29, 30, 32, 33, 35, 41, 44, 45, 47, 48, 49, 50, 52 through 73, 78, 81 through 89, 91, 92, 93, 94, 96, 97, 98, 99, 101, 102, 105, 106, 107, 108, 112, 113, 114, 115, 117, 121, 122, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 138, 144, 149, and 150.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrases "ability to elect" and "candidates of choice" as vague and ambiguous and insofar as they propound questions of law. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

REQUEST FOR ADMISSION NO. 71:

In 2007, the Texas Legislature created the International Management District, which allows property owners within the Alief community to organize their efforts to pursue common objectives.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff further objects to the compound nature of this request insofar as it contains multiple facts that must be admitted or denied. Subject to and without waiving the foregoing objections, Plaintiff states that according to

http://www.imdhouston.org/IMD/welcome-to-the-international-management-district, the Texas Legislature created the International Management District in 2007.

REQUEST FOR ADMISSION NO. 72:

In the 2004, 2006, 2008 and 2010 general elections for State Representative in House District 149, Representative Hubert Vo, who is Asian, was the preferred candidate of choice of a majority of minority voters.

RESPONSE: Plaintiff objects to this request to the extent it is vague, ambiguous, and not reasonably specific. Plaintiff objects to the use of the phrase "preferred candidate of choice of a majority of minority voters" as vague and ambiguous and insofar as it propounds a question of law. Plaintiff further objects to the compound nature of this request. Subject to and without waiving the foregoing objections, Plaintiff denies this request.

Dated: December 23, 2011

Respectfully Submitted,

FOR THE PLAINTIFF:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via email to the following parties on December 23, 2011:

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PLAINTIFF'S FIRST AMENDED PRIVILEGE LOG

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
	12/15/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting plan.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	12/15/2011	David Hanna, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting plan.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	12/9/2011	David Hanna, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding census.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	12/9/2011	David Hanna, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding census.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	12/8/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting.	Attorney-Client Privileged Communication; Legislative Privilege;

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
					TEX. GOV'T CODE § 323.017 statutory privilege
	12/8/2011	David Hanna, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	12/6/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting plan.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	12/6/2011	David Hanna, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting plan.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	12/6/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting plan.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	12/6/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice	Attorney-Client Privileged Communication;

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
				regarding redistricting plan.	Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	12/6/2011	David Hanna, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting plan.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	12/6/2011	David Hanna, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting plan.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	12/6/2011	David Hanna, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting plan.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	4/6/2011	David Hanna, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding proposed redistricting plan done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
	4/12/2011	David Hanna, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding proposed redistricting plan done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	4/20/2011	David Hanna, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding proposed redistricting plan done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	4/1/2011	Jesse Bernal, Chief of Staff to Representative Alonzo	Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding State Board of Education plan.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	3/30/2011	Jesse Bernal, Chief of Staff to Representative Alonzo	Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding State Board of Education plan.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	3/30/2011	Jesse Bernal, Chief of Staff to Representative Alonzo	Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice	Attorney-Client Privileged Communication;

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
				regarding State Board of Education plan.	Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	4/1/2011	Cole Howard, Legislative Aide to Representative Alonzo	Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding State Board of Education plan.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/8/2011	Jeff Archer, Attorney for Texas Legislative Council	Jesse Bernal, Chief of Staff to Representative Alonzo	Confidential communication for the purpose of giving or receiving legal advice regarding census.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/8/2011	Jeff Archer, Attorney for Texas Legislative Council	Jesse Bernal, Chief of Staff to Representative Alonzo	Confidential communication for the purpose of giving or receiving legal advice regarding census.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/19/2011	Ryan Downton, Counsel to House Redistricting Committee	Stacey Napier, Senior Counsel to the Attorney General Doug Davis, Counsel to Senate Redistricting Committee Jeff Archer, Attorney for	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting litigation.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Texas Legislative Council		
	7/20/2011	Gerardo Interiano, Counsel to Speaker Straus	Jeff Archer, Attorney for Texas Legislative Council David Hanna, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding Voting Rights Act analysis.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/15/2011	David Hanna, Attorney for Texas Legislative Council	Stacey Napier, Senior Counsel to the Attorney General Jeff Archer, Attorney for Texas Legislative Council Gerardo Interiano, Counsel to Speaker Straus Lisa Kaufman, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding Voting Rights Act analysis.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/14/2011	David Hanna, Attorney for Texas Legislative Council	Jeff Archer, Attorney for Texas Legislative Council Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding Voting Rights Act analysis.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/14/2011	David Hanna, Attorney for Texas Legislative Council	Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice	Attorney-Client Privileged Communication;

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Gerardo Interiano, Counsel to Speaker Straus	regarding Voting Rights Act analysis.	Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/13/2011	David Hanna, Attorney for Texas Legislative Council	Jeff Archer, Attorney for Texas Legislative Council Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding Voting Rights Act analysis.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/13/2011	David Hanna, Attorney for Texas Legislative Council	Jeff Archer, Attorney for Texas Legislative Council Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting litigation.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/15/2011	Gerardo Interiano, Counsel to Speaker Straus	Stacey Napier, Senior Counsel to the Attorney General Jeff Archer, Attorney for Texas Legislative Council David Hanna, Attorney for Texas Legislative Council Lisa Kaufman, Counsel to	Confidential communication for the purpose of giving or receiving legal advice regarding Voting Rights Act analysis.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Speaker Straus		
	7/18/2011	David Hanna, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus Jeff Archer, Attorney for Texas Legislative Council Clare Dyer, Manager, Mapping & Redistricting	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting litigation.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	3/23/2011	Gerardo Interiano, Counsel to Speaker Straus	Jeff Archer, Attorney for Texas Legislative Council David Hanna, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting maps.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	3/22/2011	Jeff Archer, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus David Hanna, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting maps.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	3/22/2011	Jeff Archer, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus David Hanna, Attorney for Texas Legislative	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting maps.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Council		privilege
	3/22/2011	Jeff Archer, Attorney for Texas Legislative Council	Gerardo Interiano, Counsel to Speaker Straus David Hanna, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting maps.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/21/2011	Jeff Archer, Attorney for Texas Legislative Council	Denise Davis, Chief of Staff to Speaker Straus David Hanna, Attorney for Texas Legislative Council Gerardo Interiano, Counsel to Speaker Straus Lisa Kaufman, Counsel to Speaker Straus Tom Phillips, Baker Botts, Counsel to the Texas House of Representatives and Speaker Straus Radney Wood, Baker Botts, Counsel to the Texas House of Representatives and	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting litigation.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Speaker Straus		
	7/14/2011	Jeff Archer, Attorney for Texas Legislative Council	David Hanna, Attorney for Texas Legislative Council Gerardo Interiano, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding Voting Rights Act analysis.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/14/2011	Jeff Archer, Attorney for Texas Legislative Council	David Hanna, Attorney for Texas Legislative Council Gerardo Interiano, Counsel to Speaker Straus Lisa Kaufman, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding preclearance submission.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/14/2011	Jeff Archer, Attorney for Texas Legislative Council	David Hanna, Attorney for Texas Legislative Council Gerardo Interiano, Counsel to Speaker Straus Lisa Kaufman, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding preclearance submission.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
	7/14/2011	Jeff Archer, Attorney for Texas Legislative Council	David Hanna, Attorney for Texas Legislative Council Gerardo Interiano, Counsel to Speaker Straus Lisa Kaufman, Counsel to Speaker Straus Stacey Napier, Senior Counsel to the Attorney General	Confidential communication for the purpose of giving or receiving legal advice regarding preclearance submission.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/15/2011	Jeff Archer, Attorney for Texas Legislative Council	David Hanna, Attorney for Texas Legislative Council Gerardo Interiano, Counsel to Speaker Straus Lisa Kaufman, Counsel to Speaker Straus Stacey Napier, Senior Counsel to the Attorney General	Confidential communication for the purpose of giving or receiving legal advice regarding preclearance submission.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
	7/15/2011	Jeff Archer, Attorney for Texas Legislative Council	David Hanna, Attorney for Texas Legislative Council Gerardo Interiano, Counsel to Speaker Straus Lisa Kaufman, Counsel to Speaker Straus Stacey Napier, Senior Counsel to the Attorney General	Confidential communication for the purpose of giving or receiving legal advice regarding preclearance submission.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/19/2011	Jeff Archer, Attorney for Texas Legislative Council	Stacey Napier, Senior Counsel to the Attorney General Ryan Downton, Counsel to House Redistricting Committee Doug Davis, Counsel to Senate Redistricting Committee and committee members	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting litigation.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/21/2011	Gerardo Interiano, Counsel to Speaker Straus	Denise Davis, Chief of Staff to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice	Attorney-Client Privileged Communication;

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			David Hanna, Attorney for Texas Legislative Council Jeff Archer, Attorney for Texas Legislative Council Lisa Kaufman, Counsel to Speaker Straus Tom Phillips, Baker Botts, Counsel to the Texas House of Representatives and Speaker Straus Radney Wood, Baker Botts, Counsel to the Texas House of Representatives and Speaker Straus	regarding redistricting litigation.	Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/14/2011	Gerardo Interiano, Counsel to Speaker Straus	Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding preclearance submission.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/14/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council Jeff Archer, Attorney for	Confidential communication for the purpose of giving or receiving legal advice regarding preclearance submission.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE §

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Texas Legislative Council Lisa Kaufman, Counsel to Speaker Straus		323.017 statutory privilege
	7/14/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council Jeff Archer, Attorney for Texas Legislative Council Lisa Kaufman, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding preclearance submission.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/14/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council Jeff Archer, Attorney for Texas Legislative Council Lisa Kaufman, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding preclearance submission.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/14/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding Voting Rights Act	Attorney-Client Privileged Communication; Legislative Privilege;

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Jeff Archer, Attorney for Texas Legislative Council	analysis.	TEX. GOV'T CODE § 323.017 statutory privilege
	7/14/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding Voting Rights Act analysis.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/14/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding Voting Rights Act analysis.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/14/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding Voting Rights Act analysis.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/14/2011	Gerardo Interiano, Counsel to Speaker Straus	David Hanna, Attorney for Texas Legislative Council Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding Voting Rights Act analysis.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
	11/30/2011	Gerardo Interiano, Counsel to Speaker Straus	Jeff Archer, Attorney for Texas Legislative Council Lisa Kaufman, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting litigation.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	11/30/2011	Gerardo Interiano, Counsel to Speaker Straus	Jeff Archer, Attorney for Texas Legislative Council Lisa Kaufman, Counsel to Speaker Straus	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting litigation.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	7/15/2011	David Hanna, Attorney for Texas Legislative Council	Stacey Napier, Senior Counsel to the Attorney General Jeff Archer, Attorney for Texas Legislative Council Lisa Kaufman, Counsel to Speaker Straus Bonnie Bruce, Committee Clerk to the House Redistricting	Confidential communication for the purpose of giving or receiving legal advice regarding preclearance submission.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Committee Doug Davis, Counsel to Senate Redistricting Committee and committee members		
	7/15/2011	David Hanna, Attorney for Texas Legislative Council	Stacey Napier, Senior Counsel to the Attorney General Jeff Archer, Attorney for Texas Legislative Council Lisa Kaufman, Counsel to Speaker Straus Doug Davis, Counsel to Senate Redistricting Committee and committee members	Confidential communication for the purpose of giving or receiving legal advice regarding preclearance submission.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	4/3/2011	Bonnie Bruce, Committee Clerk to the House Redistricting Committee	Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting plans.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	4/3/2011	Bonnie Bruce, Committee Clerk to the House Redistricting	Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice	Attorney-Client Privileged Communication;

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
		Committee		regarding redistricting plans.	Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	4/3/2011	Bonnie Bruce, Committee Clerk to the House Redistricting Committee	Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting plans.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	4/3/2011	Bonnie Bruce, Committee Clerk to the House Redistricting Committee	Jeff Archer, Attorney for Texas Legislative Council	Confidential communication for the purpose of giving or receiving legal advice regarding redistricting plans.	Attorney-Client Privileged Communication; Legislative Privilege; TEX. GOV'T CODE § 323.017 statutory privilege
	3/24/2011	David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office	David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General Todd Giberson, , System Analyst, Legal Technical Support Division Joshua Zahn, System Analyst, Legal Technical Support Division	Confidential email communication attaching proposed State Board of Education racially polarized voting analyses, and a summary, done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
	3/25/2011	David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office	David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General	Confidential email communication attaching proposed State Board of Education racially polarized voting analyses, and a summary, done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product
	3/25/2011	David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office	David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General Todd Giberson, , System Analyst, Legal Technical Support Division	Confidential email communication attaching proposed congressional racially polarized voting analyses, and a summary, done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product
	3/28/2011	David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office	David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General Todd Giberson, , System Analyst, Legal Technical Support Division	Confidential email communication attaching proposed State Board of Education racially polarized voting analyses, a summary, and a map image, all done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Joshua Zahn, System Analyst, Legal Technical Support Division		
	3/28/2011	David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office	David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General Matthew Frederick, Special Counsel to the Attorney General Todd Giberson, , System Analyst, Legal Technical Support Division Joshua Zahn, System Analyst, Legal Technical Support Division	Confidential email communication attaching proposed State Board of Education racially polarized voting analyses, and a summary, done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product
	4/13/2011	David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office	David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General David Mattax, Deputy Attorney General for	Confidential email communication attaching proposed Texas House racially polarized voting analyses, and a summary, done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Defense Litigation Todd Giberson, , System Analyst, Legal Technical Support Division		
	4/22/2011	David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office	David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General Todd Giberson, , System Analyst, Legal Technical Support Division	Confidential email communication attaching summary of proposed Texas House racially polarized voting analysis done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product
	4/26/2011	David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office	David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General Todd Giberson, , System Analyst, Legal Technical Support Division	Confidential email communication attaching summary of proposed Texas House racially polarized voting analysis done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product
	4/27/2011	David Falk, Division Chief, Legal Technical Support Division,	David Schenck, Deputy Attorney General for Legal Counsel	Confidential email communication attaching summary of proposed State	Attorney-Client Privileged Communication;

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
		Attorney General's Office	Stacey Napier, Senior Counsel to the Attorney General Todd Giberson, , System Analyst, Legal Technical Support Division	Board of Education racially polarized voting analysis done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	5/6/2011	David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office	Daniel Hodge, First Assistant to the Attorney General David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General Todd Giberson, , System Analyst, Legal Technical Support Division	Confidential email communication attaching summary of proposed Senate racially polarized voting analysis done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product
	5/18/2011	David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office	David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General Todd Giberson, , System Analyst, Legal	Confidential email communication attaching summary of proposed congressional racially polarized voting analyses done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Technical Support Division Joshua Zahn, System Analyst, Legal Technical Support Division		
	6/1/2011	David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office	David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General Todd Giberson, , System Analyst, Legal Technical Support Division Joshua Zahn, System Analyst, Legal Technical Support Division	Confidential email communication attaching proposed congressional racially polarized voting analyses, a summary, Red Apple reports, and a map image, all done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product
	9/12/2011	David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office	David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General Jay Dyer, Deputy Attorney General for Government and	Confidential email communication attaching racially polarized voting analyses done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			External Affairs James Blacklock, Special Assistant and Senior Counsel to the Attorney General Reed Clay, Special Assistant and Senior Counsel to the Attorney General Adam Aston, Assistant Solicitor General Rance Craft, Assistant Solicitor General Todd Giberson, , System Analyst, Legal Technical Support Division		
			Kevin Hayes, Law Clerk		
	9/12/2011	Todd Giberson, , System Analyst, Legal Technical Support Division	David Schenck, Deputy Attorney General for Legal Counsel Stacey Napier, Senior Counsel to the Attorney General Jay Dyer, Deputy Attorney General for	Confidential email communication attaching racially polarized voting analyses done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Government and External Affairs James Blacklock, Special Assistant and Senior Counsel to the Attorney General Reed Clay, Special Assistant and Senior Counsel to the Attorney General Adam Aston, Assistant Solicitor General Rance Craft, Assistant Solicitor General David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office		
	9/12/2011	Todd Giberson, , System Analyst, Legal Technical Support Division	Stacey Napier, Senior Counsel to the Attorney General Jay Dyer, Deputy Attorney General for Government and External Affairs James Blacklock, Special Assistant and	Confidential email communication attaching racially polarized voting analyses done in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney-Client Privileged Communication; Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
			Senior Counsel to the Attorney General Reed Clay, Special Assistant and Senior Counsel to the Attorney General Adam Aston, Assistant Solicitor General Rance Craft, Assistant Solicitor General David Falk, Division Chief, Legal Technical Support Division, Attorney General's Office		
	3/25/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	4/27/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts,	Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
		Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		mental impressions, opinions, and/or legal theories.	
	4/27/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	4/27/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	7/20/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
		Analyst, Legal Technical Support Division, Texas Attorney General's Office			
	10/19/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	3/24/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	3/28/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division,		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
		Texas Attorney General's Office			
	3/28/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	3/25/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	3/28/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
	6/3/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	4/21/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	6/6/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	6/6/2011	David Falk, Division Chief, Legal Technical		Racially polarized voting analysis summary done at the	Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
		Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	
	5/18/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	5/27/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	4/13/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and	Attorney Work-Product

BATES NO.	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
		Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	
	5/6/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product
	6/1/2011	David Falk, Division Chief, Legal Technical Support Division, Texas Attorney General's Office Todd Giberson, System Analyst, Legal Technical Support Division, Texas Attorney General's Office		Racially polarized voting analysis summary done at the direction of counsel in anticipation of litigation and reflecting attorney thoughts, mental impressions, opinions, and/or legal theories.	Attorney Work-Product

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff,	)	
	)	CIVIL CASE NO.
vs.	)	1:11-CV-1303
	)	(RMC-TBG-BAH)
UNITED STATES OF AMERICA AND ERIC H. HOLDER, JR., IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE UNITED STATES, Defendants, and	)	
WENDY DAVIS et al., Defendant-Intervenors.	)	

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ORAL DEPOSITION OF

THE DESIGNATED REPRESENTATIVE OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS (TODD GIBERSON)

October 18, 2011

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ORAL DEPOSITION OF THE DESIGNATED REPRESENTATIVE OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS (TODD GIBERSON), produced as a witness at the instance of the Defendants and duly sworn, was taken in the above-styled and numbered cause on the 18th day of October, 2011, from 3:46 p.m. to 4:48 p.m., before Kathleen Nevils, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of the Attorney General of Texas, Price Daniels Building, 209 West 14th St., Austin, Texas, pursuant to the Federal

Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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TODD GIBERSON,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. SELLS:

Q. Would you please state your name for the record?

A. Todd Giberson.

Q. And is it Dr. Giberson?

A. No.

Q. Mr. Giberson, what is -- what is your role at the Office of the Attorney General?

A. I am also titled systems analyst. I do programming, various analyses. I am the one that does all the cartographic work in the agency.

Q. Okay. And you've been sitting here through the course of this deposition, right?

A. Yes.

Q. And so you understand that this is the deposition of the Office of the Attorney General, right?

A. Yes.

Q. And do you consent to testify on behalf of the Office of the Attorney General with respect to the topics for which you're being offered?

A. Yes, for what I can do.

Q. Okay. First of all, background. How long have you been at the Office of the Attorney General?

A. Since 1994.

Q. And have you been a systems analyst for that entire time?

A. Essentially the same role, although it was at one time called planner. Same role, different name.

Q. But you've been the cartographer for that period of time?

A. Yes.

Q. And what was your role in the 2011 redistricting process?

A. We work as a team. We get requests from administration and respond back to them. I, in particular, was responsible for keeping tabs on public plans that would become available and taking them off of the RED Appl system from a machine that belonged to the Legislative Council that was housed on our floor and transferring them into our computer system, making them available then for further processing, reports, making -- I would make the map and I would do other analyses or -- or summaries of information as requested.

Q. Now, when you say "our system," do you use a system other than RED Appl?

A. We use RED Appl. When I say "our network" -- Joshua, for example, to run his reports never uses RED Appl, but those plans have to be put onto our network so

he can access them to run the reports. So when I say "on our system," I mean on our network.

Q. And by "Joshua," you mean Dr. Zahn?

A. Yes, Dr. Zahn.

Q. To get them out of RED Appl and onto your system, do you run sort of an export of some kind?

A. Export is a function built into RED Appl system.

Q. Okay. And most of your particular job is in RED Appl, at least with respect to redistricting?

A. I wouldn't say most of it is there, but any that is there, I am the one to do it.

Q. Okay. What else do you do, in the redistricting process or did you do in the redistricting process, that would have been outside of RED Appl?

A. Well, there was -- you mentioned reports. There was one particular report that I programmed and ran, and that would be compactness scores report. That report, however, was not one that would be considered a standard report that was run for every plan. I only ran it on specific plans that were in a particular interest.

Q. TLC has a compactness report built into RED Appl, doesn't it?

A. Yes.

Q. And your compactness report went beyond that?

A. Yes.

Q. Why did you do a separate report?

A. Well, I programmed the TLC's original compactness formulas for them, by the way, and at that time when they were first programmed, I had programmed a method comparing a district area to a small circumscribing circle.

The programming for that is perhaps a little more complicated than was easily available using their new -- they used a new -- they used new computer components to create this latest version of RED Appl different than what was used in 2000 -- 2001 and 2003. So because I already had the code for that, they didn't include it. It was more complex to code. I decided to go ahead and reuse my old code and program that in anyway for myself.

Q. Does your compactness report include other measures of compactness?

A. My report include three measures of compactness, two of which are from the TLC's standard report, that being the comparison of the district area to what they call the rubberband area, the smallest convex hole that would surround a district as a planner figure.

And then the other one is a ratio of the perimeter to the area bounded by that perimeter using a perimeter squared divided by four times pi, four times

square root, area times pi, something like that. But there's a formula, specific formula that compares the area to the perimeter surrounding that area. So those two plus the circle -- minimum circumscribing circle measure that I mentioned.

Q. And it's been a while since I've looked at the TLC's compactness report. Which one is not on there?

A. They don't have the circle measure.

Q. And are you familiar with the reports that are available in RED Appl?

A. I know I have looked at all of them, but they don't have that many. There might be what, six or seven available in RED Appl itself. I generally used maybe one or two of those as a routine.

Q. Which one or two?

A. Well, of course, I looked at their compactness and I used it when I was checking my programming against theirs, but the one I think I would most use is their -- I believe it's No. 200. I don't know if it's 200, 215, something look that. 215 maybe.

Q. And what's on that report?

A. It has standard demographic information, voting age populations. It also has Hispanic surname voter registration on it and turnout.

Q. Did you have access to the TLC's internal

reporting system? I think they called it the PAR system.

A. No, not the PAR system. I never -- I don't have access to that.

Q. Are you familiar -- familiar with the RED 225 report?

A. Somewhat. I know it's comparable to our DEA report.

Q. When you say "comparable," what do you mean?

A. I think they both show reconstituted election analysis for a comprehensive set of contests within each district.

Q. And do you know whether they should show the same results for each district?

A. I'm not aware of that particularly myself from doing analysis. I just know from what Joshua had stated that the different methodology they used to sum up a district -- whole districts in a way, so I believe there might be a difference, a slight difference between the actual number between our report and their report.

Q. But as far as you know, there shouldn't be a large difference, right?

A. I would not expect it to be a large difference.

Q. What would be a slight difference? Or I can put it the other way: What would be a large difference?

A. Well, again, I haven't done side-by-side

comparisons to know, but just thinking off the top of my head, I would say anything more than 10, 10, 12 votes might be something to look more closely at. It may be certainly explainable without doing a side-by-side comparison. I don't know what -- what is there.

Q. If I showed you a RED 225 report, would you recognize it?

A. I would assume I would.

Q. Do you have Exhibit 7 in front of you?

A. Okay. Yes.

Q. And would you turn to table 5?

A. Okay.

Q. The second-to-the-last column, "Actual Votes in District" --

A. Yes.

Q. -- that's the column that should be similar to what's on the RED 225 report, right?

A. I would expect, yes.

Q. Do you produce any reports other than the compactness report as part of the redistricting process?

A. Not as a -- as a routine. Only as something may come up, special request, something.

Q. Well, Dr. Zahn said that you also produce reports. What other reports do you produce?

A. Sometimes we have been asked to give counts of

districts to administration, things like that, special -- some of the requests and we just -- we do it. It's not a formalized report. Ad hoc reports. Compactness is really only the formalized report outside of what Joshua has spoken of.

Q. What did you mean by "counts of districts"?

A. Well, like summaries from the RPVAs.

Q. Can you give me an example? I'm not sure I'm following.

A. Like we would go to table 4, for example, and select or look at each contest and determine whether -- or who was winning in that district. For example, the first one, the first contest, looking at actual percent of votes in district, Tony Sanchez is winning in that district. So we would indicate that -- well, we wouldn't. That would be a primary contest.

We'd look -- take the next one down, Perry-Sanchez. Sanchez is barely winning among the Republican and Democrat candidates. So we would count the number of contests won by the particular -- we would first determine which one was the -- which candidate was the, say, Hispanic candidate of choice, then report how many contests were won by Hispanic voters or predicted to be won.

Q. How would you determine the Hispanic candidate

of choice from this table?

A. How would we determine sort of the Hispanic candidate of choice?

Q. Yes.

A. We generally could look and see -- if you look at the Estimated Percent Hispanic Votes for Candidate Column, in that election contest 72.7 percent estimated Hispanic support for Tony Sanchez. We would then presume Hispanics were supporting Tony Sanchez and then look out to the right and say, yes, the Hispanic voters' candidate of choice carried that election within those district boundaries. We would put a 1 down.

If we could see one that didn't satisfy that, we would say no. So we would give a report: Nine out of 10 contests were won by the Hispanic candidate of choice in the general election. We would sometimes do ad hoc summaries like that, but it was not a formalized report.

Q. These Racially Polarized Voting Analyses reports are, I think, 3500 pages for this particular --

A. Some can be long, yes, especially House districts.

Q. So you condensed it all down?

A. That was the purpose, was to make it so someone wouldn't have themselves to go through all these pages.

So we would extract that information, summarize it and report that.

Q. When you say "upon request," who would be making those requests? Would those be external requests coming in?

A. Always came from Stacey through David, David Falk.

Q. Do you recall approximately how many times you've produced those ad hoc reports that you just described?

A. I don't know. It didn't -- at first it was very sporadic, and it seemed like toward the end of the session, which is always crunch time, that we maybe had several requests for several districts and several plans. I -- I don't know how -- how many, but I do remember one time needing to have that information for all the districts in the benchmark plans and in the legislatively passed plans. So eight total plans for all districts.

And we enlisted some help from other people to come and help us because, otherwise, it would be a very time-consuming process for one or two of us to do that.

Q. In the process of preparing those reports, was there a threshold or number of wins or losses that you were looking for in particular or were asked to report about?

A. No. We just reported the numbers.

Q. Were you asked to do those reports on any -- anything other than the passed plans or the current existing districts?

A. I don't remember specifically which plans we might have done that analysis on, although I assume we might have done it on some of the interim -- like House committee plans or not -- in other words, not on any particular plan, but specific plans of some stature, whether it was passed out of House committee or whatever, so it had some stature of the committee behind it. Then we might have looked at that one. I assume that because I know we did more than just these eight. So interim -- interim versions of the plans.

Q. Were you ever asked to compare the numbers between the benchmark plans and the -- whatever the new proposal or enacted plan was?

A. Only that we provided the data for both the benchmark -- we got the numbers for the benchmark. We sent the numbers. We didn't do any further analysis.

Q. Did you do any similar ad hoc reports or summarizing of the DEA reports?

A. No.

Q. Did any of your ad hoc reports summarize or compile any information from other tables in the Racially

Polarized Voting Analysis or was it just that table 4?

A. Just table 4 is what we summarized and sent on, or we used table 4 to generate the numbers that we sent on, yes.

Q. In your RED Appl system here, did you import any additional data other than what was available to the TLC and to the public through the RED Appl terminals?

A. No, no additional data into RED Appl.

Q. Did the Office of the Attorney General draw plans for committees or members of the Legislature?

A. No.

Q. So as far as you're aware, it was analyzing plans that other people draw?

A. Yes. Now, we did sometimes generate something for our own. Like I made a plan that was the entire state in one district just so we could run it through and get numbers for the entire state. I mean we did some stuff on our own for our own analysis but never generate any sort of plan that -- that anybody saw. Just something specific to our needs at a given time. And that may have been the only instance.

Q. Why not?

A. We are not in that -- that's not our role. If -- if the LRB came into existence, then we would have a different role.

Q. Were you ever asked to draw plans for committees or members of the Legislature or other interested individuals?

A. No, our division was never asked to do that.

Q. There are 10 general elections in the Racially Polarized Voting Analysis, right?

A. Yes.

Q. Do you know why these 10 were selected?

A. Well, I should since I selected them. However, the process was not perhaps academically exhaustive. I do know that from history, we're interested in trying to tease out minority support for particular candidates and are not too interested in just seeing whether Hispanics vote Democratic. In other words, the partisan -- we don't care about the Democrat/Republican so much as the Hispanic candidate of choice and are they electing a candidate of choice.

So we've always looked at racially contested contests. Usually that involved a minority candidate either in the primary election, and then those generally follow through where there are winners among the minority candidates in the general election.

So we looked for -- I looked for candidates or contests that pitted minority candidates against non-minority candidates or other minority candidates,

Hispanic versus Black, for example, and we -- we wanted to limit ourselves. Because these reports can get big, we weren't interested in doing a comprehensive set of elections. It would have been too massive.

Another criteria, for example, in -- where there might have been a -- a Supreme Court Place 7 and a Supreme Court Place 8, that both had minority candidates running in the same year, we generally just chose one. Usually the one that was maybe closer contested or that the minority candidate fared better, that would be more -- be more helpful to us than a candidate that didn't fare very well, although there was -- we ended up with one contest, I think, that we -- that didn't really tell us much.

Q. Which one was that?

A. I was thinking -- I'm thinking of the 2006 Democratic primary between Hank Gilbert and Melton Koecadee. Because he never -- Melton never received strong support even among -- or similar strong support among African-Americans as other -- as the normal African-American candidate might, so that contest was never really helpful. I think in the end we might have replaced that with something else.

I did include contests that -- where the minority candidate was a Republican because it might be

interesting to see crossover votes from Hispanics to vote Republican. Some of those things were -- might -- where election was close; otherwise, that election might -- might be a swing. So I included a couple of those, with victor Carrillo and Eva Guzman, for example.

Q. Same general process on selecting the primaries?

A. Primaries we like to see where -- of course, where minority candidates were involved.

Q. Why not select any Republican primaries?

A. Well, because from history -- we've been at this over the years and decades of generating these types of reports, those have not been particularly helpful, I think, in what we call the Racially Polarized Voting Analysis.

Now, I think we have started thinking about that more, about looking, and I think we may have even -- I think we did run some reports looking at -- at how much Anglos will support minority candidates in a Republican primary, things like that. But I can't remember a lot of specifics on that.

Q. Where would you have looked at that?

A. Well, you begin look at, say, statewide contests and -- and do a similar analysis of where there are Anglo -- high Anglo populations and then the percent estimated votes for Hispanic. Again, I don't -- I can't

speak really much more because I don't recall a methodology we used.

Q. Would that have been an ad hoc thing or is that something --

A. That's not a formalized report. That was just an -- it would have been an ad hoc request.

Q. Were you ever asked to indicate, based on the Racially Polarized Voting Analysis, whether minority voters would be able to elect their preferred candidates of choice in a particular district or in a particular plan?

A. Only so far as -- as when we sent -- we sent -- we created a table for the summary results, and we would actually -- it would be like a little spreadsheet entry, and we would just say District 148, House District 148, and here are the 10 general election contests. Here's the percent of the Hispanic estimated support or Black estimated support, depending on whether this district was intended as -- proposed to be a Hispanic district or a Black district, and give that percentage and then the percent that they carried in the general -- in the actual votes. So we would just make a table with the numbers and send that on.

Q. I'm not sure I followed what's in that summary spreadsheet because you used the word "percentages" and

"percent" at a bunch of different times, and that's probably my fault. But can you explain once again what -- what those three figures represented?

A. We would say District 148, here are the 10 contests. Perry-Sanchez, we would say the minority-preferred candidate was Sanchez. I believe -- I don't know if we put the actual number there, like 72 percent, but we would indicate, based strictly on that propensity, that number to be -- or the fact that it was above 50 percent generally was never that -- not usually that close, but -- and then what the percent was: He carried that district by 50.5 percent. So those would be the numbers, basically. That was the initial way we reported and summarized this data.

Later, we started only reporting three out of 10, seven out of 10, nine out of 10, rather than give a breakdown with the numbers percentage because we had to do that by hand. We did that by hand and it was time consuming.

Q. And what my original question was: Did you -- were you ever asked to indicate whether or not minority voters would have the ability to elect in a district or across a plan, and you say that you -- only insofar as you prepared these reports?

A. Yes. We didn't provide any sort of analysis.

We provided the numbers. So we never made a value judgment. Seven out of 10, oh, we think this is okay. We never made a value judgment. We provided the numbers.

Q. And when you're saying "we," now you're talking about the Legal Technical Support Division?

A. Our division, yes, the Legal -- LTS Division.

Q. Do you know the answer to the question of why not produce a Black CVAP population profile that is akin to I think what has been marked as Exhibit 2?

A. I can assume that historically citizenship numbers have been most important when analyzing Hispanic districts in Texas. So it's a natural outgrowth of that. When we were developing reports, we're not so concerned about Black citizenship as we are about Hispanic citizenship.

Q. As a matter of math, however, if there are a lot of Hispanic noncitizens in a particular district, then the black VAP number won't be an accurate reflection of actual voting strength, will it?

A. There are problems with data in that regard.

Q. And Black CVAP would be a more accurate reflection of Black voting strength under those circumstances, wouldn't it?

A. I suppose you could argue that.

Q. What's your view?

A. Well, the way I see things is that ever since, say, the Gingles preconditions came out and -- now the way you approach this legally is that you have to look at, you know, how different populations vote differently, that started a process that's been evolving and it's being more refined as academics and others and experts come in. So it's a refining process as you go along.

For example, next decade we may have some of these new things that are so -- might be so helpful, but we come into the process not knowing ahead of time what might or might not be most helpful, and you go with what you have and you modify from there.

No one ever asked us to generate Black VAP reports that corresponded to Hispanic numbers, for example.

Q. You mean CVAP?

A. CVAP.

MR. SELLS: I think I'm about close to the end, but could I have a moment?

MR. SCHENCK: Of course you can.

(Discussion off the record).

Q. (By MR. SELLS) Were you ever asked to perform any analysis of whether Black and Hispanic voters vote in coalition?

A. I -- I think we provided data is all we did. We

never made an analysis ourselves as to that, no.

Q. There wasn't any special report on that?

A. Not that I recall, no. I believe we've only provided data for experts, for them to do that.

Q. Okay.

MR. SELLS: Then I believe that's all the questions I have for Mr. Giberson.

MR. SCHENCK: I have a couple questions.

EXAMINATION

BY MR. SCHENCK:

Q. Mr. Giberson, based on your experience in redistricting -- first of all, how many times have you been involved in redistricting in the past?

A. Since -- I was -- in the 1990s I used to work for the Legislative Council. In the 1990s, I came here. I've been involved since that time -- well, since 1990, essentially.

Q. In your experience, have you found that there's a substantial percentage of the state's population that is Hispanic that is counted in the census but that is not citizen population?

A. Well, substantial -- I suppose among all groups Hispanics would be the most substantial.

Q. And you have seen data or -- well, have you or have you not seen data reflecting the rates at which

African-Americans and Anglos that reside in Texas are citizens?

A. I believe our division may have generated such a report at the request to DOJ, but I can't recall --

Q. Do you recall whether --

A. -- specific --

Q. -- whether that report's been given to DOJ at this point?

A. I -- I can't say that. We give our stuff to Stacey.

Q. Okay.

A. We don't give it to anybody except Stacey.

Q. Do you expect there's a material -- as material a percentage of the population that is Anglo or African-American that is not a citizen in Texas?

A. I don't believe that's a major factor in --

Q. Okay.

A. -- voting analysis.

Q. Okay. Let me -- we've heard a lot about RED 225. I'm going to mark, if I can, as State's Exhibit 1 an excerpt from RED 225.

(State Exhibit No. 1 marked).

Q (By Mr. Schenck) Is that familiar to you?

A. Yes. This is what I understand to be that report, RED 225.

Q. Okay. Can you flip to the second page of that report for me? Do you see the second gray column there, "District 41 Totals"?

MR. SELLS: Counsel, I'm not sure that my pages are in the same order as yours. Can you specify by the --

MR. SCHENCK: It's -- yeah.

MR. SELLS: -- page number at the top?

MR. SCHENCK: Page -- at the very top in small print, this is Legislative Council page 52 of 299.

MR. SELLS: Okay.

Q (By Mr. Schenck) And there's a gray bar, "District 41 Totals?"

A. Yes.

Q. Do you see that? Is that the same district that we were talking about earlier in your testimony with -- responding to questions from Mr. Sells?

A. That is the district that -- the example district from the RPVA and extraction.

Q. Okay. So if we --

A. Yes.

Q. -- were to flip over from -- and now I'm going back to the top of the page, page 52 to 53. Would this represent the totals from RED 225 of votes within this district, District 41, and all the races that are

recorded?

A. Well, these are the totals, yes, in the -- you mean within the district?

Q. Yeah. Do you see a column in RED 225 that would identify the candidates by partisan affiliation?

A. In RED 225, yes.

Q. Okay. Do you see a column there that would identify the minority candidate of choice in any of those contests?

A. No.

Q. Okay. Let me draw your attention back to Government Exhibit No. 7. You were testifying about that earlier. Now, this is -- Government Exhibit 7 is a result as to one district, District 41.

Now, do you recall about how many pages this report would have been for the entire -- let's just talk now about the House plan.

A. Generally, House plans generate some 4,000 pages.

Q. Okay. And the Legislature was passing, in addition to a House plan, a congressional plan, State Board of Education, and Senate; is that correct?

A. Yes.

Q. Okay. So there would have been reports for all of those plans?

A. Yes.

Q. Okay. And you testified, I believe, about the process by which you selected the races that were going to be contested -- or I'm sorry -- the races that were going to be analyzed for purposes of identifying a minority-preferred candidate --

A. Yes.

Q. -- on this Government Exhibit 7. I'd like to ask you a few more questions about that. When did you pick the 10 general election contests that would be analyzed with respect to each of these plans?

A. I'm not sure when, but it was early on in the process Joshua needed to know which contest to use. We were in preparation phase for a redistricting upcoming, so it would have been early on.

Q. Would it have been before a plan was proposed on the floor of the Legislature?

A. I believe so.

Q. And who was involved in the process of selecting the races that ultimately -- when I say "races," the electoral contests that are reflected in Government Exhibit 7?

A. Well, I selected them, holding over some from previous reports of previous years, for example, 2002 and 2004. I just kept some of those rather than make any

valuation on them.

Q. Okay. Were any lawyers involved?

A. No.

Q. Okay.

A. I expected -- I gave an initial set of contests, expecting that perhaps some -- down the road some experts might tell us they like this or that, but no one ever said anything different to me. So they just have persisted.

Q. And so as the Legislature-proposed plans or plans were offered to the Legislature to consider, whenever you were asked to do an analysis of performance within a particular district based on one of these reports, like the House report, which you say would have been 4,000 pages long or thereabouts, did you look at the same 10 races every time throughout the legislative session?

A. We've used the same 10 general contests, same primaries throughout.

Q. Okay. And I believe you mentioned that you at one point had to borrow staff to determine the results of -- in terms of performance within a particular district as against a proposed plan, say. Is that correct?

A. Yes. We -- we needed to generate the numbers for every district in the four benchmark plans and the four legislatively passed plans. And so we borrowed staff

to count -- to do those counts more quickly.

Q. So I gather, then, this is a very time-consuming process?

A. As it stands, we are counting manually and then recording that.

Q. Okay. Is there any software, that you know of right now in existence, that would allow you simply to press a button and get this data?

A. No.

Q. Okay.

A. Although I'm thinking of something for 2020.

Q. But at this point and for the purposes of this legislative session and the work that had to be done by this Legislature, in terms of looking at data that would show them who a minority-preferred candidate was within a particular district and the rate at which the district had elected a candidate of choice to that minority, to your knowledge, is this the only report available?

A. Yes.

Q. And to your knowledge, is the process that you went through the only way available to identify comparison in terms of performance and racially contested elections from the benchmark to the new plans?

A. Yes, as it stands.

MR. SCHENCK: Okay. Thank you. Pass the

witness.

MR. SELLS: I don't think I have any other questions for Dr. Falk. I certainly don't have anything for Mr. Giberson. Unless Dr. Falk wants to clarify anything that he has heard that is unclear --

MR. SCHENCK: I don't think so.

MR. SELLS: -- or inaccurate. I don't have anything for him.

MR. FALK: No.

MR. SCHENCK: There was one thing earlier. Joshua, I think, testified that we had put together your Exhibit 2 at your request, and I don't believe you guys asked us to do Exhibit 2.

In fact, my recollection is that you guys had asked us to do citizen population for Anglo and African-American population, which I think we had provided to you, unless I'm mistaken.

MR. SELLS: I don't recall Dr. Zahn's testimony on that particular exhibit, so if there's a clarification that needs to be made, I think we need to get a witness to clarify it. I certainly would like to know, you know, the circumstances under which that document was authored.

MR. SCHENCK: I may be misremembering the testimony myself. I recall him being asked and him

testifying he thought that the DOJ had asked for it to be produced. Perhaps I'm wrong. I think that's the only thing I -- and, frankly, he needs to review the transcript anyway, so perhaps just as well.

MR. COHEN: Obviously, we'll reserve.

MR. SELLS: And it seems like a long time ago, but there were some privilege issues earlier with Ms. Napier, and so I think we have to leave the deposition open, but --

MR. SCHENCK: Yeah, that's fine.

MR. SELLS: -- because of the order, but --

MR. FALK: I may be wrong, but I believe this was created when Stacey told us that the DOJ had requested VTD-level citizenship data. We provided this as documentation to the methodology.

MR. SCHENCK: My apologies for understanding that the witness had misunderstood something.

MR. SELLS: Okay. Then could we get a sworn statement on that? I mean it sounds like Dr. Falk is the person.

MR. COHEN: I think he's just guessing.

MR. FALK: That's to the best of my recollection.

MR. COHEN: I think he just said that

Dr. Zahn testified directly.

MR. SCHENCK: Dr. Zahn testified directly on that, so I guess he's right.

MR. FALK: Well, I think Joshua testified that this might have been created at the time that we established the Hispanic Profile -- Population Profile report. I believe it was not. I believe it was established at the time that we provided you or provided to Stacey, hopefully to provide to you, the -- the VTD-level data.

MR. SCHENCK: Is that all right?

MR. SELLS: Yeah, I'll take that.

MR. SCHENCK: Okay. Thanks.

CHANGES AND SIGNATURE PAGE

WITNESS NAME: THE DESIGNATED REPRESENTATIVE OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS (TODD GIBERSON) DATE OF DEPOSITION: 10-18-11

PAGE	LINE	CHANGE	REASON

I, THE DESIGNATED REPRESENTATIVE OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS (TODD GIBERSON), have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
THE DESIGNATED REPRESENTATIVE OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS (TODD GIBERSON)

THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared THE DESIGNATED REPRESENTATIVE OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS (TODD GIBERSON) known to me or proved to me on the oath of _____ or through _____ [description of identity card or other document]) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this _____ day of_____, _____.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____
My Commission Expires:_____

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff,	)	
vs.	)	CIVIL CASE NO. 1:11-CV-1303 (RMC-TBG-BAH)
UNITED STATES OF AMERICA AND ERIC H. HOLDER, JR., IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE UNITED STATES, Defendants, and	)	
WENDY DAVIS et al., Defendant-Intervenors.	)	

REPORTER'S CERTIFICATE FOR THE ORAL DEPOSITION Of THE DESIGNATED REPRESENTATIVE OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS (TODD GIBERSON)

OCTOBER 18, 2011

I, Kathleen Nevils, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the foregoing deposition is a full, true and correct transcript;

That the foregoing deposition of THE DESIGNATED REPRESENTATIVE OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS (TODD GIBERSON) was taken by me in stenograph on 10-18-11, the said witness having been by me first duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, and the same was thereafter reduced

to typewriting by me or under my direction. The charge for the completed deposition is $_____ due from Defendants;

That by agreement of counsel, a reading condensed copy of the deposition transcript along with the full-size original Changes and Signature sheet have been sent to Bruce D. Cohen on _____ for review and signature within 30 days and if any corrections returned are attached hereto;

( ) That the signed transcript ( ) was ( ) was not received from the witness within 30 days.

( ) That the examination and signature by the witness is waived by the witness and the parties;

That the amount of time used by each party at the deposition is as follows:

Bryan L. Sells - (01:50)
Bruce D. Cohen - (00:10)

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

I further certify that before the completion of the deposition, the Deponent and/or the Plaintiff/Defendant _____ did _____ did not request to review the transcript.

WITNESS MY HAND, this the _____ day of _____, 2011.

_____
Kathleen Nevils
Certified Shorthand Reporter in and for the State of Texas
Certificate No. 1628
Expires December 2011
Esquire Deposition Services
Registration No. 283
3101 Bee Cave Rd.
Suite 220 Centre II
Austin, Texas 78746
(512) 634-1980

Assignment# 280835

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff,
vs.
UNITED STATES OF AMERICA AND ERIC H. HOLDER, JR., IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE UNITED STATES, Defendants, and
WENDY DAVIS et al., Defendant-Intervenors.

CIVIL CASE NO. 1:11-CV-13-3 (RMC-TBG-BAH)

****

ORAL DEPOSITION OF
THE DESIGNATED REPRESENTATIVE OF THE TEXAS LEGISLATIVE COUNCIL (JEFFREY ARCHER)
October 12, 2011

****

ORAL DEPOSITION OF THE DESIGNATED REPRESENTATIVE OF THE TEXAS LEGISLATIVE COUNCIL (JEFFREY ARCHER), produced as a witness at the instance of the Defendants and duly sworn, was taken in the above-styled and numbered cause on the 12th day of October, 2011, from 9:16 a.m. to 12:33 p.m. and 1:51 p.m. to 5:15 p.m., before Kathleen Nevils, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of the Attorney General of Texas, Price Daniels Building, 209 West 14th St., Austin, Texas,

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pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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GOVERNMENT EXHIBITS

NO.	DESCRIPTION	PAGE MARKED	PAGE REFERRED
1	Notice of Deposition	5	7
2	Preliminary Draft of the State and Federal Law Governing Redistricting in Texas	47	47
3	Final draft of the State and Federal Law Governing Redistricting in Texas	47	49
4	Printout of a portion of TLC News Archive on TLC's redistricting website that shows the events reported for 2011, maybe not exclusive but for most of 2011.	48	48
5	General description of data available through council resources	130	130
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session requires constant attention to requests, telephone calls, short and long queries. There's no -- there's no process by which people log or even have time to log the numerous contacts that occur in the course of a typical 10-, 20-hour workday during session.

Q. Well, who --

A. Formal -- when I say a formal request for legislation or resolution, you know, something in which substantial written output is created, is generally logged through a process by which, you know, typical legislation would be drafted or amendments, but the bulk of our day-to-day conversations are not -- not logged in any way.

Q. And who would know about any one-on-one consultations that were given during the redistricting process?

A. Each individual involved would have to be consulted, I think, the only way to even remotely reproduce that process.

Q. And who would those individuals be?

A. Predominantly, for technical requests, anybody on the redistricting research staff but primarily would be Clare Dyer, Charles McCarty, Charles Eckstein, E-c-k-s-t-e-i-n. There are a few others. Sam Davenport. And those would be the principal redistricting personnel. There may be other people answer the phone.

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A lot of the requests -- there are full reports, but they may also have more elaborate questions about data sources or interpreting data. And then for -- for -- on the legal staff, David Hanna; to a minor extent, Jennifer Jackson; and myself. I think that would be the exclusive list.

Q. And in preparation for this deposition, did you talk with any of those people about what advice they gave during that redistricting process?

A. I spoke with them generally. I believe the -- the response was that it would be impossible for them to reproduce or deliver to me any sort of even remotely comprehensive list of that; that that would not -- there's no way to accomplish that.

Q. Well, how about for yourself? You included yourself --

A. Uh-huh.

Q. -- on that list of --

A. Yes.

Q. -- legal consultants.

A. Uh-huh.

Q. Can you recall any consultations that you personally gave?

A. Of course, a few, yes.

Q. And can you tell me the subjects and the persons

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who requested those consultations?

A. No. Those -- those consultations and my advice would be subject to both legislative and attorney-client privileges unless my client waives one or both of those privileges.

In addition, I might mention that Legislative Council is governed by a statute that makes all our communications and assistance to members confidential.

Q. Well, so as not to interrupt the flow of our questioning, I'm going to skip my follow-up questions on that and your assertion of privilege, but we may come back to that before the end of the day.

MR. HICKS: May I break in briefly because I was -- when I heard the privilege discussion, did you assert the privilege as -- you didn't assert the legislative privilege?

THE WITNESS: Yes, I did.

MR. HICKS: You did?

Q (By Mr. Sells) You mentioned -- excuse me. I'm going back to the list of services that you said that you -- the Legislative Council have provided, and one of the items that you mentioned was this reporting system, and that that's separate from RED Appl?

A. Correct.

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Q. Okay. And is this reporting system the system that produces the RED 106 or RED 225 or RED 340 reports?

A. Actually, if the report has R-E-D on it, it is generated from RED Appl. RED Appl does have a reporting function. Their -- the reports that are outside of RED Appl would be called P-A-R, PAR reports. They look the same. There's almost -- some of them are the same, but there are additional reports.

And if people want -- excuse me -- large numbers of reports, they may ask for PAR reports to avoid having to run them themselves. That's one of the advantages, is you can say, "I want these 17 reports on every plan. I'll just give you the number from now on." So they may call redistricting and say, "I want my standard packet of reports for Plans 3, 5, and 7." And we do the work, the printing, the time computation, the data entry. They don't have to go on RED Appl and order up reports and sit there and tie up their printer.

Q. And did I hear you say that there's a list of the available reports somewhere?

A. There is and, you know, this process being complicated, I can't tell you off the top of my head that I remember the form in which that list is provided to members. I don't remember if it's on our website or available on request. I frankly don't recall that.

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don't think you could absolutely answer that question.
Q. And that area you're talking about, that's the area between 10 percent and 16.4 percent?
A. Roughly speaking, right.
Q. Could the State of Texas have complied more strictly with the County Line Rule if it had chosen a ceiling above 10 percent and below 16.4 percent?
MR. COHEN: You're asking the opinion of the Texas Legislative Council --
MR. SELLS: Yes.
MR. COHEN: -- or you're asking his opinion? But clarify that.
MR. SELLS: I'm asking the Legislative Council.
MR. COHEN: Okay.
THE WITNESS: The Legislative Council doesn't have an opinion on that question. I'm not -- it's a difficult question to answer in that respect, but I don't think we have an opinion on that question.
Q (By Mr. Sells) Well, based on your understanding of what the law allows, both the County Line Rule, which is set forth in this document, and the One Person, One Vote Rule -- let me back up.
There's a tension, is there not, between the County Line Rule and the One Person, One Vote Rule?

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A. That's correct.
Q. And so my question that I was getting at just a moment ago is whether the -- based on your understanding of the law, "your" meaning the Lege Council's understanding of the law that's set forth in this document, could it have achieved greater compliance with the County Line Rule if it had chosen a ceiling above 10 percent and below 16.4 percent?
A. My recollection is the answer. If you were talking purely more or less geographic mathematical possibility, by exceeding the 10 percent deviation range for the plan as a whole, I believe there are some counties that could have been kept whole whose population's deviations would have fallen within that 10 to 16 percent range. I don't recall how many or even for sure if there were any. But I suspect there were. That's a fairly large additional range.
Q. So it's at -- it's at least possible?
A. It's highly possible.
Q. And if the state had chosen, let's say, a 14-percent threshold instead of 10 percent, it could have then complied with the One Person, One Vote Rule as you've set out in this document, Exhibit 3, and complied with the one -- the County Line Rule as you've set out in this document in perhaps a more complete way?

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A. I think that's -- I think it's reasonable that courts would uphold such a plan, but I don't think it's a certainty.
Q. Did the Lege Council ever provide any advice on that specific topic, the tension between the County Line Rule and the One Person, One Vote Rule and its application in this round of redistricting?
A. I'm not sure I understand the question. I mean the answer in general is clearly yes, through this publication, through presentations, that point is frequently made. In any individualized discussions, the same point would have been discussed, I feel certain.
Q. Okay. Well, I'm going to try to nail down some more specifics because I think it's a relatively important point. I mean if someone came to you and said, "Well, can we" -- "can we do a better job of complying with the County Line Rule if we go up to 13, 14?" That's the sort of conversation that I have in mind, or it might be something like, "What can we do if we go up higher on that -- the One Person, One Vote ceiling?"
Those are the sorts of consultation questions, whether they came from a committee or otherwise, that I want to try to ask whether those questions happened.
A. If those questions happened in any kind of one-on-one relationship, I'm not at liberty -- I would

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have to claim privilege on the particulars of those discussions, both legislative and attorney-client privileges.
Q. Just to be clear for the record, then, you're refusing to answer my question?
MR. COHEN: That's a yes or no.
THE WITNESS: Yes, I understand. Yes.
Q (By Mr. Sells) And, Mr. Archer, we should have gotten this out right at the beginning, but you are an attorney, are you not?
A. That's correct.
Q. And if your title is legislative counsel, one would assume, that so -- and I understand you may not be a practicing litigator, but you understand the implications of refusing to -- excuse me -- potential implications of refusing to answer a question in a deposition?
A. I believe so.
Q. If a member of the Legislature were to come to you with that question, "Can we comply better with the County Line Rule and still comply with the One Person, One Vote by exceeding the 10 percent threshold," what would your response have been?
A. I -- I would -- I would articulate that in at least one case the court justified -- the Supreme Court allowed the State to exceed 10 percent, not to exceed 16.4

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course.
Q (By Mr. Sells) Well, so the next question then is: Based on the Lege Council's understanding as reflected in this document, can coalition districts form the basis of a successful section 2 challenge in Texas?
A. To the extent that -- by -- we are using shorthand, coalition district. If -- if all of the circumstances are present in -- by that I mean polarized voting by other voters would otherwise defeat the bloc voting by this coalition of minority voters and it's, generally speaking, compact enough and large enough, in terms of voting behavior, of potential voters, then the answer, I think, is clearly yes, that is certainly something that is relevant to a section. I mean a preexisting one is relevant to a section 2 analysis. Failure to draw one is relevant to a section 2 analysis, clearly.
Q. (By MR. SELLS) Well, you can probably anticipate my next question, which is about section 5: Given the Legislative Council's understanding of the state of the law as reflected in this document, can a, shorthand, coalition district be protected by section 5 of the Voting Rights Act?
A. By "protected," you mean does it form -- can it be considered in the -- what's the term you used for the

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baseline plan?
Q. Benchmark.
A. The benchmark plan. Absolutely, the answer is. If such a district exists in the circumstances that I described, then the effect of the redistricting on that district would be an important part of the analysis under section 5.
Q. Did the Legislative Council receive any requests for guidance on the law with respect to coalitions or coalition districts in the 2011 redistricting process?
A. I think the answer is yes, but that any specific advice or guidance we gave to a particular member committee would -- in confidential circumstances would be subject to legislative and attorney-client privileges.
Q. Let me -- let me ask this in a slightly different way first before I get to the question that you're going to refuse to answer.
Was the subject of coalitions or coalition districts -- and again, we're just using shorthand for those terms.
A. Uh-huh.
Q. Were those subjects part of any general presentation, either the Redistricting 101 or the Voting Rights Act presentation or any of these committee presentations that you've talked about before?

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A. I don't -- I do not recall. Probably, but I'm not -- I don't recall specifically.
Q. Who would know the answer to that question?
A. Can you repeat the question, so I make sure I under --
Q. Who would know whether coalitions were the subject of any of these public -- semi-public presentations that you gave to committees?
A. Uh-huh. Probably David Hanna, the committee staffs, the clerks of the committees, and possibly, possibly Charles McCarty, you know, whether that was the subject of the basic training, Redistricting 101.
Q. And would that be reflected in the minutes if it were part of that?
A. No, that would not be reflected in the minutes. The transactions are recorded in most circumstances, particularly those kind of interim committees where there are witnesses. Every committee proceeding in which there are witnesses in the -- in the House in particular and, I believe, in the Senate is recorded, and those recordings are available on line. They're publicly available, linked to the committee's proceedings.
If -- if, for example, David didn't recall exactly what was discussed, it would be fairly simple to identify the presentations and review them to see what

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issues were went into. I feel certain that it was discussed. I just don't recall. Possibly, as I said earlier, there was a committee hearing of the House committee in which -- that I attended where David made the County Line presentation. One or both of us may have discussed it at that. It was a broad-ranging meeting in which we responded to questions and provided, you know, overview materials, and it may or may not have some up at that particular hearing, for example.
Q. Okay. Well, now, I do want to put it on the record my question, which is: Did the Legislative Council receive any requests for advice or guidance with regard to coalitions or coalition districts and whether those are protected under section 2 or section 5 during the 2011 legislative process and, if so, who made those requests?
A. I believe it's fair to say that our discussions probably covered that subject matter, but to the extent that we received requests or discussed coalition districts with individual members or committees, I would raise legislative and attorney-client privilege regarding our advice and discussions.
MR. COHEN: For the record, Bryan, you're use the term "legislative privilege." Are you referring to the legislative privilege which attends to lawmakers or to the statutory privilege that attends Texas Legislative

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Council? There's two separate privileges in Texas.
THE WITNESS: I -- in most circumstances -- that's why I mentioned the statute -- they are largely, shall we say, coterminus. And I use the term to include both bases for my duty to my clients.
MR. COHEN: For your assistance, it's -- and if you're not familiar, it's Texas Government Code Section 323. I think it's .017.
THE WITNESS: .017 and 323.018.
MR. COHEN: Okay.
MR. SELLS: Thank you. I appreciate that.
Well, as we've done with the other mentions of privilege, I'm going to skip over them for the flow of the deposition and maybe come to back to them later, if that's okay.
MR. COHEN: Of course.
Q (By Mr. Sells) Mr. Archer, would you turn with me to page 91 of the final document, which is --
A. Uh-huh.
Q. -- Exhibit --
A. 91, yes.
Q. -- 3? Yes. So we're on Exhibit 3, page 91, and I want to direct your attention to the paragraph under the heading C, "Measuring Retrogression."
A. Uh-huh.

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Q. Would you take a moment just to scan that paragraph?
A. Sure.
Q. And I want to ask you questions about it.
A. Okay.
Q. Okay. Under the Legislative Council's understanding of section 5 as reflected in this document, can the ability to elect under section 5 be determined on the basis of numerical thresholds?
A. To avoid giving a simple-minded answer, I think the answer is yes, if you had all the complex data available that you need to make that analysis. In other words, the ability of a group to elect candidates of choice is based on some numerical assessments that include potential and actual voting behavior, inclusion of other voters, turnout in a particular type of election and so on.
So I think you need a lot of data, and theoretically you can put together the right data perhaps, if you had it, that could generate the answer, but it is -- it's not like a rule of thumb, where you know it when you see it. That's what it -- that's the result of the kind of complex computations that are going on simultaneously in one's head when one draws a district. So I think the answer is sort of.

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Q. Okay. Well, you've pointed out that I asked my question inartfully, so let me try again.
Based on the Legislative Council's understanding of the law as reflected in this document, can the ability to elect be determined by the voting-age population of a minority group in a district as a numerical threshold?
A. In isolation, I don't think it's enough information to make the kind of assessment you really would want to make.
Q. What other information would you need?
A. Again, I think you would want to look at levels of cross-over voting, levels of polarized voting, among other things, between different groups of voters. I think those would be among the other kinds of information you would need, absolutely.
Q. Did the Texas Legislature have that kind of information available to it at the time of the redistricting in 2011?
A. Some of it.
Q. Why do you say "some of it"?
A. We had most of the raw materials one needs to make that assessment, but making that assessment involves a lot of judgment in the individual circumstances. So it is not a matter of simply generating some additional data

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but being able to interpret that data.
In addition, I mentioned bloc voting. You can get bloc-voting estimates in different ways. One of the most useful ways is to look at actual election returns in a particular district, which gives you the sum of the votes cast. To the extent that you can anticipate some of those votes or cross-over voting -- that's real elections, real voters -- you can't attribute the particular votes to Anglo cross-over voters, coalition voters. You know they exist, but you're not -- if you see patterns, but you don't which group they're necessarily coming from.
If you look at enough elections, you might start to get an idea because one district has a small Anglo neighborhood in it that another neighborhood doesn't. You can build assumptions and generalizations about specific areas that become very accurate.
With respect to calculating bloc-voting levels that is actual support in a particular geographic area for a particular candidate, we had a tool, 10-year-old tool, that estimated that in one particular method that was available to me but was not developed to a level of usefulness, that it was -- that was made available elsewhere.
And, again, it's one of the many tools that one could use, not necessarily integral, depending on what

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includes a majority of potential voters through either voting-age population or citizenship or registration, you have additional indicia that you don't need as much cross-over voting or that whether -- if the cross-over voting dwindles, there's still an opportunity in the future and you might have a stronger district. I mean to me it's the only way to draw a legal district. So it's a little bit of a chicken and an egg.

There aren't some set of magical districts that the Legislature has to go out and draw. The edges and the coalitions and the cross-over voting give you lots of options that still comply with the law. So that's why you kind of want these other databases.

Can you draw legal districts solely with census populations and election returns? Probably, if you assess your risks carefully and draw districts in which the minority populations that -- that are concentrated seem to have opportunity to elect candidates of their choice.

Would it be better to know the other data? Absolutely.

Q. Would you want to have access to racial bloc voting analysis as part of that process?

A. Again, I think you might want it in circumstances where you aren't sure of what else you've

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got. I'm not sure I can explain that. But, frankly, I don't -- I don't think it's necessary to make the analysis of electability, shall we say. All you're doing is analyzing the cross-over voters that actually exist.

And so while it may be useful comparing has this district got more cross-over voters than this district, that's maybe somewhat of an academic or a long-term kind of analysis somebody would want to do. I don't think it's necessary to draw districts to give minority voters an opportunity to elect candidates of their choice.

Q. Do you know whether the Legislature had access to racial bloc voting analysis provided by any entity other than the Texas Legislative Council?

A. I don't know with any certainty. It's my understanding they did, from just casual conversations, but I don't have any specific knowledge of that.

Q. Okay. And this process that you've described to me of looking at election returns and trends and whatever data you have available, that is reflected in this paragraph on page 91 of --

A. I believe so.

THE REPORTER: I'm sorry. What did you say?

THE WITNESS: "I believe so."

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Q. (By MR. SELLS) This process that is reflected in paragraph C on page 91, was that part of the Redistricting 101 presentation or the Voting Rights Act presentations?

A. I think it's probably far more detailed, but its broad outlines would be involved in any such presentation.

Q. At any time, did the Texas Legislative Council advise that a district's protected status could be determined solely on the basis of voting-age population, citizen voting-age population, or Spanish-surname voter registration?

A. I don't -- I don't think so, no. The likelihood of that question being asked in that way is very small. But, no, that's not advice that I think we would give.

Q. Did the Legislative Council receive any requests for advice or guidance on how to determine whether a district was protected by section 5?

A. I feel certain that we did, but, again, with respect to any particular advice we gave or answered that question to an individual or to a committee, we would assert attorney-client and legislative privileges.

Q. Well, let's break that down into two halves. Did the Legislative Council receive requests for guidance on how to determine whether a district is protected by section 5 in any of the public or committee presentations or meetings that you've discussed?

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A. Yeah. I feel certain that we did, but I don't recall specifically.

Q. And if you did, your advice would have been consistent with what is on page 91 of Exhibit 3, correct?

A. Correct, yes.

Q. And you would not have advised whoever was assembled there to use strict numerical thresholds based on VAP, CVAP or SSVR?

A. I feel confident that none of our legal staff would have given that advice, correct.

Q. Okay. So now let me ask the second part of that question, which is: Did the Legislative Council receive requests for advice or guidance with respect to how to determine a district's protected status under section 5 from any individual members of the Legislature, and, if so, who?

A. Your question is on how to determine. I frankly am not sure, given the specificity of that question asking how do you determine this.

I think it would be a natural result of a conversation or discussion, so it probably would be information that would be imparted in the give and take of looking at a district or set of districts. I think the answer is yes.

Q. All right. Well, the second part of my question

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was who, and are you refusing to answer that question?
A. Yes. I assert legislative and attorney-client privilege with regard to those discussions.
Q. Well, then, my next set of questions is about specific districts. Did the Legislative Council receive requests for advice or guidance on whether any specific districts were protected by section 5 in the benchmark or whether any proposed districts satisfied section 5 in the proposed plan? And we'll start first at a public meeting.
A. No, I don't think so.
Q. So then the second part of the question would be: Did the Legislative Council receives requests for advice or guidance on whether specific districts were protected by section 5 in one-on-one requests or by specific individual legislators?
A. The answer is yes. And with respect to the specific conversations and discussions, I claim attorney-client and legislative privileges.
Q. In those discussions with regard to specific districts, would your advice have been consistent with what is on page 91?
A. Yes.
Q. Are you familiar with the state's position in this case with regard to determining whether a district is protected under section 5?

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A. Not in any detail, no.
Q. Did the Texas Legislative Council ever advise anyone at a public meeting that it could -- let me start again.
Did the Texas Legislative Council ever advise anyone at a public meeting that a district could satisfy section 5 in a proposed plan if it met a certain threshold based on VAP, CVAP or SSVR --
A. No.
Q. Let me finish my question.
A. You paused.
Q. Let me start again. Did the TLC ever advise anyone at a public meeting that a district could satisfy section 5 by meeting some threshold based on VAP, CVAP or SSVR where the election returns showed that the minority-preferred candidate would nonetheless lose?
A. Let me start by reinterpreting your question a little because you said whether a district would satisfy section 5. Of course, section 5 is a statewide analysis, so we wouldn't use that terminology --
Q. Okay.
A. -- in determining whether a district was considered a district in which minority candidates have the ability to elect candidates of their choice for purposes of determining whether it was either part of the

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benchmark or part of the analysis in determining whether you retrogressed.
In effect, absolutely not would we have ever advised to use numerical thresholds in the absence of election returns. There could be circumstances when those thresholds were so extreme that the examination of election returns would be somewhat pointless, but I'm not aware that that happened. I'm just simply pointing out there can be 98 percent districts in which you don't need election returns. You've either drawn the strongest minority district possible in the region or you've got such clear predominance of voters that the only way they could lose is absolute no polarized voting.
So -- but in the absence of those kind of mathematical, you know, high levels of thresholds, no, absolutely we would never advise to -- to not examine and take into account those election returns.
Q. And I assume you would not and did not provide that advice in private consultations or public meetings?
A. I can't imagine any circumstance in which we would have provided that advice.
Q. And if someone presented to you a district that was 50 percent plus one either CVAP, VAP or SSVR -- doesn't matter which one. Let's say all three -- and yet your examination of the election returns showed that the

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minority-preferred candidate for the whatever office was at issue did not win consistently --
A. Uh-huh.
Q. -- in fact did not win at all, would you -- would you conclude that minority voters had an opportunity or the ability to elect in that district?
MR. COHEN: Are you asking opportunity or ability?
MR. SELLS: Well, I asked either, but we can ask ability first.
THE WITNESS: I think -- I don't want to make you rephrase the question. There's something about the premise that I was going to comment on, but I don't -- can you try to rephrase it again --
Q. (By MR. SELLS) Sure. Okay. So we've got a district, and it could be either in the benchmark or the proposed plan, and it meets the 50 percent plus one thresholds upon those three criteria, but your examination of the election returns, either the actual election returns or the reconstituted, showed very little success for the minority-preferred candidate. We can say zero success or --
A. Uh-huh.
Q. -- some level, whatever you prefer. Would you conclude that that district was one in which minority

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voters had the ability to elect candidates of their choice?
A. Our advice would be that such a district has a potential of preventing you from meeting your duty not to retrogress from the benchmark plan. If the district or the district it's replacing there or elsewhere in the state did have that opportunity in the past, where election results were clearly showing success, that that could well be -- we really more -- I said early on neutral kind of advice. We don't try to be the arbitrator, the decision maker but to assess the risk. But I think -- I think it's clear that we would advise that in that circumstance, if you're counting this as the equivalent of that district in which the election returns showed consistent success by minority-preferred candidates, then you may well find yourself retrogressing in that point.
And you got one-on-one correspondence. There may be special circumstances why those election returns are like that, but in the absence of those things, that's -- that would be our advice.
Q. Did the Legislative Council ever receive a request to pass judgment on that threshold issue?
That's inartfully stated because I don't mean a threshold issue, but the issue of thresholds in the compliance with section 5 --

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A. I think that issue was involved in some of our -- in some of our consultations, yes.
Q. And I'm going to ask you the same question, and I imagine I know what your answer is going to be, but who raised that issue with the Legislative Council?
A. Yes, I -- I would claim legislative and attorney-client privilege regarding any consultations we had or advice we gave to individual members of committees or staff with regard to that question.
MR. COHEN: I don't know if you're in the middle of an area or you're getting close to -- before you start a new one, why don't we take a lunch break.
MR. SELLS: Yeah. I think I have one five-minute line of questions here, and then we can --
MR. COHEN: Sure. Okay.
Q (By Mr. Sells) Did Speaker Straus ever request individual guidance, with regard to the law of redistricting, during the 2011 process?
A. I assume you mean from the Texas Legislative Council?
Q. Yes, I do.
A. I would have to claim legislative privilege and, with respect to the content, attorney-client privilege regarding any -- any discussion with the speaker individually regarding redistricting.

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Q. Same question with regard to Chairman Solomons.
A. My answer would be the same.
Q. The same question with regard to Gerardo Interiano?
A. My answer would be the same.
Q. Same question with regard to Ryan Downton?
A. My answer would be the same.
Q. Same question with regard to Senator Seliger?
A. With a minor exception, it's my understanding there's not been a change -- Senator Seliger waived his legislative privilege in the -- in the state case.
THE WITNESS: I don't know if we need to discuss this briefly among ourselves. Do you want to just very quickly?
MR. COHEN: If you don't mind, we'll go off the record for just a minute.
MR. SELLS: Certainly.
(Discussion off the record).
THE WITNESS: In the -- in connection with the litigation in Texas, Senator Seliger expressly waived the legislative privilege and expressly refused to waive attorney-client privilege, so I can testify that counsel did discuss this issue with the committee staff for Senator Seliger.
When you say "Senator Seliger," in our

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parlance that usually is interpreted to include his -- his staff who are responsible directly to him.
Q (By Mr. Sells) Well, under that waiver, can I ask what subjects they sought guidance on?
A. Yes. I believe, in general, they sought guidance on the -- the question of whether a district in which election returns show inconsistent results are or are not considered effective minority districts or performing minority districts for purposes of a benchmark analysis or retrogression analysis.
Q. What do you mean by "inconsistent results"?
A. In circumstances where you may have election returns in which minority candidates don't consistently win the elections in reconstituted elections in a particular district.
Q. And under that waiver, can you tell me what your advice was?
A. No. That would be subject to attorney-client privilege.
Q. Same question we were asking before --
A. Yes, it is.
Q. -- with regard to Doug Davis.
A. And my answer is the same. The answers I just gave regarding Senator Seliger apply to him through Doug Davis.

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Q. Okay. Same question with regard to Beverly Wooley.
A. I would have to claim attorney-client and legislative privilege with regard to any advice I gave Beverly Wooley.
Q. Same question with regard to Wayne Smith.
A. Yes, same answer.
MR. SELLS: Lunch break?
MR. COHEN: Let's take one.
(Lunch recess taken).
Q. (By MR. SELLS) Mr. Archer, during the lunch break, were you able to find a RED 225 report?
A. I neglected to look for one.
Q. Well, have you -- okay. Have you since seen a RED 225 report? Let's put it that way.
A. Yes. Thanks to your ingenuity, I have since seen one, and that is the report to which you were referring. Includes reconstituted election returns by district.
Q. And just to be clear, the RED 225 report is one that you could look at to begin to make judgments about whether minority voters have the ability to elect in a benchmark or proposed district?
A. Yes.
Q. Thank you. With that having been established, I

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want to turn to Red Appl and DistrictViewer, and maybe let's start with DistrictViewer since that's --
A. Yes.
Q. -- the simpler of the two. Can you describe DistrictViewer for me, please?
A. DistrictViewer is a web-enabled application, available on the Legislative Council's public redistricting website, that allows any user who has Internet access to access in a frozen but viewable form any of the proposed plans or districts or enacted plans or districts that are part of the public process of redistricting from the inception of the Legislature, including the preexisting districts.
The first plans on there are the districts that existed before redistricting, and as the Legislature considers, votes on, enacts, amends plans, the plans and amendments are posted on DistrictViewer so that they can be accessed and various geographic information can be overlaid on those plans. Plans can be compared. Two or three plans can be accessed simultaneously so that you can look at the overlay and you can access some -- some fairly complex but fixed reports of population and election data.
Q. When is the purpose of DistrictViewer?
A. The purpose of DistrictViewer, to be -- to be frank, is to save everybody time and money. All of these

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things in the past, all of these plans and reports we would provide in printed copies. You would have to have made a request or there would have to be stacks of them available and they would have to be delivered.
So it is essentially, as many Internet databases and tools are, designed to allow anybody interested in the legislative process to access commonly discussed or important information in a quickly usable form that -- a reporter can look at a plan, for example, a staffer who's not particularly involved in the process and doesn't want to bother logging onto Red Appl and pulling it up there and accidentally changing it on his plan can simply quickly look through proposed plans, file plans, defeated plans, amendments, and analyze them or examine them however they want.
Q. Would it be fair to characterize DistrictViewer as a very, very light version of Red Appl?
A. I wouldn't compare them very much because you cannot model or change a district on DistrictViewer. You can't add a district or plan to DistrictViewer. It is basically determined by the council staff what features are on it and what plans are on it. So very different purposes. It can save somebody a lot of trouble who otherwise would have to get on Red Appl, download, save the plan they're working on to open a different plan just

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to look at where a particular -- the boundary of that plan is or the population of a particular district.
So it's a tool, but it's not very much like Red Appl, except on the surface they both have maps embedded in them.
Q. Does DistrictViewer allow the printing and generation of reports from the plans that are embedded in it?
A. Yes. Anything you can see on there can be printed.
Q. And what reports are available in DistrictViewer?
A. A population report by district referred to as R-E-D 100, so RED 100, and that is predominantly, if not exclusively, census data broken down by district and by county within each district. And it's summarized census data. It doesn't include the many, many categories of other ethnicities, for example. It is merged groups, but it is, strictly speaking, census data.
In addition to that, there is a basic election report, and it is the -- the R-E-D -- the RED 202, and it does not have individual election returns. It has summaries of the population data by district and voting-age population, and it has turnout by election for the 2008 and '10 general elections. It has estimates of

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A. I think Pamela Lan-Yip could probably most accurately describe that part of the process.
Q. Do you know the difference between counts and rates as regards census data?
A. I think so. I'm not -- it's not a distinction that I use frequently, so you may -- maybe it would be helpful if you would elucidate what you mean by that.
Q. Well, I'll represent to you that it's an issue in this case raised by some -- some folks, and it was, I think, a bigger issue in the section 2 case about whether to use the CVAP data as counts, which would be the raw numbers that are reported, or as rates. So you could look at any given level of geography --
A. Uh-huh.
Q. -- use the citizenship rate for --
A. Right.
Q. -- that level of geography or subgroups within that level of geography and apply it to 2010 census data. Does that comport with your understanding of rates and counts?
A. I understand the distinction you're drawing, yes.
Q. And was there ever any discussion of using the CVAP data as rates instead of counts in that context?
A. I -- I frankly don't recall.

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(Recess taken).
Q (By Mr. Sells) I think it probably makes sense to fill in some of what we -- what just -- like go back to what we were just talking about on the --
A. Okay, sure.
Q. -- legislative stuff because even though the judge didn't conclusively rule, in order to enable her to rule, I think it would be helpful to ask some more foundational questions.
A. Okay, sure.
MR. COHEN: So are we back on the record?
THE REPORTER: Yes.
MR. SELLS: Okay, great.
Q. (By MR. SELLS) So, Mr. Archer, we were talking about things like CVAP and whatnot, but I'm going to go back to the issues on which you asserted a privilege.
A. Okay.
Q. And the first question I want to ask is regarding the specific districts about which you, the Legislative Council, received requests for guidance. Do you recall that line of questioning?
A. I'm not sure I recall exactly a particular question that you're -- that we were referring to.
Q. Okay. Well, according to my notes, I asked you whether the Legislative Council had received requests for

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advice and guidance as to whether certain specific districts were protected by section 5 of the Voting Rights Act.
A. Okay. Yeah, I recall the question, so --
Q. Well, my notes have your answer saying yes, but then asserting a privilege on who --
A. Correct.
Q. -- asked for advice. And I want to follow that up by asking: What specific districts were you the, Legislative Council, asked about?
THE WITNESS: Could we talk for a second?
(Discussion off the record).
MR. COHEN: Sorry. We're back. Mr. Archer and I discussed the question briefly, and the concern is identification of an individual district will too easily identify the -- or too likely -- is very likely to identify the legislator who asked the question.
A lawyer who says, "I was asked a question about a bank robbery, but I can't tell you what crime the person wanted to talk to me about," but there's only bank in town, that sort of thing, so --
THE WITNESS: Yes. Without more -- without resolution of some of the privilege issues that's pending, I cannot think of a circumstance in which discussing the

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particular district would not disclose too much of the material that's subject to attorney-client privilege.
Q (By Mr. Sells) Okay. Well, it's on the record now that I asked.
A. Yes --
Q. You didn't answer that question. Now, with respect to the various assertions of privilege, I want to go back over those to see if we can get a little bit more precision on who may have asked you for advice. And given what the judge said during our conference call, I'm going to ask you whether it was a staffer or a legislator.
By the way, were you in on that call --
A. I was listening, yes.
Q. Okay. So you know where I'm going with all this?
A. Yes, I do.
Q. Okay. The first subject where the privilege came up, according to my notes, was when I asked you whether you had had consultations about the County Line Rule and the One Person, One Vote --
A. Uh-huh.
Q. -- scenario -- One Person, One Vote Rule, and you answered yes, but, again, you wouldn't answer the question who.
So let me ask you: Were there requests for

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advice or guidance, with respect to the County Line Rule and the One Person, One Vote Rule, from staffers of the legislature?
A. Let me try to articulate the circumstances. I'm here on behalf of the Legislative Council. My answers to the questions have been largely corporate or inclusive of other staff members. I cannot honestly tell you what the individual contacts were with either legal staff or nonlegal staff for which a privilege -- for which I've claimed a privilege on their behalf today, nor do I personally agree -- and I think I would have to discuss this with the clients -- that I don't think the judge has ordered me to answer those questions, and I'm going to continue to assert the privilege with respect to staff members. I don't believe that issue has been clarified, and out of a caution, I do believe that in these circumstances the staff member may well have privilege.
In addition, I can't tell you, other than to assert the privilege, what conversations other staff members, including the attorneys on the staff, whether they spoke with the principals or the staff or both in any particular circumstance. I can only testify as to my own.
Q. Okay. Are you asserting that the fact of whether you spoke with a principal or an agent is itself privileged?

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A. No.
Q. Okay.
A. No.
Q. So the line of questioning I'm getting at now is whether --
A. Right.
Q. -- you --
A. I was trying to clarify those circumstances.
Q. Okay. But the line of questioning I'm getting at now is whether you spoke to a principal or an agent.
A. Right.
Q. And I understand that you may not have raised that distinction, in going about your duties as the corporate designee, to find out who other people at the Legislative Council talked to, but I'm going to ask, and to the extent --
A. Please.
Q. -- that you know, please answer. So with respect to the County Line Rule and the One Person, One Vote Rule, did the Legislative Council receive requests for consultation from staffers?
A. I think so, yes.
Q. Did the Legislative Council receive requests for consultations on that subject from the principals; i.e., the legislators?

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A. In confidential circumstances, I do not know. I'm not -- in other words, I am not the -- I'm not the staff member who would know the answer to that question.
Q. Okay. Well, same series of questions with regard to advice on coalitions and coalition districts, so the first question would be: Did the Legislative Council receive requests for advice on that issue from staffers?
A. I believe so, yes.
Q. Did the Legislative Council receive requests on that subject from principals?
A. Possibly, but I'm not sure.
Q. Did the Legislature -- excuse me -- Legislative Council receive requests, with regard to how to determine whether a district is protected by section 5, from staffers?
A. I think so, yes.
Q. And did the Legislative Council receive --
A. I should say yes on that one, yes. We talked about one circumstance, for example, with Senator Seliger's staff.
Q. Okay. Did the Legislative Council receive requests on that subject from principals, the legislators?
A. I'm not sure.
Q. The next area was specific districts. So did the Legislative Council receive requests as to -- for

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guidance as to whether specific districts were protected from staffers?
A. Yes.
Q. And did it receive requests on that subject from principals?
A. Possibly, but I'm not sure.
Q. Did the Legislative Council receive requests from staffers on the -- what we call the threshold issue, whether a district -- whether the state could comply with section 5 by meeting some numerical threshold even if its elections did not show an ability to elect?
A. I'm not aware of any circumstances in which that question is asked in private conversations. If it -- if it has been, it was not in my presence.
Q. Is that by staffers or principals?
A. Correct.
Q. Okay. The last set of questions were about individual legislators and whether they had requested guidance. And I'm going to run down the list again, but I want to try to distinguish between staffers and the principals.
A. Okay.
Q. So with respect to Speaker Straus, did he personally come to the Legislative Council for guidance on any aspect of redistricting law?

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A. I'm going to have to assert privilege on whether he did or not.
Q. Okay. Did any of his staff come to the Legislative Council --
A. Same response: I would have to assert privilege.
Q. How about Chairman Solomons?
A. Same answer.
Q. How about Chairman Solomons' staff?
A. Same answer.
Q. Gerardo Interiano?
A. Same answer.
Q. Ryan Downton?
A. Same answer.
Q. Now, Interiano and Downton are staff members, correct?
A. They are staff members and counsel. They are attorneys to their representative employers.
Q. How about Representative Wooley?
A. Same answer.
Q. And Representative Smith?
A. Same answer.
Q. Now, you said -- well, how about staffers from Wooley and Smith?
A. Same answer.

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MR. SELLS: Thank you.
Q (By Mr. Sells) You said in a number of instances to my questions just now that you wouldn't know who got a request, you wouldn't know who gave the request because, as -- as you went about your duty of preparing yourself to answer questions on behalf of the Lege Council, you didn't ask that question of other --
A. Correct.
Q. Okay. My question to you is: Who else, besides yourself, would have received those requests for advice and guidance?
A. Any member of the legal or redistricting research group might have been asked those questions. Typically, the nonattorneys would attempt to answer technical data and sort of obvious questions. And if they didn't feel that they had the training or that it was a, strictly speaking, legal advice question, they would refer that to David Hanna, who -- or sometimes to myself, or the members and offices and staff would contact one of us individually.
So I don't think -- first of all, in preparing for this, David Hanna is out of town for -- he was out of town from Friday until the end of this week, I believe, and not available, so I was not able to discuss with him any details other than the most broad outlines of

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what I needed to know for today.
And I think it would be virtually impossible for them to reproduce their activities for, you know, a year, nine months in a way that I could adequately recreate it or represent it. It just is not possible. I think need to be asked direct questions.
I don't think -- in other words, our duties are so complex and so widespread and so intense, I don't think any one person can fully answer all of the questions that you might have regarding the activities. I've done the best I can to prepare, but I didn't quite anticipate and certainly probably couldn't have -- it would have probably taken, you know, days to establish -- for people to even try to begin to recreate or for me to understand what they're telling me, so...
Q. David Hanna is an attorney?
A. Correct.
Q. How about Clare Dyer?
A. No, she's not.
Q. How about Jennifer Jackson?
A. Yes.
Q. Did you talk to Clare Dyer about whether she had received requests?
A. In a general sense, and her response was essentially that it would be impossible for her to

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adequately figure out or how to tell me all of her day-to-day activities for that time period.
Q. How about Charles Eckstein?
A. I only spoke to Charles -- I'm not sure I spoke to Charles about this, given the relatively limited role and the fact that I did not anticipate questions of the sort of detail we're talking here. I mean for me to get all their -- I don't even know how I could have gotten a calendar or an agenda or a list of the day-to-day duties of these numerous people to answer these questions.
Q. Is Mr. Eckstein an attorney?
A. No.
Q. Is Charles McCarty an attorney?
A. No. None of the other people I named are attorneys.
Q. So is the Legislative Council asserting attorney-client privilege for any requests that would have come in to them?
A. If the request came in the form of a request for legal assistance and it was referred to an attorney, yes, but if they attempted to answer a question that is a governmental question in which an understanding of the law is -- is involved, no, of course not.
Q. Did attorneys receive -- attorneys in your group receive requests for technical assistance that may have

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touched on any of these areas we're talking about, such as the County Line Rule and One Person, One Vote?
A. It is possible that a question of a fairly simple nature like, "How do you use -- how do you turn RED Appl on" or "how" -- "does it display features X, Y or Z?" was answered by myself, although I don't recall having done so, or by David Hanna, for example, in the course of being present, either in connection with providing attorney-client advice or in a different kind of setting.
I -- I doubt that we would even remember unless something -- the -- I don't want to speak for them, but the number of minor contacts in which technical questions are asked could be voluminous. I would despair that anybody could remember all of those sorts of small questions that -- that fall short of any sort of significant advice on a particular plan or a particular approach or whether the X, Y, Z would comply with a certain statute.
I'm sure that it happens frequently, but I personally can't think of anything other than questions like, "Can you do a color map in a certain size?" or "Who do I talk to get more time on RED Appl after hours?" There are lots of those kind of questions, and most of them are incidental. They're answered. They're not logged. Again, the legislative session is such that they

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are, you know, transitory conversations.
Q. Now, with respect to the instances where the Legislative Council provided advice and guidance on the more legal subjects that we have talked about, during any of those instances, were any of the nonattorney staff present?
A. Not that I know of, no. That would not -- that wouldn't comport with the ordinary processes that are involved. If attorneys are asked to either come to a meeting or discuss an issue over the phone or some other face-to-face circumstance, then there would be no reason for and no -- so I can't imagine a circumstance where that would happen.
Q. Well, let me give you an example. If someone came in and said, "Is District 100 protected by the Voting Rights Act?" or "Is it an ability-to-elect district?" is that the sort of situation that would -- that a nonattorney staff member would never have been --
A. I can't --
Q. -- present for?
A. -- imagine why they would be present or --
Q. Do you have any institutional practices or procedures in place that are designed to protect the attorney-client privilege under these particular circumstances?

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A. I'm not sure I understand the question.
Q. Whether it's in an employee handbook or procedures manual that you just -- that you have at the Legislative Council -- I don't know if those things exist, but --
A. Uh-huh.
Q. -- are there practices, procedures, written or unwritten, that are generally followed when requests for legal advice come in?
A. Absolutely. Our confidentiality in the legal division is the most critical factor. It's why the -- you know, why the issues that have come up today are particularly important to the council and to myself. Our -- our guides and -- both external, like there's a general guide to the -- to the services the council provides, there are -- there's an employee handbook, and throughout the -- the relevant structure of the organization, the confidentiality of our attorney-client activities is articulated. It is a daily understanding. The legal division is organized in a way that minimizes the contact with the rest of the council on strictly legal issues. Except to the extent that things like a memorandum has to be proofread and produced, the entire council understands that kind of process.
It is -- yeah, it's -- it's kind of part

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and parcel of what you do in a legal division. I don't think we're any different from a city attorney's office or a DA's office or legal division of a -- of a state agency.
Q. Do those procedures and practices include, within the scope of this attorney-client privilege, every last staffer who works for a legislator or a committee?
A. Yes.
Q. Okay. Now, I'm going to go back to where we were before the --
A. Okay, sure.
Q. -- break, and jumping around a little bit, but I --
A. That's fine.
Q. -- we were discussing --
A. No problem.
Q. -- CVAP.
A. Okay.
Q. Citizen voting-age population.
A. Uh-huh.
Q. And I think my last line of questions was getting at rates versus counts and did the Legislative Council do any adjustment to capture current population figures.
A. And I believe the answer is no, we did not. I personally don't know the thought processes that resulted

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 11-01303 RMC
	§	
UNITED STATES OF AMERICA,	§	
and ERIC H. HOLDER, JR. in his	§	
official capacity as Attorney General	§	
of the United States,	§	
	§	
Defendants.	§	

STATEMENT OF MATERIAL FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 27

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA and ERIC H. HOLDER, JR. in his official capacity asAttorney General of the United States, Defendants.	Case No. 11-01303 RMC

DECLARATION OF RYAN DOWNTON

Until July 1, 2011, I was employed by the Texas House of Representatives as general counsel for the House Committee on Redistricting. I had the primary responsibility (together with Gerardo Interiano) during the most recent legislative session and subsequent special session for inputting and processing proposed amendments to redistricting plans for the Texas House of Representatives, State Board of Education and U.S. Congress. I processed these proposals by means of an electronic software program known as RedAppl, which made all of the adjusted maps available to the public and the membership of the House. At no point during that process did any member of the legislature, staff to any member of the legislature, or anyone else propose a change to me that was offered for the purpose of harming any voter or group of voters on account of their race, ethnicity or national origin. Had anyone made such a proposal, I would have immediately informed Chairman Burt Solomons.

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

Executed on this 1st day of September, 2011.

RYAN DOWNTON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 11-01303 RMC
	§	
UNITED STATES OF AMERICA,	§	
and ERIC H. HOLDER, JR. in his	§	
official capacity as Attorney General	§	
of the United States,	§	
	§	
Defendants.	§	

STATEMENT OF MATERIAL FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA and ERIC H. HOLDER, JR. in his official capacity asAttorney General of the United States, Defendants.	Case No. 11-01303 RMC

DECLARATION OF GERARDO INTERIANO

I am an employee of the Texas House of Representatives. During the most recent legislative session, my primary responsibility was the drafting and analyzing of proposed maps for the Texas House of Representatives. I also assisted Ryan Downton with the U.S. Congressional map and Bonnie Bruce with the State Board of Education map, in limited circumstances. In this capacity, I exclusively used an electronic mapping software program called RedAppl. I am not aware of any member of the legislature, legislative staffer, or anyone else who provided me with proposals regarding the maps I worked on, who offered their proposal(s) for the purpose of harming any voter or group of voters on account of their race, ethnicity or national origin. Had I been aware of such a proposal, I would have immediately informed Speaker Joe Straus. I declare under penalty of oath that the foregoing is true and correct.

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

Executed on this 14th day of September, 2011.

Gerardo Interiano

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 11-01303 RMC
	§	
UNITED STATES OF AMERICA, and ERIC H. HOLDER, JR. in his official capacity as Attorney General of the United States,	§	
	§	
Defendants.	§	

STATEMENT OF MATERIAL FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 29

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

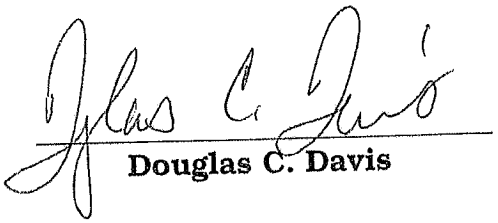
STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA and ERIC H. HOLDER, JR. in his official capacity asAttorney General of the United States, Defendants.	Case No. 11-01303 RMC

DECLARATION OF DOUG DAVIS

I am an employee of the Texas Senate. I had the primary responsibility during the most recent legislative session for inputting and processing proposed amendments to redistricting plans for the Texas House of Representatives, Senate, State Board of Education and U.S. Congress. I processed these proposals by means of an electronic software program known as RedAppl, which made all maps that were considered for a vote in either committee or before the full house (or senate) available to the public and the membership of the Senate. To my knowledge, at no point during that process did any member of the legislature, staff to any member of the legislature, or anyone else propose a change to me that was offered for the purpose of harming any voter or group of voters on account of their race, ethnicity or national origin. Had I been aware of any such a proposal, I would have immediately informed Chairman Kel Seliger.

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

Executed on this 13th day of September, 2011.



Douglas C. Davis

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ, ET AL, Plaintiffs,
vs.
RICK PERRY, ET AL, Defendants.

No. SA:11-CV-360
San Antonio, Texas
September 9, 2011

VOLUME 4

TRANSCRIPT OF BENCH TRIAL

BEFORE THE HONORABLE ORLANDO L. GARCIA,
THE HONORABLE XAVIER RODRIGUEZ,
UNITED STATES DISTRICT JUDGES,
AND THE HONORABLE JERRY E. SMITH,
UNITED STATES CIRCUIT JUDGE

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(September 9, 2011.)

JUDGE GARCIA: Ready? Where is Mr. Bledsoe?

MR. HICKS: Mr. Who?

JUDGE GARCIA: Mr. Bledsoe, Mr. Rios, Mr. Garza?

MR. HEBERT: Mr. Rios is here.

JUDGE GARCIA: Oh, I didn't see you, Mr. Rios. I just wanted to make sure the main team is here.

MR. GARZA: (Indicating.)

JUDGE GARCIA: Okay. Good.

MR. HICKS: Your Honor, Renea Hicks for the Rodriguez plaintiffs. We have got one exhibit to move the admission on. I believe we want to get that out of the way at the beginning, so we can proceed.

We move for the admission of Plaintiff's Exhibit 901.

MR. MATTAX: No objection.

JUDGE GARCIA: Okay.

MS. PERALES: Also, the Latino Task Force plaintiffs have corrected one of their summary chart exhibits and placed them into the Court's binders at tab 200. And they are now marked PL-200 corrected, and I believe also -- 201? And 201.

JUDGE GARCIA: Okay.

MR. MATTAX: Good morning, Your Honor. Pursuant to the stipulation of the parties, we are going to take Mr. Ryan Downton out of turn this morning. Mr. Downton is not going to

testify about absolutely everything that was done in the session.

We are going to try to streamline that testimony, because he has been deposed, and the parties have agreed that his depositions can be introduced and relied upon in this case.

Secondarily, the depositions identify certain legislators who had conversations with Mr. Downton; also, other witnesses have been deposed that identified legislators. Mrs. Perales had indicated she was going to introduce those exhibits.

We have contacted those legislators and indicated that their names they be revealed. I have heard no objections from those legislators. I have seen nothing filed with this Court from those legislators, so I believe there is not going to be an assertion of legislative privilege with respect to those depositions in this matter.

Accordingly, we have no objection to the introduction of the exhibits -- the depositions that Mrs. Perales has provided to the Court. So if she would like to move for the admission of those, I have no objection.

MS. PERALES: We believe that we have provided at the Court's request a flash drive with copies of all of the exhibits. That was from last Thursday.

JUDGE GARCIA: Okay.

MS. PERALES: That was at the request of the Court. I am not sure if we are planning to move the admission of all of the depositions, but we did provide them to the Court, and I guess we will come up with a decision about which ones we want to move into the record.

JUDGE GARCIA: Okay.

MS. PERALES: So we don't have to make it too unwieldy.

MR. MATTAX: Very good.

JUDGE GARCIA: Okay. Who -- you are presenting this witness?

MR. MATTAX: Yes.

JUDGE GARCIA: And who else? And then what is next?

MR. GRAY: We will go back to Mr. Bledsoe and complete Dr. Murray, who was on the stand, Your Honor, and the NAACP and their witnesses will be taken forward.

JUDGE GARCIA: Okay.

MR. MATTAX: May I proceed, Your Honor?

JUDGE GARCIA: Yes.

COURTROOM DEPUTY: May I swear in the witness, Your Honor?

Will you raise your right hand?

(Oath administered to the witness.)

COURTROOM DEPUTY: Thank you.

--*-*-*-*-*-*

sure. I didn't have a conversation with him about it, but that district wasn't 50 percent. I think he just created a district that was as Hispanic as he could in that region.

JUDGE RODRIGUEZ: I'm sorry, Counsel.

MR. MATTAX: That's fine.

BY MR. MATTAX:

Q. You mentioned other groups trying to draw maps as well that you couldn't accomplish achieving a 50-percent Hispanic citizen voting age --

THE REPORTER: Counsel --

MR. MATTAX: I'm sorry. I just realized I was speaking too fash. Let me try to slow down.

BY MR. MATTAX:

Q. You indicated that other groups had tried to draw a map in northern Texas with a greater than 50-percent HCVAP and were unable to do so; is that correct?

A. That is correct.

Q. Could you tell us who some of those groups were?

A. MALDEF, MALC. I believe Representative Veasey tried to draw one. I know there are others. I looked at a bunch of maps that attempted to draw a north Texas Hispanic district, and I tried to draw one myself, and none of those maps were able to reach that 50-percent threshold, even going down to the block level, not just precincts.

Q. Thank you. Let me direct your attention, and maybe you

Q. And was this your idea?
A. No. We took this idea from the map that MALDEF submitted to us.
Q. And what was your understanding of the map that MALDEF submitted? What was it trying to accomplish?
A. It was trying to create a Hispanic majority district in central Texas.
Q. And was it your understanding that one of the objectives of the legislature was to try to create a new citizen voting age population majority district for Hispanics in Texas?
A. Yes. I was directed to do that.
Q. And when you couldn't draw one in north Texas, is this what you focused on?
A. Yes. It wasn't really an either/or. We looked at both of them at the same time. This one, we could get over 50 percent, so then this is the one that we focused on after that.
Q. Now, did -- was this the original configuration in C-144 of C-35?
A. No. You can see that there are changes in the southern region between C-125 and C-144, as reflected by the red lines.
Q. Did you make those changes or were they requested?
A. I made those changes at the request of, in this case, Representative Villarreal and Representative Castro. They liked the idea of 35 and having the new -- a new district, a

new Hispanic district in central Texas.

Their concern was that they wanted it to be a Bexar County-based district, and they wanted to make sure that the district was sufficiently weighted towards Bexar County, as opposed to Travis County, and so we made both initial changes and additional changes later on in the process to try to weight it towards Bexar County.

JUDGE SMITH: Are they Republicans or Democrats or --

THE WITNESS: I'm sorry. They are both Democrats.

BY MR. MATTAX:

Q. And are they both Hispanic?

A. Yes.

Q. Was C-144 the map that was finally adopted?

A. No, it was not.

Q. Please pull up C-149, the next in sequence. And could you describe what this is, please?

A. C-149 is the plan passed out of the House committee.

Q. And was this the final map adopted by the legislature?

A. It was not.

Q. Let's pull up the final map adopted by the legislature and try to close off the congressional part.

A. Okay. That is C-185.

Q. What changes were made between C-149, passed by the committee, and C-185, finally enacted by the legislature?

A. In this region, the southern and southwestern part of the state, there were a lot of changes. They started with District 20 in Bexar County. When we drew the map originally, we were focused on getting District 35 above 50 percent of HCVAP.

District 20, we felt like, as long as we kept it above 50 percent HCVAP, it was going to be complying, and it ended up dropping, I think, eight or nine points in HCVAP in the initial configuration.

We got a number of complaints and criticisms about doing that. Also, with respect to -- District 20 Representative Menendez testified that there was a particular school district that had been taken out of District 20 that he wanted back into District 20, along with some areas of central San Antonio. So we tried to work on raising the HCVAP in response to those goals, and also addressing some of Representative Menendez's concerns.

JUDGE SMITH: When you mention the name of a representative, it would be helpful, at least to me, if you would say what party.

THE WITNESS: I will try to do that. Representative Menendez is a Democrat.

And then we also had -- Representative Castro and Representative Villarreal had identified parts of central San Antonio that they really wanted in the new District 35. So we

had those tensions as to how to address some of Representative Menendez's concerns, while also addressing Representative Villarreal and Representative Castro's concerns.

District 20 -- to raise District 20's HCVAP up, we had to take Hispanics out of the neighboring districts. This area of Bexar County that District 28 has is not a Hispanic area, so the only -- and this area of District 21 is not really either.

So the only places in Bexar County that we can get Hispanics for District 20 were from District 23 or District 35. District 35, we felt that it was essential to keep it over 50 percent, and we were also trying to shift the weighting down to Bexar County.

So with that, we took this area of Guadalupe County -- Representative Kuempel, who is a Republican, lives in Guadalupe. He asked that we keep as much of Guadalupe whole as possible.

And so we took this area that we had initially put in District 35 and put it in District 15, so Guadalupe could be whole. That also allowed us to add more residents from Bexar County into District 35 to increase its weighting, as compared with Travis County.

So then District 20, this area here went back into District 20 that had been taken out, and all of this area went back into District 20. And that did have the effect of

increasing the HCVAP of District 20 fairly close to where it was originally.

That also had the corresponding effect of decreasing the HCVAP of District 23. I believe District 23 was still above 50 percent at that point, and that was the baseline we used. If a district was over 50-percent HCVAP, then it was a Hispanic majority district and, therefore, there would be an opportunity for the Hispanic population to elect the candidate of its choice.

But we were also conscious of a legal challenge that was coming, and so we also looked at the baseline levels of Hispanic population, and we wanted to keep District 23 at or above its HCVAP, SSVR that it had been initially.

So in making the changes within San Antonio, we reduced the HCVAP of 23 and we needed to increase it elsewhere. So one of the things we did was out in El Paso -- initially, the El Paso map had these two fingers coming from 23 into 16.

Representative Pickett, who is a Democrat from El Paso, expressed concern about those, after conversations with his Congressman, Congressman Reyes. We worked with Representative Pickett on an amendment to El Paso to get rid of those, and he told us he was satisfied with it and was going to offer it, but then after discussions with his Congressman, he decided not to offer it.

We ended up deciding to make changes to El Paso anyway, because we did not want the map to be challenged on that basis, and we needed to increase the Hispanic population of District 23, so we ended up drawing a fairly thin line across El Paso County, with the lower part being in District 23 and the upper part in District 16.

23, the HCVAP was still lower than it had been in the baseline map, and so that is when we got to the changes over here, where we took Dimmit, Zavala and part of Maverick County and put them into 23. And in making all of those changes collectively, we were able to keep the HCVAP at the level it had been under the baseline map.

Q. So it would be fair to say, then, that as a result of some requests and some concerns to increase the citizen voting age population in CD-20, that is where that counterclockwise effect around the map requiring you to move further south in CD-23?

A. That is correct.

Q. And C -- and map C-185 was the map finally adopted by the legislature?

A. Yes.

Q. Let's move to the Texas House of Representatives. The maps we will be referring to for the Texas House are under D-53.

JUDGE SMITH: Which volume are we in?

MR. MATTAX: I'm sorry. Volume 14.

JUDGE SMITH: And which exhibit? Which tab?

MR. MATTAX: D-53.

JUDGE SMITH: Okay.

BY MR. MATTAX:

Q. Go ahead and pull up H-113. Would you describe what H-113 is?

A. H-113 is the first House map released to the public by Representative Solomons.

Q. How was this map developed?

A. Representative Solomons wanted the House map, really, all of the maps to be a member-driven process. The House map was very personal to the House members, because it was the creation of the districts they would be running in for the next election.

So he asked each of the members to draw a district and give us multiple variations, to give us an ideal district, a good district, an okay district, and if there was anything they really didn't want in their district to let us know.

With respect to counties, we called certain counties drop-in counties, and those were really an interplay between the county line rule and one-person, one-vote, that if you could draw a number of districts within a county and not have any spillover and still be within the deviation to comply with one-person, one-vote, then we would do that and there would be

no spillover.

So, for instance, El Paso was at the low end. El Paso had just enough population to have five districts at the very low end of the, plus or minus five percent, from the ideal district size that we were looking at. So we told the El Paso delegation: Draw your five districts. You can't come outside.

The same thing is true for a number of other counties around the state, so Denton County, Collin County, Tarrant County, Dallas County, Travis County, Bexar County, Harris County, and Nueces County.

All of those counties you could draw a fixed number of districts within the county and have no spillover. So all of those county delegations were asked to try to work together on a county-wide plan. Some of those counties were able to reach agreement and some of them were not.

Q. Let's start with El Paso, since you mentioned it first. Was El Paso, was that, as you described it, a drop-in?

A. Yes.

Q. And who proposed that?

A. Representative Pickett, who is a Democrat. He was on the committee, and he worked with the El Paso delegation, and this is what he presented to the committee for the El Paso map.

Q. And was Bexar County a drop-in?

A. Yes.

Q. And let's move to Dallas. Was Dallas a drop-in?
A. Dallas was a drop-in, but it is one of the ones where there was not agreement between the representatives.
Q. Well, let's pull up Dallas County, and explain how that got drawn.

If there was not agreement between the delegation, who was tasked with trying to create a map that would work in a particular county?
A. For Dallas County, I was.
Q. And describe, with respect to this map, what you did. Let's start sort of in the center with 103, I think, and then sort of move counterclockwise.
A. Sure. Well, in Dallas County, I got proposals from, I think, every representative for their own district, except for Representative Alonzo, who is a Democrat. He was also on the committee.

He didn't submit a map for his district, but I believe all other 15 members of the Dallas County delegation did. A couple of the Republicans submitted county-wide proposals, but they did not have the support of all of the other members.

I believe that Representative Davis submitted a proposal for all of the Democrat districts, but she did not have the signoff of the other Democratic members for those districts. We did -- I did end up starting and trying to

A. So 103 was around 36, I think, percent, 36, 38 percent SSVR. We looked to see if there was a way to get it above the 50-percent threshold, while also keeping 104, the other Hispanic district in Dallas, above 50 percent, and there wasn't.

And, again, that goes to the same factors we had with the congressional district, the assimilation of Hispanics around the county, the number of Hispanics under 18 years of age, and the number of noncitizen Hispanics in that region.

So once we determined we couldn't get 103 and 104 both above 50 percent, we wanted to keep 104 above 50 and keep 103 as close to where it started as possible. That was also difficult, because 103 was the most underpopulated district in the state when we started.

It needed 50,000 more people. And so we worked with Representative Anchia to come up with a configuration that he was satisfied with and that kept his SSVR where it was, and we were able to do that.

Then we also worked with Representative Johnson, who is a Democratic. He represents District 100, which is this blue one here. And we got a configuration that he was also happy with for that district.

We worked on balancing the Republican districts, which generally go across the top.

Everyone always asks about 105 and this finger

coming down. Representative Rodney Anderson, who is a Republican, lives down here. He represented a district that no longer exists in Dallas County.

The Chairman felt that we should be pairing Republicans with Republicans, when we could, and Democrats with Democrats, so we wanted to make sure that we didn't leave Representative Anderson in a heavily democratic 111 or 104, so we tried to draw him into 105.

We did that by looking at the political shading, and this area was the most Republican area down here, and so we pulled it up into 105.

Q. And I'm sorry. For the record, when you say "this area," are you referring to the lower part of 105?

A. Yes. The part of 105 below the highway. I think it might be Highway 20, up at the part that sticks down into District 104.

Q. Okay. And so, then --

JUDGE SMITH: That would be Highway 30, wouldn't it? It is Interstate 30?

THE WITNESS: Yes. You are right. It's 30 up there. I think 20 is down there. Thank you.

BY MR. MATTAX:

Q. So with respect to 105, having drawn that to have two Republicans paired, why does 104 sort of wrap around the bottom of 105?

goal of getting Representative Anderson into 105 while avoiding violating the Voting Rights Act by dropping 104 or 111 below 50, we end up with this unusual-looking configuration.

Q. So it would be fair to say that the two considerations in drawing Dallas County were pairing two Republicans and complying with the Voting Rights Act?

A. Yes.

Q. Okay. Let's move to the left and look at Tarrant County. Was this an agreed-upon plan by the members of the Tarrant County delegation?

A. The original plan, this 113, was an agreed-upon plan. Later, it changed and was no longer an agreed-upon plan. Oh. And the delegation in Tarrant County includes -- I think it was eight Republicans and two Democrats.

Q. And shall we move to plan H-153 to talk about Tarrant County? This would be next in line in D-53. I think it is D-53-2, I believe is how it is --

Does this reflect the change that resulted in a Tarrant County congressional -- House delegation not agreeing to the county map?

A. Yes. This plan H-153 is the plan that was eventually voted out of the House committee. In committee testimony, MALDEF testified that it was their belief that certain districts around the state, including District 90 in Tarrant

County, should be above the 50-percent threshold in SSVR, and they weren't in our initial proposal.

So in response to that concern, and the way they had drawn it in their map, we made changes to District 90 to get it above the 50-percent SSVR.

Representative Burnam, who is an Anglo Democrat, he represents District 90, was unhappy with those changes. Representative Veasey, who is a black Democrat in Tarrant County, was also unhappy with those changes, and so at that point, they withdrew their support for the Tarrant County map.

Q. Let's move down to Harris County. Could you describe how the Houston configuration in H-153 was arrived at?

A. Sure. Well, I will start with the Houston configuration in H-113, the initial committee proposal. We didn't know initially if Houston was going to have 24 or 25 seats. When you take the total population of Harris County and divide it by the ideal population of a district, you get 24.41 seats. Eventually, the legal decision was made that 24.41 is closer to 24 than 25.

JUDGE RODRIGUEZ: That was a legal decision?

THE WITNESS: Yeah.

BY MR. MATTAX:

Q. It wasn't an arithmetic decision?

A. The State Constitution says you have got to draw the districts within the counties, I believe the language is "as

closely as may be." So legally, the recommendation was made that 24 is closer to 24.41.

JUDGE GARCIA: A recommendation by whom?

THE WITNESS: I made that recommendation -- I believe the Texas Legislative Council made that recommendation, and I believe there were other attorneys that made it as well.

JUDGE GARCIA: Did any other attorney -- did anyone disagree or come to a different conclusion?

THE WITNESS: I know that the Democrats in Harris County wanted it to be 25.

JUDGE GARCIA: Are among those lawyers?

THE WITNESS: Yes.

JUDGE GARCIA: Okay. Go ahead.

BY MR. MATTAX:

Q. So after the decision was made to draw out 24 districts in Harris County, how was this configuration arrived at?

A. Well, initially, we had requested maps for Harris County with either 24 or 25, and the Republican delegation in Harris County gave us a map for each. We did not receive any -- I don't believe any countywide maps from the Democratic delegation.

We took what the Republican delegation gave us for their 24-map for the Republican districts. They hadn't paid very much attention to the Democratic districts, as far as

Voting Rights Act compliance, so then I made some changes to those districts to attempt to comply with the Voting Rights Act, and that resulted in this first version of Harris County in map H-113.

Q. When you say you made changes to the plan proposed by the Republican delegation to comply with the Voting Rights Act, exactly how did you do that?

A. I looked at the numbers, essentially, the SSVR, and the black voting age population, and compared them to the baseline plan, and tried to keep the numbers relatively the same.

Q. Okay. So your goal was to make sure that the numbers did not decrease in those districts?

A. That is correct.

Q. Okay. So after the Republicans had proposed this plan and you had made modifications to it, what happened next?

A. So then we had the hearings on it. And District 148 in Harris County is another one of the districts that MALDEF testified should be over 50 percent SSVR. So after that hearing, we made that change to increase 148, and you can see the -- the red lines are the changes.

Q. So let's -- so we are clear on this, you are talking about a change between 113, H-113 and H-153?

A. Yes.

Q. And the change you made was at the request of MALDEF?

A. Yes. And so with the changes to 148, they necessitated

minor changes to the surrounding districts as well.
Q. After 153 --
JUDGE SMITH: Whose district is 148?
THE WITNESS: 148 is representative Jessica Farrar's district. She is a Democrat.
BY MR. MATTAX:
Q. And H-153, then, with the changes requested by MALDEF, was passed out of committee?
A. Yes.
Q. And let's pull up now map H-271. And could you describe what this map is?
A. So after we passed H-153 out of committee, we went to floor debate on the map. At that point, the Harris County Democrats said they were not happy with the way the Democratic districts within Harris County had been drawn.

At that point, we stopped the floor debate for about three hours for people to meet with the Harris County Democrats and try to get their input. They were told, leave the Republican districts alone, and here are some parameters that we think are important legally, that you need to not drop your SSVR or black voting age population of the respective districts. You need to keep 148 above 50 percent.

Within those guidelines, you guys draw your districts however you think is best for your constituents, and we will adopt it that way.

And so they spent several hours working on that and then came up with a plan they were satisfied with, and that is plan 271, which was submitted by -- it says Representative Coleman, et al. Representative Coleman is a Democrat. And it is my recollection it was submitted by all of the Democrats in Harris County, and that was adopted by the House as a whole unanimously.

So the changes that they put in, a bunch downtown, and so that is where kind of the borders between the districts got narrowed, as a result of that.

JUDGE SMITH: Representative Turner was voting in favor of that as well?

THE WITNESS: I believe the entire House of Representatives, including Representative Turner, voted in favor of it.

JUDGE RODRIGUEZ: I want to make sure I understand. The instructions that the Democrats received, if I heard you correctly, they were told they could not touch the Republican districts?

THE WITNESS: That is correct.

JUDGE RODRIGUEZ: Now, yesterday, we heard testimony that four Anglo Republicans on the east side of Houston, populationwise, it would appear that those districts should have gone from four to three, but that it remained at four and population was shifted from minority population along the west

part and moved into the eastern part. Am I correct?

THE WITNESS: I don't know. I am not familiar with that testimony. I don't remember anyone --

JUDGE RODRIGUEZ: Well, besides the testimony, am I correct factually? Is that what took place?

THE WITNESS: I don't think so. I don't remember any discussions at the time or anyone raising any concerns about that. Certainly, all of the districts shifted. You are talking about on the east side of the county?

JUDGE RODRIGUEZ: Well, what I am curious about is, your testimony makes it seem like there was acquiescence by the Democrats to this, and what I am trying to understand is, was there acquiescence or was there acquiescence after the instruction that they couldn't tamper with the Republican lines?

THE WITNESS: There was acquiescence after the instruction.

BY MR. MATTAX:

Q. So in looking at 145, I think you mentioned District 145, that this was a narrowing, that I think that had been raised before, and the adjustments here to narrow that stretch of road, that was done at the request of Democrats?

A. Yes.

Q. And was 271 the final map passed?

A. It was not.

Q. Let's go to 281. I think we need to look at some changes in 281. Please describe to the Court what changes were made between 271 and 281 and why.

A. So 271 was adopted towards the end of the night debate on the map. The debate continued the next day. Some time after 271 was adopted, Representative Thompson, who is a Democrat, noticed for the first time that her district was not drawn the way she had initially submitted it to the committee.

She had been under the mistaken belief during the entire process that her district was going to be drawn exactly as she submitted it without changes and had, I guess, missed out on the large conversation with the rest of the delegation on revising all of Harris County.

She ended up supporting that, but then afterwards, she said she just -- she just was unaware that her district wasn't the way she wanted it. So throughout the overnight and early the next morning, the delegation, both Republicans and the Democrats, worked with Representative Thompson to make changes to her District 141 that she would be happy with.

Using this map, 126, 150, 127, 142, 128, those were all Republican districts around Representative Thompson's district that changed in order to accommodate her request, but eventually, she was happy with her district, and it ended up above 50-percent black voting age population, which made it the third such district in the state. That plan was adopted

the next morning.
Q. Was there a final change to this plan?
A. Yes. There was one more change. In drawing their districts the night before, Representative Allen, who is a Democrat, she had inadvertently left her district office out of her district.
Q. Is this a change --
A. Yes. And so this debate happened literally at the last minute. We were on the floor about to do final passage, and she said: We have got to get my district office back in. Can we do that really quickly?

And we went to a computer at the front of the floor and just tried to draw a line with as little population as possible to connect her District 131 to her district office. And so that is where we got this little jut here.
Q. So that little piece of 131 in the middle of 146 was to get the legislator's office in her district?
A. Yes, sir.

JUDGE SMITH: Representative Turner testified about many things yesterday, one of which was that he was unhappy that his district was extended so far north and west to the Highway 290 area and also up toward and even north of, I believe, the Beltway 8, which he was describing as more Republican areas, that he seemed not to wish to be representing, and it was at the expense of an area formerly, I