IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,

Plaintiff,

- against -

UNITED STATES OF AMERICA and ERIC H. HOLDER, JR. in his official capacity as Attorney General of the United States,

Defendants.

CIVIL ACTION NO. 1:11-cv-01303
Three-Judge Panel: RMC-TBG-BAH

DEFENDANT-INTERVENOR, TEXAS LATINO REDISTRICTING TASK FORCE'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Following the release of the 2010 Census, which showed that Latinos constituted 65% of the population growth that occurred in Texas over the previous decade, and during a series of racially-charged and acrimonious legislative sessions, the Texas Legislature adopted House and congressional redistricting plans that decrease Latino electoral strength. The proposed redistricting plan for the Texas State House of Representatives, H283, and the proposed redistricting plan for the Texas congressional districts, C185, discriminate against Latino voters through their retrogressive effects and because they are motivated by discriminatory purpose.

As a preliminary matter, Defendant-Intervenor, Texas Latino Redistricting Task Force (hereinafter the "Task Force") joins in the arguments made by the United States in opposing pre-clearance of Plaintiff State of Texas's (hereinafter "Texas" or the "State") proposed redistricting plans. Further, in the interest of preserving the Court's most important resource – time – the Task Force joins, and incorporates by reference herein, the discussion of the legal standards set forth in Defendant Intervenors' Joint Memorandum in Opposition to Texas's Summary Judgment Motion, Addressing the Section 5 Legal Standards. The Task Force writes separately to address the impact of the State's use of an erroneous metric for identifying Latino ability to elect districts, and to demonstrate that Texas's proposed plans violate Section 5 of the Voting Rights Act both in their retrogressive effects on Latino voting strength in Texas and because they were enacted with a discriminatory purpose. For the reasons contained herein, as well as those in the the United States' Opposition to Plaintiff's Motion for Summary Judgment, the Task Force respectfully requests that Plaintiff's Motion be denied.

II. ARGUMENT

A. The State Creates Confusion by Using an Erroneous Metric for Identifying Latino Ability To Elect Districts

1. The State's Formula Is Oversimplified and Leads To Improper Categorization of Latino Ability to Elect Districts

Texas contests the proper method by which to identify a Latino ability to elect district, and for this reason alone summary judgment in favor of Texas is not warranted. FED. R. CIV. P. 56(c). The Task Force relies on the several factors required by Section 5 and the case law. (Joint Int. Legal Mem. at 6-9 (describing the prevailing legal standard of using a multifaceted "functional" analysis to determine ability to elect under Section 5).[1])

In direct contravention of Section 5's requirements, and its own expert's testimony, the State uses a faulty analysis and focuses solely on whether a district contains more than 50% Hispanic citizen voting age (HCVAP) population. (*Compare* State Mem. at 7 *with* Tr. 1860:19-24; *see also* Tr. at 1859:24-1860:5.) According to the State, an HCVAP of over 50% automatically and always results in a Latino ability to elect district and an HCVAP of less than 50% means that the district is not a Latino ability to elect district. (*Id.*)

This simplistic analysis leads to two critical flaws in the State's argument. First, the State's analysis allows it to dismantle an existing Latino ability to elect district by purposefully reducing its election performance for Latino-preferred candidates, while at the same time the State claims to have maintained the district's ability to elect because the district has greater than 50% HCVAP. *See* discussion at Section A.1.b-c below. Second, the State's faulty analysis allows it to claim the creation of a "new" Latino ability to elect district by increasing to 51% the

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[1] The Task Force joins in the Defendant Intervenors' Joint Memorandum in Opposition to Texas's Summary Judgment Motion, Addressing the Section 5 Legal Standards. Because there are 6 signing parties to that Opposition and 15 pages of text, the Task Force has counted 2.5 pages of that document against its 45 page limit with respect to this Memorandum.

HCVAP of a district that already offers Latinos the ability to elect their candidate of choice. *See* discussion at Section A.1.a below. The State's metric fails to conform to existing standards and serves only to confuse the issues.

The State's approach to categorizing districts is unsupported by the law and is inappropriate under the "ability to elect" standard of Section 5. (Def. Int. Legal Mem. at § II.E) The DOJ does not endorse this approach. (Guidance Concerning Redistricting Under § 5 of the Voting Rights Act, 76 Fed. Reg. 7470-01 (Feb. 3, 2011).)

Indeed, the State's own expert recognizes that this is a flawed approach. (Tr. at 1859:24-1860:10-14.) As explained by the State's expert, Dr. Alford, in the Section 2 challenge to the State's House and congressional redistricting plans, a number of factors are relevant to measuring Latino political opportunity, including: the level of Spanish surname voter registration ("SSVR"); whether Latinos are voting cohesively; and the past success of Latino-preferred candidates in the district. (Tr. 1860:19-24; *see also* Tr. 1859:24-1860:5; Def. Int. Legal Mem. at § II.E.)

There exists a substantial issue of material fact with respect to how many Latino ability to elect districts are present in H100, the House benchmark, and H283, the State's proposed plan. There are 33 districts in the benchmark House Plan in which Latinos have the ability to elect the candidates of their choice. (*See* Table 1; Task Force SoMF at 35-66.) The State contends that there are 30, based solely on HCVAP figures. (Memorandum of Points and Authorities In Support of Plaintiff's Motion for Summary Judgment (hereinafter "State Mem.") at 7.)

Adherence to HCVAP alone resulted in the State's improperly failing to characterize HDs 51, 90, 103, and 148 as Latino ability to elect districts. (State Mem. at 6-7 & Exs. 7-11; Table 1.) Those four districts have HCVAP of less than 50% but are districts in which Latino

voters nonetheless demonstrate an ability to elect their candidates of choice. These districts constitute Latino ability to elect districts under Section 5 and are properly counted in the benchmark although the State's analysis excludes them. (Joint Int. Legal Mem. at § II.E (describing the prevailing legal standard of using a multifaceted "functional" analysis to determine ability to elect under Section 5); *see also* Task Force SoMF at 37-66.)

a. Ability To Elect House Districts That Are Ignored in the State's Analysis

House District 51

State Representative Eduardo Rodriguez represents Texas House District 51. (Ex. J-54: 5:1-8:13; 44:5-16.) HD 51 in Plan H100 has an HVAP[2] of 58.3%, an HCVAP of 45.8%, and a SSVR of 40.9%. (Ex. 37 [Dkt. 387-201, at pp. 1, 15].) Looking at exogenous elections, in Plan H100, from 2006 to 2010, the candidate of choice of Latinos won in 7 out of 7 racially-contested general elections in HD 51.[3] (Ex. 37 [Dkt. 387-201, at p. 1]; Pl. Ex. 258 [Dkt. 387-258, at p. 2]; Pl. Ex. 259 [Dkt. 387-259, at p. 2]; Pl. Ex. 260 [Dkt. 387-260, at p. 2].) The figures are almost identical for HD 51 in H283. (*See* Task Force SoMF at 37-42, 75-80.) Despite the success of Latino voters in electing their candidates of choice in HD 51, the State does not count this district as a Latino ability to elect district because it relies on its flawed analysis which is blind to any information other than HCVAP.

House District 90

State Representative Lon Burnam represents HD 90. HD 90 in Plan H100 has an HVAP of 64.9%, an HCVAP of 47.9%, and a SSVR of 47.2%. (Ex. 37 [Dkt. 387-201, at pp. 1, 23].) In

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2 Hispanic Voting Age Population.

3 Exogenous analysis involves re-aggregating election returns from (in this case) statewide elections to measure the election performance of candidates in a more limited geographic area, such as a proposed district.

Plan H100, from 2006 to 2010, the candidate of choice of Latinos won in 7 out of 7 racially contested exogenous general elections in HD 90. (Ex. 37 [Dkt. 387-201, at p. 1]; Pl. Ex. 258 [Dkt. 387-258, at p. 3]; Pl. Ex. 259 [Dkt. 387-259, at p. 3]; Pl. Ex. 260 [Dkt. 387-260, at p. 3].) The figures are almost identical for HD 90 in H283. (*See* Task Force SoMF at 49-54, 95-99.) Despite the success of Latino voters in electing their candidates of choice in HD 90, the State does not count this district as a Latino ability to elect district because it relies on its flawed analysis.

House District 103

State Representative Rafael Anchia represents HD 103. HD 103 in Plan H100 has an HVAP of 69.3%, an HCVAP of 46.5%, and a SSVR of 39.3%. (Ex. 37 [Dkt. 387-201, at pp. 1, 24].) In Plan H100, from 2006 to 2010, the candidate of choice of Latinos won in 7 out of 7 racially contested exogenous general elections in HD 103. (Ex. 37 [Dkt. 387-201, at p. 1]; Pl. Ex. 258 [Dkt. 387-258, at p. 4]; Pl. Ex. 259 [Dkt. 387-259, at p. 3]; Pl. Ex. 260 [Dkt. 387-260, at p. 3].) The figures are almost identical for HD 103 in H283. (*See* Task Force SoMF at 100-105.) Despite the success of Latino voters in electing their candidates of choice in HD 103, the State does not count this district as a Latino ability to elect district because it relies on its flawed analysis.

House District 148

The State's failure to measure properly Latino ability to elect districts affects this case especially with respect to HD 148, which the State contends is a new ability to elect district in H283 but which in reality existed in the benchmark. State Representative Jessica Farrar, a Latina, represents HD 148. (Ex. 417 ¶ 27 [Dkt. 330-5, at p. 92].) HD 148 in Plan H100 has an HVAP of 53.7%, an HCVAP of 42.1%, and a SSVR of 40%. (Ex. 37 [Dkt. 387-201, at pp. 1,

38].) In Plan H100, from 2006 to 2010, the candidate of choice of Latinos won in 7 out of 7 racially contested exogenous general elections in HD 148. (Ex. 37 [Dkt. 387-201, at p. 1]; Pl. Ex. 258 [Dkt. 387-258, at p. 5]; Pl. Ex. 259 [Dkt. 387-259, at p. 4]; Pl. Ex. 260 [Dkt. 387-260, at p. 4].)

Gerard Interiano (counsel to the Texas House Speaker) testified that he did not examine the election performance of benchmark House district 148 before he started mapping to determine if it was already a Latino opportunity district. (Tr. 1453:21-1454:6.) Despite never checking whether these districts were Latino opportunity districts in the benchmark, the State nevertheless claims that 148 is a "new" Latino majority district in Plan H283 that can guarantee Voting Rights Act compliance by offsetting the loss of HD 33. Redistricting Chairman Solomons further testified that the changes to HD 148 were not to increase the number of Latino opportunity districts. (Tr. 1600:24-1601:4.)

The State did not significantly alter HD 148 in Plan H283, except to raise the HCVAP to 51.4%. (*See* Task Force SoMF at 115-119.) Despite the success of Latino voters in electing their candidates of choice in the benchmark HD 148, the State does not count this district as a Latino ability to elect district in the benchmark because of its flawed analysis, but then claims HD 148 as a "new" ability to elect district in its enacted Plan H283.

In *Perez v. Perry*, the State admitted to increasing the HCVAP of HD 148 to above 50% even though the State knew the performance of the district would not change. (TR: 1600: 24-1601: 8; Pl. Ex. 227 [Dkt. 320-2, at 68-69].) This sleight of hand is inconsistent with Section 5, and the Task Force urges this Court not to countenance it. (Joint Int. Legal Mem. at § II.E (describing the prevailing legal standard of using a multifaceted "functional" analysis to determine ability to elect under Section 5).)

b. House Districts That Do Not Offer the Ability To Elect but are Claimed as Such by the State's Flawed Analysis

The State's insistence on using only HCVAP to measure ability to elect also leads it to count certain districts as ability to elect districts, despite the fact that Latinos have experienced difficulty electing their candidates of choice in those districts. (*See* Task Force SoMF at 81-94.) The State's flawed analysis leads it to count, improperly, these districts as ability to elect districts.

House District 78

HD 78 is located in El Paso County and is represented by Dee Margo, who is Anglo. HD 78 in Plan H100 has an HVAP of 62.8%, an HCVAP of 56.2%, and a SSVR of 47.5%. (Ex. 37 [Dkt. 387-201, at pp. 1, 20].) In Plan H100, from 2006 to 2010, the candidate of choice of Latinos won in only 3 out of 7 racially contested exogenous general elections in HD 78. Looking back in time, from 2002 to 2010, the Latino preferred candidates won 3 out of 13 racially contested exogenous general elections. (Ex. 37 [Dkt. 387-201, at p. 1]; Pl. Ex. 258 [Dkt. 387-258, at p. 3]; Pl. Ex. 259 [Dkt. 387-259, at p. 3]; Pl. Ex. 260 [Dkt. 387-260, at p. 3].) The figures are almost identical for HD 78 in H283. (*See* Task Force SoMF at 81-94.) Despite the lack of success for the Latino candidates of choice in HD 78 in both plans since 2002, the State counts this district as a Latino ability to elect district solely because it has greater than 50% HCVAP.

The State's flawed metric would allow it to count HD 78 as an ability to elect district when it is not. (Engstrom Supp. Report at 5-9).

House District 117

House District 117 is located in Bexar County and is represented by John Garza. In the benchmark Plan H100, HD 117 is a Latino ability to elect district. HD 117 has an HVAP of

58.7%, an HCVAP of 58.8%, and a SSVR of 50.8%. (Ex. 37 [Dkt. 387-201, at pp. 1, 27].) In Plan H100, from 2006 to 2010, the candidate of choice of Latinos won in 4 out of 7 racially contested exogenous general elections in HD 117, and from 2002 to 2010, the Latino-preferred candidate won 8 out of 13 racially contested exogenous general elections in HD 117. (Ex. 37 [Dkt. 387-201, at p. 1]; Pl. Ex. 258 [Dkt. 387-258, at p. 4]; Pl. Ex. 259 [Dkt. 387-259, at p. 4]; Pl. Ex. 260 [Dkt. 387-260, at p. 3].)

The State altered HD 117 in Plan H283 to change its election performance. In Plan H283, HD 117 has an HVAP of 62.7%, an HCVAP of 63.8%, and a slightly lower SSVR of 50.1%. (Ex. 37 [Dkt. 387-201, at pp. 1, 27].) In Plan H283, from 2006 to 2010, the candidate of choice of Latinos won in 3 out of 7 racially contested exogenous general elections in HD 117, and from 2002 to 2010, the Latino-preferred candidate won in 4 out of 13 racially contested exogenous general elections in HD 117. (Ex. 37 [Dkt. 387-201, at p. 1]; Pl. Ex. 263 [Dkt. 387-263, at p. 4]; Pl. Ex. 264 [Dkt. 387-264, at p. 9]; Pl. Ex. 265 [Dkt. 387-265, at p. 3].) In the State's House plan, Latinos no longer have the ability to elect their preferred candidates in HD 117. (Engstrom Supp. Report at 8-9).

In its changes to HD 117, the State sought to shore up the district for the incumbent John Garza, who was not the Latino preferred candidate in the 2010 General Election. (Engstrom Corr. Rebuttal at 34.) The State swapped precincts in and out of HD117 in order to reduce the election performance of Latino-preferred candidates. The result is that Latino turnout is reduced and Latino-preferred candidates are less likely to win. (Flores Report at 10; Exh. 7.)

The State's flawed analysis of ability to elect, which would allow it to claim this weakened district as an ability to elect district, merely because it has greater than 50% HCVAP,

defies reality and rewards the State for reducing Latino turnout in a district in order to preserve the incumbency of a candidate who is not the choice of Latino voters.

c. A Congressional District That Does Not Offer Latinos the Ability To Elect but Is Claimed as Such by the State's Flawed Analysis

Congressional District 23 is located in South and West Texas and is represented by Francisco Canseco. CD 23 is a Latino opportunity district in the benchmark. (Tr. 512:24-513:6; Flores Report, Ex. E-8 [Dkt. 191-1], at p. 10; Engstrom Corr. Rebuttal at 27.)

CD 23 in Plan C100 has a HVAP of 62.8%, a CVAP of 58.4%, and a SSVR of 52.6%. (Pl. Ex. 200 [Dkt. 320-1, at p. 4].) The Latino candidate of choice won two out of three endogenous elections between 2006 and 2010. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 27; Engstrom Supp. Report at 3.) From 2006 to 2010, the candidate of choice of Latinos won 3 of 7 racially contested exogenous general elections in CD 23 in the benchmark. From 2002 to 2010, the candidate of choice of Latinos won 6 of 13 racially contested exogenous general elections in CD 23 in the benchmark. (Pl. Ex. 200 [Dkt. 320-1, at p. 5]; Pl. Ex. 237 [Dkt. 387-237, at p. 1]; Pl. Ex. 238 [Dkt. 387-238, at pp. 1, 3]; Pl. Ex. 239 [Dkt. 387-239, at p. 1]: Pl. Ex. 240 [Dkt. 387-240, at p. 1]; Pl. Ex. 241 [Dkt. 387-241, at p. 1].)

In its congressional redistricting plan, the State re-drew CD 23 so that it no longer offers Latinos the ability to elect the Latino candidate of choice. (Engstrom Supp. Report at 4-5.) The State reduced the Latino voter turnout in CD 23 by swapping precincts in and out of CD 23 with the goal of re-electing the incumbent, who is not the preferred candidate of Latino voters. (Tr. 954:4-955:11.) According to the State, Tr. 966:3-5, Plan C185, CD 23 can now only elect the Latino-preferred candidate in one out of ten elections. (Tr. 1457:21-25; Ex. J-61-1, at 94:11-19; 966:20-25 to 966:6-25.)

All experts in the Section 2 case agreed that Latinos no longer have the ability to elect

their candidates of choice in CD 23. (Tr. 454:8 – 455:1; Tr. 515:24 – 516:4; Tr. 725: 16-19; Tr. 950: 14-17; Tr. 1235: 15 – 1236:2; Tr. 1457: 21-25; Tr. 1872:14-24; Tr. 1878:5-6.) While CD 23 has a slightly larger HCVAP in C185 than in the benchmark plan, the State's own expert admits that the proposed district would not be a district in which Latinos could elect their candidate of choice. In *Perez v. Perry*, Dr. Alford, testified: "I think [CD 23] is probably less likely to perform than it was, and so I certainly wouldn't and don't [and] haven't counted the 23rd as an effective minority district in the newly adopted plan." (Tr. 1839:3-7.) He further stated, "I don't count 23 as one of the seven performing districts when I evaluate C-185." (Tr. 1878:5-6.)

Nevertheless, the State claims that CD 23 is a Latino opportunity district in its Plan C185. (State's SoMF at 7; Exs. 10-12.) The State's flawed analysis of ability to elect leads it to claim this dismantled district as an ability to elect district, merely because it has greater than 50% HCVAP. As with HD 117, the State should not be allowed to hide behind HCVAP after taking steps to ensure that Latino ability to elect has been eliminated from a district.

2. The State's Flawed Metric Would Force Preclearance of a Retrogressive Plan Because It Fails To Undertake the Required Functional Analysis

The State's refusal to employ the mandated functional analysis and categorize districts properly leads to errors in the State's retrogression analysis.

To begin, all parties agree that HD 33 was a Latino ability to elect district in H100 and that it was eliminated in Plan H283. (J-61, Vol. I at 143:7-25, 154:7-8; Tr. 1452:10-14.)

In the State's Plan H283, HD 33 is completely eliminated as a Latino district. It is sliced out of Nueces County in South Texas and relocated to Rockwall County in North Texas where it becomes an Anglo-majority district. This change, standing alone, would constitute retrogression

because it has the effect of diminishing the ability of Latinos to elect their preferred candidate of choice in Texas. 42 U.S.C.A. § 1973c(b) (West Supp. 2011); Def. Int. Legal Mem. at § II.G.

Thus, the only question is whether Texas compensated for this loss by creating a new Latino ability to elect district elsewhere in the state. The State claims to offset the elimination of HD 33 with HD 148. (State Mem. at 10-13.) However, as described above, HD 148 has long been a district in which Latinos have the ability to elect their candidates of choice. Because HD 148 exists as a Latino ability to elect district in the benchmark, it cannot offset the loss of HD 33. The Plan is thus retrogressive and not entitled to preclearance under Section 5. (Def. Int. Legal Mem. at § II.G.)

In addition to the loss of HD 33, the State has changed HD 117 so that it is no longer a Latino ability to elect district. The State's creation of HD 117 as a district in which Latinos do not have the ability to elect their preferred candidate is retrogressive unless it is offset by the addition of a Latino opportunity district elsewhere in Texas. (Engstrom Supp. Report at 8-9.) There is no such offset in the State's House plan.

3. The State's Flawed Metric Allows It To Contend that a Retrogressed Plan Complies with Section 5

When the State applies its single-factor analysis to the proposed State House plan, H283, it determines that its plan contains 30 Latino ability to elect districts, conveniently the same number of Latino ability to elect districts that the State calculated existed in the benchmark. (State Mem. at 10-13.)

However, according to Dr. Engstrom, who relied on Section 5's functional analysis of ability to elect, the proposed State House plan has only 31 Latino ability to elect districts. (*See* Table 2, *infra*; Engstrom Rebuttal Supp. Report at 8; Task Force SoMF at 67.) When compared to the 33 Latino ability to elect districts in the benchmark, H283 is retrogressive by two districts.

(Def. Int. Legal Mem. § II.G; Engstrom Supp. Report at 8.) The State's proposed State House plan, therefore, is not eligible for preclearance and the Task Force urges the Court to deny the motion for summary judgment.

Similarly, when the State applies its flawed, single-factor metric to its enacted congressional Plan C185, it determines that its plan contains 8 Latino ability to elect districts, one more than the 7 Latino ability to elect districts that the State calculated existed in the benchmark.

The parties agree that the benchmark plan has seven congressional districts in which Latinos possess the ability to elect their candidates of choice: 15, 16, 20, 23, 27, 28, and 29. (Plaintiff's SoMF at 4, State Mem. at 6; Engstrom Supp. Report at 2.) Between 2000 and 2010, Texas experienced population growth that entitled it to four additional congressional seats, for a total of 36 representatives. (Tr. 443: 5-9.) Latinos comprised 65% of this growth, more than any other single group, and thus provided the bulk of the population increase that brought Texas its additional congressional seats. (Ex. J-9, at p. 3 [Dkt. 149-3].)

The State created a new Latino ability to elect district in Plan C185. However, because the State dismantled CD 23 through the reduction of Latino voter turnout, CD 23 is no longer a Latino ability to elect district and it cannot be counted in Plan C185.[4] Essentially CD 35 is a swap for the loss of CD 23. (Tr. 1875:10-23.) As a result, Plan C185 increases the number of total congressional districts in the plan (from 32 to 36), but Latinos lose electoral strength by being held to seven districts while the congressional delegation is increased to 36.

The State's proposed congressional plan violates Section 5 of the Voting Rights Act by

[4] Relying on its oversimplified and flawed HCVAP-only metric, the State asserts that Plan C185 contains 8 districts in which HCVAP is greater than 50%, and thus 8 Latino ability to elect districts: 15, 16, 20, 23, 28, 29, 34, and 35. (Plaintiff's SoMF at 5; State Mem. 7-9.)

diminishing the relative voting strength of Latino voters. As a result of Texas's population expansion – and in particular, the substantial growth of the State's Latino population, especially when compared to Anglo residents – the number of congressional voting districts in the State has grown from 32 to 36.[5] Yet, the proposed congressional plan has the same number of Latino ability to elect districts as did the benchmark congressional plan, with seven in each. Thus, while Latinos now comprise 24.7% of Texas's citizen voting age population, the percent of Latino ability to elect congressional districts fell from 21.9% to 19.4%, thus retrogressing the relative voting strength of Latino voters in Texas.

4. Maintaining the Number of Latino Ability To Elect Districts at 7 in the Face of the Allotment of Additional Congressional Seats and the Substantial Growth of the State's Latino Population Has a Retrogressive Effect on Texas's Latino Voters

The benchmark plan has 7 Latino ability to elect districts out of a total of 32 total districts, or 21.9%. The proposed congressional plan, however, creates only 7 Latino ability to elect districts out of 36 total districts. Thus, the Latino ability to elect districts drops to 19.4%. As a result, the State has weakened the voting strength of Latino voters in Texas. (Def. Int. Legal Mem. at § II.G; *see also City of Lockhart v. United States*, 460 U.S. 125, 131-32 (1983) (additional districts must be taken into account in a retrogression analysis).)

The State ignores this decrease in percentage. Rather, the State asks the Court to look at bare numbers, asserting that "new districting plans that maintain the same opportunities for a minority group to elect its candidates of choice as it had in the benchmark plan are entitled to pre-clearance." (State's Mem. at 10.)

Plan C185 maintains the number of Latino ability to elect districts while increasing the number of seats in the delegation, and has a retrogressive effect. Therefore, the State's proposed

[5] Between 2000 and 2010, Texas's Latino population grew by 2.8 million and the Anglo population grew by 464,032. Gonzalez Baker Report at Table 2.

congressional plan is not entitled to pre-clearance and the State's Motion for Summary Judgment should be denied.

B. The State's Redistricting Plans Have the Purpose of Discriminating Against Latino Voters, in Violation of Section 5 of the Voting Rights Act

A redistricting plan drawn with the purpose to discriminate cannot receive preclearance. (Joint Legal Br. at 12-13.) The State drew Plans C185 and H283 with the intent to diminish Latino voting strength in violation of Section 5 of the Voting Rights Act.

1. Intentional Discrimination Throughout Plans C185 and H283

As demonstrated below, the State's congressional and House redistricting plans are infected with the intent to dilute Latino voting strength. The State's insistence that it had legitimate reasons to eliminate or limit the number of Latino opportunity districts in its plans is unsupported by the facts and the law.

2. Intentional Discrimination in the Construction of CD23 in Plan C185

Plan C185 intentionally apportions Latino population into and out of Congressional District 23 to ensure a Latino-majority district that cannot elect the Latino-preferred candidate. In a district characterized by strong racially polarized voting, the reduction of Latinos' ability to elect their candidate of choice to 1 out of 10 elections denies Latino voters of the district the opportunity to elect their candidate of choice.

Here, the State intentionally discriminated against Latinos through vote dilution as well as through race-based redistricting. The State assigned Latino voters into and out of CD 23 because of their race and also acted expressly to limit the voting power of Latinos; the State's actions are unlawful even if the State can point to other, purportedly non-racial purposes. *See LULAC v. Perry*, 548 U.S. 399, 441 (2006); *Garza v. County of L.A.*, 756 F. Supp. 1298, 1349 (C.D. Cal.), *aff'd*, 918 F.2d 763 (9th Cir. 1990) ("racial discrimination is not just another

competing consideration.") (citing *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977)).

In 2006, the U.S. District Court for the Eastern District of Texas drew the current CD 23 as a Latino opportunity district. This was following the remand of *LULAC v. Perry*, 548 U.S. 399 (2006), (Pl. Ex. 9, p. 1 [Dkt. 320-2. at p. 88].)

CD 23 is a Latino opportunity district in the benchmark. (Ex. E-7 [Dkt. 307-1], at p. 26; Tr. 512:24-513:6.) Dr. Engstrom noted that Latinos in CD 23 were able to defeat an incumbent in 2006 and re-elect their candidate of choice in 2008. (Tr. 513:24-514:6.) The fact that Latinos were able to elect their preferred candidate in two of the most recent three elections demonstrates that CD23 is a Latino opportunity district in the benchmark. *See Magnolia Bar Ass'n, Inc. v. Lee*, 994 F.2d 1143, 1149 (5th Cir. 1993) ("[E]lections involving the particular office at issue will be more relevant than elections involving other offices.")

Dr. Engstrom testified in *Perez* that CD 23 is a Latino opportunity district, despite the result of the 2010 congressional election. (Tr. 512:24-513:23.) The State agrees that a Latino opportunity district does not have to elect the Latino preferred candidate in every election. (Tr. 1860:10-13.)

By contrast, CD23 in Plan C185 is not a Latino opportunity district. According to the State's analysis of racially contested exogenous elections, Latinos in the State's CD 23 can only elect their preferred candidate in one out of ten elections. (Tr. 1457:21-25; Ex. J-61-1, at 94:11-19; 966:20-25 to 966:6-25.) At trial in *Perez*, Dr. Alford, testified: "I think [CD 23] is probably less likely to perform than it was, and so I certainly wouldn't and don't [and] haven't counted the 23rd as an effective minority district in the newly adopted plan." (Tr. 1839:3-7.) He further

stated, "I don't count 23 as one of the seven performing districts when I evaluate C-185." (Tr. 1878:5-6.)

The State changed CD 23 in order to ensure the re-election of an incumbent the State knew was not the preferred candidate of Latino voters. When Mr. Downton, the chief architect of the congressional map, was drawing CD 23, he was aware that Rep. Canseco was not the Latino candidate of choice. (Tr. 966:3-5; Ex. J-62-I, at 90:9-11.) Senator Seliger testified in *Perez*: "in order to keep it as an opportunity district we just couldn't piece it together where -- where it served Congressman Canseco; and we wanted to if we could. And then [the House] came up with their design and we thought it was good." (Ex. J-59 at 14:6-10.)

In order to assess retrogression, Mr. Interiano, counsel to the House Speaker, used re-aggregated elections to determine if Latino preferred candidates were doing better or worse in new districts compared to the benchmark districts. (Tr. 1456:19-22; Ex. J-61, Vol. 1, at 88:15-19; Ex. J-61, Vol. 1, at 89:18-22; Ex. J-61, Vol. 1, at 92:2-16). According to Mr. Interiano, the state's re-aggregated election analysis shows that Congressional District 23 in plan C185 elects the Latino preferred candidate in one out of ten racially contested general elections. (Tr. 1457:21-25; Ex. J-61, Vol. 1, at 94:11-19).

In *LULAC v. Perry*, the Supreme Court noted that it "bears the mark of intentional discrimination that could give rise to an equal protection claim" that "the State took away Latinos' opportunity because Latinos were about to exercise it." 548 U.S. at 440. The factors identified by the Supreme Court in *LULAC v. Perry* as indicating intentional discrimination are present in the revisions to CD23 in Plan C185.

The State's expert, Dr. Alford, testified in *Perez*, with respect to the changes in CD23 from Plan C100 to Plan C185, that "[t]here are some obvious parallels between what happened

previously and what happened this time." (Tr. 1875:2-9.) Dr. Alford also stated, when discussing the changes to CD23 "we feel like we are all having déjà vu[.]" (Tr. 1929:18-21.) Specifically, Dr. Alford noted that:

- changes were made to CD23 to shore up the reelection prospects of Representative Bonilla in 2003 and in Plan C185 the changes were made to shore up the reelection chances of Representative Canseco (Tr. 1880:22-1881:7);
- in 2003 changes were made to CD23 to add overwhelmingly Anglo Hill Country counties (Alford Tr. 1881:8-1882:2);
- in 2003, CD 23 split Webb County and the City of Laredo, and he knew that some people were upset that CD23 in Plan C185 splits the border city of Eagle Pass and Maverick County (Alford Tr. 1881:8-1882:2); and
- in *LULAC*, the benchmark CD23 was a Latino majority district whose incumbent was not the candidate of choice and most observers agreed that CD23 was about to elect the Latino candidate of choice (Alford 1820:17-1821:11).

Ultimately, with respect to CD 23 in this round of redistricting, Dr. Alford testified that "If I [were] advising the legislature on drawing the 23rd, I would not have done what was done to the 23rd." (Tr. 1838 9:21.) He further testified:

> [M]y first advice to the legislature would be just -- you know, in simple -- with a slight memory of history, do as little as possible to the 23rd as you can. It really has been a difficult -- it was a difficult district for the Court to draw. It was a difficult district for the legislature to draw. But, basically, enough is enough, right? Don't make this hard on yourself. . . Don't mess with the 23rd. That would be my first rule for drawing the districts.

(Tr. 1840:8-22.) He also stated: "I would have advised [] rather than creating a replacement district for the 23rd, I would have advised making the 23rd itself a better performing district in terms of election numbers, or -- basically that, or leaving the 23rd alone." (Tr. 1840:23-1841:5.)

Instead, the State reconfigured CD 23 to deprive Latinos of the ability to elect their preferred candidate. Mr. Downton, the author of the congressional plan, made deliberate changes to protect the incumbent whom he knew was not the candidate of choice of Latinos. (Tr. 966:3-5; Ex. J-62-I, at 90:9-11.) Despite the fact that CD 23 was overpopulated by approximately 210,000 individuals, Mr. Downton moved a much larger number of 380,677 people out of the benchmark CD 23. Then he moved 231,514 new people into CD 23. (Ex. D-2)

When he was drawing CD 23, Mr. Downton turned on the shading for election results and SSVR when drawing the maps. (Tr. 954:4-8; Ex. J-62-I, at 56:15-57:8; Ex. J-62-I, at 41:15-17.) This meant that he could see the effects on election results and SSVR of every change he made the instant he made the change. He made these changes precinct-by-precinct, with the dual goals of strengthening the district for Mr. Canseco and increasing the SSVR. (Tr. 1454:23-1455:3; Ex. J-61-I, at 102:5-11.) As a result, the precincts that he drew into the map had a slightly higher SSVR, but lower election results for Latino-preferred candidates. (Tr. 452-453; Ex. 4.)

Mr. Downton acknowledged that it was possible that in the precincts he swapped into CD23 Anglo voters turned out at higher rates than Latino voters. (Tr. 956:4-19; Ex. J-62-I, at 76:24-77:20.) Mr. Downton further acknowledged that the Latino majority precincts he swapped into CD23 could have been more racially polarized. (Tr. 957:8-15; Ex. J-62-I, at 78:2-

22.)[6] Other changes he made were moving in majority Anglo counties north of the Pecos River, as well as splitting a heavily Latino, politically mobilized border county and its main city. (Ex. J-8; Ex. 3 [Dkt. 326-3, at p. 1]; U.S. Census QuickFacts, Pl. Ex. 302 [Dkt. 322-5], at p. 1010.) He admitted to removing the highly—and increasingly—mobilized Maverick County voters, who are over 95% Latino, because they would not vote for the incumbent he sought to protect. (Ex. J-62-I, at 87:21-23; Tr. 681:21-671:18; U.S. Census QuickFacts, Pl. Ex. 302 [Dkt. 322-5], at p. 1010.) Maverick County has never been split before and has traditionally had influence in its district. (Tr. 681:21-682:2.)

In *LULAC v. Perry*, it "[bore] the mark of intentional discrimination" when the Legislature reduced the HCVAP of CD23 to below 50% to ensure incumbent Rep. Bonilla's re-election. 548 U.S. at 440. Here, Mr. Downton's actions are even more deliberate. Using sophisticated technology, he removed precincts based on their election performance and SSVR, thus virtually ensuring that he moved in precincts where the Anglo vote overwhelmed the Latino vote and moved out precincts where the Latino voters were more active. In the resulting CD23, Latino voter turnout rates are lower and Latino voters are no longer able to elect their preferred candidates.

This is simply a more sophisticated way to dilute the Latino vote. As in 2003, incumbency protection for a congressman not preferred by Latinos was achieved at the cost of Latino electoral opportunity. As in 2003, predominantly Anglo counties were brought into the district, despite the fact that CD23 was overpopulated and needed to shed population. (Tr.

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[6] Notably, Kel Seliger, Chairman of the Senate Select Committee on Redistricting, thought that drawing CD 23 to protect Canseco would be illegal. He testified that if Mr. Canseco were not the Latino candidate of choice, but the Legislature nonetheless was taking steps to make this district safer for Mr. Canseco, "it would be a [legal] violation." (Ex. J-59, at 31:6-16.)

450:4-11; Pl. Ex. 236 [Dkt. 396-236].)[7] Like in 2003, a mobilized, heavily Latino border county and its biggest city were split, dividing precincts at the level where only racial data is available, because the residents were expected to vote against the incumbent the State sought to protect. (Tr. 449:6-10; Pl. Ex. 379 [Dkt. 330-1, at p. 4]; Tr. 955:12-24; Ex. J-62-II, at 11:1-17.) As in 2003, this was all done to protect the incumbency of someone who was not the Latino candidate of choice. "If. . . incumbency protection means excluding some voters from the district simply because they are likely to vote against the officeholder, the change is to benefit the officeholder, not the voters. By purposely redrawing lines around those who opposed Bonilla, the state legislature took [an unjustifiable] course." *LULAC*, 548 U.S. at 441.

Mr. Downton testified that it was possible to draw a total of seven Latino opportunity congressional districts in South and West Texas and that the decision not to draw seven was a "political decision." (Ex. J-62-II, at 63:2-10.)

After purposefully changing CD23 to ensure that Latino preferred candidates would be far less likely to be elected, the State takes the position that if the HCVAP of a district is greater than 50%, then by definition Latinos have the opportunity to elect the candidates of their choice. (Ex. J-61, Vol. 1, at 150:16-22.) Thus, the State takes the position that CD 23 in C185 is a Latino opportunity district even though the State systematically and cynically altered the district so that it would no longer elect the Latino preferred candidate. (Ex. J-61, Vol. 1, at 94:11-19.) The State's position was rejected by its own expert witness. He stated, "I don't count 23 as one of the seven performing districts when I evaluate C-185." (Tr. 1878:5-6.)

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[7] Ryan Downton admitted that he could have simply pulled population out of CD 23 to make the district conform to the Constitution's equal population rule. (Tr. 962:6-17.) Instead, he swapped precincts in and out of the district to ensure the re-election of a candidate not preferred by Latino voters. (Tr. 955:7-11.)

Because he is not the Latino-preferred candidate but represents a Latino-opportunity district, redistricters believed Rep. Canseco faced a serious risk to his incumbency in 2012. (Ex. J-59, at 14:6-10.) Mr. Downton used sophisticated methods to diminish this risk and protect the incumbent, at the expense of Latino voters.

3. Intentional Discrimination in the Construction of CD27 in Plan C185

The State also discriminated against Latinos in the creation of CD 27. CD27 is a Latino opportunity district in the benchmark. For over 30 years, since the creation of CD27, Nueces County, a majority-Latino county, was included as the northern anchor of this district. (Ex. J-62, at 65:11-19; Tr. 458:5-13.)

In drawing the congressional map, Defendants sought to protect Rep. Farenthold's incumbency and radically re-drew CD 27 so that it is centered outside of South Texas. Nueces County, which formerly contained the majority of registered voters in CD27, now comprises the southern portion of a majority Anglo district and contains a minority of registered voters in the district. (Tr. 971:23-972:2; Ex. J-62-II, at 51:6-11.) The 206,293 Latino residents of Nueces County historically accustomed to the opportunity to elect the Latino candidate of choice, are now stranded in a district to the north with an Anglo majority so that the State can assure the re-election of an incumbent who is not the Latino candidate of choice. (Tr. 458:24-459:7; Ex. E-9 [Dkt. 281-2].)

Texas created CD 34 to the south of the new CD 27; CD 34 is a Latino-opportunity district which has most of former CD 27's population. (TR. 971:14-19; EX. J-62-I, AT 31:24-32:3; EX. J-62-I, AT 66:13-15.) Mr. Downton, who drew the map, testified that CD 34 was a "swap" for CD 27 for purposes of § 5, as did Chairman Seliger. (Ex. J-59: 26:18-23; Tr. 971:14-19; Ex. J-62-I, at 31:24-32:3; Ex. J-62-I, at 66:13-15.) Dr. Alford similarly testified that CD 34 is a swap for CD 27, which is no longer a Latino opportunity district. (Tr. 1831:18 – 1832:12.)

The removal of Nueces County from the configuration of Latino opportunity districts in South and West Texas not only purposefully deprives the thousands of Latino voters in Nueces County the opportunity to elect their preferred candidate -- the change further makes impossible the creation of seven Latino opportunity districts in South and West Texas. (Tr. 459:10-20.)

4. Intentional Discrimination in Plan H283

HD 33 in the benchmark is a Latino opportunity district, one of two in Nueces County. (Ex. 37 [Dkt. 387-201, at p. 1]; Ex. J-61, Vol. 1, 143:24-144:3.) Because of population shifts, Nueces County was allocated one less State House district under the County Line Rule. Although Nueces County currently hosts one Anglo majority district and two Latino majority districts, the State eliminated one of the two Latino opportunity districts. (Ex. J-61, Vol. 1, at 150:11-18.) It did this despite the fact that it was possible to preserve both Latino majority districts in Nueces County. (Pl. Ex. 341 [Dkt. 325-4, at p. 20].)

El Paso County has five State House districts, a Latino population of over 80% and an Anglo population of less than 20%. (Pl. Ex. 297 [Dkt. 322-5, at pp. 1000-1001].) HD 78 in Plan H283 is less than 50% SSVR and is not a Latino opportunity district. (Ex. 37 [Dkt. 387-201, at p. 1]; Ex. E-7, Corr. Rebuttal, at p. 28; Engstrom Supp. Report at 5-9.) HD 78 in H283 combines disparate neighborhoods with little in common other than racial composition. For example, HD 78 combines the traditional northeast neighborhoods of El Paso with parts of the Westside neighborhoods of El Paso. It is uncommon for residents of the Westside to visit, shop, or have family connections with residents of the northeast and vice-versa. The two sides of town are connected by only one road along the Franklin Mountain Range called Trans- Mountain Road. (Ex. 418 ¶ 17 [Dkt. 330-5, at p. 95].) The boundaries of HD 78 in H283 do not follow the edges of the nearby mountain, a natural geographic feature, or existing precinct boundaries. (Pl. Ex. 323 [Dkt. 325-4, at p. 1].) The boundaries of HD78 do closely follow the racial composition of

the Census block groups in El Paso County (a level of geography at which racial, but not political, data are available). (Pl. Ex. 328 [Dkt. 325-4, at p. 6].) The State rejected the more natural configuration of House districts in El Paso County, in which all are Latino opportunity districts and follow neighborhood boundaries, and instead chose to gerrymander the districts to ensure that one cannot elect the Latino-preferred candidate.

Cameron and Hidalgo counties are located in the Rio Grande Valley, a border community in South Texas. (Tr. 620:25-621:6.) The Valley's population is growing, and between 2000 and 2010, in Cameron and Hidalgo counties, the population grew by about 167,000, close to the size of a State House district. (Ex. 1 [Dkt. 325-4, at pp. 15, 16].) The "excess" population in Cameron and Hidalgo counties essentially created a new House district in that location; that is, the redistricters could have "spilled" the excess population of each of the two counties toward the other county to make a new Latino opportunity district. (Pl. Ex. 342 [Dkt. 325-4, at p. 21].) Instead, and purportedly to comply with the County Line Rule, the excess population in each county was spilled northward, resulting in no creation of an additional Latino opportunity district. (Pl. Ex. 342 [Dkt. 325-4, at p. 21].) Rep. Burt Solomons, the Chair of the House Redistricting Committee, declared that he would follow the County Line Rule rather than the Voting Rights Act until the U.S. Supreme Court ordered him to do otherwise. (Tr. 1593:15-20.)

Texas redistricters' claim that they were required by the County Line Rule not to draw an additional Latino opportunity is inconsistent with the advice of its counsel. (Ex. 5 [Dkt. 320-2, at pp. 49-67].) If Texas's County Line Rule conflicts with the Voting Rights Act, federal law prevails under the Supremacy Clause. *Bartlett v. Strickland*, 556 U.S. 1, 4 (2009) ("It is common ground that state election-law requirements like the Whole County Provision may be superseded by federal law."); *Katzenbach v. Morgan*, 384 U.S. 641 (1966) (striking down a state literacy law

that conflicted with the Voting Rights Act). Elevating a state's election law over the federal Voting Rights Act in order to claim that that State was barred from creating an additional Latino opportunity district is a strong indicator of racial intent.

Similarly, the changes to HD 117 demonstrate discriminatory intent. Representative Garza testified that he wanted HD 117, which he represents, to extend farther north so that he could gain more Anglo population on the assumption that they would vote for him. (Garza Dep. 30:6-31:3; *see also* Garza Dep. 58:9-15 (testifying that HD 117 in Plan H283 improves his chances of being reelected).) Representative Garza knew that changing the boundaries of HD 117 would potentially dilute minority voting strength and believed that there was limited flexibility to change HD 117 without running afoul of the Voting Rights Act. (*Id.* at 50:3-19.) He further testified that he understood that Hispanic voter turnout is low in Somerset, an area placed into HD 117 in Plan H283. (*Id.* at 40:8-12.)

HD 117 in Plan H283 shows a difference of 14 percentage points between HCVAP and SSVR. Ex. 201. This 14% difference, between Latino voter eligibility and Latino voter registration, indicates that HD 117 has the most severe rate of underparticipation in the entire 150 district House plan. By contrast, HD 117 in the benchmark has a difference between HCVAP and SSVR of only 8%. Thus, in changing HD 117, the State added areas containing Latino adult citizens who were much less likely to register to vote than the Latino adult citizens in the benchmark HD 117. This is consistent with the findings of Dr. Henry Flores that the State's changes to HD 117 reduced the number of registered Latinos who turn out to vote in elections. Exhibit 45. Essentially, the State swapped out areas containing Latinos who are more civically engaged and exchanged them for areas where eligible Latinos are less likely to register and vote.

5. The Arlington Heights Factors Provide Ample Circumstantial Evidence of Intentional Discrimination

a. The Dilutive Effects of the Challenged Redistricting Plans Indicate an Intent To Discriminate

As previously described, the State's adopted House and congressional redistricting plans fail to create any additional Latino opportunity districts, despite the strong growth of the Latino population in Texas. In the face of shifting demographics, and the increase in the number of Latino registered voters in Texas from 2000 to 2010, the State's refusal to create additional Latino ability to elect districts, as well as its subtraction from the current number of Latino opportunity districts in the House plan, is circumstantial evidence of an intent to limit Latino electoral strength in the new redistricting plans.

b. The Historical Background of the Challenged Decision

Texas has enacted and then been forced to remedy discriminatory redistricting plans in every decade since the 1970's. See *White v. Regester*, 422 U.S. 935 (1975); U.S. Department of Justice, January 25 and January 29, 1982 Letters of Objection, *available at* http://www.justice.gov/crt/about/vot/sec_5/tx_obj2.php (Texas House, congressional and Senate redistricting plans); U.S. Department of Justice, November 12, 1991 Letter of Objection (Texas House redistricting plan); U.S. Department of Justice, November 16, 2001, Letter of Objection, *available at* http://www.justice.gov/crt/about/vot/sec_5/tx_obj2.php (Texas House redistricting plan); *LULAC v. Perry*, 548 U.S. 399 (2006) (Texas congressional redistricting plan). Against this backdrop, Texas commenced another round of statewide redistricting in February 2011.

c. The Specific Sequence of Events Leading up to the Challenged Decision

The 2011 Texas Legislative Session was rife with racial tension. (Flores Report, Ex. E-8 [Dkt. 191-1], at pp. 1, 6.) Larry Gonzales, a Latino Republican member of the Texas House,

testified that the legislative debate in the 2011 Session, particularly with respect to immigration, may have upset some Latinos who have conservative values but who might have taken the debate personally. (Tr.1658:1-1659:19.) Rep. Gonzales testified that he had some long discussions with other Republican members on the House floor and communicated to other Republican members that some Latinos who would otherwise have conservative values and be inclined to vote Republican might have issues with the tone of the debate. (Tr.1658:1-1659:19.)

In an interview with National Public Radio, Aaron Pena, another Latino Republican member of the Texas House, explained, "The tone of the debate is basically saying: We don't want you. This is a war over our culture. These people bring diseases into our country." (Pl. Ex. 388 [Dkt. 330-3, at p. 5].) Pena further stated that there are plenty of Texas Republicans who quietly share his concern about the tone of the debate and its long-term effect on Hispanic voters. (Pl. Ex. 388 [Dkt. 330-3, at p. 5].)

Even Latino Republican legislators were not immune from stereotypes and negative racial comments during the Legislative Session. During the 2011 Special Legislative Session, a legislatively-sponsored speaker on the Capitol steps stated: "If you really want to know why in Texas we don't get immigration legislation passed, it's because we have 37, 36 Hispanic legislators in the Texas Legislature. All of the states that have passed legislation have a handful. . . ." (Tr. 441:7, 13, 17; Pl. Ex. 202 at 1:25-1:45.)

The 2011 Legislative Session was also characterized by elected officials criticizing Latinos and Spanish-speakers without respect to immigration status. On June 13, 2011, in a Senate Transportation and Homeland Security Committee hearing, a Spanish-speaking witness attempted to give testimony through an interpreter. State Senator Chris Harris stated: "Did I understand him correctly that he has been here since 1998? . . . Why aren't you speaking in

English, then? . . . You've been here for 23 years!" Senator Harris continued: "It's insulting to us. It is very insulting. And if he knows English, he needs to be speaking in English." (Tr. 437:1-438:22; Tr. 441:7, 13, 17; Pl. Ex. 202 at 0:17-1:24.)

d. Refusal To Consider Compliance with the Voting Rights Act

Chairman Solomons testified at trial that he wanted a member-driven process for the State House Redistricting map, meaning he wanted county delegations to have as much input as possible. (Tr. 1560: 24-1561:19.) When a county contained more than one House district, Rep. Solomons asked the county delegation to submit a consensus map. (Tr. 1570:24- 1571:12; 1576:4-20.)

Chairman Solomons testified at trial that he did not independently verify whether the counties had enough Latino opportunity districts because he "assumed" that Voting Rights Act compliance was being looked at by the county delegation. (Tr. 1603:9-19.)

If there was an agreement among the members of a county delegation about the map for their county, Gerardo Interiano (counsel to the Texas House Speaker), under the direction of Chairman Solomons, would drop that county whole into the statewide map. (Tr. 1445:9-12.) Mr. Interiano testified that instead of making an assessment whether to draw an additional Latino opportunity district in a particular county, he simply dropped a county delegation's draft into the map. (Tr. 1445:13-18.) Mr. Interiano did not spend time examining whether it was possible to create additional Latino-majority districts in Harris County because the county delegation was working on that map. (Tr. 1450:18-1451:4.) Mr. Interiano never attempted to draw a fifth Latino opportunity district in El Paso County, instead accepting the proposal from that delegation. (Tr. 1445:19-1446:5; Ex. J-61, Vol. 1, at 140:5-8; Ex. J-61, Vol. 1, at 167:1-4.)

Chairman Solomons testified that he made no inquiry whether there should be five Latino opportunity districts in El Paso County but agreed that it is possible that in El Paso, the county

delegation devised a plan that satisfied one member's desire to continue his district as not a Latino opportunity district, and so the drop-in El Paso plan might be satisfactory to the members, but possibly not compliant with the Voting Rights Act. (Tr. 1601:19-1602:18.)

With respect to the congressional map, both chairmen of the redistricting committees testified that it would be a concern if an existing Latino opportunity district were re-drawn in a way that it was no longer able to offer Latinos the opportunity to elect their preferred candidate. Despite this concern, neither chairman sought to prevent the dismantling of CD 23 in Plan C185.

Chairman Solomons testified in deposition that under his standards, if a congressional district was reduced from being able to elect the Latino-preferred candidate in three out of ten elections to one out of ten elections, "that might be an issue" and "we would try to adjust that [. . .] I would ask them, we're going to have to make some adjustment," even if it adversely effected his political party. (Ex. J-60, at 126:24-127:25; Tr.1605:11-1607:2.) Chairman Seliger testified that if Mr. Canseco were not the Latino candidate of choice in CD 23, but the Legislature nonetheless was taking steps to make this district safer for Mr. Canseco, "it would be a violation [of the Voting Rights Act]." (Ex. J-59, at 31:6-16.)

e. Elevating the State County Line Rule Over Federal Requirements

In a House Redistricting Committee hearing during the Legislative Session, House Redistricting Chairman Solomons expressed his goal of prioritizing the Texas County Line Rule over compliance with the Voting Rights Act. (Pl. Ex. 10 [Dkt. 320-2, at 32-33].) He later issued a public statement saying that he rejected a proposed House plan that was offered to the committee because it broke the County Line Rule in order to create minority opportunity districts. (Tr. 1595: 20-24.)

Chairman Solomons testified at trial that the County Line Rule governed in a conflict between the County Line Rule and the creation of a Latino opportunity district pursuant to the Voting Rights Act. (Tr. 1594:10-16.) Chairman Solomons further took the position that he was not going to break the Texas County Line Rule unless the U.S. Supreme Court told him he must. (Tr. 1592:20-1593:20; Ex. J-60, at 46:13-47:21.)

Mr. Interiano, the chief architect of the House map, testified that if a Latino majority district could not be drawn within the constraints of the County Line Rule, he concluded the district could not be drawn. (Tr. 1447:13-22.)

In contrast to the position taken by Chairman Solomons, the Texas Legislative Council advised the Legislature that the County Line Rule must yield to the requirements of the Voting Rights Act.[8] The Texas Legislative Council presentation by Senior Legislative Counsel David Hanna on the County Line Rule for House Districts, given on March 1, 2011, states, "Basic Rule: A county may be cut in drawing a house district only when required to comply with: the one-person, one-vote requirement of the 14th Amendment to the United States Constitution; or the Voting Rights Act." (Ex. 5 [Dkt. 320-2, at 51].) In spite of this direction from legal counsel, the Legislature justified the failure to create any additional Latino opportunity districts in the enacted House map by invoking the need to follow the County Line Rule, even at the expense of the Voting Rights Act.

f. Departures from the Normal Procedural Sequence

The adoption of the House and congressional redistricting plans was characterized by numerous departures from the normal procedural sequence. At the outset of the Session, on

[8] The 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.

January 24, 2011, the Texas House of Representatives voted down a rules adoption stating that all legislatively approved maps would comply with the Voting Rights Act. (Pl. Ex. 223 [Dkt. 320-2, at 22-24].)

The Texas Legislature's redistricting process was abnormally rushed and did not proceed in a typical manner. (Tr. 442:7-9; 441:20-24.) Redistricting committees held some hearings with no maps. (Tr. 441:20-25.) They also held some hearings with no Census data available. (Tr. 441:20-25.) These hearings did not provide an adequate opportunity for the minority community to participate in the redistricting process. Subsequent hearings did not provide sufficient notice or time for the minority community to analyze or present testimony on the State-produced maps during the Legislative session. (Ex. J-52, at 68:13-69:19; TR: 441:20 – 442:9, at p. 6.; Task Force SoMF at ¶¶ 453-537.)

g. Departures from Normal Substantive Considerations

The Texas Legislature departed from normal substantive considerations in a number of important respects, including failing to make the necessary inquiry into whether maps conformed with the Voting Rights Act and elevating state redistricting rules over federal civil rights mandates despite knowing that federal law governed. (Task Force SoMF at ¶¶ 453-537.)

In addition, the Legislature departed from the normal substantive consideration of accommodating congressional representatives of the same political party. U.S. Representative Lamar Smith, the spokesperson for the Texas Republican congressional delegation, provided and advocated for an additional Latino opportunity district in the Dallas Ft. Worth area. (Tr. 445:11-15; Ex. 2 [Dkt. 323-2] at Congress022-23; Tr. 444:1-8, 1580:18-23; 1610:6-15; Tr. 444:1-8, 1580:18-23; 1610:6-15.) However, Texas redistricters refused to accommodate the Republican delegation's request. (Ex. J-60, at 110:8-112:2; Tr. 1320:20-1321:25; TR. 1322:1-1323:5.)

6. Improper Reliance on Racial Stereotypes of Partisanship

The State created and relied upon generalized, partisan stereotypes about Latinos to support their failure to create additional Latino opportunity districts on the grounds that doing so was contrary to their partisan political goals. (Task Force SoMF at ¶¶ 726-750.)

CONCLUSION

For the foregoing reasons, Task Force respectfully requests that The State's Motion for Summary Judgment be denied.

Dated: October 25, 2011

Respectfully submitted,

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TABLE 1—H100—THE BENCHMARK PLAN		
DISTRICTS THAT THE STATE AND THE LATINO TASK FORCE AGREE ARE LATINO ABILITY TO ELECT DISTRICTS	DISTRICTS THAT THE STATE IMPROPERLY FAILS TO LABEL AS LATINO ABILITY TO ELECT	DISTRICTS THAT THE STATE IMPROPERLY LABELS AS LATINO ABILITY TO ELECT
31	51	78
33	90	
34	103	
35	148	
36		
37		
38		
39		
40		
41		
42		
43		
74		
75		
76		
77		
79		
80		
104		
116		
117		
118		
119		
123		
124		
125		
140		
143		
145		

TABLE 2—H283—THE STATE'S ENACTED PLAN				
DISTRICTS THAT THE STATE AND THE LATINO TASK FORCE AGREE ARE LATINO ABILITY TO ELECT DISTRICTS	DISTRICTS THAT THE STATE IMPROPERLY FAILS TO LABEL AS LATINO ABILITY TO ELECT	DISTRICTS THAT THE STATE IMPROPERLY LABELS AS LATINO ABILITY TO ELECT	LATINO ABILITY TO ELECT DISTRICTS ELIMINATED OR WEAKENED	DISTRICTS ERRONEOUSLY RECATEGORIZED BY THE STATE'S FORMULA*
31	51	78	33	148
34	90	117	117	
35	103			
36				
37				
38				
39				
40				
41				
42				
43				
74				
75				
76				
77				
79				
80				
104				
116				
118				
119				
123				
124				
125				
140				
143				
145				
148				

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,

Plaintiff,

- against -

UNITED STATES OF AMERICA and ERIC H. HOLDER, JR. in his official capacity as Attorney General of the United States,

Defendants.

CIVIL ACTION NO. 1:11-cv-01303
Three-Judge Panel: RMC-TBG-BAH

DEFENDANT-INTERVENOR, THE TEXAS LATINO REDISTRICTING TASK FORCE'S
STATEMENT OF MATERIAL FACTS STILL IN DISPUTE

1. As a preliminary matter, the Texas Latino Redistricting Task Force ("Task Force") notes that the parties disagree with respect to the definition of the term "opportunity district." This difference in interpretation underlies many of the major disputes in this litigation. Plaintiff, the State of Texas (the "State" or "Texas") defines what it refers to as a "Hispanic Opportunity District" solely by looking at Hispanic citizen voting age population ("HCVAP"). Plaintiff characterizes all districts in which there is over 50% HCVAP, as Hispanic Opportunity Districts and all districts in which there is less than 50% HCVAP as not opportunity districts, without respect to whether Latino voters have the ability to elect their preferred candidate within those districts. The State fails to consider any factor other than HCVAP when determining whether, within a particular district, Latinos have the opportunity to meaningfully affect the voting process or elect their candidate of choice.

2. The standard advocated by Texas should be rejected because the solitary demographic marker of HCVAP, without more, is insufficient to determine Latino voters' ability to elect their candidate of choice. *See, e.g*, House Districts, *infra*. As such, the definition is inconsistent with Section 5 of the Voting Rights Act, which looks to a minority group's ability to elect their candidate of choice. *See* 42 U.S.C. § 1873c(b). For this reason, among others, the State's definition has not been adopted by the Department of Justice ("DOJ"). *See* Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act; Notice, 76 Fed. Reg. 7470, 7471 (Feb. 9, 2011) ("A proposed plan is retrogressive under Section 5 if its net effect would be to reduce minority voters' effective exercise of the electoral franchise when compared to the benchmark plan. [T]this means the . . . proposed redistricting plan [must] not have the effect of diminishing the ability of any citizens of the United States because of race, color, or membership in a language minority group defined in the Act, to elect their preferred candidate of choice." (citing *Beer v. United States*, 425 U.S. 125, 141 (1976)) and Section 5) (internal quotation marks omitted)).

3. Indeed, the HCVAP standard advocated by Texas also conflicts with the definition of "opportunity district" put forth by the State's own expert witness, Dr. John Alford. Dr. Alford incorporates ability to elect, as opposed to a single demographic marker, into his definition of a Latino opportunity district. (Ex. 47, at Tr. 1860:19-24; *see also* Ex. 47, at Tr. at 1859:24-1860:5 (discussing level of Spanish surname voter registration ("SSVR"), Latino voter cohesion and election performance as part of his definition of a Latino opportunity district.)

4. As a result of these diverging definitions, an inconsistency exists between the State's claims and evidence. (*Compare* State Statement of Material Facts [Dkt. 41] ("State SoMF") at 5 ("Plan C185 contains 8 Latino Opportunity Districts in which HCVAP is greater than 50%."), *with* (Ex. 47, at Tr. 1908:14-1909:2.) (testimony of Dr. Alford stating that in Plan C185 there are not eight

districts in which Latinos can elect their candidate of choice).) More importantly, this demonstrates that Texas's Statement of Material Facts (Dkt. 41) is, at best, unclear, and certainly insufficient to support a summary judgment ruling in its favor.

5. Task Force uses the term "Latino ability to elect districts." This term establishes the legally correct definition of "opportunity districts" as those districts in which, in addition to a HCVAP, the Latino voters have a better than 50/50 chance of being able to nominate and elect a candidate of their choice. (Ex. 47, at Tr. 511:1-4.) That is, Task Force will use "Latino ability to elect district" instead of the State's incorrectly defined "Hispanic Opportunity District." While factors such as a district's citizen voting age population and other demographics are relevant to this inquiry, ultimately the standard set by Section 5 of the Voting Rights Act is a minority group's ability to elect their candidates of choice. *See* 42 U.S.C. 1973c.

6. Furthermore, an opportunity district does not have to elect Latino's preferred candidate in every election. (Ex. 47, at Tr. 1860:10-13.) If a Latino ability to elect district fails to elect a Latino-preferred candidate in one election year, it cannot be stripped of that categorization if other election results suggest that Latino candidates still generally get elected. (Ex. 47, at Tr. 1860:14-18.) For example, the loss of the Latino candidate of choice in CD 23 in 2010 does not mean that the district is no longer a Latino ability to elect district, especially when considering that Latino voters turned out at lower rates than their registration percentage. (Ex. 47, at Tr. 513:20-514:12.)

7. In short, to recognize which districts are Latino ability to elect districts, one must look at several interrelated factors, and ultimately to election results themselves, over time. Only by using this more nuanced approach can one certify with authority which districts can be labeled as "opportunity" or "ability to elect" districts.

I. The Proposed Congressional Plan (C185) Has Only Seven Latino Ability to Elect Districts in Which Latino Voters Can Elect Their Candidates of Choice

8. It is undisputed that the benchmark plan, also known as C100, has seven (7) Latino ability to elect districts: Congressional Districts 15, 16, 20, 23, 27, 28, and 29. (Engstrom Suppl. Report, Ex. 44, at 2.) These districts meet the functional test of ability to elect. (Ex. 47, at Tr. 511:1-4.)[1]

9. However, a genuine issue of material fact exists with respect to how many Latino ability to elect districts exist in the Proposed Congressional Plan. Texas claims there are eight (8) Latino ability to elect districts in C185: Congressional Districts 15, 16, 20, 23, 28, 29, 34, and 35. (State SoMF at 5.)

10. The Task Force maintains that C185 only contains seven (7) Latino ability to elect districts: Proposed Congressional Districts 15, 16, 20, 28, 29, 34, and 35. (Engstrom Suppl. Report, Ex. 44, at 4.)[2]

11. This section of the Task Force's Statement of Material Facts Still in Dispute describes only the district in which the Task Force disagrees with the State's determination of which districts constitute Latino ability to elect districts. This discussion is demonstrative of the dangers inherent in the State's practice of relying on one solitary demographic factor in determining whether a district is a Latino ability to elect district become clear: a 50% HCVAP may be inadequate to render the district a Latino ability to elect district.

A. Even with Over 50% HCVAP, Proposed Congressional District 23 Is Not a Latino Ability to Elect District

12. Dr. Engstrom's analysis in *Perez v. Perry* showed that CD 23 under the benchmark plan is a Latino ability to elect despite the fact that the Latino-preferred candidate was defeated in the

[1] A detailed account of the demographic make-up and historical election results for each of these Latino ability to elect districts in C100, the benchmark plan, are included in the Appendix.

[2] A detailed account of the demographic make-up and historical election results for each of these Latino ability to elect districts in C185, the proposed Congressional Plan, are included in the Appendix.

2010 General Election. CD 23 has a strong majority of Latino population, was created by the district court in *LULAC v. Perry* as an opportunity district, and elected the Latino preferred candidate in the 2006 and 2008 General Election. (Ex. 47, at Tr. 513:7-515:5)

13. The State's expert witness, Dr. Alford, testified in *Perez v. Perry* that since CD 23 was created in 2006, it elected the Latino-preferred candidate in 2006 and 2008. (Alford Dep. Tr. at 121:6-9.)

14. Although the total Latino population of CD 23 would increase slightly under C185, increasing HCVAP from 58.4% to 58.5%, the proposed CD 23 is not a Latino ability to elect district. (Flores Report, Ex. 59, at p. 9; see also Ex. 47, at Tr. 465:16-19.)

15. The result of the district's population shift is that CD 23 can more readily insure the re-electability of the non-Latino-preferred incumbent against the Latino community's candidate of choice. (Flores Report, Ex. 59, at p. 9; see also Ex. 47, at Tr. 465:16-19.)

16. By analyzing the racially polarized voting across the district, it can be determined that the realigned district would elect the Latino voters' candidate of choice in only one of the last eight elections. The analysis reaggregates the election results to fit within the proposed CD 23 district lines. (Ex. 47, at Tr. 516:1-4; 545:16-18.) The results would not qualify a district as one in which Latinos have the ability to elect their candidate of choice. CD 23 in Plan C185 is, therefore, not a Latino ability to elect district.

17. Specifically, CD 23 in Plan C185 would have an HVAP of 63.8%, a CVAP of 58.5%, and a SSVR of 54.8%. (Pl. Ex. 200 [Dkt. 320-1, at pp. 1, 5]; Pl. Ex. 244 [Dkt. 387-244, at p. 1]; Pl. Ex. 244-1 [Dkt. 387-244-1, at p. 1]; Pl. Ex. 245 [Dkt. 387-245, at p. 1].)

18. From 2002 to 2010, in C185, the candidate of choice of Latinos would have won 9 out of 9 racially contested Democratic primary elections and 0 out of 3 racially contested Republican primary elections in CD 23. (Pl. Ex. 200 [Dkt. 320-1, at p. 5]; Pl. Ex. 242 [Dkt. 387-242, at pp.

3, 4, 6]; Pl. Ex. 243 [Dkt. 387-243, at p. 5]; Pl. Ex. 244 [Dkt. 387-244, at p. 3]; Pl. Ex. 244-1 [Dkt. 387-244-1, at p. 2]; Pl. Ex. 245 [Dkt. 387-245, at pp. 2, 6, 8].)

19. However, in that same time period, the candidate of choice of Latinos would only have won 2 of 13 racially contested general elections in CD 23. (Pl. Ex. 200 [Dkt. 320-1, at p. 5]; Pl. Ex. 242 [Dkt. 387-242, at p. 1]; Pl. Ex. 243 [Dkt. 387-243, at p. 1]; Pl. Ex. 244 [Dkt. 387-244, at p. 1]; Pl. Ex. 244-1 [Dkt. 387-244-1, at p. 1]; Pl. Ex. 245 [Dkt. 387-245, at p. 1]; Pl. Ex. 426 [Dkt. 396-426, at p. 1].)

20. The State's expert witness, Dr. Alford, agreed that CD 23 is not a Latino ability to elect district. Dr. Alford testified that Plan C185 constituted a slight increase in Spanish surname voter registration in the district, but also noted a corresponding decrease in election performance. (Ex. 47, at Tr. 1877:18-22.). Therefore, Dr. Alford did not count CD 23 as a performing district for Latinos.

21. Dr. Alford characterizing the results as "unfortunate[]," (Ex. 47, at Tr. 1820:14-16), explained that the district "is probably less likely to perform than it was and so I certainly wouldn't count and don't—in all of this discussion, I haven't counted the 23rd as an effective minority district in the newly adopted plan, but it does remain a majority district." (Ex. 47, at Tr. 1839:1-13; 1877:23-1878:6.)

22. Dr. Alford testified in *Perez v. Perry*, with respect to Plan C185's failure to create an additional Latino opportunity district, "the first time I looked at the maps, that's the question that occurred to me, is where -- where had that -- where was that growth in the map? (Ex. 47, at Tr. 1919:15-1920:1.)

B. The State Methodically and Purposefully Constructed CD 23 to Ensure that the District Was Not a Latino Ability to Elect District

23. The record demonstrates that the State intended to ensure that CD 23 was not a Latino ability to elect district by swapping precincts in and out of the district, on the basis of race and political performance. In so doing, the State acted intentionally to deny Latino voters the opportunity to elect their preferred candidate.

24. The State methodically and purposefully constructed CD 23 so that it would not provide an opportunity to elect, despite having a numerical majority of HCVAP and Latino registered voters. In other words, race was the predominant factor guiding the redistricters with respect to the drawing of CD 23. (Flores Report, Ex. 59, at pp. 8-9.)

25. Specifically, C185 would break apart a traditional voting community on the South Side of San Antonio. This practice is known as "cracking." (Flores Report, Ex. 45, at 12.)

26. The South Side community—bound on the west by Lackland Air Force Base and on the east by Interstate Highway 10, stretching all the way south to Highway 1604 and north to central city—has been a community of interest within CD 23 historically. In fact, the community has traditionally been called the "South Side" in San Antonio political and social culture. (Flores Report, Ex. 45, at 12.)

27. There is racially polarized voting in Bexar County, which contains the South Side, where Latinos are very cohesive in their voting preferences. These preferences are not shared by Anglo voters generally, and not shared by African American voters in the primary elections. (Engstrom Report, Ex. 43, at 12-13.

28. The State's proposed plan, C185 cracks this community into three congressional districts: 20, 23, and 35. (Flores Report, Ex. 45, at 12.)

29. The record contains additional examples of "cracked" communities, where the only reasonable inference to be drawn is that the communities were cracked in order to allow the State to discriminate against Latino voters.

30. Maverick County has never been split before. (Ex. 47, at Tr. 447:21-448:1.) C185 seeks to split the county in two, leaving only part of the city of Eagle Pass inside the CD 23 limits while removing the rest of the city and Maverick County into CD 28. (Flores Report, Ex. 45, at 12 & Ex. 45.13.)

31. Also, neighborhoods around Socorro in south El Paso County were divided and added to CD 23. (Pl. Ex. 378 [Dkt. 330-1, at p. 3]; Ex. J-62-II, at pp. 29-35.)

32. The enacted plan, C185, makes at least 6 precinct cuts in El Paso County. (Ex. 47, at Tr. 11-18; Pl. Ex. 378 [Dkt. 330-1, at p. 3].)

33. To replace the loss of the excised Latino voters, C185 adds counties from benchmark CD 11, where the Latino communities vote at lower rates than other Latino communities throughout CD 23, such as the South Side of San Antonio. (Flores Report, Ex. 45, at 12 & Ex. 45.17 and 45.17.)

34. The decennial census showed that CD 23 in the benchmark was overpopulated by about 149,000 people. (Ex. 47, at Tr. 450:4-11; Pl. Ex. 236 [Dkt. 396-236].)

35. Instead of simply reducing CD 23's population by 149,163 persons to meet the one-person, one-vote standard required by the U.S. Constitution, the redistricters removed 380,677 persons from CD 23 and then brought in an additional 231,514 persons from other districts. (Flores Report, Ex. 45, at 12-13.)

36. Latino population moved in is decidedly less politically active, and therefore less able to elect their candidate of choice, than the displaced Latino voters. (Flores Report, Ex. 45, at 12.)

Specifically, in absolute numbers, 30,622 of the Latino voters that were moved into CD 23 turned out in the 2010 general election, while 58,978 of Latino voters that turned out for that election were moved out. (Ex. 47, at Tr. 449:20-21; 449:24-450:1; Pl. Ex. 236 [Dkt. 396-236].).

37. By bringing into the district a SSVR turnout rate of 19% or lower, the overall SSVR turnout for the 2010 general election in CD 23 drops almost two percentage points, from 24.84% to 22.86%. (Ex. 47, at Tr. 451:25-452:3; Flores Report, Ex. 45, at 13.)

38. In short, the data demonstrates that C185 draws CD 23 in a manner that guarantees lower Latino turnout than the benchmark CD 23.

39. The results are devastating to the Latino voters' ability to elect their candidate of choice, a conclusion that is undisputed by the experts of all parties.

40.

II. The Texas House of Representative Districts

A. The Benchmark House Plan (H100) Contains 33 Latino Ability to Elect Districts

41. The State asserts that the benchmark and proposed House Plans each contain 30 Latino ability to elect districts and, therefore, that no retrogression has occurred. (State SoMF at 6-7.)

42. However, Plan H100, the benchmark house plan, actually included 33 districts in which Latinos can elect the candidate of their choice: State House Districts 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. (Engstrom Suppl. Report, Ex. 44, at 5-7.)[3]

43. This section of the Task Force's Statement of Material Facts Still in Dispute describes only districts in which the Task Force disagrees with the State's determination of which districts constitute Latino ability to elect districts. In reviewing these districts, the dangers inherent in the State's practice of relying on one solitary demographic factor in determining whether a district is a Latino ability to elect district become clear: in some of these districts, Latinos can elect their candidates of choice even though they constitute less than 50% HCVAP and, in others, more than 50% HCVAP may be inadequate to render the district a Latino ability to elect district.

1. HD 51 <u>is</u> a Latino Ability to Elect District Under H100

44. Under Plan H100, HD 51 *is* a Latino ability to elect district.

45. HD 51 has a HVAP of 58.3%, an HCVAP of 45.8%, and a SSVR of 40.9%. (Pl. Ex. 201 [Dkt. 387-201, at pp. 1, 15].)

46. The election results trend demonstrates that Latino voters are able to elect their candidate of choice in HD 51.

47. From 2002 to 2010, the candidate of choice of Latinos won in 7 out of 9 racially contested Democratic primary elections and 1 out of 3 racially contested Republican primary elections. (Pl. Ex. 201 [Dkt. 387-201, at p. 15]; Pl. Ex. 256 [Dkt. 387-256, at pp. 7, 11, 16]; Pl. Ex. 258 [Dkt. 387- 258, at p. 12]; Pl. Ex. 257 [Dkt. 387-257, at p. 17]; Pl. Ex. 259

[3] A detailed account of the demographic make-up and historical election results for each of these Latino ability to elect districts in H100, the benchmark plan, are included in the Appendix.

[Dkt. 387-259, at p. 6]; Pl. Ex. 260 [Dkt. 387-260, at pp. 6, 16]; Pl. Ex. 428 [Dkt. 396-428, at p. 2].)

48. In that same time frame, the candidate of choice of Latinos won in 13 out of 13—that is, *all*—racially contested general elections in HD 51. (Pl. Ex. 201 [Dkt. 387-201, at p. 15]; Pl. Ex. 256 [Dkt. 387-256, at p. 2]; Pl. Ex. 257 [Dkt. 387-257, at pp. 2, 7]; Pl. Ex. 258 [Dkt. 387-258, at p. 2]; Pl. Ex. 259 [Dkt. 387-259, at p. 2]; Pl. Ex. 260 [Dkt. 387-260, at p. 2].)

49. Because Latino voters are able to elect their candidate of choice, HD 51 is a Latino ability to elect district.

2. HD 78 is <u>not</u> a Latino Ability to Elect District Under H100

50. Under Plan H100, HD 78 is *not* a Latino ability to elect district.

51. HD 78 has an HVAP of 62.8%, an HCVAP of 56.2%, and a SSVR of 47.5%. (Pl. Ex. 201 [Dkt. 387-201, at pp. 1, 20].)

52. The election results trend demonstrates that Latino voters are unable to elect their candidate of choice in HD 78.

53. From 2002 to 2010, the candidate of choice of Latinos won in 6 out of 9 racially contested Democratic primary elections and 1 out of 3 racially contested Republican primary elections in HD 78. (Pl. Ex. 201 [Dkt. 387-201, at p. 20]; Pl. Ex. 256 [Dkt. 387-256, at pp. 7, 12, 17]; Pl. Ex. 257 [Dkt. 387-257, at p. 18]; Pl. Ex. 258 [Dkt. 387-258, at p. 13]; Pl. Ex. 259 [Dkt. 387-259, at p. 7]; Pl. Ex. 260 [Dkt. 387-260, at pp. 7, 17]; Pl. Ex. 428 [Dkt. 396-428, at p. 3].)

54. However, from 2002 to 2010, the candidate of choice of Latinos won in 3 out of 13 racially contested general elections in HD 78, 3 out 7 from 2006 to 2010. (Pl. Ex. 201 [Dkt. 387-201, at p. 1, 20]; Pl. Ex. 256 [Dkt. 387-256, at p. 3]; Pl. Ex. 257 [Dkt. 387-257, at pp. 3, 8]; Pl. Ex. 258 [Dkt. 387-258, at p. 3]; Pl. Ex. 259 [Dkt. 387-259, at p. 3]; Pl. Ex. 260 [Dkt. 387-260, at p. 3].)

55. Because Latino voters are unable to elect their candidate of choice, HD 78 is not a Latino ability to elect district.

3. HD 90 <u>is</u> a Latino Ability to Elect District Under H100

56. Under Plan H100, HD 90 *is* a Latino ability to elect district.

57. HD 90 has an HVAP of 64.9%, an HCVAP of 47.9%, and a SSVR of 47.2%. (Pl. Ex. 201 [Dkt. 387-201, at pp. 1, 23].)

58. The election results trend demonstrates that Latino voters are able to elect their candidate of choice in HD 90.

59. From 2002 to 2010, the candidate of choice of Latinos won in 7 out of 9 racially contested Democratic primary elections and in 2 out of 3 racially contested Republican primary elections in HD 90. (Pl. Ex. 201 [Dkt. 387-201, at p. 23]; Pl. Ex. 256 [Dkt. 387-256, at pp. 7, 12, 17]; Pl. Ex. 258 [Dkt. 387-258, at p. 13]; Pl. Ex. 257 [Dkt. 387-257, at p. 18]; Pl. Ex. 259 [Dkt. 387-259, at p. 7]; Pl. Ex. 260 [Dkt. 387-260, at pp. 7, 17]; Pl. Ex. 428 [Dkt. 396-428, at p. 3].)

60. In that same time frame, the candidate of choice of Latinos won in 13 out of 13 racially contested general elections in HD 90. (Pl. Ex. 201 [Dkt. 387-201, at p. 23]; Pl. Ex. 256

[Dkt. 387-256, at p. 3]; Pl. Ex. 257 [Dkt. 387-257, at pp. 3, 8]; Pl. Ex. 258 [Dkt. 387-258, at p. 3]; Pl. Ex. 259 [Dkt. 387-259, at p. 3]; Pl. Ex. 260 [Dkt. 387-260, at p. 3].)

61. Because Latino voters are able to elect their candidate of choice, HD 90 is a Latino ability to elect district.

4. HD 103 is a Latino Ability to Elect District Under H100

62. Under Plan H100, HD 103 *is* a Latino ability to elect district.

63. HD 103 has an HVAP of 69.3%, an HCVAP of 46.5%, and a SSVR of 39.3%. (Pl. Ex. 201 [Dkt. 387-201, at pp. 1, 24].)

64. The election results trend demonstrates that Latino voters are able to elect their candidate of choice in HD 103.

65. From 2002 to 2010, the candidate of choice of Latinos won in 6 out of 9 racially contested Democratic primary elections—5 of 6 from 2006 to 2010—and 2 out of 3 racially contested Republican primary elections. (Pl. Ex. 201 [Dkt. 387-201, at p. 1, 24]; Pl. Ex. 256 [Dkt. 387-256, at pp. 8, 13, 18]; Pl. Ex. 257 [Dkt. 387-257, at p. 19]; Pl. Ex. 258 [Dkt. 387-258, at p. 14]; Pl. Ex. 259 [Dkt. 387-259, at p. 8]; Pl. Ex. 260 [Dkt. 387-260, at pp. 8, 18]; Pl. Ex. 428 [Dkt. 396-428, at p. 4].).

66. In that same time period, the candidate of choice of Latinos won in 13 out of 13 racially contested general elections. (Pl. Ex. 201 [Dkt. 387-201, at p. 24]; Pl. Ex. 256 [Dkt. 387-256, at p. 4]; Pl. Ex. 257 [Dkt. 387-257, at pp. 4, 9]; Pl. Ex. 258 [Dkt. 387-258, at p. 4]; Pl. Ex. 259 [Dkt. 387-259, at p. 3]; Pl. Ex. 260 [Dkt. 387-260, at p. 3].)

67. Because Latino voters are able to elect their candidate of choice, HD 103 is a Latino ability to elect district.

5. HD 148 is a Latino Ability to Elect District Under H100

68. Under Plan H100, HD 148 *is* a Latino ability to elect district.

69. HD 148 has an HVAP of 53.7%, an HCVAP of 42.1%, and a SSVR of 40%. (Pl. Ex. 201 [Dkt. 387-201, at pp. 1, 38].)

70. The election results trend demonstrates that Latino voters are able to elect their candidate of choice in HD 148.

71. From 2002 to 2010, the candidate of choice of Latinos won in 8 out of 9 racially contested Democratic primary elections and 3 out of 3 racially contested Republican primary elections in HD 148. (Pl. Ex. 201 [Dkt. 387-201, at p. 38]; Pl. Ex. 256 [Dkt. 387-256, at pp. 8, 14, 19]; Pl. Ex. 258 [Dkt. 387-258, at p. 15]; Pl. Ex. 259 [Dkt. 387-259, at p. 9]; Pl. Ex. 257 [Dkt. 387-257, at p. 20]; Pl. Ex. 260 [Dkt. 387-260, at pp. 9, 19] ; Pl. Ex. 428 [Dkt. 396-428, at p. 5].)

72. In that same time period, the candidate of choice of Latinos won in 13 out of 13 racially contested general elections in HD 148. (Pl. Ex. 201 [Dkt. 387-201, at p. 38]; Pl. Ex. 256 [Dkt. 387-256, at p. 5]; Pl. Ex. 257 [Dkt. 387-257, at pp. 5, 10]; Pl. Ex. 258 [Dkt. 387-258, at p. 5]; Pl. Ex. 259 [Dkt. 387-259, at p. 4]; Pl. Ex. 260 [Dkt. 387-260, at p. 4].)

73. Because Latino voters are able to elect their candidate of choice, HD 148 is a Latino ability to elect district.

B. The Proposed House Plan (H283) Contains Only 31 Latino Ability to Elect Districts

74. The proposed House Plan, also known as H283, has only 31 Latino ability to elect districts: House Districts 31, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90,

103, 104, 116, 118, 119, 123, 124, 125, 140, 143, 145, and 148. (Engstrom Suppl. Report, Ex. 44, at 8-9.)[4]

75. This constitutes two less total Latino ability to elect districts when compared to the benchmark.

76. Once again, this section describes only districts in which the Task Force disagrees with the State's determination of which districts constitute Latino ability to elect districts. In reviewing these districts, the dangers inherent in the State's practice of relying on one solitary demographic factor in determining whether a district is a Latino ability to elect district become clear: in some of these districts, Latinos can elect their candidates of choice even though they constitute less than 50% HCVAP and, in others, more than 50% HCVAP may be inadequate to render the district a Latino ability to elect district.

1. HD 33 is <u>no longer</u> a Latino Ability to Elect District Under H283, Accounting for One Less Ability to Elect District

77. It is undisputed that HD 33 is a Latino ability to elect district under H100.

78. It is also undisputed that HD 33 would cease to be a Latino ability to elect district under H283.

79. However, the House Plan would relocate HD 33 from the southern part of the Gulf coast to Collin County, northeast of Dallas. This change provides the district with an HCVAP of only 8.5% and SSVR of 6.5%. This is in sharp contrast to the benchmark HD 33's HCVAP of 60.4% and SSVR of 55.3%. (Engstrom Suppl. Report, Ex. 44, at 8.)

[4] A detailed account of the demographic make-up and historical election results for each of these Latino ability to elect districts in H283, the proposed House Plan, are included in the Appendix.

80. H283 contains no district replacing HD 33, in which Latinos could have a comparable, or better, opportunity to effectively elect their candidate of choice. (Engstrom Suppl. Report, Ex. 44, at 8.)

81. H283 also deprives Nueces County of one of its two Latino-majority districts and one of its three State representatives, which it had in benchmark HD 33. (Flores Report, Ex. 59, at pp. 9-10.)

2. HD 51 is a Latino Ability to Elect District Under H283

82. Under Plan H283, HD 51 *would be* a Latino ability to elect district.

83. HD 51 would have an HVAP of 56.2%, an HCVAP of 44%, and a SSVR of 38.2%. (Pl. Ex. 201 [Dkt. 387-201, at pp. 1, 15].)

84. Using reaggregated statistics, the election results trend demonstrates that Latino voters are unable to elect their candidate of choice in HD 51.

85. From 2002 to 2010, the candidate of choice of Latinos would have won in 7 out of 9 racially contested Democratic primary elections and 1 out of 3 racially contested Republican primary elections in HD 51. (Pl. Ex. 201 [Dkt. 387-201, at p. 15]; Pl. Ex. 261 [Dkt. 387-261, at pp. 7, 10, 15]; Pl. Ex. 262 [Dkt. 387-262, at p. 12]; Pl. Ex. 263 [Dkt. 387-263, at p. 7]; Pl. Ex. 264 [Dkt. 387-264, at p. 2]; Pl. Ex. 265 [Dkt. 387-265, at pp. 6, 16]; Pl. Ex. 429 [Dkt. 396-429, at p. 2].)

86. In that same time period, the candidate of choice of Latinos would have won in 13 out of 13 racially contested general elections in HD 51. (Pl. Ex. 201 [Dkt. 387-201, at p. 15]; Pl. Ex. 261 [Dkt. 387-261, at p. 2]; Pl. Ex. 262 [Dkt, 387-262, at pp. 2, 7]; Pl. Ex. 263 [Dkt. 387-263, at p. 2]; Pl. Ex. 264 [Dkt. 387-264, at p. 7]; Pl. Ex. 265 [Dkt. 387-265, at p. 2].)

87. Because Latino voters would be able to elect their candidate of choice, HD 51 is a Latino ability to elect district.

3. HD 78 is <u>not</u> a Latino Ability to Elect District Under H283

88. Under Plan H283, HD 78 would *not* be a Latino ability to elect district.

89. Race was the predominant factor guiding the redistricters with respect to the drawing of State House District 78. (Flores Report, Ex. 59, at pp. 8-9.)

90. Mr. Interiano, the State's primary mapper for the House Plan, admitted that HD 78 in plan H283 would not be a Latino ability to elect district. (Ex. 47, at Tr. 1444:13-16.)

91. HD 78 would have an HVAP of 62.6%, an HCVAP of 55.2%, and a SSVR of 47.1%. (Pl. Ex. 201 [Dkt. 387-201, at pp. 1, 20].)

92. Even though over 80% of El Paso's population is Latino, SSVR is distributed unevenly across the county's five districts, and HD 78 has less than half SSVR. (Flores Report, Ex. 59, at p. 9; Ex. 47, at Tr. 84:21-85:13)

93. To accomplish this, the boarder of HDs 77 and 78 cut across various precinct boundaries, split the historic community of interest of northeast El Paso, and fail to follow the contours of the Franklin Mountains. (Pl. Ex. 327 [Dkt. 325-4, at p. 1, 5]; Ex. 47, at Tr. 377:2-25.)

94. The community of northeast El Paso has its own identity, its own high school, Irving, and is divided by the configuration of districts in H283. The high performing Latino population is packed into HD 77. (Ex. 47, at Tr. 377:2-25.)

95. HD 78 combines communities of interest that are not similar. The traditional Northeast neighborhoods of El Paso would be combined with parts of the Westside neighborhoods of El Paso. It is very uncommon for residents of one side to visit the other. The two sides of

town are connected by only one road along the Franklin Mountain Range. Their residents, stores, and pracites are very distinct. (Ex. 418 ¶ 17 [Dkt. 330-5, at p. 95]).

96. The redistricters drew only four Latino majority districts in the enacted plan, H283, where it was possible to draw five. (Ex. 47, at Tr. 462:1-5; Pl. Ex. 340 [Dkt. 325-4, at p. 19].)

97. Eliminating the "arms" from HD 77 and allowing the populations to be in districts more consistent with the geography would have increased Latino population in HD 78. (Ex. 47, at Tr. 378:19-24.)

98. Also, using reaggregated statistics, the election results trend demonstrates that Latino voters are unable to elect their candidate of choice in HD 78.

99. From 2002 to 2010, the candidate of choice of Latinos would have won in 6 out of 9 racially contested Democratic primary elections and 1 out of 3 racially contested Republican primary elections in HD 78. (Pl. Ex. 201 [Dkt. 387-201, at p. 20]; Pl. Ex. 261 [Dkt. 387-261, at pp. 7, 11, 16]; Pl. Ex. 262 [Dkt. 387-262, at p. 13]; Pl. Ex. 263 [Dkt. 387-263, at p. 8]; Pl. Ex. 264 [Dkt. 387-264, at p. 3]; Pl. Ex. 265 [Dkt. 387-265, at pp. 7, 17]; Pl. Ex. 429 [Dkt. 396-429, at p. 3].)

100. However, in that same period, the candidate of choice of Latinos would only have won in 3 out of 13 racially contested general elections in HD 78. (Pl. Ex. 201 [Dkt. 387-201, at p. 20]; Pl. Ex. 261 [Dkt. 387-261, at p. 3]; Pl. Ex. 262 [Dkt, 387-262, at pp. 3, 8]; Pl. Ex. 263 [Dkt. 387-263, at p. 3]; Pl. Ex. 264 [Dkt. 387-264, at p. 8]; Pl. Ex. 265 [Dkt. 387-265, at p. 3].)

101. Because Latino voters would be unable to elect their candidate of choice, HD 78 is not a Latino ability to elect district.

4. HD 90 Was Already a Latino Ability to Elect District Under the Benchmark Plan and Does Not Constitute a Newly Created Ability to Elect District Under H283

102. Just as under the benchmark, under Plan H283, HD 90 *would be* a Latino ability to elect district.

103. HD 90 would have an HVAP of 71%, an HCVAP of 49.7%, and a SSVR of 50.1%. (Pl. Ex. 201 [Dkt. 387-201, at pp. 1, 23].)

104. Using reaggregated statistics, the election results trend demonstrates that Latino voters are able to elect their candidate of choice in HD 90.

105. From 2002 to 2010, the candidate of choice of Latinos would have won in 8 out of 9 racially contested Democratic primary elections and 2 out of 3 racially contested Republican primary elections in HD 90. (Pl. Ex. 201 [Dkt. 387-201, at p. 23]; Pl. Ex. 261 [Dkt. 387-261, at pp. 7, 11, 16]; Pl. Ex. 262 [Dkt. 387-262, at p. 13]; Pl. Ex. 263 [Dkt. 387-263, at p. 8]; Pl. Ex. 264 [Dkt. 387-264, at p. 3]; Pl. Ex. 265 [Dkt. 387-265, at pp. 7, 17]; Pl. Ex. 429 [Dkt. 396-429, at p. 3].) This is one fewer Democratic primary win, and the same amount of Republican primary wins as Latino voters had in the benchmark.

106. In that same time period, the candidate of choice of Latinos would have won in 13 out of 13 racially contested general elections in HD 90. (Pl. Ex. 201 [Dkt. 387-201, at p. 23]; Pl. Ex. 261 [Dkt. 387-261, at p. 3]; Pl. Ex. 262 [Dkt, 387-262, at pp. 3, 8]; Pl. Ex. 263 [Dkt. 387-263, at p. 3]; Pl. Ex. 264 [Dkt. 387-264, at p. 8]; Pl. Ex. 265 [Dkt. 387-265, at p. 3].) This is the same amount of general election wins as in the benchmark.

5. HD 103 <u>is</u> a Latino Ability to Elect District Under H283

107. Under Plan H283, HD 103 *would be* a Latino ability to elect district.

108. HD 103 would have an HVAP of 67.7%, an HCVAP of 44.6%, and a SSVR of 38.1%. (Pl. Ex. 201 [Dkt. 387-201, at pp. 1, 24].)

109. Using reaggregated statistics, the election results trend demonstrates that Latino voters are able to elect their candidate of choice in HD 103.

110. From 2002 to 2010, the candidate of choice of Latinos would have won in 5 out of 9 racially contested Democratic primary elections and in 2 out of 3 racially contested Republican primary elections in HD 103. (Pl. Ex. 201 [Dkt. 387-201, at p. 24]; Pl. Ex. 261 [Dkt. 387-261, at pp. 7, 12, 16]; Pl. Ex. 262 [Dkt. 387-262, at p. 14]; Pl. Ex. 263 [Dkt. 387-263, at p. 9]; Pl. Ex. 264 [Dkt. 387-264, at p. 4]; Pl. Ex. 265 [Dkt. 387-265, at pp. 8, 18]; Pl. Ex. 429 [Dkt. 396-429, at p. 4].)

111. In that same time period, the candidate of choice of Latinos would have won in 13 out of 13 racially contested general elections in HD 103. (Pl. Ex. 201 [Dkt. 387-201, at p. 24]; Pl. Ex. 261 [Dkt. 387-261, at p. 4]; Pl. Ex. 262 [Dkt, 387-262, at pp. 4, 9]; Pl. Ex. 263 [Dkt. 387-263, at p. 4]; Pl. Ex. 264 [Dkt. 387-264, at p. 8]; Pl. Ex. 265 [Dkt. 387-265, at p. 3].)

112. Because Latino voters would be able to elect their candidate of choice, HD 103 is a Latino ability to elect district.

6. HD 117 is <u>No Longer</u> a Latino Ability to Elect District Under H283, Accounting for One Less Ability to Elect District.

113. It is undisputed that HD 117 was a Latino ability to elect district under H100.

114. Under Plan H283, HD 117 would *not* be a Latino ability to elect district.

115. While the HCVAP actually increases in the proposed HD 117, from 58.8% to 63.8%, the SSVR decreases from 50.8% to 50.1%. (Engstrom Suppl. Report, Ex. 44, at 8.)

116. Also, using reaggregated statistics, the election results trend demonstrates that Latino voters are unable to elect their candidate of choice in HD 117.

117. From 2002 to 2010, the candidate of choice of Latinos would have won in 9 out of 9 racially contested Democratic primary elections 1 out of 3 racially contested Republican primary elections in HD 117. (Pl. Ex. 201 [Dkt. 387-201, at p. 27]; Pl. Ex. 261 [Dkt. 387-261, at pp. 8, 12, 17]; Pl. Ex. 262 [Dkt.387-262, at p. 14]; Pl. Ex. 263 [Dkt. 387-263, at p. 9]; Pl. Ex. 264 [Dkt. 387-264, at p. 4]; Pl. Ex. 265 [Dkt. 387-265, at pp. 8, 18]; Pl. Ex. 429 [Dkt. 396-429, at p. 4].)

118. However, in that same time period, the candidate of choice of Latinos would only have won in 4 out of 13 racially contested general elections in HD 117. (Pl. Ex. 201 [Dkt. 387-201, at p. 27]; Pl. Ex. 261 [Dkt. 387-261, at p. 4]; Pl. Ex. 262 [Dkt, 387-262, at pp. 4, 9]; Pl. Ex. 263 [Dkt. 387-263, at p. 4]; Pl. Ex. 264 [Dkt. 387-264, at p. 9]; Pl. Ex. 265 [Dkt. 387-265, at p. 3].)

119. In the latest exogenous elections, the two general elections in 2010, the votes received by the Latino candidates would be reduced by 3.0 and 3.3 percentage points, a significant drop in a district just lost by the Latino candidate of choice by a margin of 3.8 percentage points. (Engstrom Suppl. Report, Ex. 44, at 9.)

120. Because Latino voters would be unable to elect their candidate of choice, HD 117 is not a Latino ability to elect district.

121. H283 contains no district replacing HD 117, in which Latinos could have a comparable, or better, opportunity to effectively elect their candidate of choice.

7. HD 148 Was Already a Latino Ability to Elect District Under the Benchmark Plan and Does Not Constitute a Newly Created Ability to Elect District Under H283

122. Just as under the benchmark, under Plan H283, HD 148 *would be* a Latino ability to elect district.

123. HD 148 would have an HVAP of 68.9%, an HCVAP of 51.4%, and a SSVR of 50%. (Pl. Ex. 201 [Dkt. 387-201, at pp. 1, 38].)

124. Using reaggregated statistics, the election results trend demonstrates that Latino voters are able to elect their candidate of choice in HD 148.

125. From 2002 to 2010, the candidate of choice of Latinos would have won in 9 out of 9 racially contested Democratic primary elections and 3 out of 3 racially contested Republican primary elections in HD 148. (Pl. Ex. 201 [Dkt. 387-201, at p. 38]; Pl. Ex. 261 [Dkt. 387-261, at pp. 8, 13, 17]; Pl. Ex. 262 [Dkt. 387-262, at p. 15]; Pl. Ex. 263 [Dkt. 387-263, at p. 10]; Pl. Ex. 264 [Dkt. 387-264, at p. 5]; Pl. Ex. 265 [Dkt. 387-265, at pp. 9, 19]; Pl. Ex. 429 [Dkt. 396-429, at p. 5].) This is an increase of only one additional Democratic primary election win.

126. In that same time period, the candidate of choice of Latinos would have won in 13 out of 13 racially contested general elections in HD 148. (Pl. Ex. 201 [Dkt. 387-201, at p. 38]; Pl. Ex. 261 [Dkt. 387-261, at p. 5]; Pl. Ex. 262 [Dkt, 387-262, at pp. 5, 10]; Pl. Ex. 263 [Dkt. 387-263, at p. 5]; Pl. Ex. 264 [Dkt. 387-264, at p. 10]; Pl. Ex. 265 [Dkt. 387-265, at p. 4].) This is the same amount of general election wins as in the benchmark.

III. Racial Stereotyping Surrounded the Redistricting Process

127. Official acts based on such racial stereotyping are unconstitutional. *See Johnson v. California*, 543 U.S. 499, 519 (2005); *Palmore v. Sidoti,* 466 U.S. 429, 433 (1984) ("The Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect."); *Watson v. Memphis*, 373 U.S. 526, 535-536 (1963) (rejecting claim by city officials that desegregation of city parks had to proceed slowly to "prevent interracial disturbances, violence, riots, and community confusion and turmoil" and concluding that such predictions were no more than "personal speculations or vague disquietudes.").

128. Around the time of the 2011 Legislative Session, State Representative Leo Berman repeatedly promoted the stereotype that Latinos are only Democratic voters and for that reason Latino policy concerns should not be important to Republicans. In the Houston Chronicle on July 30, 2010, Rep. Berman stated with respect to providing a path to citizenship for undocumented people: "There's 25 million in the United States – you can't listen to the 8 million to 12 million numbers that come out of Washington every day – you're going to create an instant 25 million Democrats." (Ex. 47, at Tr. 441:7, 13, 17; Ex. 38, at 0:07-0:16; Pl. Ex. 390 [Dkt. 330-4, at p. 2].) On March 29, 2011, Rep. Berman stated on NPR, "Most Hispanics right now do vote Democrat. There's no question about it. So, what vote are we going after? We're going after a vote that doesn't vote Republican anyway." (Ex. 47, at Tr. 441:7, 13, 17; Ex. 38, at 2:30-2:55; Pl. Ex. 388 [Dkt. 330-3, at p. 5].)

129. Republican elected officials acknowledge that Latinos can and do vote Republican. (Ex. J-59: 34:20-35:16; 1656-1659.) Senator Kel Seliger, the Chairman of the Senate Select Committee on Redistricting, testified that more Latinos don't vote Republican because "Republicans haven't done a very good job of reaching out to Latino voters [because] we keep coming up with

proposals to declare English the official language of Texas to no good end and things like that." Senator Seliger further testified that some immigration policy proposals had a similar effect on Latinos. (Ex. J-59: 34:20-35:16.) According to State Representative Larry Gonzales, Latinos in Texas are willing to vote for both Democratic and Republican candidates. (Ex. 47, at Tr. 1656: 7-9.) Rep. Gonzales testified that he helped create an organization to help recruit and elect Latino Republicans to office in Texas. (Ex. 47, at Tr. 1656-1659.)

130. Nevertheless, the redistricting process was characterized by collapsing the categories of Latino and Democrat for the purpose of limiting the number of Latino opportunity districts that would be created in the new maps. Correspondence between Rep. Lamar Smith and Texas redistricters repeatedly contrasted the creation of Republican districts with the creation of "voting rights" districts. (E.g., Pl. Ex. 311, at Congress021-027 [Dkt. 323-2, at pp. 21-27].) Ryan Downton, chief architect of the congressional plan, relied on partisan election returns showing support for John McCain as a proxy for electing a candidate that was not preferred by Latino voters in CD23. (Ex. 47, at Tr. 956:4-19; Ex. J-62-I, at 76:24-77:20.) While discussing the possible requirement of creating additional Latino opportunity districts, Ryan Downton emphasized that he had to produce a congressional map that would win the support of a Republican legislature. He further explained that he considered proposed congressional maps that increased the number of Latino opportunity districts, "But in order to pass a map through the Texas House, we needed to increase the net number of Republican districts by three. So that was another limitation on the process." (Ex. J-62-I, at 57:11-16, 139:7-13.) While claiming to be creating a Latino-majority, Republican-leaning CD 23, neither Mr. Downton nor Mr. Interiano ever examined whether in a Republican district CD 23, Latino voters would be able to nominate a Latino candidate in the

Republican Primary. (Ex. J-59, at 36:9-19 [Seliger]; Ex. 47, at Tr. 967:10-17 [Downton]; Ex. J-62-II, at 27:7-10, 35:1-6, 47:1-19 [Downton]; Ex. 47, at Tr. 1458:3-8 [Interiano].)

131. The reality is that Latinos will support the candidates who work for their votes. Latinos voted in large numbers for Presidents Ronald Reagan, George H Bush and George W Bush (Ex. J-51, at 37:5-10; 60:14-61:8; Ex. 47, at Tr. 569:2-3; Ex. 47, at Tr. 1398:19-23, 1401:14-22; Ex. 47, at Tr. 569:4-11; Ex. 47, at Tr. 571:14-19; Ex. 47, at Tr. 569:14-20.) Mr. Alex Jimenez of Ft. Worth testified in *Perez* that Hispanic voters will look at what a person stands for regardless of political party. Mr. Jimenez explained that if a candidate promises to create jobs and strengthen education, that candidate would have Latino support. However, if he tells Hispanics to go to Mexico, he will lose that support. (Ex. 47, at Tr. 576:16-577:16; Pl. Ex. 363 [Dkt. 328-1, at p. 5].) Even Ciro Rodriguez, former incumbent in CD 23, testified in *Perez* that he started his political career in San Antonio by campaigning against Democrats. (Ex. 47, at Tr. 778:7-25.)

132. The refusal to increase the opportunity for Latinos to elect their candidate of choice, while consistently characterizing Latinos as Democrats and the goals of redistricting as seeking partisan advantage for Republicans, reveals intentional discrimination against Latinos.

IV. Texas Suffers from Racially Polarized Voting

133. There is racially-polarized voting in Texas. (Ex. 47, at Tr. 220:6; 229:12-14.)

134. The electoral data demonstrates that there is racially polarized voting in Texas regardless of the statistical methodology used to analyze the data, and even controlling for partisonship. (Ex. 47, at Tr. 217:1-6; Ex. 47, at Tr. 223:16-20; 230:1-4; Kousser Decl., Ex. E-2 [Dkt. 128-1], at p. 26, 36; [Dkt. 128-2], at p. 9.

135. When racially polarized voting exists in a geographic area, the group composition of election districts in that area are a crucial determinant of Latino opportunities to elect representatives of their choice. (Engstrom Report, Ex. E-7 [Dkt. 154-1], at p. 18.)

136. Latino voters have been very cohesive in their preferences for Latino candidates across different offices in general and Democratic primary elections during the last three state-wide election cycles (2006, 2008, and 2010). (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 24.)

137. Latino voters do exercise discretion, however, in choosing which Latino candidates to support; not every Latino candidate on the ballot can expect to be the Hispanic candidate of choice. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 24.)

138. Other voters, who are mostly Anglo, usually cast the majority of their votes for the opponents of Hispanic candidates of choice in both primary and general elections. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 25.)

A. Racially Polarized Voting in the Dallas/Fort Worth Metroplex

139. In Dallas County, both bivariate and multivariate analyses of the state-wide elections from 2006 to 2010 reveal the presence of racially polarized voting in both general elections and primary elections. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 12.)

140. Latino voters of Dallas County have been highly cohesive in their support of Democrat Latino candidates in the general elections (83.8% to 90.9% in bivariate analyses; 81.1% to 88.0% in multivariate analyses) and in the Democratic primaries (71.5% to 84.7% in bivariate analyses; 60.3% to 87.8% in multivariate analyses), and for a Latino candidate in the Republican primary (78.5% in bivariate analysis; but only 41.8% in multivariate analysis). (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 12-14 & tbl. 5.)

141. The preferences of Latino voters in Dallas County in the general elections are shared by African Americans, but not with other voters whose estimated support never reached 30% for any Latino candidate. The preferences of Latino voters in primary elections are not consistently shared by the rest of the primary voters. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 14-15 & tbl. 5.)

142. In Tarrant County, both bivariate and multivariate analyses of the state-wide elections from 2006 to 2010 reveal the presence of racially polarized voting in both general elections and primary elections. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 21.)

143. Latino voters of Tarrant County have been highly cohesive in their support of Democrat Latino candidates in the general elections (94.9% to 99.8% in bivariate analyses; 84.3% to 98.3% in multivariate analyses) and in the Democratic primaries (70.7% to 99.9% in bivariate analyses; 64.3% to 85.0% in multivariate analyses), and for a Latino candidate in the Republican primary (92.4% in bivariate analysis; 56.1% in multivariate analysis). (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 18-20 & tbl. 7.)

144. The preferences of Latino voters in Tarrant County in the general elections are shared by African Americans, but other voters cast the majority of their ballots for the opponents of the Latino candidate in every instance. The preferences of Latino voters in primary elections are not consistently shared by the rest of the primary voters. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 18-21 & tbl. 7.)

B. Racially Polarized Voting in South and West Texas

145. In Bexar, both bivariate and multivariate analyses of the statewide elections from 2006 to 2010 reveal the presence of racially polarized voting in both general elections and primary elections. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 12.)

146. Latino voters of Bexar County have been highly cohesive in their support of Democrat Latino candidates in the general elections (86.0% to 91.8% in bivariate analyses; 78.3% to 86.0% in multivariate analyses) and in the Democratic primaries (85.3% to 93.2% in bivariate analyses; 83.3% to 89.2% in multivariate analyses), and for a Latino candidate in the Republican primary (80.7% in bivariate analysis; 63.3% in multivariate analysis). (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 9-11 & tbl. 4.)

147. The preferences of Latino voters in Bexar County in the general elections are shared by African Americans, but not with other voters whose estimated support never exceeded 22% for any Latino candidate. The preferences of Latino voters in primary elections are not consistently shared by the rest of the primary voters. (Engstrom Report, Ex. E-7 [Dkt. 154-1], at p. 7; & tbl. 2; Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 9-12 & tbl. 4.)

148. In South Texas—a 52-county area near the Mexico border—the bivariate analyses of the state-wide elections from 2006 to 2010 reveal the presence of racially polarized voting in both general elections and primary elections across the 52 counties. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 9.)

149. Latino voters of South Texas have been highly cohesive in their support of Democrat Latino candidates in the general elections (80.5% to 88.5%) and in the Democratic primaries (76.8% to 93.5%), and for a Latino candidate in the Republican primary (69.73%). (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 7-8 & tbl. 3.)

150. Non-Latinos of South Texas largely do not share this preference, only supporting the Hispanic candidates of choice in only one general election and no primary elections across 17 general and primary elections. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 8-9 & tbl. 3.)

151. Racially polarized voting still occurs in the Rio Grande Valley. (Ex. 419 ¶ 18 [Dkt. 330-5, at p. 99]).

152. Latinos are the vast majority in the Rio Grande Valley, but Anglos and Latinos do not cohesively vote for the same candidates. (Ex. 419 ¶ 18 [Dkt. 330-5, at p. 99]).

C. Racially Polarized Voting in Nueces County

153. In Nueces, the bivariate analyses of the state-wide elections from 2006 to 2010 reveal the presence of racially polarized voting in both general elections and primary elections. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 7.)

154. Latino voters of Nueces County have been highly cohesive in their support of Democrat Latino candidates in the general elections (90.1% to 97.8%) and in the Democratic primaries (70.2% to 85.7%), and for a Latino candidate in the Republican primary (72%). Non-Latinos of Nueces County largely do not share this preference, only supporting the Hispanic candidates of choice in one general election and no primary elections across 17 general and primary elections. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 6-7 & tbl. 2.)

155. There was racially polarized voting in the 1987 election for Mayor of Corpus Christi The Latino candidate got much of his support from the predominantly Latino West Side, while the Anglo opponent's support came from predominantly Anglo neighborhoods, such as those along Shoreline Boulevard, Kings Crossing, Padre Island and Flour Bluff. (Ex. 412 ¶ 9 [Dkt. 330-5, at p. 69]).

156. There is a high degree of racially polarized voting in Nueces County. (Ex. 412 ¶ 10 [Dkt. 330-5, at p. 69]).

D. Racially Polarized Voting in El Paso County

157. In El Paso County, the bivariate analyses of the state-wide elections from 2006 to 2010 reveal the presence of racially polarized voting in both general elections and primary elections. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 5.)

158. Latino voters of El Paso County have been highly cohesive in their support of Democrat Latino candidates in the general elections (82.0% to 90.1%) and in the Democratic primaries (70.2% to 85.7%), and for a Latino candidate in the Republican primary (72%). (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 4-5 & tbl. 1.)

159. Non-Latinos of El Paso County largely do not share this preference, only supporting the Hispanic candidates of choice once in a general election, twice in Democratic primaries, and never in Republican primaries across 17 general and primary elections. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 4-5 & tbl. 1.)

160. The Anglo residents of the Northeast and the affluent Westside of El Paso County do not vote with and will dilute the Latinos of Canutillo. (Ex. 414 ¶ 12 [Dkt. 330-5, at p. 77]).

E. Racially Polarized Voting in Harris County

161. In Harris County, both bivariate and multivariate analyses of the state-wide elections from 2006 to 2010 reveal the presence of racially polarized voting in both general elections and primary elections. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 18.)

162. Latino voters of Harris County have been highly cohesive in their support of Democrat Latino candidates in the general elections (74.9% to 83.0% in bivariate analyses; 76.4% to 84.6% in multivariate analyses)—with one exception where a candidate received almost half of the Latino vote—and in the Democratic primaries (78.1% to 91.7% in bivariate analyses; 59.0% to 87.8% in multivariate analyses), and for a Latino candidate in the Republican primary (78.5% in

bivariate analysis; 54.9% in multivariate analysis). (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 15-17 & tbl. 6.)

163. The preferences of Latino voters in Harris County in the general elections are shared by African Americans, but not with other voters whose estimated support never reached 30% for any Latino candidate. The preferences of Latino voters in primary elections are not consistently shared by the rest of the primary voters. (Engstrom Rebuttal Report, Ex. E-8 [Dkt. 307-1], at p. 16-17 & tbl. 6.)

164. In House District 117, a Latino ran unopposed in the 2010 Republican Primary. (Pl. Ex. 309 [Dkt. 323-1, at p. 28].)

V. Texas's History of Discrimination Against Latinos

A. History of Voting-Related Discrimination

165. Race is consistently a very important issue with respect to the voting rights of Latinos in Texas. (Ex. 47, at Tr. 435:1-4.)

166. In the past, Texas has packed Latino voters into congressional, State House, or State Senate districts. (Ex. 47, at Tr. 435:7-10.)

167. In the past, Texas has divided traditional historical Latino communities, placing parts of communities in different districts. (Ex. 47, at Tr. 435:10-14.)

168. Historically, Texas has consistently attempted to minimize the opportunity of Latinos to elect the candidates of their choice. (Ex. 47, at Tr. 435:14-17.)

169. Latinos in Texas sued the State for violations of the Voting Rights Act of 1965 in redistricting in 1991, 2001, 2003, and 2011. (Flores Report, Ex. 59, at pp. 1-2, 5.)

170. The State of Texas has a rich history of having voting rights challenges brought against it or one of its political subdivisions: there have been 200 challenges under the Voting Rights Act or the United States Constitution since 1982. (Flores Report, Ex. 59, at p. 5.)

171. Evidence presented to the court in a broad array of voting rights cases over the past 25 years has demonstrated clear patterns of racially polarized voting where Hispanics vote differently from their Anglo or non-Hispanic white fellow citizens. (Flores Report, Ex. 59, at p. 5.)

172. Discrimination and segregation against Latinos has existed in Texas since the 1840s. (Ex. 47, at Tr. 582:1-4; Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.2.)

173. Areas in which Latinos have historically experienced discrimination in Texas include: fair access to housing, education, employment, and access to political participation. (Ex. 47, at Tr. 582:7-21.)

174. In the early 1900s, Anglo-American political bosses would direct Latino voting in exchange for short-term work, deducting poll tax fees straight from their wages. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.10.)

175. The poll tax proved to be an otherwise effective means of restricting Latino access to voting. A 1933 study of voting in Austin elections showed that less than 3% of Latinos voted after implementation of the poll tax. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.23.)

176. Texas had poll taxes in the past. Senator Joe Bernal introduced a bill to eliminate the poll tax, but federal law made it illegal first. (Ex. 47, at Tr. 555:2-10.)

177. Gilberto Torres, a Latino voter, recalled that he paid the poll tax in the past and experienced hostility from an Anglo voter during a recent election. (Ex. 420 ¶¶ 8-9 [Dkt. 330-5, at p. 102.)

178. Senator Gonzalo Barrientos recalls when his parents, Latinos, were required to pay a poll tax. (Ex. 413 ¶ 13 [Dkt. 330-5, at p. 73]).

179. Following prohibition of the poll tax, Texas enacted annual voter re-registration which required voters to register to vote every year, as a way to keep people from voting. (Ex. 47, at Tr. 555:13-23.)

180. Gerrymandering done by political bosses to control the Latino vote proved to be an effective and accepted practice by Anglo-American policy makers at all levels of Texas government. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.11.)

181. To secure their voting blocks, political bosses used gerrymandering to create whole counties in their support – nearly doubling the number of South Texas counties in the 20th century. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.11.)

182. Besides the poll tax and gerrymandering, the state also used restrictive laws to limit Latino voting, including a1918 state law to eliminate interpreters at the polls. (Ex. 47, at Tr. 593: 14-24; Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.12.)

183. Another device used to limit Latino voting was the White Man's Primary. To vote in the primary a person had to take an oath, stating "I am a white person and a Democrat." (Ex. 47, at Tr. 593:1-13; Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.12.)

184. In addition, Texas Rangers would use violence to intimidate Latinos and keep them from voting. This violence ranged from threats of prison - for voting in violation of the literacy clause, which required minorities to prove that they could read in order to vote - to executions. (Ex. 47, at Tr. 594:2-18; Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.13.)

185. In 1913, 3,000 to 4,000 Anglo-Americans rioted outside a voting booth to prevent Latinos from voting, shouting: Don't let the Mexicans vote. (Ex. 47, at Tr. 588:15-589:2.)

186. Several Latino citizens were lynched during the riot and others were brutalized. (Ex. 47, at Tr. 589:2-5.)

187. The rioters were led by the sheriff of Hidalgo County. (Ex. 47, at Tr. 588:15, 589:4-5.)

188. In post-World War II San Antonio, a group known as the Good Government League ("GGL") would put forth candidates for city council elections. While the League would slate a middle-class Latino as a token, it limited the Latino representation to that one token position, which was far below their percentage of the electorate. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.11.)

189. The GGL controlled the slating of candidates for San Antonio City Council under the at-large election system for the City of San Antonio. (Ex. 416 ¶ 10 [Dkt. 330-5, at pp. 84-85]).

190. Because of this all-Anglo slating process and the existence of at-large voting, Latinos in San Antonio had virtually no ability to elect the kinds of candidates that they would have preferred to City Council. (Ex. 416 ¶ 10 [Dkt. 330-5, at pp. 84-85]).

191. The at-large system of elections for San Antonio City Council and the closed slating process meant that the slated candidates would not bother to explain their political views to, or seek endorsements from Latino voters. (Ex. 416 ¶ 11 [Dkt. 330-5, at p. 85]).

192. The segregated schools, the poll tax, voting intimidation, and job discrimination continued as the status quo in Texas from the 1920s through the 1960s. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.14.)

193. Historically redistricting has been unfair to Latinos which has led to consistent litigation including LULAC v Perry in the last round of statewide Congressional redistricting. (Ex. J-52, at 18:8-14)

194. There has been hostility and resistance from Texas election officials and political establishment to efforts to register Latinos voters. (Ex. 416 ¶ 15 [Dkt. 330-5, at p. 85]).

195. Texas election officials have refused to issue registration cards or provide public information about the registration process when Latino activist groups were working to register Latinos. (Ex. 416 ¶ 15 [Dkt. 330-5, at p. 85]).

196. Anglos would often brand organizers "outside agitators" because of efforts to politically empower Latinos. (Ex. 416 ¶ 16 [Dkt. 330-5, at p. 85]).

197. Local officials in the Dallas area refused to deputize Mexican-Americans as poll workers.

198. Local officials held SVREP employees to higher standards than Anglo volunteers when they sought to be deputized as voter registrars. (Ex. 416 ¶ 17 [Dkt. 330-5, at p. 85]).

199. Despite substantial compliance with voter registration procedures, local election officials in Texas frequently rejected the voter registration cards collected by SVREP and refused to process the cards. (Ex. 416 ¶ 18 [Dkt. 330-5, at p0. 85-86]).

200. Some jurisdictions in Texas continued to use English-only ballots even after the passage the 1975 amendments to the Voting Rights Act. (Ex. 416 ¶ 19 [Dkt. 330-5, at p. 86]).

201. The continued lack of materials in Spanish, and the lack of people at the polls who could help in Spanish, has hindered Latino's ability to participate effectively in the electoral process. (Ex. 416 ¶ 19 [Dkt. 330-5, at p. 86]).

202. Spanish-speaking Latino voters have been made to feel by poll officials often acted as if the voters were committing a crime by simply showing up to vote. (Ex. 416 ¶ 19 [Dkt. 330-5, at p. 86]).

203. As a result of the overt resistance from Anglos to allowing Latinos to access the political process, and the lack of provision of assistance, Latinos have been dissuaded from voting. (Ex. 416 ¶ 20 [Dkt. 330-5, at p. 86]).

204. In 1972, the use of at large by place elections for Travis County State House members denied Latinos the opportunity to elect a State House member. (Ex. 413 ¶ 20 [Dkt. 330-5, at p. 74]).

205. Until 1977, San Antonio conducted its elections at-large. (Ex. 416 ¶ 9 [Dkt. 330-5, at p. 84]).

206. It took intervention by the U.S. Department of Justice for the City of San Antonio to convert to district-based elections. (Ex. 416 ¶ 12 [Dkt. 330-5, at p. 85]).

207. Under the at-large system, the overwhelming number of San Antonio city council members came from the wealthy Anglo neighborhoods and almost all of them were Anglo. (Ex. 416 ¶ 9 [Dkt. 330-5, at p. 84]).

208. Mexican-American neighborhoods in Uvalde historically lacked adequate polling places. (Ex. 420 ¶ 8 [Dkt. 330-5, at p. 102]).

209. Until about 2000, there were not many Mexican- American election judges in Uvalde. (Ex. 420 ¶ 8 [Dkt. 330-5, at p. 102]).

210. El Paso has a history of discouraging voting among Mexican Americans. (Ex. 418 ¶ 5 [Dkt. 330-5, at p. 93]). Some Latinos in El Paso struggled to pay the poll tax. El Paso's first mayor was elected in 1957. (Ex. 418 ¶ 5 [Dkt. 330-5, at p. 93]). There has been widespread Anglo

resistance to attempts by Latinos to gain political empowerment in Texas. (Ex. 416 ¶ 14 [Dkt. 330-5, at p. 85]).

211. Latino electoral participation is low because of the history of discrimination including the white man's primary, the poll tax, and literacy tests. (Ex. J-52, at 10:18-11:12)

B. Recent Discrimination with Respect to Redistricting

212. Following an objection under section 5 of the Voting Rights interposed by the U.S. Department of Justice, the court in Balderas v. Texas issued an order adopting a court-drawn remedial plan, 1369H, for the Texas State House of Representatives. Final Judgment, Balderas v. Texas, No. 6:01-CV-158 (E.D. Tex. Nov. 28, 2001). (Pl. Ex. 228, p. 12 [Dkt. 320-2. at p. 76].)

213. In the 2001 round of redistricting in Texas, "the Justice Department objected to parts of the LRB House plan as causing an impermissible retrogression in Hispanic voting strength." Decision, Balderas v. Texas, No. 6:01-CV-158 (W.D. Tex. Nov. 28, 2001). (Pl. Ex. 229, at p. 4 [Dkt. 320-2, at p. 81].)

214. "Specifically, the Justice Department objected to the loss of a Latino District in Bexar County, as well as the reduction of Latino voting strength in Districts 35, 38, and 74." Decision, Balderas v. Texas, No. 6:01-CV-158 (W.D. Tex. Nov. 28, 2001). (Pl. Ex. 229, at p. 8 [Dkt. 320-2, at p. 85].)

215. "In Bexar County, the LRB plan reduced the number of majority Latino districts from seven to six." Decision, Balderas v. Texas, No. 6:01-CV-158 (W.D. Tex. Nov. 28, 2001). (Pl. Ex. 229, at p. 8 [Dkt. 320-2, at p. 85].)

216. In Balderas, the court remedied the reduction of a Latino opportunity district in Bexar County by "reconstitute[ing] a seventh majority Latino district without pairing any Latino incumbents or

splitting any Voter Tabulation Districts, and . . . equalize[ing] the level of Spanish surnamed registration (SSRV) among all seven Latino districts.." Decision, Balderas v. Texas, No. 6:01-CV-158 (W.D. Tex. Nov. 28, 2001). (Pl. Ex. 229, at p. 8 [Dkt. 320-2, at p. 85].)

217. In 2001, "[t]he Justice Department . . . objected to the LRB's proposed District 38, which reduced the Spanish surnamed registration level from 70.8 to 60.7 percent. The LRB Plan also removed over 40 percent of the core of the existing District 38, 90 percent of which was Latino." Decision, Balderas v. Texas, No. 6:01-CV-158 (W.D. Tex. Nov. 28, 2001). (Pl. Ex. 229, at p. 9[Dkt. 320-2, at p. 86].)

218. "To respond to these objections, [the court in Balderas] modified the district. The new district ha[d] an SSRV level of 73.4 percent and [the then-]current District 38 residents ma[d]e up 83.1 percent new District 38." Decision, Balderas v. Texas, No. 6:01-CV-158 (W.D. Tex. Nov. 28, 2001). (Pl. Ex. 229, at p. 9 [Dkt. 320-2, at p. 86].)

219. "Thus, [the court in Balderas] preserve[d] the opportunity for Latinos to elect their candidate of choice [in HD 38]." Decision, Balderas v. Texas, No. 6:01-CV-158 (W.D. Tex. Nov. 28, 2001). (Pl. Ex. 229, at p. 9 [Dkt. 320-2, at p. 86].)

220. In 2001, "the Department [of Justice] objected to the proposed District 74, which reduced the Spanish surname registration level from 64.5 to 48.7 percent." Decision, Balderas v. Texas, No. 6:01-CV-158 (W.D. Tex. Nov. 28, 2001). (Pl. Ex. 229, at p. 9 [Dkt. 320-2, at p. 86].)

221. The court in Balderas "reconfigured District 74, raising its SSRV level to 54.0 percent, while preserving county lines as required by the Texas Constitution." Decision, Balderas v. Texas, No. 6:01-CV-158 (W.D. Tex. Nov. 28, 2001). (Pl. Ex. 229, at p. 9 [Dkt. 320-2, at p. 86].)

222. "The Justice Department . . . objected to the proposed District 35 [in 2001]. In the LRB plan District 35 paired a Latino incumbent and an Anglo incumbent in a district in which the Anglo had maintained a higher proportion of her constituents." Decision, Balderas v. Texas, No. 6:01-CV-158 (W.D. Tex. Nov. 28, 2001). (Pl. Ex. 229, at pp. 9-10 [Dkt. 320-2, at pp. 86-87].)

223. "[The court's] modifications eliminate[d] the pairing, maintaining a heavily Democratic District 35 with no incumbent, and an SSRV of 51.5%." Decision, Balderas v. Texas, No. 6:01-CV-158 (W.D. Tex. Nov. 28, 2001). (Pl. Ex. 229, at p. 10 [Dkt. 320-2, at p. 87].)

224. In 2003, Dr. Alford testified that the State's ethnicity-based districting was related to the decision to shore-up the reelection prospects of Republican Congressman Henry Bonilla at the cost of weakening the power of Hispanic voters in the 23rd District. (Pl. Ex. 321, at pp. 31-32 [Dkt. 325-3, at p. 10]; Pl. Ex. 322, at p. 15 [Dkt. 325-3, at p. 61].)

225. In 2003, Dr. Alford testified that the redistricters in Texas accomplished their goals with respect to CD 23 by adding to CD 23 the overwhelmingly Anglo and Republican Hill Country population of Kerr, Kendall, and Bandera Counties, while excluding half of the city of Laredo in Webb County. Kerr, Kendall, and Bandera Counties are 76.2 percent Anglo and have a statewide Republican index of 79.2 percent; in 2002, only 10.9 percent of the registered voters in these counties had Spanish surnames. (Pl. Ex. 322, at p. 15 [Dkt. 325-3, at p. 61].)

226. In 2003, Dr. Alford testified that the designers of Plan 1374C tried to show the same number of Hispanic opportunity districts as previously existed in Texas, while not utilizing all or part of 9 of the 13 counties that border Mexico, along with over 370,000 Hispanics, from the Border region that is key to all but one of the majority Hispanic districts in Texas. Their decision to do so in order to protect Congressman Bonilla was what led directly to the very apparent racial

gerrymandering in the new 15th, 25th, and 28th Districts, in which every remaining available Hispanic had to be captured. (Pl. Ex. 322, at pp. 15-16 [Dkt. 325-3, at pp. 61-62].)

227. As described in the racially polarized voting analysis of CD 23 in Plan 1374C (the enacted plan) performed by the Texas Attorney General's office in Session v. Perry, racially polarized voting was present in the 2002 Democratic primary for U.S. Senator when an estimated 64.7% of Hispanics voted for Victor Morales, 0% of Anglos voted for Victor Morales, 11% of Hispanics voted for Ken Bentsen, and 39.7% of Anglos voted for Ken Bentsen. (Pl. Ex. 423 [Dkt. 372-3, at p. 5].)

228. As described in the racially polarized voting analysis of CD 23 in Plan 1374C (the enacted plan) performed by the Texas Attorney General's office in Session v. Perry, racially polarized voting was present in the 2002 Democratic primary for governor when an estimated 17% of Anglos voted for Bill Lyon, 1.8% of Hispanics voted for Bill Lyon, 77.4% of Anglos voted for Dan Morales, 21.7% of Hispanics voted for Dan Morales, 0% of Anglos voted for Tony Sanchez, and 75.3% of Hispanics voted for Tony Sanchez. (Pl. Ex. 423 [Dkt. 372-3, at p. 5].)

229. As described in the racially polarized voting analysis of CD 23 in Plan 1374C (the enacted plan) performed by the Texas Attorney General's office in Session v. Perry, racially polarized voting was present in the 2002 Democratic primary for agriculture commissioner when an estimated 0% of Anglos voted for Ernesto De Leon, 78.5% of Hispanics voted for Ernesto De Leon, 100% of Anglos voted for Tom Ramsay, and 21.5% of Hispanics voted for Tom Ramsay. (Pl. Ex. 423 [Dkt. 372-3, at p. 5].)

230. As described in the racially polarized voting analysis of CD 23 in Plan 1374C (the enacted plan) performed by the Texas Attorney General's office in Session v. Perry, racially polarized voting was present in the 2002 general election for governor when an estimated 87.4% of Anglos voted

for Rick Perry, 0% of Hispanics voted for Rick Perry, 12.6% of Anglos voted for Tony Sanchez, and 100% of Hispanics voted for Tony Sanchez. (Pl. Ex. 423 [Dkt. 372-3, at p. 6].)

231. As described in the racially polarized voting analysis of CD 23 in Plan 1374C (the enacted plan) performed by the Texas Attorney General's office in Session v. Perry, racially polarized voting was present in the 2002 general election for Supreme Court Place 4 when an estimated 83.4% of Anglos voted for Michael Schneider, 0% of Hispanics voted for Michael Schneider, 16.6% of Anglos voted for Linda Yanez, and 100% of Hispanics voted for Linda Yanez. (Pl. Ex. 423 [Dkt. 372-3, at p. 7].)

232. As described in the racially polarized voting analysis of CD 23 in Plan 1374C (the enacted plan) performed by the Texas Attorney General's office in Session v. Perry, racially polarized voting was present in the 2002 general election for Court of Criminal Appeals Place 1 when an estimated 88.6% of Anglos voted for Cathy Cochran, 0% of Hispanics voted for Cathy Cochran, 11.4% of Anglos voted for J.R. Molina, and 100% of Hispanics voted for J.R. Molina. (Pl. Ex. 423 [Dkt. 372-3, at p. 8].)

233. In 1996 and 1998, Hispanics voted cohesively in the existing West Texas district, CD 23. (Pl. Ex. 320, at pp. 74-75, 119 [Dkt. 325-2, at pp. 75-76, 120].)

234. In 1996 and 1998, Hispanics could control the West Texas district, CD 23. (Pl. Ex. 320, at pp. 74-75, 119 [Dkt. 325-2, at pp. 75-76, 120].)

235. In 1996 and 1998, there was cohesion among Hispanic voters of approximately 70 to 90%. (Pl. Ex. 320, at pp. 114-15, 119, 126 [Dkt. 325-2, at pp. 115-16, 120, 127].)

236. In 1996 and 1998, Anglo voters typically voted against the Hispanic candidate of choice in the Democratic primaries. (Pl. Ex. 320, at p. 126 [Dkt. 325-2, at p.127].)

237. In 1996 in CD 23, 30% of Hispanic voters and 83% of non-Hispanic voters voted for Bonilla. Similarly, 70% of Hispanic and 17% of non-Hispanic voters voted for the Democratic candidate. (Pl. Ex. 425 [Dkt. 327-5].)

238. In 1998 in CD 23, 26% of Hispanic voters and 85% of non-Hispanic voters voted for Bonilla. Similarly, 74% of Hispanic and 15% of non-Hispanic voters voted for the Democratic candidate. (Pl. Ex. 425 [Dkt. 327-5].)

239. In 2000 in CD 23, 20% of Hispanic voters and 83% of non-Hispanic voters voted for Bonilla. Similarly, 80% of Hispanic and 17% of non-Hispanic voters voted for the Democratic candidate. (Pl. Ex. 425 [Dkt. 327-5].)

240. In 2002 in CD 23, 8% of Hispanic voters and 88% of non-Hispanic voters voted for Bonilla. Similarly, 92% of Hispanic and 12% of non-Hispanic voters voted for the Democratic candidate. (Pl. Ex. 425 [Dkt. 327-5].)

241. In an analysis of 27 elections from 1992 through 2002 in CD 23, the average level of Hispanic registered voter support for the Hispanic- candidates of choice was 90.6%. On the other hand, the average level of NonHispanic registered voter support for the Hispanic- candidates of choice was 17 .9%. (Pl. Ex. 422, at p. 8 [Dkt. 372-2].)

242. In an analysis of 27 elections from 1992 through 2002 in CD 23, NonHispanic candidates of choice averaged 10.9% support among Hispanic registered voters and 82.1% support from the NonHispanic registered voters. (Pl. Ex. 422, at p. 8 [Dkt. 372-2].)

243. The data from 1992-2002 indicate a clear and consistent pattern of racial polarization and also indicate that the candidate of choice of Hispanic voters has not won a congressional election since 1992 in CD 23. (Pl. Ex. 422, at p. 8 [Dkt. 372-2].)

244. The data from 27 elections from 1992 through 2002 indicate that incumbent congressman Henry Bonilla had never been the candidate of choice of Hispanic voters in the CD 23. The highest estimated level of support he has received from Hispanic voters was in 1996 when he received 21.97% of the Hispanic vote. Also, he has averaged only 14.95% support over the six elections portrayed in Table 2. On the other hand, Mr. Bonilla has averaged 83.4% support from the NonHispanic voters during the same elections indicating that he is the preferred choice of the NonHispanic Registered Voters in the district. (Pl. Ex. 422, at pp. 8-9 [Dkt. 372-2].)

245. Pursuant to the remand order of the Supreme Court, the court in LULAC v. Perry issued an order adopting a court-drawn plan, 1438C, as a remedial redistricting plan to cure the Voting Rights Act violation regarding CD 23. The order changed boundaries of congressional districts 15, 21, 23, 25, and 28. Order Regarding 2006 Special Elections for Redrawn Congressional Voting Districts, LULAC v. Perry, No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006). (Pl. Ex. 230, p. 1 [Dkt. 320-2. at p. 88].)

246. "The Supreme Court found that District 23 in Plan 1374C violated section 2 of the Voting Rights Act." Decision, LULAC v. Perry, No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006). (Pl. Ex. 231, p. 1 [Dkt. 320-2. at p. 91].)

247. "The Court held that when District 23 was redrawn in 2003 to enhance the political fortunes of Congressman Bonilla, the result impermissibly diluted Latino voting strength in that district." Decision, LULAC v. Perry, No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006). (Pl. Ex. 231, pp. 1-2 [Dkt. 320-2. at p. 91-92].)

248. "In particular, the [Supreme] Court faulted the way in which the Texas [L]egislature accomplished that dilution [in 2003] by dividing Webb County through the City of Laredo, a 'cohesive Latino community,' removing half of Webb County from District 23 and placing it in

adjacent District 28." Decision, LULAC v. Perry, No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006). (Pl. Ex. 231, p. 2 [Dkt. 320-2. at p. 92].)

249. In 2006, "[t]o make District 23 an effective Latino opportunity district, consistent with the Supreme Court's direction, [the district court panel added] portions of Bexar County . . . which increase[d] the number of Hispanic voters in the district. This in turn require[d] that the Hill Country counties of Kerr, Kendall, Bandera, and Real be placed in adjacent District 21, where three of the four had been before the legislature enacted Plan 1374C in 2003. These changes restore[d] Latino voting strength to District 23 without dividing communities of interest." Decision, LULAC v. Perry, No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006). (Pl. Ex. 231, pp. 2-3 [Dkt. 320-2. at p. 92-93].)

250. In LULAC v Perry, the district court panel's remedial plan "contain[ed] six Latino opportunity districts." Decision, LULAC v. Perry, No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006). (Pl. Ex. 231, p. 6 [Dkt. 320-2. at p. 96].)

251. Of the districts that the panel redrew in LULAC v. Perry, "[n]ew Districts 23, 28, and 15 [we]re effective Latino opportunity districts. District 23 ha[d] a 57.4% HCVAP; District 28 ha[d] a 67.8% Hispanic Citizen Voting Age Population; and District 15 ha[d] a 69.1% HCVAP. . . . In addition to the HCVAP numbers, the underlying data from the statewide elections supports the conclusion that new District 23 will perform as an effective Latino opportunity district." Decision, LULAC v. Perry, No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006). (Pl. Ex. 231, p. 6 [Dkt. 320-2. at p. 96].)

252. The panel that drew the remedial map in LULAC v. Perry opined: "That this remedial order makes changes in the lines of five districts, as few as possible consistent with conscientious partisan neutrality, is not the product of aggressive remediation. Rather, it is the consequence of

an aggressive map, which resulted in the section 2 violation the Supreme Court found. . . . This map corrects the violation, makes the adjustments that flow from that correction, and stops." Decision, LULAC v. Perry, No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006). (Pl. Ex. 231, p. 7 [Dkt. 320-2. at p. 97].)

C. Latinos Bear the Effects of Past Discrimination in Areas Such as Education, Employment, and Health, Which Hinder Their Ability to Participate Effectively in the Political Process and Cause Lower Rates of Registration and Turnout

253. Latinos continue to display profound evidence of social and economic disadvantage around the state. (Gonzalez Baker Deposition, Ex. J-41, at 64 [Tr. 64:12-14].)

254. At every socioeconomic metric analyzed by Drs. Chapa and Gonzalez Baker, Hispanics are trailing non-Hispanics. (Ex. 47, at Tr. 197:11-23.)

255. In each of the counties with large Hispanic populations, Hispanics have lower educational attainment levels, income levels, and a higher poverty rate than non-Hispanics. This is true even when controlling for various demographic differences. (Ex. 47, at Tr. 177:8-14, 20-24; Ex. 47, at Tr. 178:24-179:2; Chapa Report, Ex. E-1 [Dkt. 128-5], at p. 4; [Dkt. 128-10, at tbl. 4, 5, and 6]; Ex. 47, at Tr. 197:11-19.)

256. These decreased educational attainment levels, income levels, and higher poverty levels are strong evidence that historical discrimination still has a strong present day impact Hispanic Texans. (Ex. 47, at Tr. 179:16-21; Chapa Report, Ex. E-1 [Dkt. 128-5], at p. 5.)

257. Lower levels of education, income, and earnings have the lingering effect of lowering Latino participation rates, including registering and voting. (Ex. 47, at Tr. 179:23-180:2; 189:7-16; Ex. 47, at Tr. 200:11-14.)

258. The effects of de jure segregation have lingered even after blatant signs limiting African-American and Hispanic access to public services were taken down. (Ex. 47, at Tr. 585:9-17; Tijerina Report, Ex. E-10 [Dkt. 325-1], at p.1.)

259. It is clear that the lower rate of voter registration, voting, and running for elective office of Texas Latinos is directly related to the past discrimination of Latinos in Texas. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.32.)

260. The State's expert witness, Dr. Alford, did not offer an opinion in the case that there are no lingering effects of prior discrimination in the Latino community. (Ex. 47, at Tr. 1858:12-15.)

261. Latino low propensity voters do not think that they can effect change with their votes. (Ex. 421 ¶ 12 [Dkt. 319-1, at p. 2]).

262. The overt resistance from Anglos to allowing Latinos to exercise their political rights, and the lack of provision of assistance, has caused Latino disengagement to persist from one generation to the next. (Ex. 416 ¶ 20 [Dkt. 330-5, at p. 86]).

263. Younger low propensity Latino voters are often raised in families where parents experienced race-based discrimination and exclusion from voting and therefore did not vote themselves. (Ex. 421 ¶ 12 [Dkt. 319-1, at p. 2]).

264. There is a constant struggle to encourage voter participation in the Latino neighborhoods of El Paso. (Ex. 418 ¶ 6 [Dkt. 330-5, at p. 93]).

265. From 1972 to 2012, Latino voters in Texas have not registered or turn out at same levels as Anglo voters. (Ex. 421 ¶ 8 [Dkt. 319-1, at p. 2]).

266. In November 2008 only 54.3% of eligible Latinos in Texas were registered to vote. (Ex. 421 ¶ 9 [Dkt. 319-1, at p. 2]).

267. This means that across the state there is a gap of about 2,052,000 potential Latino voters that have not registered. (Ex. 421 ¶ 9 [Dkt. 319-1, at p. 2]).

268. The Latino registration rate trails that of the Black population by19.4% and that of the Anglo population by 19.3%. (Ex. 421 ¶ 9 [Dkt. 319-1, at p. 2]).

269. Only 37.8% of Latino voters actually went to the polls in 2008. This trails Anglo participation by 17.8% and Black participation by 27.1%. Of the 4.5 million eligible Latino voters in 2008, only 1.7 million cast a ballot. (Ex. 421 ¶ 10 [Dkt. 319-1, at p. 2]).

270.

1. Education

(a) **Statewide**

271. Across the state, Texas Hispanics—including those born in Texas—have lower levels of educational attainment and income when compared to non-Hispanics. (Ex. 47, at Tr. 176:17-22; Chapa Report, Ex. E-1 [Dkt. 128-5], at p. 4; [Dkt. 128-8, at tbl. 2].)

272. Latino educational achievement lags far behind that of non-Hispanic Whites in the same age bracket. (Gonzalez Baker Report, Ex. E-9 [Dkt. 149-3], at p. 7; [Dkt. 149-4], at p. 7.)

273. There is an extensive history of discrimination against Latinos and African Americans in Texas that continues to have vestiges today. (Ex. J-52, at 101:23-102:23)

274. In 1841, Texas passed a Joint Resolution that suspended printing laws in Spanish. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.24.)

275. In 1856, use of the Spanish-language was further limited through the passage of a law that allowed Spanish in the courts of Texas only if the Justice of the Peace and the primary party could not speak English. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.24.)

276. A 1925 law required that the English language be the only language used in public education. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.28.)

277. By the turn of the 20th century, Latinos were only allowed in segregated schools. (Ex. 47, at Tr. 583:16-20.)

278. Sometimes Latino students were segregated into separate districts; sometimes into gerrymandered areas within districts that would create schools in the Latino part of town where only Latino students would attend; or, if Latinos and non-Latinos were in the same school, then Latinos would be segregated within the school or within the classroom. Such segregation lasted through the 1960s and 1970s. (Ex. 47, at Tr. 583:21-584:8.)

279. Latino schools lacked the basic advantages of Anglo schools. In San Antonio, in 1934, while there was approximately the same number of Latino and Anglo students in schools, there were only 11 Latino schools, but 28 Anglo schools. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.27.)

280. School funding showed similar discrimination. The school board spent $24.50 on each Latino student, but $35.96 on each Anglo student. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.27.)

281. The Latino schools that arose in big city barrios not only lacked physical and curriculum advantages, but also implemented corporeal punishment for speaking Spanish. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.20.)

282. Condoned by the state superintendent, school boards neglected Latino student enrollment in schools almost entirely. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.25.)

283. In 1920, 70% of Latino school-age children in Texas were not enrolled in school as opposed to only 22% of Anglo school-age children, though mandatory school attendance had been required by law since the 1880s in Texas. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.25.)

284. In the 1920s, Lyndon B. Johnson taught Latino students at a dilapidated school in Cotulla, Texas, where the student body was disproportionately small—likely because Latinos were allowed to go to school only half a day and only to the sixth grade. (Ex. 47, at Tr. 584:11-24; Tijerina Report, Ex. E-10 [Dkt. 325-1], at p.7; [Dkt. 149-6], at p. 26.)

285. Lingering effects of discrimination against Latinos in education are evident in the data; Latinos have the lowest educational statistics in the state of Texas, and Texas has the lowest statistics in the nation. (Ex. 47, at Tr. 586:2-4.)

286. Hispanics still face a gap in enrollment and graduation from the State of Texas's Colleges and Universities as compared to non-Hispanic Whites. (Ex. 47, at Tr. 1720:13-17; Ex. J-63, at 18:16-23)

287. Texas Hispanics still fall behind Anglos in attainment of higher education in terms of persistence and graduation rates. (Ex. 47, at Tr. 1720:18-24; Ex. J-63, at 21:5-8, 18-21)

288. The Closing the Gaps progress reports from 2011 state that for public, community, technical and state colleges, the fall 2004 cohorts six year success rates were 40.2 percent Hispanics, 53.9 percent for Asians, and 45.8 percent for Whites. (Ex. J-63, at 23:16-24:1)

289. Latino adults in Texas are currently less than half as likely to have a college degree as their Anglo counterparts. (Ex. 47, at Tr. 1720:25-1721:12; Ex. J-63, at 24:2-7)

290. The Higher Education Coordinating Board identified Hispanic participation in higher education and Hispanic receipts of degrees and awards as one of the areas that continues to be below the targeted goals for its plan. (Ex. 47, at Tr. 1721:15-24; Ex. J-63, at 27:8-14)

291. The target for Hispanics for higher education is currently, according to Closing the Gaps, at 5.7 percent of the total population in 2015. (Ex. 47, at Tr. 1721:15-24; Ex. J-63, at 27:15-21)

292. Hispanics are not progressing in terms of attainment of higher education at the rate that the State has set as its desired goal. (Ex. 47, at Tr. 1722:1-4; Ex. J-63, at 28:18-25)

293. For Hispanics to reach the 2015 enrollment target, Hispanic enrollment needs to grow another 52 percent. (Ex. 47, at Tr. 1722:5-8; Ex. J-63, at 31:7-25; 32:1-7)

294. The change in Hispanic enrollment since 2000 was well below what was needed to stay on track to the meet the 2015 target. (Ex. J-63, at 32:12-16, 23-25; 33:1-6)

295. The Closing the Gaps progress report says "Things will only get more challenging for Hispanics in the next five years as the CTG target trend line for enrollment growth gets steeper." (Ex. 47, at Tr. 1723:3-7; Ex. J-63, at 33:7-13)

296. The Closing the Gaps target, as it is expressed in the report, if it were met right now, it would mean that Latinos would not be participating at the same rate as Anglos. (Ex. 47, at Tr. 1723:21-25.)

297. The Closing the Gaps report does not make any findings as to the causes of the educational disparities such as gaps in Latino enrollment in higher education as compared to Anglos. (Ex. 47, at Tr. 1724:2-6.)

298. The Closing the Gaps report does not make any findings about whether the gaps in Latino persistence and graduation rates have a relationship to past discriminatory practices. (Ex. 47, at Tr. 1724:15-18.)

299. Anglos are making greater progress toward the Coordinating Board's goals in terms of degrees awarded than Hispanics. (Ex. J-63, at 34: 2-6)

300. Hispanic students are reported to have graduated at 72.5% and white students at 89.7% with respect to the four-year completion rate including grades 9-12 for the class of 2009. (Ex. 47, at Tr. 1724:19-1725:2; Ex. J-63, at 40:7-16)

301. Hispanics are shown to be at 37.5% and whites at 61.7% on the AP IB results on the examinees' criteria. (Ex. 47, at Tr. 1725:3-8; Ex. J-63, at 40:17-22)

302. Hispanics lagged behind Whites in every category of TSI Readiness (Texas Success Initiative), including English, language arts, mathematics, and SAT and ACT results. (Ex. 47, at Tr. 1725:9-13; Ex. J-63, at 40:23-25; 41:1-8)

303. The National Center for Public Policy In Higher Education in 2004 gave Texas a D as a grade in affordability of higher education. (Ex. J-63, at 42:22-25; 43:1)

304. The Texas Legislature in 2009 during the 81st Regular Session enacted legislation to cap the Top Ten Percent Plan at the University of Texas at Austin. (Ex. 47, at Tr. 1725:14-18; Ex. J-63, at 44: 4-9)

305. The Top Ten Percent Plan is a way for Hispanic students to close educational gaps. (Ex. 47, at Tr. 1725:19-22.)

306. The Legislature cut funding for TEXAS Grants by $11 million, as well as other financial aid funding for the biennium. (Ex. 47, at Tr. 1725:23-1726:5; Ex. J-63, at 44:16-22)

307. Texas A&M affirmatively ended its race-conscious admissions policy in 2004. (Ex. 47, at Tr. 1726:6-9; Ex. J-63, at 46:8-21)

308. In 2006, the Texas Higher Education Coordinating Board issued a rule barring Texas residents from benefitting from the Hazlewood program when those residents had entered the military as legal permanent residents. The Hazlewood program paid the tuition of honorably discharged

members of the U.S. Military when they attended Texas universities. The THECB reversed its rule following a lawsuit challenging this practice. (Ex. 47, at Tr. 1726:10-25.)

309. Communities of color have a more difficult time achieving educational equality than affluent communities because Texas has a school financing system based on property taxes. (Ex. 47, at Tr. 63:5-15)

(b) **Nueces County**

310. Many students Latino students at Texas A&I University-Corpus Christi have a relative lack of resources and opportunities compared to their Anglo classmates. (Ex. 412 ¶ 4 [Dkt. 330-5, at p. 67]).

311. Comparatively more Latino students at Texas A&I University-Corpus Christi are the first in their families to attend college as compared to their Anglo classmates. (Ex. 412 ¶ 4 [Dkt. 330-5, at p. 67]).

(c) **El Paso County**

312. El Paso public schools still consist of property-poor school districts that require substantially higher tax rates to generate the same revenue as the property-rich school districts in other parts of the state. (Ex. 418 ¶ 9 [Dkt. 330-5, at p. 94]).

313. Lubbock has a much smaller population than El Paso, yet Texas Tech in Lubbock has a major medical university and a law school. The University of Texas at El Paso, on the other hand, has historically and consistently received insufficient funds. (Ex. 418 ¶ 7 [Dkt. 330-5, at p. 93]).

314. University of Texas at El Paso was a major beneficiary of the South Texas Border Initiative that came about as a result of litigation in LULAC v Richards but without this legal victory, UTEP

would still be struggling to get Ph.D. programs off the ground. (Ex. 418 ¶ 7 [Dkt. 330-5, at p. 93]).

315. El Paso still does not have a law school and relies on a Texas Tech satellite campus for the only medical school in the county. (Ex. 418 ¶ 7 [Dkt. 330-5, at p. 93]).

316. Canutillo has historically been one of the poorest school districts in El Paso County. (Ex. 414 ¶ 4 [Dkt. 330-5, at p. 76]).

317. Canutillo still lacks enough resources for adequate education, and Canutillo remains a property poor school district. (Ex. 414 ¶ 6 [Dkt. 330-5, at p. 76]).

318. Latino students had to overcome extensive economic barriers in comparison to the students attending wealthier schools in El Paso. (Ex. 414 ¶ 6 [Dkt. 330-5, at p. 76]).

319. Sergio Coronado testified that when he was a schoolchild in Canutillo, students were spanked by their teachers for speaking Spanish. (Ex. 414 ¶ 6 [Dkt. 330-5, at p. 76]).

320. In the 1970s, there was an attempt to pass a bond for a much needed high school. Canutillo high school students were sharing a facility with the local junior high school. However, the bond failed because predominantly Anglo and owners refused to pay additional taxes for Hispanic students who they thought were destined to work the fields. Without the bond funds, the school district could build a facility that contained a cafeteria and some classrooms, but not much else. (Ex. 414 ¶ 5 [Dkt. 330-5, at p. 76]).

321. Carmen Rodriguez testified that El Paso had de jure segregation through the 1970s in its public schools until the case of Alvarado v. El Paso ISD resulted in desegregating the schools. (Ex. 418 ¶ 10 [Dkt. 330-5, at p. 94]).

322. When Carmen Rodriguez's father was in school, Latino students in El Paso would often be tracked into Tech High School and would be trained in mechanics and other manual labor skills. (Ex. 418 ¶ 11 [Dkt. 330-5, at p. 94]). The students not tracked into Tech attended segregated high schools. (Ex. 418 ¶ 11 [Dkt. 330-5, at p. 94]).

323. In El Paso, every time Latinos began to attend an Anglo high school in significant numbers, the school district would build a newer and more modem school for the Anglo student population. Initially Bowie High School was slated for Latino students, then later it was Jefferson High School, and then El Paso High. In the 1980s and 1990s, the Anglo high school was Coronado High School on the Westside. Now Coronado High school has an established Latino student body of just under 75 percent (73.9) in the middle of HD78. (Ex. 418 ¶ 11 [Dkt. 330-5, at p. 94]).

(d) **Austin-San Antonio**

324. Senator Joe Bernal testified that when he was a child, schools in San Antonio had a "no Spanish" rule. Children were given ribbons that read, "I'm an American. I speak English." If members of the student council saw a student speaking Spanish on the school grounds, they confiscated the ribbons and gave them to the student's English teacher, who would then give the student demerits. (Ex. 47, at Tr. 553:8-19.)

325. Latino students in Dove Springs drop out of high school at a disproportionately high rate and teen pregnancy disproportionately affects young people in Dove Springs. (Ex. 416 ¶ 23 [Dkt. 330-5, at p. 86]).

326. Until Delgado v. Bastrop desegregated the schools in Bastrop, Texas there separate schools: one for Blacks, one for Mexicans, and one for Whites, and one for Mexican Americans. (Ex. 413 ¶ 6-7 [Dkt. 330-5, at pp. 72-73]).

327. At the Latino schools students were given a sheet of paper and crayons to draw on all day. (Ex. 413 ¶ 6-7 [Dkt. 330-5, at pp. 72-73]).

328. After the desegregation of the schools in Bastrop, Texas Anglo students would call Latino students spic, greaser, taco bender, and other names. (Ex. 413 ¶ 8 [Dkt. 330-5, at p. 73]).

329. Senator Barrientos testified that Texas textbooks portrayed Mexican in a racist way, involving big mustaches and images of Mexicans wanting to kill white people. (Ex. 413 ¶ 9 [Dkt. 330-5, at p. 73]).

330. Senator Barrientos testified that when he was a student, Texas schools in Bastrop, Texas did not allow students to speak Spanish and students would get put into a corner or paddled if caught speaking Spanish. (Ex. 413 ¶ 10 [Dkt. 330-5, at p. 73]).

331. Senator Barrientos testified that when he was a schoolchild, there was a general expectation that Latino children were going to work the fields and would typically not get an education beyond the 6th or 7th grade. (Ex. 413 ¶ 11 [Dkt. 330-5, at p. 73]).

332. When Hector Flores was attending San Antonio Community College, Anglo counselors at the Texas Employment Commission told him that he was not "college material" and that that he was better suited for upholstery repair. (Ex. 415 ¶ 12 [Dkt. 330-5, at p. 81]).

333. When lay witness Andrew Hernandez was a child, Latino students in San Antonio were punished by teachers for speaking Spanish in school. (Ex. 416 ¶ 4 [Dkt. 330-5, at p. 84]).

334. When lay witness Andrew Hernandez was a child in San Antonio, the city's schools had few, if any Latino teachers or administrators. (Ex. 416 ¶ 5 [Dkt. 330-5, at p. 84]).

335. When lay witness Andrew Hernandez was a child, San Antonio schools often tracked the Latino students into vocational or low level courses. (Ex. 416 ¶ 6 [Dkt. 330-5, at p. 84]).

336. When lay witness Andrew Hernandez was a child, San Antonio schools were plagued by a high drop-out rate for Latino students. (Ex. 416 ¶ 7 [Dkt. 330-5, at p. 84]).

337. The discrimination in education in San Antonio Schools meant that Latinos in San Antonio were provided with an inferior education, which left them at a disadvantage in terms of their current ability to participate in the political process. (Ex. 416 ¶ 8 [Dkt. 330-5, at p. 84]).

(e) **Dallas-Fort Worth Metroplex**

338. The Dallas Independent School District (DISD) was under federal court order to desegregate its schools. (Ex. 415 ¶ 14 [Dkt. 330-5, at p. 81]).

(f) **South Texas**

339. Hector Flores testified that when he was growing up the public schools in Dilley were segregated by race. (Ex. 415 ¶ 3 [Dkt. 330-5, at p. 79]).

340. During segregation, in comparison to the Latino schools, the Anglo schools in Dilley, Texas were clean and well maintained, with inside restroom facilities. These schools had new textbooks and sufficient supplies. (Ex. 415 ¶ 6 [Dkt. 330-5, at p. 80]).

341. Hector Flores testified that when he was growing up the "Latino schools" were deteriorated and needed substantial maintenance and repair, and some only had had an outhouse for a restroom. Most, if not all, of the classrooms did not have sufficient desks or chairs for the students. The schools lacked sufficient school supplies or textbooks. (Ex. 415 ¶ 3 [Dkt. 330-5, at p. 79]).

342. When Hector Flores was growing up, Latinos in Dilley were funneled into special classes where they were taught how to perform calculations so they would know how much fertilizer to lay down in the fields. (Ex. 415 ¶ 4 [Dkt. 330-5, at p. 79]). There was not much emphasis on reading and writing for Latinos in Dilley. (Ex. 415 ¶ 4 [Dkt. 330-5, at p. 79]).

343. Hector Flores recalls that in Dilley, there were special "graduation" ceremonies for Latinos in sixth grade, when they were encouraged to exit school and begin working in the fields. (Ex. 415 ¶ 4 [Dkt. 330-5, at p. 79]).

344. When schools started to be integrated in Dilley, Latino students were punished for speaking Spanish at school. (Ex. 415 ¶ 7 [Dkt. 330-5, at p. 80]).

345. In the 1940s and 1950s, schools in Uvalde had separate classes for Mexican students. Mexicans were not allowed to mix with the whites. (Ex. 420 ¶ 3 [Dkt. 330-5, at p. 101]).

346. When schools started to be integrated in Dilley, the white students often bullied the Latino students, calling them pejorative names like “greaser” and “pelado.” (Ex. 415 ¶ 7 [Dkt. 330-5, at p. 80]).

347. Gilberto Torres testified that teachers in Uvalde in the 1940s and 1950s called the Mexican children with green or blue eyes derogatory names for people of mixed race. (Ex. 420 ¶ 3 [Dkt. 330-5, at p. 101]).

348. In the 1940s and 1950s, Latino children often had to work to help support their families in Uvalde, in part because of the discrimination faced by Latino workers. (Ex. 420 ¶ 4 [Dkt. 330-5, at p. 101]).

349. Gilberto Torres’ father was a ranch worker who was only paid one dollar a day while the Anglo ranch workers got paid a lot more – up to $50 a week. (Ex. 420 ¶ 4 [Dkt. 330-5, at p. 101]).

350. Gilberto Torres testified that in the 1950s, guidance counselors in Uvalde dissuaded Latinos from going to college, and encouraged them to go into vocational programs. This is why Mr. Torres became an upholsterer. (Ex. 420 ¶ 6 [Dkt. 330-5, at p. 101]). At this time, A greater percentage

of Anglo students than Latino students in Uvalde went to college. Mr. Torres estimates that only about 4 to 5% of Latinos went to college. (Ex. 420 ¶ 6 [Dkt. 330-5, at p. 101]).

351. Both Cameron and Hidalgo counties experience a disproportionally high dropout rate for students. With a drop out rate close to 49%, both counties also lack adequate educational alternatives. (Ex. 419 ¶ 13 [Dkt. 330-5, at p. 98]).

352. The conditions in schools in Uvalde have not improved much for Mexican American students, because there is still a high dropout rate. (Ex. 420 ¶ 7 [Dkt. 330-5, at pp. 101-02]).

(g) **Houston**

353. Mary Ramos testified that when she was a child, predominantly Latino schools Houston often did not have sufficient resources, such as books. (Ex. 417 ¶ 4 [Dkt. 330-5, at p. 88]).

354. Mary Ramos testified that when she was a child, schools in Houston did not allow children to speak Spanish, and they children would be punished by being paddled and having their mouths washed out with soap. (Ex. 417 ¶ 5 [Dkt. 330-5, at p. 88]).

2. Housing

(a) **Southeast Austin-San Antonio**

355. In the 1850s in Austin, Latino landowners were driven out of the city by vigilante groups organized by the city council, which subsequently took their land. (Ex. 47, at Tr. 589:14-18.)

356. Latinos were then recruited back into Austin as laborers, but only allowed to live in the city dump. (Ex. 47, at Tr. 589:19-23; Tijerina Report, Ex. E-10 [Dkt. 325-1], at p.5-6.)

357. Once the city dump was moved, the Latino community found itself on prime real estate. (Ex. 47, at Tr. 590:13-23.)

358. The city obtained federal funding to create the first housing project in the nation, specifically as an incentive to give Latinos and African-Americans free housing to move them off of the prime real estate. (Ex. 47, at Tr. 591: 3-8.)

359. The city of Austin went on to advertise its housing project, even though it was effectively a government-created "barrio" through urban planning. (Ex. 47, at Tr. 591:14-592:1; Tijerina Report, Ex. E-10 [Dkt. 325-1], at p.3.)

(b) **Statewide**

360. Austin was not the only city in which a barrio was created. Across the state, Latinos were simply not allowed to settle within city limits. As cities grew, those areas where Latinos had settled became barrios. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.18.)

361. To further promote the racial segregation that the barrios created, many Texas cities used restrictive covenants and deed restrictions to keep Latinos from being able to move into more affluent neighborhoods. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.23.)

362. In the mid- to late-1800s local officials condoned and facilitated, often times violent, efforts to drive Latinos from their lands. Groups of Anglo-Americans would conduct raids whereby they would storm onto Latino property, burn livestock and property, and kill Latino landholders or force them to sell their property through violence. (Ex. 47, at Tr. 588:2-6; Tijerina Report, Ex. E-10 [Dkt. 149-6], at p. 5-8.)

363. Legal means were also used to divest Latinos of their land rights. In 1852, the Texas legislature passed the Texas Land Relinquishment Law requiring that all unarchived lands granted before 1835 be surveyed and filed with the Texas General Land Office by 1853 or be declared null and void. When Latinos would try to plead their land cases, they were told that a committee rule

required that in order for Latinos or other non-whites to testify, their character had to be established by the testimony of two white men. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p. 8.)

364. Fifty years later, Latinos who were previously significant landowners in Texas, such as Abelardo Balli, were reduced to traveling between counties to look for work and thus subject to restrictive labor controls, such as the use of the county pass. (Ex. 47, at Tr. 587:22-588:3; Tijerina Report, Ex. E-10 [Dkt. 325-1], at p. 4.)

365. When Hector Flores was a child, housing in Dilley was segregated with Latinos living on the east side of town, and the Anglos lived on the west side, divided by the roadway which today is US 35. (Ex. 415 ¶ 10 [Dkt. 330-5, at p. 80]).

(c) **El Paso County**

366. El Paso Latinos also have suffered and continue to suffer from environmental racism. (Ex. 418 ¶ 13 [Dkt. 330-5, at p. 94]).

367. Factories and heavy industries with extensive pollutants are allowed to exist next to Latino residential areas creating "smelter towns" resulting in continuing health concerns among the Latino community. (Ex. 418 ¶ 13 [Dkt. 330-5, at p. 94]).

(d) **Rio Grande Valley**

368. Cameron Park in Cameron County is a "colonia." The Texas Secretary of State's website describes colonias as communities in the "area along the Texas Mexico border that may lack some of the most basic living necessities, such as potable water and sewer systems, electricity, paved roads, and safe and sanitary housing." Most of the housing in Cameron Park lacks this basic infrastructure. (Ex. 419 ¶ 8 [Dkt. 330-5, at p. 98]).

369. The colonias, many of which are contained in State House District 32 in Plan H292, all share similar issues of inadequate storm drainage, paved roads, police and fire protection, and safe and sanitary housing. Services common in the rest of the state, such as 911 response systems are missing in many areas of these counties. (Ex. 419 ¶ 9 [Dkt. 330-5, at p. 98]).

370. According to the Texas Secretary of State's website, Hidalgo County has the most colonias and largest number of colonia residents in Texas. (Ex. 419 ¶ 10 [Dkt. 330-5, at p. 98]).

(e) **Houston**

371. There are concentrated pockets of segregated neighborhoods in Harris County. (Ex. 417 ¶ 11 [Dkt. 330-5, at p. 89]).

372. There has discriminatory use of housing codes by local governments against Latinos, such as where the City of Kemah used housing codes to prohibit Latino residents who owned desirable real estate from renovating their homes after Hurricane Ike in 2008. The city forced these Latino residents to sell their homes by claiming that these houses would have to be demolished, yet these houses were never demolished after they changed hands. (Ex. 417 ¶ 12 [Dkt. 330-5, at p. 89]).

3. Employment

(a) **Statewide**

373. Across the state, Texas Hispanics—including those born in Texas—have lower incomes and earnings when compared to non-Hispanics. (Chapa Report, Ex. E-1 [Dkt. 128-5], at p. 4; [Dkt. 128-9, at tbl. 3].)

374. Statewide, absolute median incomes for Latino men and women are substantially lower than they are for non-Hispanic White men and women. (Gonzalez Baker Report, Ex. E-9 [Dkt. 149-3], at p. 9.)

375. Latino men make 52% of non-Latino White men's median income, while Latino women make 59% of non-Hispanic White women's median income. (Gonzalez Baker Report, Ex. E-9 [Dkt. 149-3], at p. 9.)

376. Beginning in the early 20th century, Texas state officials condoned limiting Latino education so as to better control Latinos in the labor force. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.14.)

377. Similar to the Black Codes used against African-American freed slaves during Reconstruction, Latinos experienced labor controls through the use of the county pass, which allowed only designated Latinos to go from one county to another to seek a better job or higher wages. Otherwise, local laws prohibited the free movement of Latino workers. (Ex. 47, at Tr. 586:24-587:24; Tijerina Report, Ex. E-10 [Dkt. 325-1], at p.4.)

378. Government officials systematically arrested Latinos who did not have county passes and paroled them as "convict labor." (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.15.)

379. Through these labor controls, government officials were able to create local labor surpluses and drive down wages. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.15.)

380. Workers in the 1940's picking cotton on the migrant trails - including in Sinton, Taft, Banquete, Bishop, Bastrop, Taylor, Elgin, Tahoka, Paduca and Littlefield - would receive 50 to 75 cents an hour for the work. (Ex. 413 ¶ 2 [Dkt. 330-5, at p. 72]).

381. The housing for these farm workers usually involved a shack but there were times when they would have to sleep in a chicken coop. (Ex. 413 ¶ 3 [Dkt. 330-5, at p. 72]).

382. At this time there was no access to healthcare for migrant workers, and it was unacceptable to be sick at work. (Ex. 413 ¶ 4 [Dkt. 330-5, at p. 72]).

383. Alex Jimenez recalled his youth in Eastland, Texas when Mexican Americans were subjected to wage discrimination but continued to work under discriminatory conditions because it was the only work available. (Ex. 47, at Tr. 563:1-23.)

384. During his early working career Mr. Jimenez recalled that his supervisor thought it was appropriate to call Mr. Jimenez "Pepper Belly," and Mr. Jimenez just had to look the other way. (Ex. 47, at Tr. 565:2-11.)

385. When Mr. Jimenez earned a promotion to vice president at TXU, he received a number of calls accusing him of filling a quota. (Ex. 47, at Tr. 567:25-568:19.)

(b) **Austin-San Antonio**

386. When lay witness Andrew Hernandez was a child, Latinos at Kelly Field in San Antonio experienced discrimination with respect to employment, such as having less experienced Anglo workers promoted ahead of them. (Ex. 416 ¶ 3 [Dkt. 330-5, at p. 84]).

(c) **Rio Grande Valley**

387. Both Hidalgo and Cameron counties have disproportionately high unemployment rates as compared to Texas as a whole. Many residents of both areas are seasonal workers in the agricultural industries, and many lack opportunities to gain regularized work. Residents of both counties could benefit from increased job training and efforts to promote job creation in the region. (Ex. 419 ¶ 14 [Dkt. 330-5, at pp. 98-99]).

388. According to the 2000 US Census, Cameron Park was the poorest town in the United States, with a per capita income, at $4,135, less than that of El Salvador, Guatemala, or Mexico. (Ex. 419 ¶ 8 [Dkt. 330-5, at p. 98]).

(d) **Houston**

389. Latinos have disproportionately low employment in public sector jobs in the Houston metropolitan area. (Ex. 417 ¶ 15 [Dkt. 330-5, at pp. 89-90]).

(e) **El Paso County**

390. There is a history of employment discrimination in El Paso. (Ex. 418 ¶ 12 [Dkt. 330-5, at p. 94]).

391. For decades, Farah Manufacturing's factory was the largest employer in El Paso. The factory workers were almost exclusively Latino, while the owner and the management were Anglo. (Ex. 418 ¶ 12 [Dkt. 330-5, at p. 94]).

392. The Farah clothing factory in El Paso had unfair wages, minimal benefits, racial tensions, and pressures to meet high quotas until the strike and boycott in the 1970s. (Ex. 418 ¶ 12 [Dkt. 330-5, at p. 94]).

393. Farah ostracized and intimidated employees who attempted to organize. (Ex. 418 ¶ 12 [Dkt. 330-5, at p. 94]).

(f) **Nueces County**

394. The diversity of the South Texas population is not reflected in the administrative structure of the university itself as only two Latinos since the founding of Texas A&M University-Corpus Christi have served in the top five administrative positions. (Ex. 412 ¶ 6 [Dkt. 330-5, at p. 68]).

4. Other Historical Discrimination, Socioeconomic Disparities and Representational Needs

(a) **Statewide**

395. The statewide Latino child poverty rate is roughly 2.5 times that of the non-Hispanic White child poverty rate. (Gonzalez Baker Report, Ex. E-9 [Dkt. 149-3], at p.7.)

396. Senator Barrientos testified that in Littlefield, Texas, a waitress denied entrance to Latinos, telling them that the café did not serve Mexicans. (Ex. 413 ¶ 5 [Dkt. 330-5, at p. 72]).

397. Senator Barrientos testified that in West Texas, Latinos would regularly be required to get their food from the back of the restaurant and would have to take the food to go. (Ex. 413 ¶ 5 [Dkt. 330-5, at p. 72]).

398. When Hector Flores was a child in Dilley, Latinos were regularly subjected to being called derogatory and harassing names. (Ex. 415 ¶ 8 [Dkt. 330-5, at p. 80]).

399. Hector Flores testified that when he lived in Dilley, Latinos would often have store clerks follow them around the store. (Ex. 415 ¶ 8 [Dkt. 330-5, at p. 80]).

400. There was a pool in Lubbock that allowed Latinos to swim only on Thursdays, before the pool was drained and cleaned for the Anglos on the weekend. (Ex. 47, at Tr. 552:22-553:5.)

401. Mr. Jimenez recalled having to call banks in advance to establish checking accounts because if he let his ethnicity be the bank's first impression, opening an account became an ordeal. One bank, where he had cashed checks previously, required him to produce ID while cashing an Anglo coworker's check without hesitation. (Ex. 47, at Tr. 565:18-566:22.)

(b) **Southeast Austin-San Antonio**

402. Senator Barrientos recalls that Austin had segregated movie theatres and pools. (Ex. 413 ¶ 15 [Dkt. 330-5, at pp. 73-74]).

403. The residents of Dove Springs often criticize the lack of affordable and culturally competent health care because until recently, there were no health care clinics in this community, and the ones in neighboring communities often lacked adequate Spanish speaking staff. (Ex. 416 ¶ 24 [Dkt. 330-5, at p. 86]).

404. In the 1930s and 1940s, the west side of San Antonio was almost 100% Mexican American and housing in that area was substandard. (Ex. 47, at Tr. 550:1-17.)

405. Senator Joe Bernal testified that San Antonio had segregated swimming pools. Guards would allow people with lighter skin to enter and turn away those with darker skin. (Ex. 47, at Tr. 551:14-20.)

406. At a San Antonio pool that was not officially segregated, Anglos would pick fights with Latinos because they wanted to ensure that the Latinos did not return to the pool. (Ex. 47, at Tr. 551:21-552:1.)

407. In New Braunfels around 1945, a restaurant discriminated against Latinos, forcing them to eat in the back. (Ex. 47, at Tr. 552:5-15.)

(c) **South Texas**

408. Gilberto Torres testified that when he was young, many Mexican families in Uvalde could not afford to go to the doctors when a member of the family was sick. (Ex. 420 ¶ 4 [Dkt. 330-5, at p. 101]). This may not have been of any consequence because most doctors would not serve Mexicans. (Ex. 420 ¶ 4 [Dkt. 330-5, at p. 101]).

409. In Uvalde there were restaurants with signs that said "No dogs or Mexicans allowed." (Ex. 420 ¶ 5 [Dkt. 330-5, at p. 101]).

410. In Uvalde during Gilberto Torres's lifetime, there were many restaurants that served Mexicans only from the kitchen. (Ex. 420 ¶ 5 [Dkt. 330-5, at p. 101]).

411. In 1970, Gilbert Torres lost business from Anglos because of his support for Latino students' walkout to protest school conditions. (Ex. 420 ¶ 7 [Dkt. 330-5, at p. 101-02]).

412. Cameron and Hidalgo counties are border communities, and as such they experience the same issues of insecurity and increased militarization that affect the entire Four County Region.

Something as crucial as hurricane evacuation routes are affected by the border patrol presence in a way unknown in the rest of the state. (Ex. 419 ¶ 15 [Dkt. 330-5, at p. 99]).

413. A problem common to the Rio Grande Valley region is a lack of health care facilities available to low income residents of the county areas. There is no public hospital in the region; the closest available public hospital is in San Antonio, a five hour drive. (Ex. 419 ¶ 11 [Dkt. 330-5, at p. 98]).

414. Many residents of the Rio Grande Valley region —low and middle income, often have to turn to emergency facilities for basic health care needs. (Ex. 419 ¶ 11 [Dkt. 330-5, at p. 98]).

415. Additionally, there are a high number of veterans in this area but there is only a small facility available to address their needs. (Ex. 419 ¶ 11 [Dkt. 330-5, at p. 98]).

416. Increased public health care facilities located in Cameron or Hidalgo County would benefit the residents of Hidalgo and Cameron counties, regardless of the facilities' location. (Ex. 419 ¶ 11 [Dkt. 330-5, at p. 98]).

417. Cameron and Hidalgo counties also share a similar concern because both are part of the same flood plain. Flooding from either the Gulf Coast or the Rio Grande River would affect the whole area. Thus the regions of Hidalgo and Cameron are united in their need for extra resources to address the dangers associated with hurricane season and flooding. (Ex. 419 ¶ 12 [Dkt. 330-5, at p. 98]).

(d) **Houston**

418. When Mary Ramos was a child in Houston, she had to sit in the balcony at movie theaters. (Ex. 417 ¶ 7 [Dkt. 330-5, at p. 88]).

419. When Mary Ramos was a child, Local restaurants in Houston would only serve Mexicans out of the back door. (Ex. 417 ¶ 8 [Dkt. 330-5, at p. 88]).

420. When Mary Ramos was a child, there were limited economic opportunities available to Latinos in Houston. (Ex. 417 ¶ 6 [Dkt. 330-5, at p. 88]).

(e) **El Paso County**

421. State government agencies always have understaffed the El Paso regional offices and in many cases, El Paso has no regional offices despite having a much larger population than any other West Texas city. As a result, good government jobs, including supervisory positions, are scarce in El Paso. Ex. 418 ¶ 8 [Dkt. 330-5, at p. 93]).

422. Neither the State of Texas nor the County of El Paso has ever adequately funded Canutillo in terms of medical, education, and infrastructure needs. (Ex. 414 ¶ 4 [Dkt. 330-5, at p. 76]).

423. Canutillo historically lacked public health clinics and medical services and residents had to travel to downtown El Paso to receive hospital care until very recently. (Ex. 414 ¶ 7 [Dkt. 330-5, at p. 76]).

424. There continues to be a shortage of county clinics in Canutillo. (Ex. 414 ¶ 7 [Dkt. 330-5, at p. 76]).

425. Canutillo always has suffered from poor funding in terms of economic development, infrastructure needs, and business development. (Ex. 414 ¶ 8 [Dkt. 330-5, at p. 77]).

426. El Paso does not receive its fair share of highway funds, Medicaid reimbursements, or other needs. (Ex. 418 ¶ 7 [Dkt. 330-5, at p. 93]).

427. El Paso has an extensive history of discrimination against Latinos. (Ex. 418 ¶ 5 [Dkt. 330-5, at p. 93]).

B. The Extent to which Members of the Minority Group Have Been Elected to Office in the Jurisdiction

428. Very few Latinos can get elected in non-Hispanic-majority districts. (Ex. 47, at Tr. 780:11-12.)

429. The lack of Latino and African American congressional members that come from districts without a Latino majority population demonstrates polarization. (Ex. J-51, at 62:5-62:18)

430. The absence of Latinos from all levels of appointed positions before 1970 is a major indicator of their exclusion from the democratic process in Texas. (Tijerina Report, Ex. E-10 [Dkt. 149-6], at p.14.) If there is not a candidate who the Latinos support then Latinos don't go to vote because they don't think the candidates represent them, and they think voting is a waste of time. (Ex. 420 ¶ 11 [Dkt. 330-5, at p. 102]).

431. The Latino population has begun to see more Latino elected officials and Latino government employees, which has opened the doors to more political participation among Latinos than in the past. (Ex. 418 ¶ 5 [Dkt. 330-5, at p. 93]).

1. The Extent to Which Elected Officials Are Unresponsive to the Particularized Needs of the Members of the Minority Group

432. The Texas Statewide Election Eve 2010 poll conducted by Latino Decisions and released on November 2, 2010 indicated that the most important issue for Latinos was immigration (35%), followed by jobs (28%), and education (16%). (Flores Report, Ex. 59, at p. 6.)

433. The Latino Decisions Texas Statewide Poll of Feb 24, 2008 shows that the economy, health care, and immigration were issues of greatest concern to Texas Latino voters. (Flores Report, Ex. 59, at pp. 6-7.)

434. A review of United States Representative Francisco Canseco's (R-Tx, CD23) sponsored and cosponsored legislation during the 112th Congress showed that Rep. Canseco did not sponsor

any legislation on immigration reform other than to increase law enforcement on the border. (Flores Report, Ex. 59, at p. 7.)

435. Rep. Canseco's sponsorship and co-sponsorship record with respect to immigration, an issue of importance to Latino voters, does not coincide with concerns as expressed in the polls. (Flores Report, Ex. 59, at p. 7.)

2. Ignoring Traditional Redistricting Criteria or Applying Criteria Inconsistently

436. Texas courts have allowed redistricting plans to violate the County Line Rule to the extent necessary to draw a plan that complies with the one-person, one-vote requirement. (Kousser Decl., Ex. E-2 [Dkt. 128-1], at p. 60, 81, 87.)

437. The County Line Rule was applied inconsistently within H283. (Ex. 47, at Tr. 235:22-236:18.)

438. H283 split 412 precincts – considerably more precincts than any other plan. (Kousser Decl., Ex. E-2 [Dkt. 128-1], at p. 84; Kousser Decl., Ex. E-2 [Dkt. 128-2], at p. 28-29.)

3. State Legislator Hostility toward Latinos

439. The Legislative session was filled with racial tensions due to legislation related to sanctuary city bills, school finance, strict voter identification requirements at the polls, early voting absentee voting,. (Ex. 47, at Tr. 810:15-813:4)

440. The acrimony that has been publicly reported in the current legislative session surrounding the redistricting process and other issues significant to Latinos, such as immigration reform, "sanctuary cities," and educational reform, was more racially charged in 2011 than at any time since at least 1981. (Flores Report, Ex. 59, at pp. 1, 6.)

441. According to State Representative Larry Gonzales, a Latino Republican, the legislative debate on immigration during 82nd Legislative session upset some Latinos because it is a personal issue to them. (Tr.1658:1-1659:19)

442. According to State Representative Larry Gonzales, a Latino Republican, Latino Republican members had to work with their Anglo colleagues to address the racial tones of the debate. (Tr.1658:1-1659:19)

443. The 82nd Legislative session was the most racially acrimonious seen in decades. (Ex. 47, at Tr. 436:3-6.)

444. Latinos and Spanish speakers were the principal targets of the racially charged legislation. (Ex. 47, at Tr. 436:7-9.)

445. Latinos and Spanish speakers were the principal targets of the racially charged atmosphere in the Legislature. (Ex. 47, at Tr. 436:7-9.)

446. On June 13, 2011, in the Special Session of the 82nd Legislature Senate Transportation and Homeland Security Committee Hearing on SB 9, a man attempted to give testimony through an interpreter. State Senator Chris Harris stated: "Did I understand him correctly that he has been here since 1998? . . . Why aren't you speaking in English, then? . . . You've been here for 23 years!" The interpreter stated: "Spanish is his first language, and since it's his first time giving a testimony, he would rather do it in Spanish." Senator Harris replied, pointing aggressively: "It's insulting to us. It is very insulting. And if he knows English, he needs to be speaking in English." (Ex. 47, at Tr. 437:1-438:22; Ex. 47, at Tr. 441:7, 13, 17; Ex. 38, at 0:17-1:24.)

447. On June 13, 2011, Rebecca Forrest spoke at a rally on the Capitol steps. Ms. Forrest was sponsored to speak on the Capitol steps by State Senator Leo Berman. At this rally, she stated:

"If you really want to know why in Texas we don't get immigration legislation passed, it's because we have 37, 36 Hispanic legislators in the Texas Legislature. All of the states that have passed legislation have a handful . . . ." (Ex. 47, at Tr. 441:7, 13, 17; Ex. 38, at 1:25-1:45.)

448. On January 13, 2011, State Representative Leo Berman appeared on Austin KXAN news. He stated, "Every sign on the road is in English, and, uh, if you can't read English, you shouldn't be able to drive in the State of Texas." (Ex. 47, at Tr. 441:7, 13, 17; Ex. 38, at 1:45-2:00.)

449. On May 1, 2009, State Representative Dennis Bonnen participated in a House Floor Debate regarding the Texas Top Ten Percent Plan. He stated, "In the Hispanic culture, they are less interested in seeing their young daughters go to Austin or go to College Station at 18 years of age. They want to keep them at home." (Ex. 47, at Tr. 441:7, 13, 17; Ex. 38, at 2:00-2:16.)

450. On April 30, 2010, State Representative Debbie Riddle was discussing Arizona-style immigration legislation in Texas on the Partisan Gridlock Radio Show on KPFT. In response to the interviewer's question, "how do you generate an outcry among the people of color that is equivalent to the outcry from white people?" State Rep. Riddle stated, "[t]he reason that's difficult is when you have people that are used to entitlements, then they like the entitlements, and they want the entitlements to keep coming." (Ex. 47, at Tr. 441:7, 13, 17; Ex. 38, at 2:16-2:30.)

451. Texas Land Commissioner Jerry Patterson called objections to the placement of the Confederate Flag on license plates "[r]ace-baiting" and suggested "inflammation" on the part of the opponents. Mr. Patterson continued: "I am proudly a member of the [Sons of Confederate Veterans]; my great grandfather James Monroe Cole served in the Louisiana Infantry during the War, died in the Texas Confederate Veterans Home and is buried in the Texas State Cemetery here in Austin. As a statewide elected official, I sponsored the plate because of my personal

heritage and my commitment to Texas history – even the history others might find offensive." At the beginning of the article, Mr. Patterson placed a quotation suggesting that he did not care who he offended with the sponsorship: "There is no statutory protection against being offended. Actually, it's the privilege of every American to be offended." (Pl. Ex. 391 [Dkt. 330-4, at p. 7].)

452. Texas Land Commissioner Jerry Patterson, who was reelected in 2010, sponsored a license plate featuring the Confederate flag. (Pl. Ex. 391 [Dkt. 330-4, at p. 7].)

453. Richard Land, President of the Southern Baptist Convention's Ethics & Religious Liberty Commission stated in the Houston Chronicle on July 30, 2010, "If the conservative coalition is going to be a governing coalition, it's going to have to include an awful lot of Hispanics, an you're not going to bring an awful lot of Hispanics into your coalition with anti-Hispanic immigration rhetoric." (Pl. Ex. 390 [Dkt. 330-4, at p. 1].)

454. State Representative Leo Berman, "who is pushing for a tough Arizona-style immigration law for Texas, said evangelical ministers who promote immigration reform risk losing their congregations and the White House in the future." (Pl. Ex. 390 [Dkt. 330-4, at p. 1].)

455. Rep. Berman stated, "It could cause a divide in the right. There's no question about it. . . . The right in Texas, the Baptist, the Methodists, the Episcopalians, the people on the right, just don't want to see that happen. So, they might be causing problems with their own churches." (Pl. Ex. 390 [Dkt. 330-4, at p. 1].)

456. In a broadcast of NPR's All Things Considered the reporter stated: "In Texas, the Republican Party is changing tact on illegal immigration. The relatively welcoming, tolerant attitude embraced by George W. Bush when he was governor is waning. It's been overtaken by a flood

of Arizona-style get-tough measures. Nearly 100 immigration bills have been written or filed in the current legislative session." (Pl. Ex. 388 [Dkt. 330-3, at p. 4].)

457. The program described some of the bills from this session: Berman has filed a bill that would make English the official state language. Rep. BERMAN: 'That will shut off the state [sic] printing in any language but English, and that's going to save millions of dollars right there.'" (Pl. Ex. 388 [Dkt. 330-3, at p. 4].)

458. NPR quoted State Representative Aaron Pena, a Texas Republican, as stating, "The tone of the debate is basically saying: We don't want you. This is a war over our culture. These people bring diseases into our country." (Pl. Ex. 388 [Dkt. 330-3, at p. 5].)

459. NPR further reported that "Pena says there are plenty of Texas Republicans who quietly share his concern about the tone of the debate and its long-term effect on Hispanic voters." (Pl. Ex. 388 [Dkt. 330-3, at p. 5].)

4. Procedural Irregularities in Passing the Redistricting Legislation

460. Burt Solomons is a state representative from Denton County and is the current Chair of the House Redistricting Committee. (Tr.1551:25-1552:14).

461. Chairman Solomons hired Ryan Downton as legal counsel. (Ex. 47, at Tr. 1554:18-25).

462. Chairman Solomons did not allow questions to be asked of Ryan Downton in the House Committee claiming Downton was Solomons' personal counsel. (Ex. 47, at Tr. 1609: 3-14)

463. Chairman Solomons did not take part in the statewide hearings held in the intersession between the 81st and 82nd Legislatures. (Ex. 47, at Tr. 1556:20-25).

464. There was not enough time or notice for the minority community to make comments or analysis of the State-produced maps during the Legislative session. (Ex. J-52, at 68:13-69:19)

465. The Senate Select Committee on Redistricting and the House Redistricting Committee hearings surrounding the passage of all the redistricting legislation are replete with examples of hearings without public input or testimony, rushed meetings, and, at least in one instance of the committee completely ignoring the input of a state senator seeking a courtesy. (Flores Report, Pl. Ex. E-8 [Dkt. 191-1], at p. 6.)

466. In the State Legislature, the entire redistricting process was rushed. (Ex. 47, at Tr. 441:20-24.)

467. The State Legislature held some redistricting hearings with no maps. (Ex. 47, at Tr. 441:20-25.)

468. The State Legislature held some redistricting hearings with no data. (Ex. 47, at Tr. 441:20-25.)

469. Several State Senators complained that they did not have enough time to prepare for the redistricting hearings. (Ex. 47, at Tr. 441:25-442:3.)

470. Several State Senators complained that they did not have enough time to obtain expertise that would speak to the redistricted portions of the plans. (Ex. 47, at Tr. 441:25-442:3.)

471. A senior State Senator, asked for a courtesy, and the committee denied it to him. This kind of denial is extremely rare. (Ex. 47, at Tr. 442:3-6.)

472. The Texas Legislature's process was abnormal. It was not run like the normal legislative hearing process. (Ex. 47, at Tr. 442:7-9.)

473. On January 24, 2011, the Texas House of Representatives rejected a rules adoption seeking that all legislative approved maps comply with the Voting Rights Act. (PL. Ex. 223 [Dkt. 320-2, at 22-24].)

(a) **State House Plan**

474. Chairman Solomons filed a skeleton bill for the Texas State House map right around March 2011. (Ex. 47, at Tr. 795:8-15)

475. The substantive redistricting bill for the Texas House map was not filed until April 13, 2011 (Ex. 47, at Tr. 795:16-17)

476. Chairman Solomons provided very little notice for the April 15 and April 17 public hearings despite objections from minority legislators. In comparison to previous sessions, this was more expedited time line. Previous sessions provided for at least a week and half notice. (Ex. 47, at Tr. 795:18-797:1)

477.

478. The House Rules provide for a three to five day rule for hearing postings. The notice for the April 15th House Redistricting hearing on the State House map provided for less than two days notice. (Ex. J-60, at 83:19-85:15)

479. Although it was called by the Committee, Chairman Solomons did not attend the House Redistricting public hearing on Sunday, April 17, 2011. (Ex. J-60, at 85:16-18).

480. Notice of the House Redistricting Committee on April 19, 2011 was announced from the floor of the House. (Ex. J-60, at 88:2-23).

481. The House Redistricting Committee held a public hearing on the concept of Congressional redistricting, but never held a hearing to take public comment on the Congressional map that was actually passed by the Committee. (Ex. 47, at Tr. 1571: 22-1572:3).

482. The only explanation for the expedited schedule on the Texas House map was that the legislature was operating on a expedited schedule, despite five to six weeks left in the legislative session. (Ex. 47, at Tr. 798:5-799:1)

483. There were few changes to the Texas House map from the time it was introduced to its passage and the changes were minor in nature. Public input was ignored. Changes to increase minority

opportunity were not accepted and the vote was predetermined. (Ex. 47, at Tr. 799:4-6; 802:21-803:14;806:6-21)

484. The House leadership did not discuss the implications of a statewide map with the minority caucuses and never asked for input from MALC. (Ex. 47, at Tr. 114:25-115:6; 116:19-117:1)

485. Chairman Solomons made it clear that if a county delegation could not come up with a map collectively, his staff would draw for them. (Ex. 47, at Tr. 117:9-22)

486. Chairman Solomons wanted a member-driven process for the State House Redistricting map meaning he wanted county delegations to have as much input as possible. (Ex. 47, at Tr. 1560: 24-1561:19).

487. Gerardo Interiano, Ryan Downtown, and the House members themselves drew the State House map. (Ex. J-60, at 33:15-34:6).

488. Chairman Solomons defined a drop-in district as an urban district that would be restricted by the county line rule but would have multiple districts inside the county. Rep. Solomons asked the county delegations to submit a consensus map. (Ex. 47, at Tr. 1570:24- 1571:12; 1576:4-20).

489. Chairman Solomons assumed that Voting Rights Act compliance was being looked at by the county delegation in the drop-in counties and did not independently verify whether the counties had enough Latino opportunity districts. (Ex. 47, at Tr. 1603:9-19).

490. The Rio Grande Valley delegation did not agree on a House map. Representative Aaron Pena did not attend the delegation meetings and did not cooperate with the delegation. (Ex. 47, at Tr. 73:8-18; 159:25-160:11)

491. Senator Seliger, the chairman of the Senate Select Committee on Redistricting, did not work with Chairman Solomons on the State House Map. (Ex. 47, at Tr. 1564:11-20).

492. Minority members of the Texas Legislature knew that the Legislative Council had produced a redistricting primer for members of the legislature and it placed a higher value on compliance with the Voting Rights Act when compared to the preservation of the whole county. (Ex. 47, at Tr. 76:16-78:3)

493. The Mexican American Legislative Caucus (MALC) drew alternative maps that were presented to the Legislature. (Ex. 47, at Tr. 71:25-72:8)

494. MALC was successful in drawing a new Latino majority district in Hidalgo and Cameron County while still maintaining the status quo in terms of incumbency, compactness, and Latino opportunity districts in the surrounding districts. (Ex. 47, at Tr. 85:19-86:7)

495. In comparison to previous redistricting years, the 82nd session was less transparent and the adverse impact on minorities was greater. (Ex. 47, at Tr. 805:9-806:5)

496. Chairman Solomons did not personally attempt to determine which districts were Latino opportunity districts or attempt to determine whether additional districts needed to be added anywhere, despite being aware of significant Latino growth and a potential need for one or two additional Latino opportunity districts. (Ex. 47, at Tr. 1584: 1-25; 1585:5-23; 1604:3-10).

497. Chairman Solomons did not look into whether there was racially polarized voting in particular areas of the state or apply a particular number to come to his own understanding about which districts were Latino opportunity districts in the benchmark or the enacted plan. (Ex. 47, at Tr. 1585: 1-4; Ex. J-60 23:3-15).

498. Chairman Solomons did not ask his staff to check into drawing any additional Latino opportunity districts in Plan H283, and he claimed his staff never told him one would be needed. (Ex. 47, at Tr. 1586:14-1587:17)

499. Chairman Solomons did not offer any amendments to the House Plan that added additional Latino opportunity districts. (Ex. 47, at Tr. 1588: 9-11).

500. Chairman Solomons knew that there were population overages in Hidalgo and Cameron Counties, but he never came to the conclusion that an additional Latino opportunity House district could be drawn between Hidalgo and Cameron counties. (Ex. 47, at Tr. 1588:21-1590:10).

501. Chairman Solomons testified that he could not remember if it would have been possible to draw two Latino opportunity districts in Nueces County if Nueces County population was joined with population in either San Patricio County or from northern counties.

502. Chairman Solomons testified that he could not define the difference between spillover versus a cut that would violate the county line rule (Ex. J-60, at 35:18-20).

503. Chairman Solomons took the position that he was not going to break the Texas county line rule unless the U.S. Supreme Court told him he must. (Ex. 47, at Tr. 1592:20-1593:20; Ex. J-60, at 46:13-47:21).

504. Chairman Solomons testified that the county line rule governed in a conflict between the county line rule and the creation of a Latino opportunity district pursuant to the Voting Rights Act. (Ex. 47, at Tr. 1594:10-16).

505. Chairman Solomons issued a public statement that he rejected a plan that was offered to the committee because it broke the county line rule in order to create minority opportunity districts. (Ex. 47, at Tr. 1595: 20-24).

506. On April 15, 2011 Chairman Burt Solomons expressed his goal of placing the Texas Constitution county line rule over compliance with Section 2 of the Voting Rights Act at the House Redistricting Committee hearing. (PL. Ex.224 [Dkt. 320-2, at 32-33].)

507. The Texas Legislature was advised by its counsel that the County Line Rule must yield to the requirements of the Voting Rights Act. The Texas Legislative Council PowerPoint by Senior Legislative Council David Hanna on the County Line Rule for House Districts presented on March 1, 2011 states, "Basic Rule: A county may be cut in drawing a house district only when required to comply with: the one-person, one-vote requirement of the 14th Amendment to the United States Constitution; or the Voting Rights Act." (PL. Ex. 226 [Dkt. 320-2, at 51].)

508. Chairman Solomons did not make a decision regarding whether El Paso County needed an additional Latino opportunity district and cannot explain how the neighborhood lines match with the district line in Plan H283. (Ex. 47, at Tr. 1601:12-18; 1602:19-1603:8).

509. Chairman Solomons acknowledges that it is possible that the member from El Paso that is elected from non-Latino opportunity district might have wanted his boundary lines to remain the same despite it being a violation of the Voting Rights Act. (Ex. J-60, at61:16-62:7)

510. Chairman Solomons does not know how legislative counsel verified whether an additional Latino opportunity district was necessary. (Ex. 47, at Tr. 1603:21-1604:7).

511. Notice for the April 15, 2011 public hearing of HB 150, the proposed legislation enacting the Texas House Map, in the House Redistricting Committee was provided at 2:15 p.m. on April 14, 2011. Map H113, which was released by Representative Burt Solomons on April 13, 2011 at 4:42 p.m., received a public hearing in the House Redistricting Committee on April 15, 2011

which allowed for less than 2 days for public analysis. (PL. Ex. 203 [Dkt. 320-1, at 13]; PL. Ex 204 [Dkt. 320-1, at 14] PL. Ex 205 [Dkt. 320-1, at 15].)

512. The witness list for the House Redistricting Committee on April 15, 2011 did not reflect the testimony of two Latino House members from the Rio Grande Valley although they were present and testified in opposition to the proposed plan: Representative Sergio Munoz (HD 36) and Representative Armando Martinez (HD 39). (PL. Ex. 206 [Dkt. 320-321, at 17].)

513. House Bill 150, the House Redistricting map, was heard, amended and voted out of the Texas Redistricting Committee on April 19, 2011 in Room 1W.14 without any live public broadcasting or any ability to view an archived video. (PL. Ex. 207 [Dkt. 320-1, at 18-22]; PL. Ex. 208 [Dkt. 320-1, at 23]; PL. Ex. 220 [Dkt. 320-2, at 12].)

514. Notice for the May 6, 2011 public hearing of HB 150 in the Senate Select Redistricting Committee was provided at 6:00 p.m. on May 4, 2011, less than 48 hours before the hearing. (PL. Ex. 209 [Dkt. 320-1, at 24].)

515. No changes were made to HB 150 in the Texas Senate thereby ensuring the only meaningful opportunity for input was in the House of Representatives. (PL. Ex. 210 [Dkt. 320-1, at 25].)

516. MALDEF submitted a letter to Chairman Solomons on April 27, 2011 regarding the proposed redistricting plan (H 153) for the Texas State House of Representatives and notifying the Chairman that Latinos already possessed the ability to elect their candidates of choice in benchmark House District 90 and House District 148. The letter states that by raising the SSVR in those districts, the plan does not create new Latino opportunity districts that can offset the loss of District 33. (PL. Ex. 227 [Dkt. 320-2 at 68-75].)

517. On April 15, 2011 MALDEF provided testimony on behalf of the Latino Redistricting Task Force and informed the House Redistricting Committee that H115, the proposed Texas House Redistricting Map, reduced Latino electoral opportunity. Specifically, MALDEF informed the committee that the plan raised a potential section 5 violation for eliminating District 33 in Nueces County. MALDEF also raised concerns that the plan did not create the required number of Latino majority districts under Section 2 of the Voting Rights Act. (PL. Ex.224 [Dkt. 320-2, at 31].)

518. The Senate did not make any changes to Texas State House map. (Ex. J-59: 42:7-15)

(b) **Congressional Plan**

519. The procedure for the Congressional map in the special session was similar to the process for the Texas House map with little opportunity to make changes in a rushed timeline. (Ex. 47, at Tr. 806:22-807:19)

520. There was no committee hearing or public testimony on a Congressional map during the regular session and it was not debated until the special session. (Ex. 47, at Tr. 91:25-92:4; 109:19-21)

521. Once the Congressional map was produced it was voted on within three days. (Ex. 47, at Tr. 92:18-23)

522. Doug Davis drafted congressional maps for the Senate. (Ex. J-59: 20:22)

523. The Senate Redistricting committee did not hold any hearings on the proposed Congressional Redistricting plan that featured a proposed map during the regular session. (Ex. J-59: 40:2-7).

524. A scheduled Senate Redistricting Committee on May 19th on the Congressional Plan during the regular session was cancelled. (Ex. J-59: 8-10).

525. Alternative maps for the congressional plan that proponents claimed better reflected the growth of the minority community were introduced and rejected during the Special session. (Ex. J-59: 40:24-41:11)

526. SB 4, the proposed legislation enacting the congressional map, passed both the House and Senate chamber in approximately two weeks. (Ex. J-59: 41:18-25)

527. The Senate realized that the House draft on the congressional plan was much more advanced and the Senate took more of House ideas because of time. (Ex. 47, at Tr. 1607:3-1608:14).

528. The Texas Senate looked at creating a Latino opportunity congressional district in Harris County because of the population growth. (Ex. J-59: 11:22-12:11)

529. The Texas Senate looked at creating a Latino opportunity congressional district in the Dallas Fort Worth area. (Ex. J-59: 12:16-22;22:5-12)

530. Chairman Solomons understood that Congressional District 27 was protected under the Voting Rights Act. The enacted plan divided benchmark CD 27 into two districts and cut Nueces County loose from the Valley. (Ex. J-60, at 153:1-16).

531. Congressman Lamar Smith was the spokesperson for the Texas Congressional delegation for the Congressional map and submitted a plan to the committee. (Ex. 47, at Tr. 444:1-8, 1580:18-23; 1610:6-15).

532. Congressman Lamar Smith submitted a Congressional plan that included a new Hispanic opportunity district in the Dallas- Fort Worth area that was not adopted by the State. (Ex. J-60, at 110:8-112:2)

533. The redistricters in Texas generally give a great deal of deference to the head of the congressional delegation of the same party when drawing new congressional districts. (Ex. 47,

at Tr. 444:21-445:3; 1320:8-15.) More often than not, his wishes are included in the redistricting plan. (Ex. 47, at Tr. 445:1-3.)

534. Representative Lamar Smith emailed the redistricters proposing a "Voting Rights Act district" in the Dallas-Ft. Worth Metroplex. (Ex. 47, at Tr. 445:11-15; Pl. Ex. 311 [Dkt. 323-2] at Congress022-23.)

535. The district that Rep. Smith proposed, CD 33, had a 61% HVAP. (Ex. 47, at Tr. 445:16-18; Pl. Ex. 311 [Dkt. 323-2] at Congress021.)

536. Rep. Smith's proposed district, or a similar district, was not featured on the enacted plan, C185. (Ex. 47, at Tr. 446:11-14; Ex. J-8.)

537. Congressman Cuellar, a Democrat, worked closely with Congressman Smith, a Republican and the head of the Texas Delegation, to determine the location of Texas's four new districts. They determined that Republicans should get two and Latinos should get two, with one Latino district in the Dallas-Fort Worth area. (Ex. 47, at Tr. 1320:20-1321:25.)

538. The Texas Legislature ignored the wishes of the Texas Republican congressional delegation, and this was a surprise to Rep. Cuellar, because of how the Legislature historically worked with the input of the delegation and because the delegation had presented a bipartisan deal. (Ex. 47, at Tr. 1322:1-1323:5.)

539. No hearings with Congressional maps proposed by the legislative leadership were held during the entire 82nd Regular Legislative Session in either the House or Senate Redistricting Committees. (PL. 211 [Dkt. 320-1, at 29-30]; PL. Ex. 212 [Dkt. 320-321, at 31-32].)

540. The only proposed Senate Committee Hearing on a Congressional Map (SB 308) during the regular session was cancelled. (PL. Ex. 213 [Dkt. 320-1, at 33].)

541. SB 4, the proposed legislation enacting the Congressional map, passed both the House and Senate Chambers in 16 days including weekends during the special session. (PL. Ex. 214 [Dkt. 320-1, at 34-36].)

542. Notice for the House Redistricting Committee on HB 4, the companion bill for SB 4, was provided on June 1 for a public testimony hearing on June 2, 2011 and no subsequent public testimony was allowed for either HB 4 or SB 4 in the House Redistricting Committee. (PL. Ex. 216 [Dkt. 320-1, at 38]; PL. Ex. 217 [320-1, at 39].)

543. Alternative maps and amendments to the congressional map (SB 4) reflecting minority input, minority communities of interest and adherence to the Voting Rights Act offered on the House Floor and Senate Floor were rejected. (PL. Ex. 218 [Dkt. 320-2, at 1-8]; PL. Ex. 219 [Dkt. 320-2, at 9-11].)

544. Alternative maps and amendments to the congressional map (SB 4) reflecting minority input, minority communities of interest and adherence to the Voting Rights Act offered in the Senate Select Committee on Redistricting and the House Redistricting Committee were rejected. (PL. Ex. 221 [Dkt. 320-2, at 13-14]; PL. Ex. 222 [Dkt. 320-2, at 16-19].)

VI. Intent

545. The factors identified by the Supreme Court in *LULAC v. Perry* as indicating intentional discrimination are present in the revisions to CD23 in Plan C185.

546. The State's expert, Dr. Alford, testified, with respect to the changes in CD23 from Plan C100 to Plan C185, that "[t]here are some obvious parallels between what happened previously and what happened this time." (Ex. 47, at Tr. 1875:2-9.) Dr. Alford also stated, when discussing the changes to CD23 "we feel like we are all having déjà vu[.]" (Ex. 47, at Tr. 1929:18-21.)

547. The State's expert, Dr. Alford, testified, with respect to the changes in CD23 from Plan C100 to Plan C185, that the issues of partisanship and race conscious redistricting are going to come up in this case. (Ex. 47, at Tr. 1882:3-8.)

548. The State's expert witness, Dr. Alford, testified that he had observed as an expert witness in 2003 that changes were made to CD23 to shore up the reelection prospects of Representative Bonilla and in Plan C185 the changes were made to shore up the reelection chances of Representative Canseco. (Ex. 47, at Tr. 1880:22-1881:7.)

549. The State's expert witness, Dr. Alford, testified that he had observed as an expert witness in 2003 that changes were made to CD23 to add overwhelmingly Anglo Hill Country counties, while splitting the city of Laredo and Webb County. Dr. Alford further testified that although he was unaware Plan C185 added to CD23 the heavily Anglo counties north of the Pecos River, he did know that some people were upset that CD23 in Plan C185 splits the city of Eagle Pass and Maverick County. (Ex. 47, at Tr. 1881:8-1882:2.)

550. In *LULAC*, the benchmark CD23 was a Latino majority district whose incumbent was not the candidate of choice. Most observers agreed CD23 was about to elect the Latino candidate of choice. (Alford 1820:17-1821:11.)

551. The State's expert witness, Dr. Alford, testified that "If I was advising the legislature on drawing the 23rd, I would not have done what was done to the 23rd." (Ex. 47, at Tr. 1838 9:21.) Dr. Alford further testified:

> [M]y first advice to the legislature would be just -- you know, in simple -- with a slight memory of history, do as little as possible to the 23rd as you can. It really has been a difficult -- it was a difficult district for the Court to draw. It was a difficult district for the legislature to draw. But, basically, enough is enough, right? Don't make this hard on yourself. . . Don't mess with the 23rd. That would be my first rule for drawing the districts.

(Ex. 47, at Tr. 1840:8-22.)

552. The State's expert witness, Dr. Alford, testified "I would have advised either making -- either -- rather than creating a replacement district for the 23rd, I would have advised making the 23rd itself a better performing district in terms of election numbers, or -- basically that, or leaving the 23rd alone." (Ex. 47, at Tr. 1840:23-1841:5.)

553. The smallest level of geography at which election data is available in redistricting technology is called a voter tabulation district, or VTD, and VTD typically conform to current election precincts. (Ex. 47, at Tr. 317:10-12.)

554. With the existing redistricting software, map drawers can add a precinct, a VTD, a census block, or a group of census blocks to a district. As soon as the map drawer creates a district, she has immediate access to election returns on a partisan basis, as well as the ethnic makeup of the district. (Ex. 47, at Tr. 316:18-317:5.)

555. Redistricting software immediately can indicate the effect of moving a VTD into or out of a district on election returns or racial composition. (Ex. 47, at Tr. 317:24-318:20.)

556. Color shading by race or election returns for a particular election is available on the redistricting software. This allows people who do not know certain areas to accomplish racial and/or politicalredistricting goals with respect to those areas. (Ex. 47, at Tr. 319:1-10.)

557. Every single time someone alters a map on REDAPPL, the software can show the effect on the racial and ethnic composition of the district. (Ex. 47, at Tr. 661:23-662:2.)

558. Hispanics show disproportionately lower levels of voter registration and turnout, as well as education and income, when compared to non-Hispanics in Texas, which is a clear indication of

a legacy of discrimination that directly and indirectly has prevented their full participation in the electoral process. (Chapa Report, Ex. E-1 [Dkt. 185-5], at p. 16.)

559. However, even people with lower education and income levels participate at higher rates in districts where there is a majority-minority population—including increased voting and voter registration. (Ex. 47, at Tr. 200:20-201:2.)

560. Chairman Solomons never told his staff that the maps for the House or Congressional boundaries should give primary consideration to incumbency reelection. (Ex. 47, at Tr. 1634:19-1635:5).

A. Congressional Plan

561. In communicating his desires to the mappers, Congressman Lamar Smith consistently used the terms "Republican district" and "Voting Rights district" as opposites. He did not use the term "Democratic district." (Ex. 47, at Tr. 654:8-15; Pl. Ex. 311, at pp. Congress021-27 [Dkt. 320:2, at pp. 21-27.)

562. Representative Lamar Smith emailed certain people responsible for congressional redistricting and identified potential districts as either "Republican district[s]" or "Voting Rights Act district[s]." (Ex. 47, at Tr. 443:5-19; Pl. Ex. 311 [Dkt. 323-2, at pp. Congress021-27].

563. Rep. Smith's email drew a distinction between Republicans and Latinos, rather than Republicans and Democrats. (Ex. 47, at Tr. 443:15-25.) Rep. Smith was speaking on behalf of the Texas Republican Delegation for the United States House of Representatives. (Ex. 47, at Tr. 444:1-8.)

564. All minority organizations opposed the Congressional Plan. (Kousser Decl., Ex. E-2 [Dkt. 128-1], at p. 108.)

565. Chairman Solomons of the House Committee refused to consider coalition districts to establish Hispanic opportunity districts, but clearly did so for African-American opportunity districts,

where not considering African-American coalition districts would result in reducing the effective number of African-American districts, which would be legally and politically problematic. (Kousser Decl., Ex. E-2 [Dkt. 128-1], at p. 131-32.)

566. CD 21 in Plan C185 has portions from Austin and San Antonio and is represented by Rep. Lamar Smith. (Ex. 47, at Tr. 943:11-944:2.)

567. In 1996, 1998, and 2000, CD 21 contained portions from San Antonio and from Williamson County. (Ex. 47, at Tr. 944:3-11; Pl. Ex. 305.)

568. In the court-ordered map used for the 2002 elections, CD 21 had portions from Austin and San Antonio. (Ex. 47, at Tr. 944:12-16; Ex. 306.)

569. In the legislatively adopted map used for the 2004 elections and the 2006 primaries, San Antonio and Austin were united in CD 21. (Ex. 47, at Tr. 944:19-22.)

570. Webb County was located in CD 23 from 1992 through the 1996 primaries. (Ex. 47, at Tr. 945:2-7; Ex. 304.)

571. In the map used from the 1996 special elections through the 2000 elections, Webb County was located in CD 23. (Ex. 47, at Tr. 945:8-12; Ex. 305.)

572. In the 2002 elections, from a court-drawn map, Webb County was located in CD 23. (Ex. 47, at Tr. 945:13-16; Ex. 306.)

573. CD 23 in C185 splits 19 precincts in Bexar County. (Ex. 47, at Tr. 679:22-25.)

574. Maverick County has never been split before in CD23. (Ex. 47, at Tr. 681:21-682:2; 766:22-767:1.)

575. Maverick County contains about 58,000 people. (Ex. 47, at Tr. 681:2-3; 766:14-45.)

576. For the past ten years, Maverick County has turned out about 12,000 to 14,000 voters for presidential elections, and 8,000 to 9,000 voters in any other election, and they vote heavily for the Latino-preferrred candidate. Splitting Maverick County could make the difference in an election. (Ex. 47, at Tr. 681:13-18, 771:9-18.)

577. Maverick County politicians were not informed by the Legislature that Maverick County would be split. They learned through the media. (Ex. 47, at Tr. 767:2-7.)

578. Maverick County residents and county officials would prefer that Maverick County be contained in one congressional district. Splitting Maverick County dilutes the voting strength of its citizens, who know that as a small community, they have to vote together to be heard. (Ex. 47, at Tr. 767:15-768:15.)

579. The people of Maverick County are politically active and a significant voting bloc in their congressional district. When Maverick County is whole, it cannot be ignored. Maverick County would rather be a significant part of one district than an insignificant part of two districts. (Ex. 47, at Tr. 769:1-24. 771:3-6.)

580. Maverick County needs more federal services. For example, it needs a location to serve veterans, who now have to go to San Antonio or the Valley. Maverick County was getting close to securing a veterans' facility but now feels that the opportunity has evaporated with the split. (Ex. 47, at Tr. 769:25-770:10.)

581. Maverick County has funding needs for securing basic services, such as water, sewers, paving, and security for the colonias. (Ex. 47, at Tr. 772:9-19.)

582. Maverick County is trying to secure a four-year college. It experiences a brain drain because people leave to get an education and do not return. Maverick County will not have the clout to get a university if it is split into two congressional districts. (Ex. 47, at Tr. 772:20-773:11.)

583. Maverick County has high and seasonal unemployment. There is a large migrant worker population that returns every October. (Ex. 47, at Tr. 772:12-21.)

584. There was no need to cut Maverick County in configuring CD 23. (Ex. 47, at Tr. 784:2-3.)

585. Maverick County housing is all lower to middle income, countywide. (Ex. 47, at Tr. 773:22-774:2.)

586. Ryan Downton, at the time General Counsel for the House Committee on Redistricting, was the primary person responsible for the drawing of the congressional map. (Ex. 47, at Tr. 903:5-7; Ex. J-62-I, at 9:1-8.)

587. Gerardo Interiano assisted Ryan Downton on the congressional map. (Ex. 47, at Tr. 1418: 15-22).

588. When drawing the maps, Mr. Downton would look at the population of the district, the SSVR, the HVAP, the African American population, and the BVAP, among other data. (Ex. J-62-I, at 40:22-41:3.)

589. Mr. Downton turned on the shading for election results and SSVR when drawing the maps in REDAPPL. (Ex. J-62-I, at 41:15-17.)

590. The only way that Mr. Downton sought to ensure compliance with the one person, one vote requirement on the State House plan was to ensure that the maximum deviation fell below 10%. (Ex. J-62-I, at 14:22-15:4.)

591. Mr. Downton sought to avoid retrogression by maintaining the current number of majority African American and majority Hispanic districts. (Ex. J-62-I, at 15:12-16.)

592. According to Mr. Downton, HD 33 in the benchmark was a Hispanic majority district. (Ex. J-62-I, at 20:9-17.)

593. Mr. Downton balanced the requirements of Section 2 of the Voting Rights Act with the Texas Constitution and the political reality of getting a map passed. He viewed the requirements of the Voting Rights Act as equal with getting enough votes to get the map passed. (Ex. J-62-I, at 20:24-21:4; Ex. J-62-I, at 62:17-20.)

594. Mr. Downton relied solely on SSVR and HCVAP in determining whether a district was a Latino majority district, which he equated with Latino opportunity district. (Ex. 47, at Tr. 966:6-12; Ex. J-62-I, at 22:6-11.)

595. Chairman Solomons believes that if a new congressional plan were to reduce the number of wins by the minority candidate of choice by three or more it would create a problem. It would also be a problem if the number of wins went from 3 in the base plan down to one and would necessitate a change to the plan. (Tr.1605:11-1607:2).

596. Senator Kel Seliger, Chair of the Texas Senate Select Redistricting Committee, testified that in the benchmark plan, Congressional District 23 is a Latino opportunity district and was drawn to be a Latino opportunity district by the Court. (Ex. J-59: 13:7-18)

597. Senator Kel Seliger, Chair of the Texas Senate Select Redistricting Committee, testified that Congressional District 23 was reconfigured in Plan C185 with the goal of protecting the incumbent in the general election as much as possible by making the district more Republican. Senator Seliger further testified that CD23 in the benchmark plan was perceived to be unstable in

the general election, but needed to remain a Latino opportunity district. (Ex. J-59: 13:19-15:11; 30:6-15; 37:21-24)

598. Senator Kel Seliger, Chair of the Texas Senate Select Redistricting Committee, testified that he believed it was legally required to build a district to elect the candidate of choice in CD 23. (Ex. J-59: 31:6-16)

599. To reconfigure CD 23, Chairman Seliger looked at voting patterns, ethnic composition and partisan performance patterns. (Ex. J-59: 15:12-16:3)

600. Senator Kel Seliger, Chair of the Texas Senate Select Redistricting Committee, testified that no analysis was done to determine if Congressman Canseco was the Latino candidate of choice. (Ex. J-59: 31:3-16)

601. Senator Kel Seliger, Chair of the Texas Senate Select Redistricting Committee, testified that no study was done in the counties of Loving, Ward, Winkler, or Crane to determine if the Republican primary voters would support an Hispanic candidate (Ex. J-59: 36:9-19)

602. Senator Kel Seliger, Chair of the Texas Senate Select Redistricting Committee, testified that District 23 could have been pulled downward closer to the border instead of going up to Loving, Ward, Crane, and Winkler to ensure Latinos determined the outcome of the election. (Ex. J-59: 38:5-19)

603. The Senate Special Redistricting Committee attempted to draw a safe district for Rep. Canseco but could not keep it safe for Canseco and as a Latino opportunity district. As Chairman Seliger put it: "A. We just -- in order to keep it as an opportunity district we just couldn't piece it together where -- where it served Congressman Canseco; and we wanted to if we could. And then they came up with their design and we thought it was good." (Ex. J-59, at 14:6-10.)

604. Chairman Seliger testified that if Mr. Canseco were not the Latino candidate of choice, but the Legislature nonetheless was taking steps to make this district safer for Mr. Canseco, "it would be a violation [of the Voting Rights Act]." (Ex. J-59, at 31:6-16.)

605. Mr. Downton did not factor the State's regression analysis into his determination whether a district was a Latino majority district. (Ex. J-62-I, at 22:16-23:4.)

606. When measuring VRA compliance, Mr. Downton stated that he didn't consider political performance as particularly relevant. He further testified that he would classify a district as a majority minority district if it elected the minority candidate of choice 3 out of 10 times or 1 out of 10 times. (Ex. J-62-I, at 24:21-25:2; Ex. 47, at Tr. 966:20-25.)

607. According to the U.S. Census, CD 20 in the benchmark was overpopulated by about 13,400 people and could have been brought into constitutional compliance by shedding a few precincts. (Ex. 47, at Tr. 945:17-946:19.)

608. On behalf of the Texas Republican delegation from the United States House of Representatives, Mr. Opiela urged Mr. Downton to draw CD 23 to protect Rep. Canseco. Mr. Downton accommodated this request and made protecting Rep. Canseco's incumbency a goal. (Ex. J-62-I, at 29:6-30:1; 37:10-13.)

609. Mr. Downton's goals with respect to drawing CD 23 were to improve Rep. Canseco's chances for reelection and to maintain or increase all of the Hispanic population percentages, such as HCVAP and SSVR. (Ex. J-62-I, at 73:18-74:2, 96:10-15.)

610. To protect Rep. Canseco's incumbency, Mr. Downton sought to increase the number of Republicans in CD 23. He did this by moving precincts in and out of the district. (Ex. J-62-I, at 75:22-25; 79:13-16.)

611. Mr. Downton sought to protect Rep. Canseco's incumbency by including in CD 23 precincts that went for McCain in the 2008 Presidential election, even though he knew it was possible that these precincts went for McCain because Anglo voters preferred McCain and turned out at higher rates than Latino voters. (Ex. 47, at Tr. 956:4-19; Ex. J-62-I, at 76:24-77:20.)

612. Mr. Downton admitted that Latino majority precincts that went for McCain in 2008 could have voted that way because of an increase in racially polarized voting. (Ex. 47, at Tr. 957:8-15; Ex. J-62-I, at 78:2-22.)

613. As compared to the benchmark, Mr. Downton was aware that CD 23 in C185 resulted in an increase in the total Hispanic population, an increase in the SSVR, an increase in the HCVAP, and an increase in the percentage of people voting for McCain in the 2008 Presidential election. (Ex. 47, at Tr. 967:1-5; Ex. J-62-I, at 39:20-23.)

614. According to the 2010 Census, CD 16 was overpopulated by about 59,000 people that it had to shed into CD 23. (Ex. J-62-I, at 80:1-23.)

615. According to the 2010 Census, CD 23 was overpopulated in the benchmark. (Ex. J-62-I, at 80:24-81:1.)

616. CD 23 in Plan C185 has about 67% of the population in CD 23 in the benchmark. (Ex. J-62-I, at 82:21-25.)

617. CD 23 in Plan C185 contains a portion of CD 16 in the benchmark, and picks up about 76,000 individuals from CD 16 in the benchmark. (Ex. J-62-I, at 83:3-18.)

618. CD 23 in Plan C185 picks up about 33,000 people from CD 11 in the benchmark. (Ex. J-62-I, at 83:19-23.)

619. It is possible to bring CD 23 into population equality by simply pulling it towards the U.S. Mexico border out of San Antonio, West Texas, or South Texas. (Ex. 47, at Tr. 961:23-962:17; Ex. J-62-I, at 85:7-18.)

620. CD 23 in Plan C185 moved into areas in Frio and Atascosa counties to increase the SSVR. (Ex. J-62-I, at 85:19-25.)

621. CD 23 in the benchmark included all of Maverick County, but Mr. Downton admitted that portions were removed because Maverick County does not have a good record of voting Republican. Portions were retained to increase the SSVR. (Ex. 47, at Tr. 963:8-14; Ex. J-62-I, at 87:3-23, 88:6-13, 90:1-8.)

622. Because the political goal was to make CD 23 stronger for Rep. Canseco, Mr. Downton testified that if Maverick County was going to make CD 23 less Republican, then it was less likely to be included in CD 23. (Ex. 47, at Tr. 964:13-19.)

623. Mr. Downton was aware that Maverick County is strongly Latino. (Ex. 47, at Tr. 965:24-966:2.)

624. If a majority Hispanic area tended to have more votes in precincts for the Republican candidate, it was more likely to become part of CD 23. (Ex. 47, at Tr. 965:17-23.)

625. When Mr. Downton was drawing CD 23, he was aware that Rep. Canseco was not the Latino candidate of choice. (Ex. 47, at Tr. 966:3-5; Ex. J-62-I, at 90:9-11.)

626. Mr. Downton chose not to include in CD 23 areas that were majority Hispanic and that tended to be less likely to prefer Rep. Canseco. (Ex. J-62-I, at 90:25-91:3.)

627. Mr. Downton asserts that CD 23 in C185 is a Latino opportunity district although he knows that the Latino candidate of choice won only 1 out of 10 reaggregated elections. (Ex. 47, at Tr. 950:14-17; Ex. J-62-I, at 93:5-23.)

628. Mr. Downton did not have any evidence regarding the degree to which voters in the Republican primary supported Latino candidates in the areas that are included in CD 23 in C185 but not in the benchmark. (Ex. 47, at Tr. 967:13-17; Ex. J-62-II, at 35:1-6.)

629. Mr. Downton did not look at primary data at all, and did not take any steps other than discussing the district with Rep. Canseco's office, to ensure that CD 23 in C185 would offer Latinos the opportunity to nominate their candidate of choice in the Republican primary. (Ex. 47, at Tr. 967:10-12; Ex. J-62-II, at 47:1-19.)

630. Mr. Downton did not have any evidence regarding the degree to which voters in the Republican primary supported Latino candidates in the areas that were in CD 23 in the benchmark but not in C185. (Ex. 47, at Tr. 967:24-968:4; Ex. J-62-II, at 35:7-11.)

631. Mr. Downton did not know whether Latino voters in the areas that are not in CD 23 in C185 but were in the benchmark may have given more votes to Latino Republicans in the primary when compared to the voters in the areas that were drawn into CD 23. (Ex. 47, at Tr. 967:18-23; Ex. J-62-II, at 12-17.)

632. Mr. Downton did not have evidence to show that the West Texas counties that were included in CD 23 in C185 but not in the benchmark would support a Latino in the Republican primary. (Ex. J-62-II, at 35:18-22.)

633. Mr. Downton did not have any data other than Rep. Canseco's satisfaction with the district as drawn to show that Rep. Canseco would likely be nominated in a racially contested primary election in CD 23 in Plan C185. (Ex. J-62-II, at 36:4-9.)

634. In the 2010 Republican primary, Rep. Canseco garnered only 32.16% of the vote, and the other 4 candidates got the remaining votes. (Ex. J-62-II, at 39:3-40:3.)

635. In the 2010 Republican primary, about one third of Rep. Canseco's votes came from the portions of Bexar County that do not appear in CD 23 in Plan C185. (Ex. J-62-II, at 40:11-18.)

636. In the 2010 Republican primary, incumbent Railroad Commissioner Carrillo performed better in the portions drawn out of CD 23 in C185 than he performed statewide and better than in those parts that remained in the district. (Ex. 47, at Tr. 968:22-969:1; Ex. J-62-II, at 45:14-17; Pl. Ex. 385.)

637. In the 2010 Republican primary, incumbent Railroad Commissioner Carrillo had more total votes from the areas taken out of CD 23 than the areas that remained. (Ex. 47, at Tr. 970:3-19.)

638. Rep. Canseco won the 2010 primary runoff against a non-Spanish-surnamed opponent, Hurd, by only 722 votes. (Ex. J-62-II, at 36:20-24.)

639. In the areas of CD 23 that are the same in C100 and C185, Mr. Canseco beat Mr. Hurd by less than 200 votes in the 2010 Republican primary runoff, garnering 50.95% of the vote. (Ex. J-62-II, at 37:23-38:5.)

640. In the areas of CD 23 from Bexar County that were shed from the benchmark to Plan C185, Rep. Canseco got about a third of his total votes in the Republican Primary runoff. (Ex. J-62-II, at 38:22-39:2.)

641. Mr. Downton could have requested and received reports from the TLC showing Rep. Canseco's Republican primary runoff performance in the areas draw out of CD 23 in C185. (Ex. J-62-II, at 43:13-22.)

642. Mr. Downton looked at maps during the redistricting process that created 7 Latino majority districts that would elect a Latino preferred candidate more than half the time. (Ex. 47, at Tr. 948:12-16.)

643. To draw an additional Latino opportunity district in South and West Texas, all one had to do was take the overpopulation from CDs 15, 16, 20, 23, 27, and 28 in the benchmark and add about 200,000 people. (Ex. J-62-II, at 66:6-21.)

644. Mr. Downton testified that it was possible to draw seven Latino opportunity congressional districts in South and West Texas and that the decision not to draw seven was a political decision. (Ex. J-62-II, at 63:2-10.)

645. According to Ryan Downton, the State's congressional mapper, including Nueces County in the South Texas configuration was considered by the redistricters, and it would have relieved pressure to maintain benchmark SSRV levels in CDs 20 and 23. (Ex. 47, at Tr. 949:22-950:3.)

646. According to the 2010 Census, the overpopulation in CDs 15, 16, 20, 23, 27, and 28 in the benchmark—all Latino opportunity districts—comprises about 74% of a new district. These numbers are consistent with the growth of the Latino community in the state being faster than the growth of the Anglo population. (Ex. J-62-II, at 65:5-25.)

647. Mr. Downton looked at statistics, but when trying to accommodate the desires of a specific elected official, he would defer to that elected official regarding whether the map accommodated those desires. (Ex. J-62-II, at 60:9-14.)

648. Mr. Downton never sat down with State Rep. Veasey in front of mapping software to work on mapping. (Ex. J-62-I, at 52:7-9.)

649. Mr. Downton never sat down with State Rep. Alonzo in front of mapping software to work on mapping. (Ex. J-62-I, at 52:12-13.)

650. Mr. Downton never sat down with State Rep. Veasey in front of mapping software to work on mapping. (Ex. J-62-I, at 52:10-11.)

651. Chairman Solomons sat with Mr. Downton in front of mapping software to work on the State House map. (Ex. J-62-I, at 52:22-53:6.)

652. Chairman Solomons sat with Mr. Downton in front of mapping software to work on the congressional map. (Ex. J-62-I, at 53:24-54:7.)

653. When mapping, Mr. Downton often kept the Obama-McCain race up as a running statistic so that he could measure how strongly the district performed for Republican candidates. (Ex. 47, at Tr. 954:4-8; Ex. J-62-I, at 56:15-57:8.)

654. When mapping, Mr. Downton did not keep political races as running data to measure whether districts could elect a Latino preferred candidate. (Ex. 47, at Tr. 954:24-955:2; Ex. J-62-I, at 57:25-58:4.)

655. When reviewing the reports on draft plans, Mr. Downton looked at certain races to assess whether the Latino preferred candidate could be elected. He looked at the following elections from the Attorney General's report on 10 reaggregated elections: 2002 general election for Governor; 2004 general election for Railroad Commissioner; 2004 general election for Court of Criminal Appeals; 2006 general election for Lieutenant Governor; 2006 general election for Court of Criminal Appeals; 2008 general election for U.S. Senate; 2008 general election for Justice of the Supreme Court; 2010 general election for Lieutenant Governor; 2010 general election for Land Commissioner; and 2010 general election for Justice of the Supreme Court. (Ex. J-62-I, at 58:5-59:17; Ex. J-62-II, at 15:18-16:7.)

656. In looking at the Attorney General's report on 10 reaggregated elections, Mr. Downton concluded that CD 23 in the benchmark elected Latino candidates in the 2002 general election

for Governor, the 2008 general election for U.S. Senate; and the 2008 general election for Justice of the Supreme Court. (Ex. 47, at Tr. 959:7-960:7; Ex. J-62-II, at 16:9-17; Pl. Ex. 293.)

657. In evaluating the electoral success of the Latino preferred candidate in the benchmark, Mr. Downton did not look at: the results for the 2008 election for the Court of Criminal Appeals, in which candidate Molina garnerd 52.18% of the vote in benchmark CD 23; the results for the 2002 election for Supreme Court Justice in which candidate Yanez garnered 53.89% of the vote in benchmark CD 23; or the 2002 race for Court of Criminal Appeals in which candidate Molina garnered 50.23% of the vote in benchmark CD 23. If Mr. Downton had considered those races, the electoral success for the Latino candidate of choice would have been 6 out of 13 instead of 3 out of 10. (Ex. 47, at Tr. 960:8-961:15; Ex. J-62-II, at 17:17-20:19.)

658. When drawing CD 23, Mr. Downton did not analyze whether Latinos could elect their preferred candidate in the Republican primary. (Ex. J-62-II, at 27:7-10.)

659. Mr. Downton opined a Republican Latino opportunity district could exist even where Latinos were unable to nominate their preferred candidate in the Republican primary. (Ex. J-62-II, at 28:13-16.)

660. Mr. Downton was told who was the Latino preferred candidate in the races he analyzed. (Ex. J-62-I, at 60:4-7.)

661. Mr. Downton admitted that CDs 15, 16, 20, 23, 27, 28, and 29 were Latino opportunity districts in the benchmark. (Ex. J-62-I, at 69:18-70:4.)

662. Mr. Downton opined that CDs 15, 16, 20, 23, 28, 29, 34, and 35 are Latino opportunity districts in Plan C185, and he considered any majority-SSVR district to be a Latino opportunity district. (Ex. J-62-I, at 70:9-15.)

663. Mr. Downton did not look at any racially polarized voting analyses for primary elections. (Ex. J-62-I, at 72:24-25.)

664. In drawing the map, Mr. Downton considered it legally risky to fail to increase the number of Latino opportunity districts in the congressional plan. (Ex. 47, at Tr. 950:23-951:3; Ex. J-62-I, at 96:23-97:7.)

665. The only data available at the block level are race, age, and Hispanic origin. Mr. Downton conceded it is impossible to identify Spanish-surnamed registered voters by party. Mr. Downton could not identify Latino Republicans while drawing CD 23. (Ex. 47, at Tr. 955:12-24; Ex. J-62-II, at 11:1-17.)

666. According to Mr. Interiano, there were two concurrent goals with respect to the redistricting of Congressional District 23—maintain or increase Hispanic demographic percentages and provide an opportunity for Representative Canseco to be reelected. (Ex. 47, at Tr. 1454:23-1455:3; Ex. J-61, Vol.1, 102:5-11).

667. Mr. Interiano communicated with Eric Opiela to get the views of the Texas congressional delegation on the new district lines. (Ex. 47, at Tr. 1455:4-13; Ex. J-61, Vol. 2, at 56:13-19).

668. Based on a racially polarized voting analysis, Mr. Interiano advised Chairman Solomons to take particular care with respect to the Latino percentages in Congressional Districts 20 and 23. (Ex. 47, at Tr. 1456:4-10).

669. Mr. Interiano never conducted analysis to determine if Representatives Canseco and Farenthold were the Latino preferred candidate. (Ex. 47, at Tr. 1456:11-18; Ex. J-61, Vol. 1, at 86:24-87:9).

670. In order to assess retrogression, Mr. Interiano used reaggregated elections to determine if Latino preferred candidates were doing better or worse in new districts compared to the benchmark

districts. (Ex. 47, at Tr. 1456:19-22; Ex. J-61, Vol. 1, at 88:15-19; Ex. J-61, Vol. 1, at 89:18-22; Ex. J-61, Vol. 1, at 92:2-16).

671. According to Mr. Interiano, the state's reaggregated election analysis shows that Congressional District 23 in plan C185 elects the Latino preferred candidate in one out of ten racially contested general elections. (Ex. 47, at Tr. 1457:21-25; Ex. J-61, Vol. 1, at 94:11-19).

672. Mr. Interiano did not review any reaggregated election analysis containing primary elections. (Ex. 47, at Tr. 1458:3-8).

673. Mr. Interiano conceded that a district with a majority Spanish surname voter registration and Hispanic citizen voting-age population is not in every circumstance a Latino opportunity district. (Ex. 47, at Tr. 1458:9-16).

674. Mr. Interiano testified that a goal of Plan C185 was to allow Nueces County to anchor a congressional district. (Ex. 47, at Tr. 1461:21-1462:5; Ex. J-61, Vol. 1, at 112:1-10). Mr. Interiano further testified that he did not know what portion of Congressional District 27 voters were in Nueces County in plan C100. (Ex. 47, at Tr. 1462:10-14)

675. Mr. Interiano did not know what portion of Congressional District 34 voters are in Nueces County in plan C185. (Ex. 47, at Tr. 1462:10-14).

676. Mr. Interiano conducted no election analysis to determine if Nueces County could control the election in either Congressional District 27 in plan C100 or Congressional District 34 in plan C185. (Ex. 47, at Tr. 1462:15-18; Ex. J-61, Vol. 1, at 114:7-10).

677. One goal in the changes made to Congressional District 27 was improving the electoral chances of Representative Farenthold. (Ex. 47, at Tr. 1462:19-22).

678. The House redistricting committee held hearings on congressional redistricting when the committee has no proposed congressional maps. (Ex. 47, at Tr. 1463:16-20).

679. Mr. Interiano did not examine whether there were any Latino communities of interest in the state that needed to be kept whole inside of a congressional district. (Ex. J-61, Vol. 1, at 81:22-82:4).

680. According to Mr. Interiano, in plan C100, Congressional Districts 15, 16, 20, 23, 27, 28 and 29 are Latino opportunity districts. (Ex. J-61, Vol. 1, at 83:13-19).

681. Mr. Interiano conceded that in plan C185, Congressional Districts 15, 16, 20, 28, 29, 34 and 35 are Latino opportunity districts. (Ex. J-61, Vol. 1, at 93:7-9).

682. The state's reaggregated election analysis shows that Congressional District 23 in plan C100 elects the Latino preferred candidate in three out of ten racially contested general elections. (Ex. J-61, Vol. 1, at 94:11-19).

683. Mr. Interiano conceded that Congressional District 23 in C185 does not perform as well as Congressional District 23 in C100. (Ex. J-61, Vol. 1, at 96:23-97:2).

684. Changes made to Congressional District 23 from plan C100 to plan C185 increased the performance of Republicans in statewide elections. (Ex. J-61, Vol. 1, at 103:2-21).

685. Congressional District 23 was altered from plan C100 to plan C185 to include Representative Canseco's house. (Ex. J-61, Vol. 1, at 110:3-9)

686. Nueces County has a majority Hispanic citizen voting-age population. (Ex. J-61, Vol. 1, at 115:20-24).

687. Mr. Interiano did not undertake any analysis to determine how many Latino opportunity congressional districts should be drawn in Texas. (Ex. J-61, Vol. 1, at 117:16-21).

688. On June 9, 2011, Corbin Casteel forwarded to Mr. Interiano an analysis by Dub Maines of the congressional map passed by the Texas House Special Committee on Redistricting wherein Mr. Maines opined that the map was retrogressive. (Pl. Ex. 311, at Congress294-295 [Dkt. 324-2]; Congress408 [Dkt. 324-3].)

689. Mr. Casteel is a friend of Mr. Interiano's, as well as a political consultant in Austin. (Ex. J-61-III, at 42:16-18.)

690. Mr. Maines works for Congressman Joe Barton. (Ex. J-61-III, at 56:5-8.)

691. Mr. Casteel requested that the initial recipient of his email look at a modified map, as the map that the House Committee had just passed "badly retrogresses CD20 without creating a new VRA district. CD35 is in no way a VRA district; it is a district that re-elects Congressman Doggett – whether he receives the support of Hispanic voters or not. . . . The Committee map, as passed, has next to no chance of pre-clearance – either by Justice or the DC circuit court. . . . This is the analysis of those who have practiced in the Voting Rights area – very successfully – for over 25 years." (Pl. Ex. 311, at Congress294-295 [Dkt. 324-2]; Congress408 [Dkt. 324-3].)

692. Mr. Maines opined that "If DOJ objects, the Texas federal court grants legislative deference to the map passed by the Legislature and is required to remedy ALL of DOJ's objections in its map. If preclearance is only pursued at DOJ there will be, most likely, a longer list of objections. . . . DOJ's punch list will grow exponentially if they know we have to make changes. Little things that they wouldn't have nit picked in a clean map will show up on the list because of the obvious retrogression and lack of a new Hispanic seat. That having been said, is there any reason why every effort should not be made to make the map more likely to pre-clear, especially if it doesn't hurt the political aims in any way?" (Pl. Ex. 311, at Congress294 [Dkt. 324-2].)

693. Mr. Interiano understood VRA to mean Voting Rights Act in this email. (Ex. J-61-III, at 43:11-12.)

694. Mr. Interiano disagreed with Mr. Maines regarding the map's retrogressing of CD 20. (Ex. J-61-III, at 43:23-25.)

695. Regarding Mr. Maines's emails, Congressman Lamar Smith later wrote to Pete Sessions: "Need to get word to Dale not to make any calls. AG upset. And pls call barton [sic]. Dub mains [sic] sending emails criticizing cd 20. May be used against us in court. We didn't kno [sic] Dale was making calls or wld [sic] have advised him not to do so." (Pl. Ex. 311, at Congress410 [Dkt. 324-3].)

696. On December 17, 2010, Eric Opiela forwarded a blog posting to Congressman Lamar Smith and Mr. Interiano entitled, "another dem plan from swing state project." (Pl. Ex. 311, at Congress035 [Dkt. 323-2].)

697. The blog post and maps that Eric Opiela forwarded on December 17, 2010 included: a statement that the Voting Rights Act does not require a state with 38 percent Hispanic population to have any Hispanic opportunity districts; noted that its purpose was to keep the Hispanic opportunity districts as close to the current configuration as possible; drew a Hispanic opportunity district in the Dallas-Ft. Worth area (noting the difficulty of drawing districts there because of where the incumbents live); and a "centerpiece" of an 8-way split of Austin." (Pl. Ex. 311, at Congress035-042 [Dkt. 320-2].)

698. On March 19, 2011, Eric Opiela forwarded to Lamar Smith camp, Mr. Interiano, and Doug Davis an email entitled "Swing State Project-Dem's predictions of TX Cong Map." This email included a 24R-12D configuration that had the objectives to: "1) Keep all incumbents with their

base voters, except McCaul. 2) Draw a Republican safe district for McCaul. 3) Draw a new non-VRA Republican safe district for Farenthold in Corpus Christi. 4) Draw two new Republican safe districts in Harris and Johnson. 5) Draw two VRA swing districts for Canseco and Pena in south Texas. 6) Draw a new VRA Democratic safe district in DFW. [and] 7) Draw a VRA Democratic safe district in Austin." One commenter noted that the map packed Hispanic voters. (Pl. Ex. 311, at Congress159-168 [Dkt. 320-4].)

699. In the late Spring of 2011, Mr. Interiano saw a memo from Congressman Smith with a congressional redistricting plan for the Texas Legislature to consider, but Mr. Interiano did not take any actions based on this memo. (Ex. J-61, Vol. 2, at 20:8-21:20).

B. State House Plan

700. Mr. Interiano was counsel to the Speaker of the Texas House of Representatives and was the lead staffer in charge of the House redistricting plan. (Ex. 47, at Tr. 1418:7-14).

701. Mr. Interiano drew the Texas State House districts in Hidalgo County. (Ex. 47, at Tr. 1426:20, 21; Ex. J-61, Vol. 1, at 169:14-24).

702. The House district plan for Nueces County in plan H283 was given to Mr. Interiano by Representatives Hunter, Torres and Scott. (Ex. 47, at Tr. 1430:2-5).

703. The House district plan for Harris County in plan H283 was given to Mr. Interiano by the Republican delegation of that county. (Ex. 47, at Tr. 1430:10-17).

704. Ryan Downton was the lead for the lines drawn in Tarrant and Dallas County in plan H283. (Ex. 47, at Tr. 1431:22-1432:1).

705. The House district plan for El Paso County in plan H283 was given to Mr. Interiano by Representative Pickett. (Ex. 47, at Tr. 1432:2-5; Ex. J-61, Vol. 1, at 162:22-163:3).

706. As counsel to Speaker Straus, Mr. Interiano offered advice on compliance with the voting Rights Act. (Ex. 47, at Tr. 1441:18-22).

707. If members of a county delegation could not agree on a map for their county, Chairman Solomons, Speaker Straus and a member of the delegation would make the final decision. (Ex. 47, at Tr. 1442:2-6).

708. Mr. Interiano made efforts to get members of county delegations to work together on creating a map for their county. (Ex. 47, at Tr. 1442:14-20).

709. A racial bloc voting analysis was conducted as the redistricting maps were being drawn. (Ex. 47, at Tr. 1442:25-1443:2).

710. Mr. Interiano saw summaries of the racial block voting analysis that was conducted as the redistricting maps were being drawn. (Ex. 47, at Tr. 1443:3-4)

711. At the beginning of the redistricting process, Mr. Ex. J-61-Identified the number of Latino opportunity districts in the benchmark plan so that the final plan would either meet or surpass that number. (Ex. 47, at Tr. 1443:8-12).

712. If there was an agreement among the members of a county delegation about the map for their county, Mr. Interiano would drop that county whole into the statewide map. (Ex. 47, at Tr. 1445:9-12).

713. Mr. Interiano never attempted to draw a fifth Latino opportunity district in El Paso County. (Ex. 47, at Tr. 1445:19-1446:5; Ex. J-61, Vol. 1, at 140:5-8; Ex. J-61, Vol. 1, at 167:1-4).

714. The population in Cameron County requires two wholly contained House districts with population leftover that must be combined with population outside the county. (Ex. 47, at Tr. 1446:23-1447:7).

715. The population in Hidalgo County requires four wholly contained House districts with population leftover that must be combined with population outside the county. (Ex. 47, at Tr. 1447:8-12).

716. If a Latino majority district could not be drawn in the constraints of the county line rule, Mr. Interiano concluded that it could not be drawn. (Ex. 47, at Tr. 1447:13-22; Ex. J-61, Vol. 1, at 132:17-22).

717. Mr. Interiano was able to draw a Latino opportunity House district with the remainder populations of Hidalgo and Cameron Counties while keeping all of the districts in those counties within the correct deviation. (Ex. 47, at Tr. 1448:12-1449:6).

718. When a county delegation agreed on a map for their county, that map was integrated into the statewide plan. (Ex. 47, at Tr. 1451:1-4; Ex. J-61, Vol. 1, at 128:11-23).

719. Mr. Interiano testified that Hispanic voting-age population, Hispanic citizen voting-age population, Spanish surname voter registration, and election performance must all be considered to determine if a district is a Latino opportunity district. (Ex. 47, at Tr. 1451:14-20).

720. Mr. Interiano did not review an analysis of election performance of benchmark districts or of new draft House districts until close to end of the redistricting process. (Ex. 47, at Tr. 1451:21-1452:2).

721. Plan H283 eliminates a Latino opportunity district from Nueces County. (Ex. 47, at Tr. 1452:15-22).

722. In plan H100, House Districts 90 and 148 had a majority Hispanic voting-age population. (Ex. 47, at Tr. 1453: 6-9).

723. When Mr. Interiano began drawing the House map, he did not know if House Districts 90 and 148 were Latino opportunity districts in plan H100. (Ex. 47, at Tr. 1453:15-1454:10).

724. During the regular session, there was not a hearing with a map for the public to comment on proposed by the House redistricting committee or Chairman Solomons. (Ex. 47, at Tr. 1463:21-1464:5; Ex. J-61, Vol. 1, at 118:10-17).

725. The redistricting plan for the Texas House was considered and passed in a hearing room without video broadcast. (Ex. 47, at Tr. 1464:6-15; Ex. J-61, Vol. 1, 159:24-160:3).

726. Mr. Interiano conceded that a compact, Latino majority House district could have been drawn between Hidalgo and Cameron Counties. (Ex. J-61, Vol. 1, at 136:15-24).

727. Compared to plan H100, plan H283 creates one fewer Latino opportunity district in Nueces County. (Ex. J-61, Vol. 1, at 150:11-18).

728. Mr. Interiano did not examine election performance to determine if House Districts 90 and 148 were Latino opportunity districts in plan H100. (Ex. J-61, Vol. 1, at 153: 15-19).

729. During the process of drawing the maps, the state did not conduct analysis to determine which candidates were Latino candidates of choice in plan H100. (Ex. J-61, Vol. 1, at 155:14-20).

730. The Legislature intended to eliminate the Latino opportunity district in Nueces County. (Ex. 47, at Tr. 161:5-7)

731. The changes made to District 90 in Tarrant County and District 148 in Harris County were not intended to increase the number of Latino opportunity districts but, rather, were intended to increase the percentage numbers in those existing districts. The changes were made to beef up those districts. (Ex. 47, at Tr. 1600:24-1601:8).

C. Legislative Animosity Toward Latinos

732. Findings of Fact 439 through 459 demonstrate the racial animosity on the part of the State Legislature, which ultimately approved the Congressional and House Plans.

VII. Diversity of Latino Political Preferences

A. State's Assumption that Latinos Are Democrats

733. A Houston Chronicle article from July 30, 2010, reads: "[State Representative Leo] Berman said he believes a path to citizenship for illegal immigrants is a path to creating Democratic voters. 'There's 25 million in the United States – you can't listen to the 8 million to 12 million numbers that come out of Washington every day – you're going to create an instant 25 million Democrats,' Berman said." (Ex. 47, at Tr. 441:7, 13, 17; Ex. 38, at 0:07-0:16; Pl. Ex. 390 [Dkt. 330-4, at p. 2].)

734. On a March 29, 2011 interview on NPR for a segment entitled, "Texas Republicans Take Harder Line on Immigration," State Rep. Leo Berman stated, "Most Hispanics right now do vote Democrat. There's no question about it. So, what vote are we going after? We're going after a vote that doesn't vote Republican anyway." (Ex. 47, at Tr. 441:7, 13, 17; Ex. 38, at 2:30-2:55; Pl. Ex. 388 [Dkt. 330-3, at p. 5].)

735. Findings of Fact 439 through 459 demonstrate the racial animosity on the part of the Republican dominated State Legislature, which is using a partisan justification as a pretext to discriminate against Latinos.

736. Dr. Alford agreed that a Latino voter who is socially and fiscally conservative could feel that the Republican Party had walked away from him for the past few years, because of certain policy positions, and he might even find himself voting Democratic. (Ex. 47, at Tr. 1874:6-13.)

737. Dr. Alford further agreed that a conservative Latino voter could believe that in the past few years racial animosity in the political system had increased and not declined but further testified that he had not done any analysis of opinion polling in the Latino community regarding the issues that they have rated high on their concern list. (Ex. 47, at Tr. 1874:19-1875:1.)

738. Dr. Alford testified that immigration policy is increasing the position of race in the current American political debate now. (Ex. 47, at Tr. 1936:22-1937:23.)

B. Latinos' Political Independence

739. Senator Kel Seliger, Chair of the Texas Senate Select Redistricting Committee, testified that Republicans have not done a very good job of reaching out to Latino voters, but Latinos are willing to vote for Republicans. (Ex. J-59: 34:20-35:16)

740. According to State Representative Larry Gonzales, a Latino Republican Latinos in Texas are willing to vote for both Democratic and Republican candidates. (Ex. 47, at Tr. 1656: 7-9)

741. State Representative Larry Gonzales, a Latino Republican, testified that he helped create an organization to help recruit and elect Latino Republicans to office in Texas. (Ex. 47, at Tr. 1656-1659)

742. Latinos voted at a high percentage for Presidents Ronald Reagan, George H Bush and George W Bush (Ex. J-51, at 37:5-10; 60:14-61:8)

743. In the mid 1990s, Latinos in Wharton County coalesced for the Republican candidate for County Sheriff because the Anglo Democratic establishment that controlled the political structure did not include Latinos. Latinos aligned themselves with local Republican candidates in order to form a coalition of voters that could compete with the Anglo Democratic establishment. (Ex. 411 ¶ 14 [Dkt. 330-5, at pp. 5-6]).

744. Latinos work on political races for both parties. (Ex. 47, at Tr. 569:2-3.)

745. Latinos contribute to candidates for both parties. (Ex. 47, at Tr. 569:4-11.)

746. Mr. Jimenez helped the Republican Mayor of Fort Worth get elected. He also helped Mary Louise Garcia, a Republican, run for County Clerk, and she was elected. (Ex. 47, at Tr. 571:14-19.)

747. Mr. Jimenez, for example, chooses candidates by meeting them and seeing if they fit his values. (Ex. 47, at Tr. 569:14-20.)

748. In chairing the Fort Worth and Dallas Hispanic Chambers of Commerce, Mr. Jimenez sought to influence legislation to help Hispanic businesses, and small businesses in particular. (Ex. 47, at Tr. 570:4-17.)

749. Mr. Jimenez's political involvement includes seeking economic development and education for everyone. These need to be in place for a strong community. (Ex. 47, at Tr. 570:25-571:9.)

750. Mr. Jimenez testified that Hispanic voters in CD 6 in Plan C190 will look at what a person stands for regardless of political party. If a candidate promises to create jobs and strengthen education, that candidate should have the Latino support. However, if he tells Hispanics to go to Mexico, he will lose it. Party does not matter—Hispanics in this area would support a Republican if their values coincided. (Ex. 47, at Tr. 576:16-577:16; Pl. Ex. 363 [Dkt. 328-1, at p. 5].)

751. Ciro Rodriguez started his political career by campaigning against the Democrats. (Ex. 47, at Tr. 778:7-25.)

752. The first time that Ciro Rodriguez ran for office, he ran as an independent. About twelve years later, he ran for the State House as a Democrat. (Ex. 47, at Tr. 779:7-11.)

753. Ciro Rodriguez's support has always come from the Latino community, and he is the Latino candidate of choice. (Ex. 47, at Tr. 780:1-12.)

754. Sylvia Gonzalez, a Latino political organizer, worked on a campaign for George Bush Sr., a Republican, for Rick Perry's first campaign, and for Judge Ed Emmett, a Republican. (Ex. 47, at Tr. 1398:19-23, 1401:14-22.)

755. Dr. Alford, reviewing EI analysis and exit poll estimates of Hispanic support for Republican candidates in the 2008 and 2010 election, opined: "I don't think it tells us that either one of those is necessarily the right answer, but is either the 60 percent or the 70 percent -- there were 70 plus percent you see in 2010 or the 80 percent in 2008 -- that necessarily that any one of those is the right answer, but that maybe for Hispanic voters the notion of a right answer or sort of a one size fits all is maybe not as appropriate." (Ex. 47, at Tr. 1780:11-1781:12.)

756. Dr. Alford agreed that a Latino voter can vote for a Republican in one election and Democrat in the next election and further stated "I think that is something we -- we can clearly infer about Latino voting behavior from all of this analysis. There is much more movement across party lines, in terms of how Latinos are distributed[.]" (Ex. 47, at Tr. 1873:12-19.)

757. Dr. Alford stated, with respect to the relationship between partisan affiliation and race, "There are a lot of ways in which we can think about how things might contribute to what is ultimately a partisan choice, and race could be contributing to that -- to that choice. We just don't have -- we just can't say what exactly that contribution is, using the methodology that courts typically use to assess these cases." (Ex. 47, at Tr. 1949:19-1950:4.)

C. Notes on HD 117

758. The State altered HD 117 in Plan H283 to change its election performance. In Plan H283, HD 117 has an HVAP of 62.7%, an HCVAP of 63.8%, and a slightly lower SSVR of 50.1%. (Pl. Ex. 201 [Dkt. 387-201, at pp. 1, 27].) In Plan H283, from 2006 to 2010, the candidate of choice of Latinos won in 3 out of 7 racially contested exogenous general elections in HD 117, and from 2002 to 2010, the Latino-preferred candidate won in 4 out of 13 racially contested exogenous general elections in HD 117. (Pl. Ex. 201 [Dkt. 387-201, at p. 1]; Pl. Ex. 263 [Dkt. 387-263, at p. 4]; Pl. Ex. 264 [Dkt. 387-264, at p. 9]; Pl. Ex. 265 [Dkt. 387-265, at p. 3].) In the State's House plan, Latinos no longer have the ability to elect their preferred candidates in HD 117. (Engstrom Supp. Report, Ex. 44, at 8-9).

759. In its changes to HD 117, the State sought to shore up the district for the incumbent John Garza, who was not the Latino preferred candidate in the 2010 General Election. (Engstrom Corr. Rebuttal at 34.) The State swapped precincts in and out of HD117 in order to reduce the election performance of Latino-preferred candidates. The result is that Latino turnout is reduced and Latino-preferred candidates are less likely to win. (Flores Report, Ex. 45, at 10; Exh. 45.7.)

760. Similarly, the changes to HD 117 demonstrate discriminatory intent. Representative Garza testified that he wanted HD 117, which he represents, to extend farther north so that he could gain more Anglo population on the assumption that they would vote for him. (Garza Dep. 30:6-31:3; see also Garza Dep. 58:9-15 (testifying that HD 117 in Plan H283 improves his chances of being reelected).) Representative Garza knew that changing the boundaries of HD 117 would potentially dilute minority voting strength and believed that there was limited flexibility to change HD 117 without running afoul of the Voting Rights Act. (Id. at 50:3-19.) He further

testified that he understood that Hispanic voter turnout is low in Somerset, an area placed into HD 117 in Plan H283. (Id. at 40:8-12.)

761. HD 117 in Plan H283 shows a difference of 14 percentage points between HCVAP and SSVR. Ex. 201. This 14% difference, between Latino voter eligibility and Latino voter registration, indicates that HD 117 has the most severe rate of underparticipation in the entire 150 district House plan. By contrast, HD 117 in the benchmark has a difference between HCVAP and SSVR of only 8%. Thus, in changing HD 117, the State added areas containing Latino adult citizens who were much less likely to register to vote than the Latino adult citizens in the benchmark HD 117. This is consistent with the findings of Dr. Henry Flores that the State's changes to HD 117 reduced the number of registered Latinos who turn out to vote in elections. [Flores Report] Essentially, the State swapped out areas containing Latinos who are more civically engaged and exchanged them for areas where eligible Latinos are less likely to register and vote.

D. Findings of Dr. Henry Flores

762. The State of Texas has a rich history of having voting rights challenges brought against it or one of its political subdivisions more than 200 times since 1982. These challenges have been under the provisions of Sections 2, 5 or 203 of the Voting Rights Act of 1965 or the 14th and 15th Amendments of the United States Constitution ("Voting Rights in Texas"). (Flores Report, Ex. 45, at 5.)

763. The evidence presented to courts, in sundry voting rights cases over the last 25 years, has shown clear patterns of racially polarized voting where Hispanics vote differently from their Anglo or non-Hispanic white fellow citizens. These racially polarized patterns are still in evidence as presented in the expert reports of both Drs. Engstrom and Kousser in *Perez .v Perry* which was

recently tried to a three judge panel in the Western District of Texas sitting in San Antonio, Texas. (Flores Report, Ex. 45, at 5-6.)

764. Additionally, the input of representatives of both the Latino and African American communities were never given serious consideration during this process. The entire atmosphere surrounding the hearings calls into question the motives of the committee membership particularly that of the chairs. Dr. Flores's expert observation is that these committees functioned outside of their normal and customary rules and procedures as they passed the state's redistricting legislation. (Flores Report, Ex. 45, at 6.)

765. In the drawing of Congressional Districts 23 and 27 and Texas House Districts 33, 78 and 117, race was the predominant factor guiding the redistricters. They intentionally manipulated the Hispanic population numbers, provided for redistricting, to insure the re-electibility of the incumbents to the exclusion of the representational interests of Latinos thereby preventing this protected population from having the opportunity to elect a candidate of their choice. (Flores Report, Ex. 45,, at 8-9.)

766. Additionally, the redistricting committee completely ignored the wishes of South Texas in considering drawing an additional House district in the region of Cameron and Hidalgo Counties. (Flores Report, Ex. 45, at 9.)

767. A close inspection of each State House district in El Paso County reveals that the Latino population could be more evenly distributed among all five districts resulting in giving Latinos the opportunity to elect their preferred candidate in all of El Paso's House districts. (Flores Report Ex. 45, at 9 & Ex. 45.1.)

768. In State House districts 75, 76, 77 and 79, the SSVR is above 64.6% with HD76 having an SSVR of 89.4% at the highest end of the range and HD79 having an SSVR of 64.6%. Yet on the northern edge of the county, bordering HD77 and HD79 lies HD78 with only an SSVR of 47.1%. (Flores Report, Ex 45, at 9 & Exs. 45.2 & 45.3.)

769. Fourteen VTDS or precincts were minutely split to arrive at this imbalance of SSVR among all five Texas House Districts in El Paso County. (Flores Report, Ex. 45, at 9 & Exs. 45.4 & 45.5.)

770. The deliberateness of the redistricters can be visibly seen in the Google Earth Satellite Photo as the southeastern boundary of H78 "snakes" its way through Latino neighborhoods. (Flores Report , Ex. 45, at 9 & Ex. 45.6.)

771. Exhibits 1 through 6 to Dr. Flores's report, together with the affidavit of Ms. Carmen Rodriguez, a resident and native of El Paso, Texas, support Dr. Flores's opinion that the redistricters were consciously manipulating heavily Latino precincts and neighborhoods to avoid creating a House district in the northern part of El Paso County that would allow Hispanics to elect a candidate of their choice. (Flores Report , Ex. 45, at 9-10.)

772. Dr. Richard Engstrom's racially polarized voting analysis demonstrating that Representative Margo was not the Latino candidate of choice in HD 78 in the 2010 General Election also demonstrates that the redistricters were using race as the predominant factor for El Paso County's State House districts. (Engstrom Corr. Rebuttal at 25-26; Flores Report , Ex. 45, at 10.)

773. In Bexar County, Plan H283 reduces the SSVR of HD 117 from 50.8% to 50.1%. A review of Dr. Lisa Handley's election performance research indicates that the performance level of HD117 is reduced from 60 to 20 (100 point scale) making this district even less likely to allow Hispanics

to elect a preferred candidate. This severe reduction is underlaid by the racially polarized nature of the electorate in HD117 as evidenced in the same report by Dr. Handley. (Handley Report of October 19, 2011, at 5, 11; Flores Report , Ex. 45, at 10.)

774. With respect to HD117, the redistricters again carefully removed high performing Latino districts from the Westside of San Antonio and replaced them with higher performing Anglo precincts from the far northwest side of the city. In effect, the redistricters not only reconfigured HD117 from the benchmark to H283 geographically but also changed the political dynamics of the district in that they have created what appears to be an Hispanic majority or opportunity district but in substance is not. (Flores Report , Ex. 45, at 10 & Ex. 45.7.)

775. Plan H283 completely eliminates House District 33 that exists in the benchmark plan. (Flores Report , Ex. 45, at 10 & Ex. 45.8.)

776. HD33 historically has been located in the heart of Corpus Christi, Texas and was a majority SSVR district. The effect of eliminating it is that under H283, Nueces County is deprived of a Latino majority district and their representation in the state legislature is reduced from three members to two. The elimination of House 33 represents the elimination of a district where Latinos have the opportunity to elect a preferred candidate. (Flores Report, Ex. 45, at 10-11.)

777. An additional House district can be added in the geographical area along the Mexican border known as "The Valley" which is centered in Cameron and Hidalgo Counties . (Flores Report, Ex. 45, at 11 & Ex. 45.9.)

778. A close perusal of the deviations among the 6 Valley districts drawn under H283 and two other surrounding districts indicates that there is sufficient population to create an additional district in this region. Adding a new district in this region is important because the Valley has been one of

the fastest growing population centers of the state over the last two decades. Also, and almost equally as important, is this area has traditionally and historically been understood as an integrated economic, cultural, social and political region of Texas. The small towns in this region share a rich common history reaching further back than the founding of the state and represent a unique community of interest. (Flores Report, Ex. 45, at 11.)

779. Latinos have an opportunity to elect a candidate of their preference in CD23 under the benchmark plan. (Engstrom Corr. Rebuttal at 26-28.)

780. Under C185, the opportunity to elect for Latinos is reduced even though the district remains majority Hispanic. (Flores Report of Oct. 21, 2011, at 11-12 & Exs. 10-12.)

781. "Cracking" has occurred to several small towns in El Paso County in CD23 in C185. (Flores Report of Oct. 21, 2011, at 12 & Exs. 14 & 15.)

782. What happened in CD23 in C185 is tantamount to a "bait and switch" making CD 23 in C185 appear to be a Latino opportunity district when in substance it is not. (Flores Report of Oct. 21, 2011, at 12.)

783. Under CD23 in C185 Latinos are deprived of their opportunity to elect a preferred candidate even though they remain a majority of the population. In order to achieve this end, the redistricters laboriously and intentionally manipulated the district's boundaries to add and subtract more than 612,191 individuals to simply reduce the population of CD23 by 149,163 to meet the "one person, one vote" requirement of the constitution. Redistricters moved in a total of 231,514 new individuals and also removed 380,677 individuals from the district. (Flores Report of Oct. 21, 2011, at 12-13 & Ex. 18.)

784. Beyond the manipulation of the population in absolute numbers, a deeper analysis of the registered voters within the district together with the performance of the Hispanic preferred candidates in 14 endogenous elections between 2002 and 2010 support the conclusion that the redistricters laboriously and intentionally manipulated CD23's boundaries to deprive Latinos electoral opportunity. (Flores Report of Oct. 21, 2011, at 13 & Ex. 19.)

785. If one compares the percentage turnout of SSVR in the benchmark C100 plan for CD23 with that of SSVR in C185 one will note that the SSVR turnout for the 2010 General Election drops 1.98% from 24.84% to 22.86%. (Flores Report of Oct. 21, 2011, at 13 & Ex. 17.)

786. Taking the analysis a step further, one discovers that under the benchmark plan the Hispanic preferred candidate is successful in 7 of the 14 general endogenous elections between 2002 and 2010 for a 50% success rate. Under Plan C185 there is a stark difference in that a reaggregation of the same elections in the redrawn CD 23 reveals that the Latino preferred candidates win only 3 of the 14 elections, a 24.4% rate or more than a 50% reduction from the rate in the benchmark plan. (Flores Report of Oct. 21, 2011, at 13 & Ex. 19.)

787. The effect on support for the Latino-preferred candidate, as reflected in general election votes for the Latino preferred candidate in CD 23 from the district in the benchmark to the "new" one in C185 is dramatic; the votes garnered by Latino preferred candidates is reduced 3.2% in that district between 2006 and 2010 and 2.4% between 2002 and 2010. (Flores Report of Oct. 21, 2011, at 13.)

788. These data demonstrate that the "new" CD23 in C185 is structured to insure lower Hispanic turnout rates than in the benchmark CD23. (Flores Report of Oct. 21, 2011, at 13.)

789. A thorough analysis of CD23 in the benchmark and C185 show that the methods utilized to redraw CD23 in C185 intentionally reduced Latino voter turnout to insure that Hispanics would be denied an opportunity to elect a candidate of choice. (Flores Report of Oct. 21, 2011, at 13-14.)

790. Latinos have the opportunity to elect their preferred candidate in the benchmark CD27. (Engstrom Corr. Rebuttal at 26-28.)

791. In C185 the new CD27 reduced the SSVR from 69.2% to 45.1% when compared to C100 the benchmark plan. Dr. Richard Engstrom's racially polarized voting analysis demonstrates that Representative Farenthold was not the Latino candidate of choice in CD27 in the 2010 General Election. (*Id*. at 25-26)

792. This 24% reduction in SSVR intentionally dilutes Latino voting power and prohibits their ability to elect a candidate of choice. (Flores Report of Oct. 21, 2011, at 15.)

793. The reconfiguration of CD27 also removes a substantial number of Latinos from the configuration of Latino opportunity districts in South Texas and thus deprives voters in this region a seventh Latino opportunity district. (Flores Report of Oct. 21, 2011, at 15.)

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Respectfully submitted,

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