IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA and ERIC H. HOLDER, JR., In His Official Capacity As Attorney General Of The United States, Defendants, WENDY DAVIS, *et al.*, Defendant-Intervenors, MEXICAN-AMERICAN LEGISLATIVE CAUCUS, Defendant-Intervenors, GREG GONZALEZ, *et al.*, Defendant-Intervenors, TEXAS LEGISLATIVE BLACK CAUCUS, Defendant-Intervenor, TEXAS LATINO REDISTRICTING TASK FORCE, Defendant-Intervenor, TEXAS STATE CONFERENCE OF NAACP BRANCHES, *et al.*, Defendant-Intervenors.	)	No.1:11-CV-1303 (RMC-TBG-BAH) (three-judge court)

DAVIS DEFENDANT-INTERVENORS' AND LULAC's PROPOSED FINDINGS OF FACT

The Davis Defendant-Intervenors and LULAC respectfully submit these proposed findings of fact in the above-referenced case. These proposed findings are divided into two parts: Part 1 addresses the proposed senate plan and Part 2 addresses the proposed congressional plan.

FACTS

Part 1—The State Senate Plan (S156)

1. The State Correctly Predicted In 2001 That Senate District 10 In The Fort Worth Region Of Tarrant County Would Develop Into A Minority Opportunity District

1. Ten years ago, the State of Texas enacted a state senate redistricting plan and submitted that plan to the United States Department of Justice for preclearance under Section 5 of the Voting Rights Act. When Senate District 10 (hereafter "SD 10") was drawn back in 2001, it was 56.6 percent Anglo, 16.7 percent African American and 22.9 percent Hispanic (over 43% combined minority population). In urging the Department of Justice to approve its 2001 state senate plan, Texas pointed out that the minority population in District 10 was growing, and the State justified its configuration of the district by stating:

> ..District 10 contain[s] significant minority communities that are essentially kept intact within [the] district. The voting strength of these minority communities in the future will depend on the cohesion within and between Black and Hispanic voters and the ability of such voters to form coalitions with other racial or ethnic groups in support of their preferred candidates.

DX 126 at p. 18.

2. DOJ precleared the 2001 state senate map and, just as Texas predicted, the minority population continued to grow significantly in SD 10 throughout the decade. By the time of the 2010 census, Senate District 10's minority population had increased by 9 percent, the Anglo population percentage had fallen by 9 percent, and minorities comprised a majority of Senate District 10's total population. DX 151.

3. Since the early part of the last decade, there had been a strong awareness among African American and Hispanic leaders in Tarrant County that the minority

population within Senate District 10 (African Americans and Hispanics) was large, growing, and politically cohesive. Veasey Trial Testimony at 13 (1/18/2012pm session). As a result of the minority growth in SD 10, local minority elected officials and leaders knew that SD 10 was growing into a district in which the minority voters would soon have a realistic opportunity to elect the candidate of choice in that district. As one local elected Hispanic official testified:

> Hispanic and African American leaders in Tarrant County had paid close attention to the rapid growth of the minority population within the boundaries of Senate District 10. The district [SD 10] includes nearly all of the predominately Hispanic and African American neighborhoods in Fort Worth.
>
> As the 2008 election approached, we understood that the minority community had become sufficiently large and united to form an effective coalition to elect our candidate of choice. Latino leaders and African American leaders decided to not only unite behind a single candidate but to make the Senate District 10 election the priority campaign in our county. We made a conscious and deliberate effort to recruit and unite behind Wendy Davis as our candidate of choice and to devote our time and resources to electing her.

Testimony of Sergio DeLeon, Document 157-1, filed January 17, 2012.

2. <u>By 2006-2008, It Became Clear to Minority Leaders in Tarrant County That SD 10 Was an Effective Opportunity District for Black and Hispanic Voters</u>

4. In 2006, a white Democratic candidate, Terri Moore, ran for the position of District Attorney, a countywide office in Tarrant County. Veasey Trial Testimony at 30-31 (1/18/2012 p.m. session). Because SD 10 was entirely within Tarrant County, State Representative Veasey testified that he studied the 2006 election results to see whether black and Latino voters could elect a candidate of choice to SD 10. *Ibid*. What he found was that candidate Terri Moore, though talented but underfunded, came close to carrying SD 10 with 49% of the vote. *Id*., at 30, and Sen. Wendy Davis Trial Testimony at 17 (1/20/2012am session). Rep. Veasey testified that his review of the 2006 election results

showed that "when the African American and Hispanic communities came together as a coalition to vote, that they could win Senate District 10." *Id*. at 30.

5. Following the 2006 Tarrant County District Attorney race, Rep. Veasey worked with other elected officials and community leaders, both in the African-American and Latino communities" (*id*. at 32) of Tarrant County, focusing on the 2008 SD 10 race and recruited Wendy Davis to run for the state senate. They did so, according to Representative Veasey's testimony, because

> [a]fter seeing the 2006 election results, it was clear to me that the [minority] community was empowered again because, you know, after redistricting took place in 2001, and the mid-decade redistricting took place for the Congressional maps, it had sort of taken away a lot of the voting strength that we had had over the years…. [T]he African-American community didn't have a lot of money and didn't have a lot of influence downtown, but the one thing we did have was our voting strength. So…it excited everybody to be able to get that voting strength back in Senate District 10.

Id. at 31. Rep. Veasey further testified that his goal was "to get the [minority] community to understand the importance of the candidacy and the fact that we had a shot again, that we were, you know, finally back in the game again, I felt that that was important, and so anything that I could do to help promote [Wendy Davis' candidacy], I did." *Id*., at 34.

6. Rep. Veasey's testimony was confirmed and corroborated by Hispanic leader and elected official Sergio DeLeon, who testified,

> Our focus on District 10 in 2008 was successful. Hispanic and African American voters formed a strong coalition and voted overwhelmingly in support of Wendy Davis. She was elected by gaining over 90 percent support from minority voters. Anglos voted against her in very large numbers, but could not overcome her strong support from an energized and mobilized minority vote.

DeLeon Testimony, Document No. 157-1 filed 1/17/2012 at page 2. Rep. Veasey and Mr. DeLeon's trial testimony was also confirmed by State Democratic Party Chair Boyd Richie, who testified that

> Senate District 10 in Tarrant County is an important example of a district where, in 2008, local minority leaders recognized that their voting strength had grown and reached a level where they could recruit, unite behind and elect their candidate of choice. These leaders recruited and united behind candidate Wendy Davis in 2008.

Trial Testimony of Boyd Richie, Document 157-2 at p. 2 (filed 1/17/2012). None of the foregoing testimony was contradicted, rebutted, or even challenged by the State of Texas.

7. Senator Davis herself testified that the coalition of black and Hispanic leaders came to her and asked her to run. Sen. Davis Trial Testimony at 16-19 (1/20/2012am session). She identified more than a half dozen minority leaders and elected officials who recruited her to run, including Rep. Veasey, Constable DeLeon (Hispanic), County Commissioner Roy Brooks (African American), among other minority leaders in Tarrant County. *Ibid*. The campaign strategy that candidate Wendy Davis and the leaders of the minority community agreed upon for the 2008 senate race was two-fold: "activating and exciting our minority communities about this race, our African American and Latino communities" and "to work very hard together to make sure that we turned out that vote." *Id*., at 18 (emphasis added).

8. In running for the state senate in 2008, Wendy Davis "spent a great deal of time going into [African American and Hispanic] neighborhood meetings, knocking doors in those communities and attending churches and speaking to church congregations in those communities." Wendy Davis Trial Testimony at 21-23 (1/20/2012 am session).

Candidate Wendy Davis also coordinated her campaign with three State House candidates (two of whom, Reps. Veasey and Burnam, were incumbents in majority-minority districts, and the third, Chris Turner, was trying to unseat a Republican whose district contained a substantial and growing minority population. *Id*., at 23-25. Candidate Wendy Davis also testified that she "met with our Tarrant County Democratic Party and other leaders in the democratic community and minority community" to coordinate their efforts in the campaign. *Id*. They coordinated their efforts, Davis explained, because "none of us had an enormous amount of money to spend, and we knew that with our scarce resources we could each play a role in making sure that we turned out, activated and turned out the Latino and African American vote." *Id*. For example, Rep. Veasey, an African American leader and officeholder, "was very active in his [Fort Worth] community knocking on doors and getting on the radio." *Id*., at 22. Rep. Veasey made arrangements to have Davis appear "on African American radio on several occasions which is the predominant communication resource to that community in Fort Worth." *Id*. at 22. Candidate Davis also made similar efforts "in our Latino community" and appeared on Latino radio. *Ibid*.

3. The 2008 Election Results: The Strong and Cohesive Minority Voter Coalition Elects Senator Wendy Davis

9. Because 2008 was a Presidential election year, the Texas State Democratic Party had a substantial role to play. According to its chairman, Boyd Richie, whose testimony went unchallenged and unrebutted by Texas, testified that "there was a concerted effort to build support from and mobilize African-American and Hispanic voters and to have them unite in their electoral support for Wendy Davis. We did this, even to the exclusion of

efforts for the Obama campaign or other statewide candidates that were going on at that time." Testimony of Boyd Richie, Document 157-2, pp. 2-3, filed 1/17/2012.

Chairman Richie further testified:

> To truly understand the political and electoral dynamics in Senate District 10 that led to Senator's Davis' election in 2008, it is important to contrast that local election with other electoral contests that were on the ballot that same year. In 2008, it was no secret nationally, statewide or locally in Tarrant County that Texas would not be a state targeted by the Obama campaign to reach the 270 electoral votes needed to win the presidency. Moreover, Tarrant County, while containing the third largest concentration of African voters in Texas and a large and growing Hispanic population, is the most reliably Republican large urban county in Texas. Democratic statewide candidates, particularly when they have very limited financial resources like Texas statewide candidates did in 2008, do not devote resources to Tarrant County.
>
> Local Tarrant County minority leaders, and the State Party that I chair, were well aware that devoting precious local resources to national and statewide campaigns in 2008 and 2010 that were not targeting Tarrant County was neither practical politically nor defensible to our donors and other supporters. In 2008, we made the practical and common sense decision to concentrate our efforts and resources in Tarrant County to the Senate District 10 race, where a deliberate and focused effort to unite and turn out minority voters would actually elect the minority voters' candidate of choice, who would then go to the Legislature and serve the community.
>
> …A conscious, pragmatic decision was made to devote time, effort and resources to the Senate District 10 race, knowing that it would draw resources away from efforts to elect statewide Democratic candidates or to advance the Obama Presidential campaign. Though that was a hard choice to make as Party Chair, the Texas Democratic Party recognized the practical wisdom of this decision and focused its efforts in Tarrant County and in Senate District 10 in particular. To do this, there was a concerted effort to build support from and mobilize African-American and Hispanic voters and to have them unite in their electoral support for Wendy Davis. We did this, even to the exclusion of efforts for the Obama campaign or other statewide candidates that were going on at that time.

Testimony of Boyd Richie, Document 157-2, pp. 2-3, filed 1/17/2012.

10. In the 2008 election for SD 10, candidate Wendy Davis faced an Anglo Republican incumbent, Kim Brimer. Though the State of Texas contends that Brimer was a scandal-ridden, weak candidate in the 2008 elections, see PX 106 & 108, Senator Davis testified that Brimer was "incredibly well funded. He spent almost three million dollars in that campaign. He ran an unprecedented amount of television ads. He had the endorsement of every mayor and the police and fire unions, and had mayors appearing in television commercials with him endorsing him." Trial Testimony of Sen. Wendy Davis at 67-68 (1/20/2012am session). Though Brimer may have been a vulnerable incumbent in the 2008 election, there is no evidence that his ethical issues were the deciding factor in that race, and no witness testified to that effect. Indeed, the ethical issue raised in the 2008 Brimer-Davis campaign had surfaced well in advance of the 2008 senate election campaign. *Id* at 69. And as noted above, Brimer received broad support from mayors and unions in the 2008 election. When asked point blank if the scandal issues involving Senator Brimer was the reason Senator Davis beat the incumbent Brimer, Rep. Veasey unequivocally said "no":

> Q. …Mr. Brimer, the opponent to Wendy Davis back in 2008 – there's been some testimony in this case that he was a -- had some scandal issues, and that's why she prevailed. What can you tell the Court about whether or not that's the reason that Senator Davis was able to beat Senator Brimer?
> A. No, that is absolutely not the reason why.
> Q. What do you base that on?
> A. Well, because Senator Brimer had all of the money behind him. He had all of the downtown Ft. Worth business establishment behind him. And the fact of the matter is that the African-American and Hispanic communities in Tarrant County just out-hustled Senator Brimer and the downtown business folks, and that's what happened on that race, is that we worked really hard, we knew that -- because of Terri Moore's race, that we were back in the game again, and that if -- and if we worked together and we put our votes together and our voices

> together that we could -- that we could play a role in determining who got elected to Senate District 10. And that's exactly what we did. It didn't have anything to do with Senator Brimer's scandals in the district that I represent.

Veasey Trial Testimony at 43-44 (1/18/2012 pm session).

11. That the minority communities (black and Hispanic) in Tarrant County formed a voting coalition and worked together to elect their candidate of choice in the 2008 elections was unrebutted by the State of Texas. Indeed, the State's expert witness, Dr. John Alford, admitted in cross examination that minority voters in SD 10 demonstrated an ability to elect their candidate of choice in the 2008 elections and that candidate of choice was Wendy Davis. Alford Trial Testimony at 39 (1/25/2012am session). According to Dr. Alford's testimony, "I think here [SD 10] that this is an example that in the general election this is an effort of where there is a cohesion of democratic voters, Hispanic, black and Anglo to elect a candidate of choice in that district." Alford Trial Testimony at p. 39 (1/25/2012 am session). Though Dr. Alford conceded that minority voters had demonstrated an ability to elect their preferred candidate in SD 10 in 2008, the State's senate map drawer, Doug Davis, contradicted him and claimed that they had not done so. But Doug Davis was forced to admit that he never conducted any inquiry or analysis into whether minority voters in SD 10 had demonstrated an ability to elect their preferred candidate of choice in the district. Doug Davis Trial Testimony at 24 (1/18/2012 am session). Doug Davis further testified that if minority voters had elected their candidate of choice in SD 10 in 2008, then they would be entitled to protection against retrogression under Section 5. *Id*., at 22 ("If they have the ability to elect a candidate, then they have Section 5 protections and this was not the case in Senate District 10."). When one puts the testimonies of Dr. Alford together, what

emerges is that the State's witnesses have admitted violating Section 5 of the Voting Rights Act by dismantling SD 10, which Dr. Alford conceded was an ability to elect district.

12. That a bi-racial coalition of voters formed in Tarrant County and focused their energy and resources on electing the candidate of their choice in the 2008 senate race was also unrebutted by Texas' other witnesses, Senator Seliger and Senate Redistricting Committee Director Doug Davis. Both admitted in cross-examination that they had not studied the electoral dynamics in the 2008 SD 10 race or the minority voter coalition that was successful in that election. Seliger Trial Testimony at 64 (1/24/2012am session); Doug Davis Trial Testimony at p. 24 (1/18.2012 am session). Indeed, Senator Seliger who chaired the Senate Redistricting Committee, admitted in cross-examination that although one of the main focuses in the 2011 redistricting cycle would be SD 10, he had not looked at any of the following regarding SD 10: voting patterns in the 2008 race; voter turnout in 2008; the political dynamics in the 2008 race; how much money was spent; and what efforts were made by candidate Wendy Davis to mobilize the voters in SD 10. Seliger Trial Testimony at 64-65 (1/24/2012am session).[1] Senate Redistricting Committee staff director Doug Davis, who claimed he was "reasonably competent" in his understanding of the requirements of the Voting Rights Act (Doug Davis Trial Testimony at 142 (1/17/2012pm session)), admitted that he was unable to identify any of the criteria that lawyers for the Texas Legislative Council, lawyers in the Office of the Attorney

[1] Senator Seliger initially testified he was unable even to identify the voters or voting group responsible for Senator Davis' election (Seliger Trial Testimony at 52, 1/24/2012 am session), although he later acknowledged that his "presumption" was that Senator Davis received most of the minority vote and that "she was successful in the minority population[.]" *Id*. at 53-54.

General, or outside counsel used in evaluating whether Senate District 10 was an ability to elect district in the benchmark plan. *Id*. at 170.

13. Once in office, Senator Davis focused her legislative agenda on issues that were of particular concern to the minority communities in her district, including education and predatory payday lending. As one Hispanic leader (Sergio DeLeon) testified: "Wendy Davis had proven herself to be a courageous advocate for Hispanic and African American voters for many years…. She has been an effective advocate for the interests of Hispanic communities in Tarrant County as a state senator." Testimony of Sergio DeLeon, Document 157-1 at 2-3, filed January 17, 2012. That Senator Wendy Davis would be such a strong advocate for issues of particularized concern to the minority community confirms that she was the minority voters' candidate of choice in the 2008 elections and was therefore responsive to them.

14. The State's expert witness, Dr. Alford, speculated that Davis received greater support from white voters than other Democratic candidates and this explained her successful election in 2008. Alford Testimony at 35-36 (1/25/2012am session).[2] However, Dr. Alford acknowledged he had not conducted any turnout analyses of the 2008 election (*id*., at 36) and that such data was needed to make such a determination. Moreover, Dr. Alford's statistical analysis showed that in the 2008 election, Senator Davis received over 99% of the black vote, over 85% of the Hispanic vote, and a mere 25% of the Anglo vote. Alford Trial Testimony at 32-33 (1/25/2012am session). One

[2] Though Dr. Alford's pre-filed direct testimony (DX 801) stated that the United States' expert, Dr. Handley, did not dispute his assertion that the adopted Senate plan contains at least as many effective minority districts as the benchmark plan, Dr. Handley testified she did no analysis of the senate plan whatsoever. Handley Trial Testimony at 69-70 (1/26/2012am session)

Hispanic leader testified that he believed Senator Davis' election was attributable, not to any increase in the Anglo vote, but rather to the strong support she received from the minority community:

> Our organizational and financial support was committed to the election of Davis to the near exclusion of statewide candidates, including our Presidential candidate, Barack Obama and our US Senate candidate Rick Noriega. We understood that diverting resources to statewide candidates would harm rather than enhance our opportunity to elect our candidate of choice in Senate District 10.
>
> Our focus on District 10 in 2008 was successful. Hispanic and African American voters formed a strong coalition and voted overwhelmingly in support of Wendy Davis**. She was elected by gaining over 90 percent support from minority voters. Anglos voted against her in very large numbers, but could not overcome her strong support from an energized and mobilized minority vote.**

DeLeon Testimony, Document No. 157-1 at p. 2 (emphasis added). The State chose not to cross-examine Mr. DeLeon or to challenge his testimony. Similarly, African-American State Senator Rodney Ellis testified at trial: "The fact that African-Americans and Hispanics in the district coalesced was the paramount reason that Senator Wendy Davis] won that seat." Sen. Rodney Ellis Trial Testimony at 109 (1/20/2012 am session).

15. The expert witness for the Davis intervenors, Dr. Allan J. Lichtman, agreed with Dr. Alford's findings that the 2008 election in SD 10 was marked by racially polarized voting. DX 134 at 2. According to Dr. Lichtman's testimony and analysis, "Anglo voters strongly bloc voted against the candidates of choice of Latino and African American voters." *Id*., at 2-3. Dr. Lichtman found that "Senator Davis was an overwhelming consensus choice of Latino and African American voters in the 2008 SD 10 election, and that Senator Davis was elected by a unified coalition of Latino and

African American voters." *Id.*, at 3. Here again, the State of Texas chose not to cross examine Dr. Lichtman regarding his analysis and findings.

16. The State of Texas' expert, Dr. Alford, testified that in all ten exogenous elections he studied, the minority candidate of choice did not prevail in SD 10. According to Dr. Alford, "the 10th Senate District is not even a Democratic majority district. Not a single Democrat wins in any of the reconstituted election analysis and the election of an Anglo Democrat to the Senate seat in 2008 stands as the sole indication of Democratic success." Alford Pre-filed Direct Testimony, DX 801 at page 31. Dr. Alford's analysis, however, fails to take into account the endogenous election of 2008—the only real election contest that matters because it is the election in which Senator Davis prevailed and minority voters demonstrated an ability to elect their candidate of choice. Second, Dr. Alford has admitted that in the 2008 election, minority voters demonstrated an ability to elect Senator Davis as their candidate of choice. Alford Trial Testimony at 39 (1/25/2012 am session).

17. Moreover, even if the minority candidate of choice was unable to carry SD 10 in the elections preceding 2008, it is clear that by 2008 the minority population and minority voting strength in the district was growing. As Dr. Alford himself has acknowledged, one would "certainly … want to be cautious if there are trends that would make current election results give us a very different picture than, say, results from 2002, 2004." Alford Testimony at 105 (1/24/2012am session). That is precisely the trend here, as revealed first by the 2006 District Attorney race, the 2008 election results in SD 10 where minority voters demonstrated an ability to elect their preferred candidate, and the significant increase in minority population in SD 10 as shown by the 2010 census data.

DX 855 (showing population growth in Tarrant County). Indeed, Rep. Veasey, a lifelong resident of Tarrant County and Fort Worth described the minority population growth in Tarrant County this way:

> Q. I would just like to talk to you a little bit about the minority growth in the Dallas/Ft. Worth area. How would you describe that growth over the last ten years?
>
> A. I would say that that growth has been very strong. I mean, when you look at -- you know, there's -- obviously, we've had strong Hispanic growth and the Metroplex continues to be one of the strongest areas for Hispanic growth in the entire country. The Metroplex -- and the Metroplex is the Dallas/Ft. Worth area. But the Metroplex or the Dallas/Ft. Worth area is the second fastest growing African-American area in the entire country, only behind Atlanta, Georgia.

Veasey Trial Testimony at 12-13 (1/18/2012pm session). This testimony regarding population growth in the Dallas-Fort Worth metroplex was unrebutted.[3]

18. Reconstituted election returns from statewide candidates, even those who received strong support from minority voters over the last decade, are not an accurate measure of minority voting strength in SD 10. As Hispanic leader and Tarrant County official Sergio DeLeon stated,

> Any contention that SD10 is not a minority opportunity district because other Democrats running for statewide office did not carry it in 2008 or in other election cycles is simply wrong. Those holding this view fail to understand or acknowledge the dynamics that have taken place over the decade or the hard decisions made by local minority leaders in 2008.

Testimony of Sergio DeLeon, document No. 157-1 at p. 3. African-American State

[3] Congresswoman Eddie Bernice Johnson also testified about population growth in the Dallas and Tarrant counties area and the coalition of blacks and Hispanics in those counties. Cong. Johnson Trial Testimony at 72-73, 75-77 (1/18/2012 pm session).

Representative Marc Veasey also made this precise point in his testimony. Rep. Veasey Trial Testimony at 36-37 (1/18/2012pm session).

4. **According to the 2010 Census, Senate District 10 Was A Majority-Minority District In Total Population.**

19. By the time of the 2010 census, Senate District 10 had become majority-minority district in terms of total population. DX 151. SD 10, according to the 2010 census, was 52.4% combined Hispanic, Black and Other minorities. *Ibid*. The 2010 census also showed that Texas' population had grown so much over the last decade that in order to comply with the one-person, one-vote requirements of the Constitution, the ideal population in each senate district would be 811,147. *Ibid*. The 2010 census also showed that the population of SD 10 was 834,265, a little more than 23,000 (2.85%) over ideal population. *Ibid*. Senator Seliger testified that SD 10 was well within the overall population range for one-person, one-vote purposes, meaning that SD 10 did not have to change at all to meet the requirements of one-person, one-vote. Sen. Seliger Testimony at 47 (1/24/2012am session).

20. In the current benchmark plan, Plan S100 (DX 151), SD 10 is a geographically compact district located entirely within Tarrant County. *Id*. SD 10 contains a number of identifiable minority communities of interest, which are set forth in the map, DX 657. Current SD 10 includes almost every minority neighborhood in the City of Fort Worth as well as close-in predominately minority suburbs such as Forest Hill and Everman and other growing minority neighborhoods in Arlington. Doug Davis Trial Testimony at 21 (1/18/2012am session). See also DX 128. Senate District 10 contains the third largest concentration of African American voters in the state of Texas (Rep.

Veasey Trial Testimony at 9, 1/18/2012pm session), and its Hispanic population is large and growing. DX 128.

21. The chief state senate map drawer, Doug Davis, testified that he attempted to keep communities of interest together in drafting the senate plan. Doug Davis Trial Testimony at 19 (1/18/2012am session). Yet Mr. Davis admitted he was never given any working definition of what constituted a community of interest, and he was incapable of defining a community of interest himself. *Ibid*. Despite this, Mr. Davis acknowledged that he knew the racial or ethnic composition of these minority communities of interests and neighborhoods when he drew the state senate map. *Id*., at 20.

5. The 2011 Redistricting Cycle in Texas: The State's Proposed State Senate Plan (S148) And The Process Used To Develop The Plan Was Driven By A Racially Discriminatory Purpose.

A. Racially Exclusive and Discriminatory Process of Senate Redistricting

22. Even before the 2011 legislative session started, the State legislative redistricting committees held field hearings across the State. At that time, no census data gad been released. The senate's principal map drawer, Doug Davis, said " the purpose of these hearings is to receive input, collect input, and so we have called them outreach hearings, and the purpose is to go out into the state, into -- solicit and receive input from the public in whatever parts of the state or throughout the state. Doug Davis Trial Testimony at 145 (1/17/2012pm session). Doug Davis acknowledged that these hearings were held well before the census numbers were released. *Id*., at 146.

23. Though Doug Davis claimed that the field hearings were held in "population centers," he admitted no redistricting hearings were held in Fort Worth, the largest city in Tarrant County. *Id*., at 17 (1/18/2012am session). Even worse, Representative Veasey

had requested that a public hearing be held in Fort Worth and offered to find appropriate locations for such a hearing, but his request was ignored. Veasey Trial Testimony at 8-9 (1/18/2012pm session). Instead, the only public hearing in all of Tarrant County was held in Arlington—the largest city in the United States which lacks both public bus and rail service. *Id*., at 8-9. As a result, Rep. Veasey testified, "a lot of the constituents that I represent didn't even have a way to get to the hearing, and I just thought that that was completely unfair." *Id*., at 9. Even the public hearing location in Dallas County was held downtown at the courthouse, where there was inadequate parking and in the middle of a work day making it difficult for members of the general public to attend. *Id*., at 11.[4] In the last redistricting cycle in Texas in 2003, there were field hearings held across the state after proposed maps were released. No field hearings on redistricting plans were ever held after draft maps were prepared in 2011, which would have given the public and legislators a more meaningful ability to participate in the process, because "when you're actually drawing lines, ….that's where the real meat of the process is." Sen. Rodney Ellis Trial Testimony at 94-95 (1/20/2012am session).

24. It is also noteworthy that Senator Seliger, Chairman of the Senate Redistricting Committee, and Doug Davis, the Director of the Senate Redistricting Committee, gave conflicting testimony on whether the Senate Redistricting Committee ever held any field hearings in Tarrant County. Mr. Davis said that the Arlington hearing was a House hearing and the Senate did not conduct any outreach field hearings anywhere in Tarrant County. Doug Davis Trial Testimony at 71 (1/18/2012am session).

[4] Representative Veasey noted in his trial testimony that the parking at the Dallas location was so bad that, even though he was a member of the redistricting committee, he had to leave the redistricting hearing to put money in a parking meter. Veasey Trial Testimony at 11 (1/18/2012, pm session).

Senator Seliger, however, testified that the Arlington hearing was a joint hearing of the Senate and House Redistricting Committees. Seliger Trial Testimony at 58 (1/24/2012am session). Equally noteworthy is the fact that neither the Chairman of the Senate Redistricting Committee nor the Chairman of the House Redistricting committee had any redistricting experience prior to the 2011 cycle. Rep. Solomons Trial Testimony at 65 (1/20/2012 pm session) and Sen. Seliger Trial Testimony at 42 (1/24/2012 am session). It is difficult to understand how Texas, which knew the importance of redistricting and was gaining additional seats in the national Congress, would put in charge of the two redistricting committees, persons who lacked any redistricting experience or expertise. Consequently, at trial, each Committee Chair had difficulty explaining who drew the lines, why lines were drawn the way they were, the number of ability to elect districts in the benchmark plan, or the population or voting patterns that existed in the various districts. See, *e.g.*, Sen. Seliger Trial Testimony at 52-54 (1/24/2012 am session) and Rep. Solomons Trial Testimony at 65-66 (1/23/2012pm session).

25. Moreover, the public outreach hearings themselves were conducted in 2010 in a manner that differed from previous redistricting cycles. Senator Judith Zaffirini, an Hispanic Senator who was a veteran of several past senate redistricting cycles and served on the Senate Redistricting Committee in 2011, said the 2010 field hearings were "a sham" with low attendance, low participation, the lack of invited testimony, and the lack of prepared materials for members of the Senate Redistricting Committee.
DX 810, Senator Zaffirini Testimony at pp. 7-8. Similarly, African-American Senator Rodney Ellis testified that the field hearings were "perfunctory," marked by low attendance because the census numbers were not known and it wasn't even known how

many seats Texas would be getting. Rodney Ellis Trial Testimony at 94 (1/20/2012am session).

26. The State of Texas' 2011 redistricting cycle differed from previous cycles in several important respects. First, the State delayed the formal redistricting process until there were just three weeks left in the regular session. As a result, the formal senate redistricting process was rushed, with the entire formal process starting with a redistricting committee public hearing on May 12, 2011, and ending just eleven days later with the enactment of the state senate map on May 23, 2011. See DX 156, Bill History for State Senate Redistricting Bill. The truncated redistricting process was harmful to the public, which was not given an adequate opportunity to be heard. DX 809, Zaffirini Testimony at 17-19.

27. Though the formal redistricting process did not begin in Texas until mid-May 2011, maps were being drawn and in secret, with behind-the-scene maneuvering occurring among Anglo state senators and those responsible for drawing the state senate map. In the months both before and during the 2011 legislative session in Texas, and before the official 2010 census numbers were released, the State of Texas' principal point person and map-drawer for the senate redistricting plan, Doug Davis, began drawing alternative state senate maps using population projections. *Id*., at 38-39. Before the 2011 session began, at least two Anglo senators came to Davis to identify potential redistricting problems with their districts. DX 127, Doug Davis Deposition at 42-43.[5]

[5] Doug Davis testified he met with one Anglo senator (Fraser) in the summer of 2010 to discuss redistricting and the potential redistricting problems with his district. DX 127, Davis Deposition at42-43. Davis also identified several other senators (all Anglo) that he either met with during the legislative session either to discuss redistricting or with whom he met and showed them a draft configuration to them of their proposed district before

28. Though Anglo senators were able to freely discuss redistricting with the senate's map drawer and the chairman of the Senate Redistricting Committee before any proposed plans were made public, senators representing majority-minority districts, including Senator Wendy Davis, were denied such access. Sen. Wendy Davis Trial Testimony at 37-40 (1/20/2012 am session); Sen. Judith Zaffirini Trial Testimony, DX 810 at pp. 8-9; and Sen. Rodney Ellis Trial Testimony at 95 (1/20/2012 am session)("I was left out of the process and most of the members who represented minority districts, all of us were left out of the process").

29. Some of these state senators who were shut out of the redistricting process were even members of the Senate's redistricting committee. For example, State Senator Judith Zaffirini testified that Anglo senators had access to drawing their districts and the senate plan, but minority senators did not. DX 809, Sen. Judith Zaffirini Trial Testimony, at pp. 8-9. Not only were the senators who represented majority-minority districts not consulted during the map drawing process, Senator Zaffirini testified they were "excluded" from the process. *Id*., at 10.

30. On May 13, 2011, all five Hispanic members of the Senate Redistricting Committee signed a letter to Senator Seliger expressing their disappointment at the redistricting process. DX 132. These five Hispanic state senators stated that they felt "locked out" of the redistricting process while senators representing "Anglo-controlled districts" were "given access to the process[.]" *Ibid*.

31. As note above, like other Senators who represent majority-minority districts, Senator Wendy Davis was also denied access to information and maps during the

---

any redistricting plans were made public. DX 190. Two Anglo Senators even got to draw their own districts. DX 127 at 59.

redistricting process, despite making direct and repeated requests for such information. Sen. Wendy Davis Trial Testimony at 37040 (1/20/2012am session). Here again, the state's witnesses contradicted themselves at trial about whether they provided draft maps to Anglo state senators. Senate Redistricting Committee Director Doug Davis, in responding to questions about whether he complied with Senator Wendy Davis' request that he provide her with a map of her district, testified that "we were not printing maps and giving them to members." Doug Davis Trial Testimony at 172-73 (1/17/2012 pm session). But Doug Davis' boss, Senator Seliger, testified that he provided maps to three Anglo state senators. Seliger Trial Testimony at 67 (1/24/2012am session).

32. During late April and throughout May, 2011, draft senate redistricting maps were available for viewing on an "invitation only" basis in a room adjacent to the senate floor and various members were invited, one by one, to leave the floor with Senator Seliger and Doug Davis to review draft proposals and provide their feedback. Sen. Wendy Davis Trial Testimony at 39 (1/20/2012am session); and Sen. Rodney Ellis Trial Testimony at 96 (1/20/2012am session) ("there was a point late in the session in which a number of my colleagues were going off the floor into a back room, and they were being shown maps."). Senator Ellis testified that no black or Hispanic senators were shown maps. *Ibid*. Senator Zaffirini in her testimony confirmed these private map drawing sessions stating

> I saw, for example, Anglo senators being called to private meetings and to discuss maps in the

> Lieutenant Governor's conference room. I never saw a senator who represented a minority district be called to one of those private meetings.
>
> Now, I sit in the back row of the Senate, and I sit there for a purpose. I can see everything going on in front of me. So a back row seat gives you a wonderful opportunity to see what's going on. And I could see that Anglo members of the Senate were being called to the back room, as we call the Lieutenant Governor's conference room, to discuss the maps. I never saw a minority senator being called back. And of course, we discussed it among ourselves.
>
> So we would see a senator go back there and we'd say, what's going on? What did you discuss? And that's how I know that Anglo senators had the opportunity to discuss their districts in advance. Some of them were even involved in drawing different maps. They drew different maps for their districts until they were pleased.

Zaffirini Testimony at 29-30.

33. When Senator Davis realized this was occurring, she asked Senator Seliger when she could see her district. *Ibid*. Sen. Seliger promised Sen. Davis that he would show her a draft of her district, but he never did until the map was finalized and about to be made public. One Anglo Senator even informed Sen. Davis in mid-April that the Anglo leadership of the Senate was "shredding my district" and he had seen her reconfigured district. *Id*., at 40. It was not until the evening of May 10, less than 48 hours before the Senate Redistricting Committee was going to meet, that Senator Davis got to see her district for the first time. Other senators representing majority minority districts, such as Senator Ellis and Senator Zaffirini were also denied the right to see their districts or to have any meaningful input into the map drawing process. See Sen. Rodney Ellis Trial Testimony at 95 (1/20/2012am session) and DX 809, Sen. Zaffirini Trial

Testimony at pp. 11-12. In sum, State officials in Texas acted intentionally each step along the way to ensure that those senators who represented minority opportunity districts were excluded from meaningful participation in the redistricting process, while Anglo members participated actively in the redrawing of their own districts and were actually shown the districts of other senators who represented minority opportunity districts. See DX 190 (Deposition Excerpts of Anglo Senators detailing their repeated meetings with Senator Seliger and Doug Davis and their access to the map drawing process). See also DX 645 at pp. 17-20 and DX 646 at pp. 10-11 (Depositions of two Anglo senators who also participated in the redrawing of their own districts and met with Seliger and/or Doug Davis).

34. A glaring example of how the state's senate map was pushed through the Senate Redistricting Committee with no opportunity for meaningful input was revealed in an email sent by David Hanna to Katrina Davis (Senate parliamentarian)[6] with a copy to Doug Davis, the parliamentarian's spouse and chief senate map drawer. Apparently a scheme was hatched by Anglos running the senate redistricting process to prepare the final maps and run the statistical reports on the plan before the Senate Redistricting Committee hearing was even held. The fact that Hanna's email is directed to the parliamentarian suggests that she may have been the one who came up with the idea of "predoing committee report," to use Hanna's words. Senator Seliger at trial admitted that this email exchange suggested that the senate map and the redistricting committee

[6] It is strange, to say the least, that the Senate parliamentarian, who Senator Seliger testified is supposed to be a resource regarding Senate rules for all senators in the legislative body (Seliger Trial Testimony at 43, 1/24/2011am session) would insinuate herself into the redistricting process in this manner. The State of Texas offered no explanations.

hearing could be a "*fait accompli*" by the time the redistricting committee hearing was even held, but he denied knowing anything about it. Seliger Trial Testimony at 71-72 (1/24/2012am session).

35. Hanna counseled against the idea of "predoing committee report" because it would leave a "paper trail" that the Redistricting Committee hearing was a sham, signaling that no amendments to plans at the committee hearing would be seriously considered. Hanna responded to the request that the senate plan be finalized before the Redistricting Committee as follows:

> No bueno. RedAppl time stamps everything when it assigns a plan. Doing it Thursday would create paper trail that some amendments were not going to be considered at all. Don't think this is a good idea for preclearance. Best approach is to do it afterwards and we'll go as fast as possible.

DX 359. Such an exchange speaks volumes about how State officials cynically orchestrated the redistricting process in the senate in a way that denied elected officials and members of the public a fair opportunity to be heard and participate in an honest, open, and above board political process.

36. Members of the general public, including minority elected officials and senators representing majority-minority districts, voiced their strenuous objections about the racially discriminatory redistricting process at the time redistricting was occurring. For example, all twelve senators representing majority-minority districts in Texas, including Senator Davis, sent a letter dated May 17, 2011 "detailing our objections to the discriminatory redistricting process." See DX 129 (May 17, 2011 Statement of all twelve Democratic Senators). This statement of all twelve senators was entered into the Senate journal and made an official part of the record. DX 159 at pp. 2481-2482. Numerous others also complained at the time about the discriminatory redistricting process. These

include: DX 128, Letter from Senator Davis to Senator Kel Seliger (May 10, 2011);[7] DX 130, Letter from Tarrant County Commissioner Roy Brooks to Senator Kel Seliger (May 11, 2011); DX 131, Letter from Tarrant County Constable Sergio L. De Leon to Senator Kel Seliger (May 12, 2011) ; and DX 132, Letter from Senators Judith Zaffirini, Mario Gallegos, Juan Hinojosa, Eddie Lucio, Jr. and Carlos Uresti to Senator Kel Seliger" (May 13, 2011). Senator Zaffirini explained why she and the other eleven state senators (all of whom represented majority minority senate districts) issued the May 17, 2011 statement expressing their objections to the redistricting process and the proposed state senate plan, stating

> We understood the impact of the proposed map on Senate District 10. So we began by expressing our responsibility for that.
> And then we expressed anew our disappointment in the process that was used to develop this map, as you can see there.
> But we wanted to reiterate our very strong belief that the plan did not comply with the Voting Rights Act.
> We also talk about the weeks leading up to the Committee's action on the Senate Redistricting bill and that some senators were allowed ongoing participation but others were not. The Anglos were; the senators who represent the minority districts were not involved.
> **And we thought that that was just outright blatant discrimination. And I can't tell you what was in their hearts or what their purposes were, but I can tell you that the result of their work was blatant discrimination and retrogression**.

DX 810 (Zaffirini Testimony at 21).

37. In her testimony, Senator Zaffirini also outlined how unfair it was that at the May 12, 2011 senate redistricting committee hearing, Chairman Seliger imposed a rule that any amendment to the plan had to be filed by 5pm that day. DX 310, Sen. Zaffirini Testimony at 17-18. As Sen. Zaffirini noted, she complained to Senator Seliger that she

[7] DX 128, Senator Davis' May 10, 2011 letter to Senator Seliger, provides substantial details of her many unsuccessful efforts to gain access to the redistricting process, the unequal treatment of senators representing majority-minority districts, and her repeated requests to see a copy of a map showing her reconfigured district.

could not attend the committee hearing, listen to testimony, and simultaneously draw up an amendment. Seliger was "dismissive" of her concerns and "disrespectful". *Id*., at 19. Senator Zaffirini also raised concerns about the holding of the May 12 hearing itself, stating that there had been inadequate publicity, a lack of outreach, and insufficient opportunity for interested persons to attend the hearing and participate. *Id*., at 17-18. Again Senator Seliger, she testified, was "dismissive of my concerns." *Id*., at 19.

38. It cannot be denied that the State of Texas was fully aware that the racially discriminatory process of drawing a new senate map was intentional. After all, every single Democratic senator representing a majority-minority district in the senate (there are twelve) voted for an alternative senate redistricting plan that preserved and protected these twelve senatorial districts, including SD 10, but that amendment was rejected. See DX 159, pp. 2412-13, 2432. All twelve senators objected to the State's redrawn SD 10 because it would "[eliminate] the ability of African American and Hispanic voters in the district to elect the candidate of their choice." *Id*., at 2481-82.

39. State officials have attempted to suggest that the state senate map was supported by a number of minority senators because they voted to bring the senate map to the floor and because all but two senators voted in favor of the map on final passage. This is misleading at best. All twelve state senators who represent majority-minority districts in the senate issued a statement explaining that their vote on final passage "should not be interpreted as endorsement of the process used to develop the plan or the configuration of the plan in all parts of our state." DX 132. As Senator Ellis explained at trial, a number of senators representing majority-minority districts voted in favor of the state senate map on final passage to ensure that the state senate would not deadlock over

redistricting, which would have resulted in the all-Anglo and highly partisan Legislative Redistricting Board drawing the map. Sen. Ellis Trial Testimony at 113-114 (1/20/2012am session) and DX 129.[8] Indeed, Senator Ellis testified that he voted to bring up the bill because he feared "retribution." Sen. Ellis Trial Testimony at 103 (1/20/2012am session).

40. Once the Senate had approved the proposed senate plan, it was sent over to the House for quick action. What happened next was a serious procedural and substantive departure from the norm. Under normal procedures, when a bill is sent over from the Senate, it is referred to a committee and public hearing or hearings are held to allow the public to voice their views. Veasey Trial Testimony at 41-42 (1/18/2012pm session). The House failed to hold a single hearing on the senate redistricting bill where the public was allowed to testify and have any input. *Id*., at 42. The hearing that was held was held in the House Agriculture Extension Museum, which was so cramped in size that it had no room for anyone to sit down (public or press) except the committee members. *Id*., at 42. Furthermore, the House ordinarily holds its committee hearings in committee rooms, which broadcast the hearings over the web and on cable TV. *Id*., at 42-43. The House Agriculture extension Museum is not equipped with any broadcast capability. *Ibid*.

[8] "The Legislative Redistricting Board (LRB), composed of the lieutenant governor, speaker of the house, attorney general, comptroller, and land commissioner, was created by constitutional amendment in 1951, at least in part to provide legislators with an incentive to redistrict after each federal decennial census. If the legislature fails to redistrict house or senate districts during the first regular session following release of the decennial census, Section 28, Article III, of the Texas Constitution requires the board to meet within 90 days of the end of that regular session and, within 60 days of convening, to adopt its own house or senate plan." http://www.tlc.state.tx.us/redist/process_lrb.html

41. Under normal legislative procedures or tradition involving redistricting legislation, the House does not try to amend the Senate's redistricting plan and the Senate does not try to amend the House's redistricting plan. Seliger Trial Testimony at 62 (1/24/2012am session). That normal process was not followed here. Minority members of the House unsuccessfully attempted to amend the senate plan by reuniting the minority neighborhoods in SD 10. Sen. Seliger Trial Testimony at 62-63 (1/24/2012am session). In the end, the House passed the Senate's plan with every Democrat voting against the plan, including every single minority Democrat in the House. Seliger Trial Testimony at 61 (1/24/2012am session).

42. Even though SD 10 was majority-minority in total population under the benchmark map, and even though the senate had been provided ample evidence by elected officials and numerous members of the public that SD 10 had been effective for minority voters in the 2008 election and was continuing to grow in minority population, the State of Texas dismantled the district anyway. The senate map drawers admitted at trial that when they removed areas from SD 10, they knew that they were removing minority neighborhoods and placing them in heavily Anglo districts. Davis Trial Testimony at 20 (1/18/2012am session); Sen. Seliger Trial Testimony at 56-57 (1/24/2012 am session). Perhaps no one summed up the situation any better than Tarrant County African-American Commissioner Roy Brooks, who wrote to the Senate Redistricting Committee and the Senate's outside legal counsel on May 11, 2011, and predicted SD 10's destruction as an ability to elect district:

> Over the last decade, the minority population in the 10th District grew to the point that Anglos now make up less than half the population of the district. African American and Hispanic citizens form an effective coalition and have demonstrated their ability to

> elect their candidate of choice. Now there is a clear possibility, and perhaps even likelihood, that the Texas Legislature will break apart the 10th District in order to crack the effective block of minority voters and eliminate their ability to elect their candidate of choice. I believe that any effort to dilute the voting strength of minority citizens in the 10th Senate District of Texas would be a disservice to many of the people I represent and would constitute illegal retrogression.

DX 130, May 11, 2011 Letter from Roy Brooks to Senator Kel Seliger, *et al*.

43. The Davis Intervenors also presented expert testimony of Dr. Allan Lichtman on the question of whether the state senate plan (S156) was enacted with a racially discriminatory purpose or intent. The State of Texas failed to rebut or challenge Dr. Lichtman's analysis and conclusions, since they chose not to cross examine him or to present any expert testimony on the intent issues. What Dr. Allan Lichtman "found was that the redistricting process in Texas that produced a state senate map which itself has racially discriminatory effects, clearly exhibits the indicia of a racially discriminatory intent aimed at African-Americans and Latinos." DX 134 at p. 8. Dr. Lichtman's analysis of intent began with an examination of the effects of the redistricting plan. He found that:

> The coalition of African American and Latino voters that elected Senator Davis in 2008 demonstrated an effective ability to participate in the political process and to elect a candidate of choice to office in Senate District 10. That effective coalition of minority voters has been fractured severely into several other senate districts under the state's proposed map. The voting strength of minority voters (African Americans and Latinos) has been significantly diminished under the state's proposed senate plan.

DX 134 at 8-9.

44. Dr. Lichtman reviewed facts, data and other evidence including the effects of the redistricting plan, the racial composition of those who ran the redistricting process and enacted the plan, the procedural and substantive departures from past redistricting cycles, and contemporaneous statements made by legislators. DX 134 at pp. 8-15. Dr. Lichtman found that the State of Texas' proposed senate plan (S156) "was enacted with a racially discriminatory purpose and will have a retrogressive effect." *Id.*, at 15.

B. The State Of Texas' Proposed Senate Plan (S148) Carves Up The Minority Population In SD 10, Cleaving Minority Voter Neighborhoods Into Disparate Pieces That Will Have No Political Impact On Any Of The Districts They Are Placed Within.

45. As noted above, SD 10 as it existed in the benchmark map was comprised of almost all of the traditional and growing minority neighborhoods of Tarrant County within its borders: the historic northside Hispanic neighborhoods, the growing Southside Hispanic neighborhoods, the growing Hispanic neighborhoods of east Fort Worth, the traditional African American southeast Fort Worth and Forest Hill neighborhoods, the growing African American neighborhoods in Everman, the growing African American neighborhoods in southwest Fort Worth, and the growing African American neighborhoods in Meadowbrook. See DX 657 and DX 151.

46. Maps depicting current SD 10 and other Tarrant County and Dallas County Senate Districts in the benchmark map (S100), with shading that shows the predominantly African American and Hispanic population concentrations, are DXs 136-138. To illustrate how the State's proposed plan fractured these minority communities that were all previously within SD 10, see DXs 139-141, showing the demographic shading of minority population with the new proposed senate lines in the State's plan

(S148). State Senator Judith Zaffirini accurately explained what happens to the minority communities in SD 10 under the State's proposed plan: the plan "cracked the African American and the Hispanic populations and then moved them to different districts." DX 810, Sen. Zaffirini Testimony at 71.

> The demolition of District 10 was achieved by cracking the African American and Hispanic voters into three other districts that share few, if any, common interests with the existing District's minority coalition. The African American community in Fort Worth is "exported" into rural District 22 – an Anglo-controlled district that stretches over 120 miles south to Falls [County]. The Hispanic Ft. Worth North Side community is placed in Anglo suburban District 12, based in Denton County, while the growing South side Hispanic population remains in the reconfigured majority Anglo District 10.

Ex. 15, July 5, 2011 Letter of Senator Rodney Ellis.

47. According to the State of Texas, even though SD 12 in the benchmark map exceeded the ideal population of a senate district by more than 200,000 persons, the state's enacted map moved over 53,000 people from SD 10 into SD 12, of whom 89.5% were Hispanic or black. DX 133. In addition, 104,703 Tarrant County residents formerly in SD 10 have now been placed in SD 22, which runs south over 120 miles from Fort Worth to south of Waco. See DX 152, Statistical Package for Plan S148, and DX 133 at p. 2. Of these persons, over 80% (84,093) are minorities (78.2% black and Hispanic and 2.1% Other). DX 133 at page 2. The current state senator from District 22 is Senator Birdwell, whose district under the benchmark plan contains no part of Tarrant County. DX 151.

48. The placement of minority voters into Senate District 22 (a new district that runs south over 120 miles from Fort Worth to south of Waco) will be especially harmful to the representational interests of minority voters. Senator Birdwell, who was voted the

most conservative member of the Texas Senate (Veasey Trial Testimony at 47 (1/18/2012 pm session) enjoys a reputation as a legislator who will not serve the representational interests of minorities in his district. *Ibid*. See also DX 810, Sen. Zaffirini Testimony at

49. In the last legislative session, Senator Birdwell co-sponsored a number of bills that minority voters and minority elected officials fought hard to defeat, including a controversial voter ID bill, a sanctuary cities bill, and a controversial bill to end in-state tuition for undocumented Texas students (persons Senator Birdwell refers to as "illegal aliens"). Sen. Davis Trial Testimony at 32-34, (1/20/2012 am session) and DX 810 Sen. Zaffirini Testimony at p.15. See also DX 134, Report of Allan Lichtman at ¶18 (describing an atmosphere of racial animosity and tensions over such legislation in the 2011 legislative session).

50. That the fracturing of minority voters in current SD 10 among several districts will retrogress or diminish their ability to participate effectively in the political process is free from doubt. See, *e.g*., Veasey Trial Testimony at 47049 (1/18/2012pm session). This fracturing of the minority communities in SD 10 has a serious detrimental impact on their ability to participate effectively in the political process. As Dr. Lichtman, Davis intervenors' expert witness, who has studied the political behavior of voters in SD 10 has testified, "The state legislature, in dismantling benchmark SD 10 cracked politically cohesive and geographically concentrated Latino and African American communities and placed members of those communities in districts in which they have no opportunity to elect candidates of their choice or participate effectively in the political process." Dr. Lichtman Report at ¶12. This testimony was unchallenged by the State of Texas who chose not to cross examine Dr. Lichtman.

51. Dr. Lichtman also testified that "the substantial reduction of the African American and Latino population in SD 10 under the state's adopted senate plan clearly deprives these minority groups, that are overwhelmingly cohesive in their voting behavior in general elections, any realistic chance to once again elect their candidate of choice to State Senate from this district, or any other senate district in Tarrant County." DX 134 at p. 8. State officials accomplished this by removing the core of the district and dramatically reconfiguring it, more than any other senate district in the entire state. See DX 133. Under the State's proposed senate plan, SD 10 retains just 43% of its current district—while the other 30 senate districts in Texas retained on average over 75% of their current district's population. See DX 133, Red Appl Report 340. State data also show that of the 53,451 people removed from SD 10 and moved into SD 12 under the State's proposed plan, 89.5% are black or Hispanic. *Ibid*. These are Hispanic neighborhoods (northside, Diamond Hill, and the stockyards) who Mr. Doug Davis admitted he removed from SD 10, knowing full well that when he did so, he was moving Hispanic population into a district (SD 12) that would be dominated by Anglo Republicans from Denton County to the north. Doug Davis Trial Testimony at pp. 21, 29 (1/18/2012am session). Furthermore, of the 104,703 people moved from SD 10 to SD 22, 78.2% are black or Hispanic (and over 80% are minorities). DX 133. The mostly minority voters removed from SD 10 have been replaced by nearly half a million new persons from districts 9 and 12, of whom more than two-thirds are reliable Anglo voters, who generally vote as a bloc against minority preferred candidates. *Id*. See also DX134, Lichtman Testimony and Report at p. 2.

52. Dr. John Alford, the State of Texas' expert witness, admitted that in the 2008 elections, blacks and Hispanics voted "cohesively" and demonstrated an ability to elect the candidate of their choice (Senator Wendy Davis) to the state senate. Alford Trial Testimony at 39 (1/25/2012am session). Dr. Alford then actually conceded that the State's proposed senate plan retrogressed minority voting strength in SD 10:

> Q. It's also true isn't it that if you take that ability to elect away, that diminishes the voting strengths of blacks and Latinos in that district; isn't that true?
>
> A. You know, ... I couldn't agree with you more….

Ibid.

53. It is feasible to create an alternative SD 10 that not only preserves, but substantially increases, the African-American and Latino voter strength in this district. Both plans, S120 (DX 143 & 153) and S156 (DX 149 & 155), create a majority-minority citizen voting age population in their new versions of SD 10, and stand in sharp contrast to the state's proposed state senate plan that diminishes minority voting rights in SD 10.

54. The state's proposed senate plan, S156, was enacted with a racially discriminatory purpose and will have a retrogressive effect on the ability of minority voters in SD 10 to elect their preferred candidates to office.

Part 2-the State's Proposed Congressional Plan (C185)[9]

1. Texas gained four new congressional seats on account of the dramatic population growth of Hispanics and African Americans. DX 372.[10] African Americans

[9] The Davis Intervenors will only address the congressional plan insofar as it involves the North Texas (Dallas-Tarrant County) region of the State. With regard to other portions of the congressional plan, we adopt and support the proposed findings of fact being filed by the United States, the Gonzales Intervenors, the NAACP, MALC, LULAC, the Texas Latino Redistricting Task Force, and the Texas Legislative Black Caucus.

and Latinos accounted for 78.7 percent of the Texas total population growth between 2000 and 2010. *Id*., at 12. All minorities combined accounted for 89 percent of the Texas total population growth since 2000; Anglos accounted for only 11 percent of that growth. *Ibid*. As a result of their rapid growth, African Americans and Latinos have come to comprise nearly a majority of the Texas's total population in 2010 – 49.6 percent. All minority groups combined comprise a majority of Texas's total population – 54.6 percent, with Anglos in the minority. *Id*.

2. African-Americans and Hispanics were responsible for 70.3% of the growth in Texas's voting age population. DX 372 at 12. African-Americans and Hispanics now comprise 37.2% of the state's citizen voting age population (CVAP), which translates proportionately into 13.39 congressional districts (.372 * 36 = 13.39). *Ibid*. All together, minorities comprise 41 percent of the 2010 CVAP and Anglos comprise 59 percent of the CVAP. *Ibid*. That translates proportionately into 21.24 Anglo districts. *Id*.

3. In creating only 10 ability to elect majority-minority districts and wiping out the only effective crossover district for minorities (CD 25), the state-passed proposed congressional plan (C185) "significantly fails to reflect the predominantly minority growth in population since 2000 and falls far short of rough proportionality relative to citizen voting age population in the number of minority voters' ability to elect districts." DX 372 (Testimony and Report of Dr. Allan Lichtman at pp. 12-14). Under Plan C185, Anglo voters will control 72 % of the congressional districts (26 of 36), even though they

[10] DX 372 is the sworn testimony and report of Dr. Allan J. Lichtman, an expert witness called by the Davis Intervenors. Dr. Lichtman's pre-filed report on Congress was filed on January 16, 2012 and is document number 152-2. Dr. Lichtman's sworn testimony and report on the senate plan is DX 640, also filed on January 16, 2012 as document number 152-1.

constitute only 59% of Texas' citizen voting age population (which proportionally translates to only 21 districts). *Ibid*. These "widely disproportionate results" between the number of ability to elect districts in the state's proposed plan and the percentage and amount of minority growth in the population strongly suggest that the failure to create new ability to elect districts for minority voters was intentional. *Ibid*.

4. According to the 2010 census, over 2.1 million Latinos and African Americans resided in Dallas and Tarrant Counties – enough population for more than three majority-minority congressional districts. DX 855. Under the current benchmark map, there is only one minority ability to elect district, CD 30 (represented by Congresswoman Eddie Bernice Johnson). Under the State's proposed congressional plan (S185), there remains only one minority ability to elect district (CD 30). Rep. Veasey Trial Testimony at 13 (1/18/2014pm session). And that district, CD 30, is packed with minority population far in excess of what is needed to create an ability to elect district, and the result is that "the state has deliberately created a heavily packed district that wastes many minority votes and diminishes the possibility of placing minority voters into an additional ability to elect district in the North Texas region of the State." DX 372 at 21.

5. Since 2000 the Latino population in Dallas and Tarrant Counties has grown by 83.7%, the African American population by 34.1%, and population of other minorities by 12.0%. DX 372 at 21. In contrast, the Anglo population in Dallas and Tarrant Counties has *declined* by 29.8% since 2000. According to data compiled by Dr. Lichtman (DX 372 at Table 10), African-Americans and Hispanics now comprise a majority of the population of these two counties –52.6%. In the last decade, the Anglo population in

Dallas and Tarrant Counties decreased by 156,742 while the African American and Hispanic population increased by almost 600,000. *Ibid*.

6. During the 2011 legislative session, Republican Congressman Lamar Smith took the lead on congressional redistricting for the Republicans in the Texas congressional delegation. Veasey Trial Testimony at 15 (1/18/2012pm session). Legal counsel for the Republican members of the congressional delegation, Eric Opiela, engaged in numerous email correspondence with legislative staff in the Texas Legislature regarding the configuration of the congressional districts. DX 393-401.

7. Around early April 2011, Congressman Smith distributed a draft congressional plan to Republican leaders of the Texas Legislature, as well as the Lieutenant Governor and Governor. DX 394 (Bates Stamp #012775).[11] That map created a new minority ability to elect district in the Dallas-Fort Worth region. *Ibid*. As Congressman Smith put it, the map created "one new Voting Rights Act district in the Dallas-Fort Worth area" and "reflects the population growth in Texas over the last decade." *Ibid*. Rep. Marc Veasey, the only African American on the House Redistricting Committee, heard such a map was circulating and asked the chairman of the Committee for a copy. Veasey Trial Testimony at 15 (1/18/2012pm session). Chairman Solomons denied the existence of any such map, and as rumors of the Lamar Smith map persisted, Veasey again asked Solomons for the map. Again, Solomons denied the existence of the map. *Ibid*. Later , Veasey learned that Solomons had been provided a copy of the map when Congressman Smith first distributed it in early April. *Id* at 15-16. Rep. Veasey testified that his experience on the House Redistricting Committee was "frustrating" because he was never

[11] Because this exhibit is voluminous, we have provided the Bates stamp page number for the convenience of the Court.

given an opportunity to have any input into how the process or the maps would unfold. Veasey Trial Testimony at pp. 8 (1/18/2012pm session). Similarly, Senator Rodney Ellis testified that he "was left out of the process and most of the members who represented minority districts, all of us were left out of the process." Sen. Rodney Ellis Trial Testimony at 95 (1/20/2012am session).

8. The Legislature did not conduct a single hearing on congressional redistricting in the 2011 regular legislative session. Instead, redistricting was taken up in a special session in June 2011. Senators on the redistricting committee, like Senator Zaffirini (Hispanic) and Senator West (African-American), complained that the process was too rushed and they complained that neither they nor the public had adequate time to study it or meaningfully participate. DX 370. Senator West, for example, said he was not shown the proposed congressional map until the day of the redistricting committee hearing. DX 370. Similarly, Senator Zaffirini told Chairman Seliger: "I've been on every redistricting committee since my election in 1986 and I must say that I have never had less input into the drawing of any map until this session. " *Ibid*.

9. The congressional redistricting process was so rushed that even the State's outside counsel, Baylor law professor Mike Morrison, acknowledged that the redistricting process in 2011 was far more truncated than previous cycles, telling Senator West: "this process has been quite different from what we've seen in the past. We didn't get to Congressional; we didn't see a plan until the regular session ended. Nobody has had the opportunity to study it the way it has been done in the past or the way you do it ideally." *Id*., at 2. Professor Morrison also contrasted the 2011 cycle with the 2003 redistricting cycle when the Texas Legislature conducted numerous field hearings to obtain public

input. Morrison said: "We went all over the state as you said earlier today. We spent 16 hours in one place, 20 in another. We sat down in your office, we visited. We hired experts to do retrogression analysis and if time permits that would be the way to do it this time." Unfortunately for Texas voters, particularly minority voters, there were no public field hearings held across the State on congressional redistricting plans.

10. Once the congressional map reached the senate floor, Senator Seliger was again forced to admit that not only did the outside team of lawyers he hired not see the congressional plan until it was released in committee, he also was forced to acknowledge that they had failed to evaluate it for compliance with the Voting Rights Act. DX 568. Senator Seliger also admitted, under questioning by Senator Zaffirini, that no Hispanic or black member of the Senate was involved in the development of the congressional plan. DX 568. Seliger also conceded he never asked any senators to participate in drawing the plan, which was drafted he said, by the senate redistricting committee director Doug Davis. *Ibid*. This was the same Doug Davis who testified that he worked on the 2003 redistricting plan (Davis Trial Testimony at 141 (1/17/2012pm session)), a plan that Senator Seliger acknowledged had been struck down in *LULAC v. Perry* as violating the Voting Rights Act. Seliger Trial Testimony at 89 (1/24/2012am session).

11. Plan C185 as enacted by the Texas Legislature removed the home and district office of African-American Congresswoman Eddie Bernice Johnson from her congressional district, District 30. Rep. Johnson Trial Testimony at 79 (1/18/2011pm session). Congresswoman Johnson tried "several times" to get her house back in her district but she was unsuccessful. *Id*., at 80. African American Members of Congress Al Green and Sheila Jackson Lee also had their district offices taken out of their districts, as

did Hispanic Congressman Charlie Gonzalez. Trial Testimony of Rep. Sheila Jackson Lee at 13 (1/23/2012 pm session).[12] Meanwhile, Anglo Members of Congress were accommodated completely, with one Member asking for a condo full of Republicans to be put in his district along with an exclusive country club (Rep. Lamar Smith), another wanting his "grandbabies" private school in his district (Rep. Kenny Marchant) and another asking that her campaign office be moved back into her district (Rep. Kay Granger). In each instance, the Anglo Congresspersons' requests were immediately granted. That African American Members of Congress could be subject to such blatantly disparate treatment is strong evidence that the congressional plan is infected with racially discriminatory intent.

12. The State's enacted congressional map (C185) in the Dallas-Tarrant counties area fractures or cracks minority neighborhoods into four different congressional districts: CD 26, CD 12, CD 33, and CD 6. Each of those congressional districts is bizarre in shape. See DX 65, DX 73, and DX 85 for graphic silhouettes of congressional districts 12, 26, and 33, respectively. See also DX 630A-D (racial/ethnic shading maps of congressional districts in the Dallas-Fort Worth metroplex). These four congressional districts (26. 12, 6 and 33), each of which is dominated by Anglo Republican voters, take on these highly unusual shapes to avoid the creation of a majority-minority district or districts in the North Texas area. Rep. Veasey explained at trial how each of these four congressional districts takes a part of the minority community in the Dallas-Fort Worth

[12] Congresswoman Jackson Lee also testified that she travelled to Austin early in the redistricting process to attempt to open a dialogue with those who would be drawing new congressional boundaries, but she "was not reached back to." Sheila Jackson Lee Trial Testimony at 10 (1/23/2012pm session).

region and assigns it to an Anglo dominated district where the minority voters will have no voting power. Rep. Veasey Trial Testimony at 17-25 (1/18/2011pm session).

13. CD 26 under the State's plan was referred to at trial as the "lightening bolt district." It is dominated by Denton County Anglo voters and then protrudes with a jagged extension in a southerly direction into Tarrant County. See DX 73. A map showing District 26's boundaries and how it carves out minority voters, particularly Latino population in the historic Northside/Stockyards area of Tarrant County, is DX 75. Rep. Veasey Trial Testimony at 17-19 (1/18/2012pm session).

14. One of the architects of the congressional plan was Ryan Downton. According to Dr. Lichtman's testimony and report, Downton provided "a thin rationale for the lightning bolt appendage of jagged District 26 that dips down into Tarrant County." DX 372 at 15 Downton's testimony in *Perez v. Perry*, was that the strange shape of the lightning bolt resulted from the State's desire to include an economic development area known as Trinity Vision within District 12 and not any desire to capture Hispanic voters. *Ibid*. Dr. Lichtman found such an explanation "implausible on its face."

15. That keeping the Trinity Vision Project within CD 12 had nothing to do with the sharp jaggedness of CD 26 was specifically addressed by African-American Tarrant County Commissioner Roy Brooks. Commissioner Brooks, who serves on the Trinity Vision Project's Board of Directors, directly contradicted Downton's contention, pointing out that the contorted lightening bolt through Tarrant County reflected the separation of Hispanic voters into CD 26 while placing black voters in CD 12:

> I serve on the Trinity Vision Authority Board of Directors and am very familiar with the project. As you can see on the attached benchmark

> congressional map, the Trinity Vision site is currently located within the 12th District. It has been since its inception.
>
> On the map, the State's proposed lines are overlaid in green. The cuts around the Trinity Vision site are caused by the shift of CD26 to the west to pick up Hispanic neighborhoods. The contorted lines south of the Trinity Vision site reflect a careful effort to include Hispanic precincts and blocks in CD26 while placing African American precincts and blocks in CD12.
>
> Any difficulty in retaining Trinity Vision in CD12 was caused by the State placing a higher priority on separating black and Hispanic voters from each other.

DX 113, Memorandum from Tarrant County Commissioner Roy Brooks to Tim Mellett. Maps depicting the Trinity River Project in both the benchmark plan (C100) and the enacted plan (C185) are DX 111 and 112, respectively. They confirm Dr. Lichtman's testimony and Commissioner Brooks' explanation that CD 26 was shifted to the west and that put the Trinity River Project on the edge of CD 12. DX 66 and DX 75 show how CD 12 and CD 26 carefully extract minority population with scalpel-like precision to divide blacks and Hispanics between the two congressional districts.

16. Dubbed the broken heart district, CD 12 in the state's proposed plan attaches the large Anglo population in northwest Fort Worth and western Tarrant County to a large part of SE Fort Worth, which is made up of heavily African-American neighborhoods. *Id*., at 20. A map showing District 12's boundaries and how it is drawn along racial lines to absorb minority neighborhoods, particularly the minority population in SE Fort Worth, is DX 66. Rep. Veasey explained that the district would be dominated by Anglo voters in the more affluent areas of Tarrant County. Rep. Veasey Trial Testimony at 20 (1/18/2012pm session).

17. CD 33 is comprised of heavily Anglo, suburban Parker and Wise counties (just northwest and west of Tarrant County) and then juts, fist-like, into Tarrant County from the west and extends deep into Tarrant County, grabbing fast-growing minority population areas to the south and east of CD 12. The district then extends into the City of Arlington and into the Grand Prairie area that straddles the Dallas-Tarrant border, and "picks up the minority growth areas in southeast Tarrant County, Arlington—southeast Arlington-Grand Prairie." *Id*., at 23-24. A map showing District 33's boundaries and how it is drawn along racial lines to absorb the neighborhoods in these fast growing minority areas and submerge them into heavily Anglo-dominated District 33 is DX 86.

18. CD 6 contains the heavily Anglo counties of Ellis and Navarro and reaches into both Dallas County and Tarrant County to pick up and absorb heavily Hispanic neighborhoods in Dallas County and areas of Tarrant County with rapidly growing Hispanic and black population areas. Id., at 21-22. What is also telling about the configuration of this congressional district, according to Rep. Veasey's testimony, was that it split black neighborhoods from Hispanic neighborhoods in a House district that just a month earlier, in drawing House districts, the leadership had insisted on keeping together. *Id.,* at 22.

19. Rep. Veasey testified that he offered an alternative congressional plan, C121, called the Fair Texas Plan, in the House Redistricting Committee. Rep. Veasey Trial Testimony at 26 (1/18/2012pm session). Rep. Marc Veasey's Fair Texas Plan gave every congressional incumbent a fair chance to win re-election and created two new majority-minority districts in the Dallas-Fort Worth region. *Ibid.* The two new ability to elect districts in North Texas that were contained in Rep. Veasey's Fair Texas Plan were

districts 34 and 35—with CD 34 containing a combined black and Hispanic VAP of 77.6% and CD 35 containing a combined black and Hispanic VAP of 52.1%.[13] Rep. Veasey's proposal was rejected in Committee.

20. There is also evidence that State of Texas officials knew, or had reason to know, that their congressional plan violated the Voting Rights Act. In an email sent to those drawing the congressional plans during the special session on congressional redistricting, a Congressional staffer to Texas Republican Joe Barton (Dub Maines) wrote that the congressional map that had just passed out of the House Redistricting committee "has next to no chance of pre-clearance either by Justice or the DC circuit court." DX 210. Maines also cited retrogression in the map and urged that a new district configurations be employed. *Ibid*. Mr. Maines was unsuccessful. Even more importantly, some of those involved in drawing the congressional lines contemplated the possibility of asking the Governor to call another special session after they enacted their map, in the event they filed a preclearance declaratory judgment action in the D.C. court "and we get really bad panel and have serious concerns about the direction that things are going" with preclearance.

21. Alternative congressional redistricting plans have been drawn that reflect the surge in Hispanic and black population growth in North Texas and which create two new minority ability to elect districts. For example, Plan C205 drew two new congressional districts in the Tarrant and Dallas counties and each district had combined majority black and Hispanic citizen voting age populations (BHCVAP). DX 114. These two new districts, CD 34 and 35 in Alternative Plan C205, were drawn by the Davis intervenors

[13] See http://gis1.tlc.state.tx.us/download/Congress/PLANC121r100.pdf and DX 582 (Trial Tr. in *Perez v. Perry)* at p. 183 of 197.

and submitted to the San Antonio court in *Perez v. Perry* to illustrate that the minority population in the Dallas-Tarrant region is sufficiently large and geographically compact to create two additional ability to elect districts for minority voters.

22. The congressional plan C185 was enacted with a racially discriminatory intent and will have a retrogressive effect on minority voters in Texas.

Respectfully submitted,

/s/ J. Gerald Hebert
J. GERALD HEBERT
D.C. Bar #447676
Attorney at Law
191 Somerville Street, #405
Alexandria, VA 22304
Telephone: 703-628-4673

PAUL M. SMITH
MICHAEL DESANCTIS
JESSICA RING AMUNSON
CAROLINE LOPEZ
Jenner & Block LLP
1099 New York Ave., N.W.
Washington, D.C. 20001
Tel: (202) 639-6000
Fax: (202) 639-6066

CHAD W. DUNN
D.C. Bar No. 987454
Texas Bar No. 24036507
Brazil & Dunn
4201 Cypress Creek Pkwy. West, Suite 530
Houston, Texas 77068
Telephone: (281) 580-6310
Facsimile: (281) 580-6362
chad@brazilanddunn.com

Counsel for Davis Defendant-Intervenors

/s/ Luis Roberto Vera, Jr.
LUIS ROBERTO VERA, JR.
League of United Latin American Citizens
111 Soledad St., Suite 1325
San Antonio, TX 78205

Counsel for LULAC

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February 2012, I filed and served the foregoing Proposed Findings of Fact by filing the same in this Court's ECF system, which caused copies of this document to be sent to counsel of record in this litigation.

/s/ J. Gerald Hebert
J. GERALD HEBERT