IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA, *et al.*, Defendants, and WENDY DAVIS, *et al.*, Defendant-Intervenors.	)	No.1:11-CV-1303 (RMC-TBG-BAH) (three-judge court)

DAVIS DEFENDANT-INTERVENORS'
SUMMARY OF EXPERT WITNESS TESTIMONY AND REPORTS

The Davis Intervenors, pursuant to this Court's order of January 10, 2012, respectfully submit this summary of the testimony and reports of its expert, Dr. Allan J. Lichtman. Dr. Lichtman has prepared four different reports addressing both the State of Texas' proposed congressional map and the proposed senate plan. Those reports are DX 43 (a report on Congressional redistricting plan filed in Perez v. Perry); DX 134 (a report on the senate plan in this case); DX 640 (a supplemental report and Dr. Lichtman's direct testimony on the proposed senate plan in this case); and DX 655 (a supplemental report and Dr. Lichtman's direct testimony on the proposed congressional plan in this case)**.**

I. Qualifications.

Dr. Lichtman's qualifications are fully described in his prior reports. He is a Professor of History at American University in Washington, D.C who has served as a consultant or expert witness in over seventy-five cases. His areas of expertise include political history, electoral analysis, and historical and quantitative methodology and have published numerous books and

articles in these fields. His work includes several cases in Texas, among them the congressional redistricting case *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006). Justice Kennedy's opinion in that case authoritatively cited Dr. Lichtman's statistical work.

II. Data and Methods

Dr. Lichtman's electoral analyses rely on standard information utilized in social science, utilizing the standard methodology of ecological regression that he has employed in his scholarship and in voting rights cases. This methodology was recognized by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), and his analysis of voting data based on these methods was cited in the *LULAC v. Perry*, *supra*.

III. Summary of Opinions

Latino and African American voters in Texas are cohesive in that both voter groups overwhelmingly choose to participate in Democratic rather than Republican primaries.

Latino and African American voters in Texas are additionally cohesive in that they overwhelmingly unite in support of candidates emerging from Democratic primaries.

Voting is usually racially polarized in these general elections in that Anglo voters usually unite in opposition to the candidates of choice of Latino and African American voters. An exception to this polarization occurs in Travis County.

Latinos usually have much lower turnout than either Anglos or African Americans.

Such racially polarized voting and turnout impedes the ability of minorities to elect candidates of their choice in districts that lack either a politically effective majority-minority voting age population or a racial-ethnic voter coalition that can elect its candidate of choice.

The congressional redistricting plan for the State of Texas is retrogressive in that it eliminates an effective minority ability district in Travis County.

The congressional redistricting plan for the State of Texas exhibits the many indicia associated with the purposeful intent to restrict the ability of Latinos and African Americans to elect candidates of their choice to Congress. The sworn statements of Members of the Legislature who represent majority minority districts and the bizarre racially driven configuration of congressional boundaries in Tarrant and Dallas counties

provides convincing evidence of purposeful discrimination.

The senate redistricting plan for the State of Texas is retrogressive in that it eliminates an effective minority ability to elect state senate district: SD 10 in Tarrant County.

The senate redistricting plan for the State of Texas also exhibits the many indicia associated with the purposeful intent to restrict the ability of Latinos and African Americans to elect candidates of their choice to the state senate.

IV. Minority Cohesion, Anglo Bloc Voting, and Turnout Rates

Analysis of voting and electoral data demonstrate that African-American and Latino voters are cohesive in their choices of Democratic primary participation in Texas overall and in major counties with significant minority populations. The cohesion of African American and Latino voters in their choice of Democratic primary elections is ratified by the results of statistical analysis of voting patterns in general elections statewide and in key counties. African American and Latino voters overwhelmingly favored Democratic candidates in recent elections with a varied racial mix of candidates. These elections include a black Democrat vs. a white Republican (2008 president), two Latino Democrats vs. white Republicans (2008 Senate and 2010 Lt. Governor), a white Democrat vs. a white Republican (2010 governor), and a white Democrat vs. a black Republican (2008 State Supreme Court Justice). Statewide, Democratic candidates received a mean of some 89 percent of Hispanic voters and essentially unanimous support from black voters. In contrast, the results for Anglos reveal the pattern of racially polarized voting found by all experts in the 2003 litigation (*LULAC v. Perry*). Only 22 percent of Anglo voters in the statewide estimate supported the candidates of choice of African American and Latino voters. These results are consistent in every county, with the exception of Travis County were about half of the Anglo voters backed the Democratic candidates of choice of minority voters.

This polarized voting impedes the ability of African-American and Latino voters to elect candidates of their choice in legislative districts for Congress and the State Senate, given the substantially lower turnout of minorities – especially Latinos, which reflects both socio-economic disparities and histories of racial discrimination. Low Latino participation also reflects lower citizenship rates than for other groups. Thus, minority ability to elect districts in Texas must be carefully crafted to avoid the defeat of minority candidates of choice by Anglo bloc voting, especially given turnout differences.

V. Retrogression in the Texas <u>Congressional</u> Redistricting Plan

With respect to the existing benchmark plan, Dr. Lichtman's findings accord with those of Dr. Lisa Handley, the expert for the U. S. Department of Justice, that there are currently ten minority ability to elect districts in the benchmark congressional plan. In these ten districts, the candidate of choice of Latino and African American voters in general elections prevailed in at least two-thirds of the most probative endogenous congressional elections held within those districts. Dr. Handley also found that on average in all of these districts the candidates of choice of Latino voters prevailed more than half the time when averaging endogenous and exogenous elections for other offices.

The state's expert, Dr. John Alford, makes a point of noting that in 2010 Republican congressional candidates defeated Democratic incumbents in CD 23 and CD 27, which Dr. Handley assesses as minority ability districts. However, Dr. Alford fails to note that 2010 was an extraordinary year for Republican congressional candidates in the nation and in Texas, although he does note that Republican numbers were low in 2008. Yet 2010 was a far better year for congressional Republicans in Texas than 2008 was for congressional Democrats in Texas. In addition, an ability to elect district is not one in which the candidate of choice of minorities is

guaranteed to prevail no matter what the political circumstances. Indeed, Dr. Alford admits that both existing CD 23 and existing CD 27 were "opportunity districts" for minority voters. The Democratic congressional candidate prevailed in CD 27 in 2004, 2006, and 2008 and in CD 23 in 2006 (after the district was redrawn pursuant to the Supreme Court decision in *LULAC*) and in 2008.

Additional analysis discloses an eleventh benchmark district in which minorities have the ability to elect candidates of their choice to Congress: CD 25 in Travis County. This district is majority-minority in total population, but falls just short of majority-minority in its voting age population. However, given the cohesion of minority voters in Travis County and the approximately 50 percent support for minority candidates of choice by Anglo voters, CD 25 is an effective crossover district that provides minority voters the ability to elect candidates of their choice to Congress. The Democratic candidate of choice of minority voters prevailed in every endogenous congressional election held in CD 25 since 2004. Likewise, the results of the reconstituted election analysis show that the Democratic candidate prevailed within existing CD 25 in four of the five exogenous statewide 2008 and 2010 contests referenced above.

The state passed proposed congressional plan results in the retrogression of the ability of minority voters in Texas to elect candidates of their choice to Congress by reducing the number of minority ability districts from 11of 32 to 10 of 36. Although the plan creates thirteen districts with voting age majority minority populations, three of those districts do not nearly provide minority voters the ability to elect candidates of their choice. These are proposed CD 6, CD 23, and CD 27. In each of these districts, the candidate of choice of minority voters lost all five of the 2008 and 2010 general elections referenced above, usually by quite wide margins.

The state-passed proposed congressional plan is retrogressive in eliminating the eleventh

minority ability district under the benchmark plan: CD 25 in Travis County. The state-passed plan cracks and fragments the minority population of Travis County by splitting the county into five separate districts. Four of these districts are dominated by Anglo Republicans and none contain more than 24 percent of Travis County within their boundaries. There is no substitute crossover district in the state-passed plan for the dismembered existing CD 25, which reduces the number of minority ability districts from 11 to10. This means that Anglos control the outcomes of electoral results in 26 of 36 congressional districts, equal to 72 percent, compared to 11 of 32 under the existing plan, equal to 66 percent. Yet data from the 2010 American Community Survey of the U. S. Census shows that Anglos are 59 percent of Texas's citizen voting age population, which equals only 21.24 districts (.59 * 36). Thus, Anglos are overrepresented by nearly five districts.

VI. Intentional Discrimination in the Texas <u>Congressional</u> Redistricting Plan

In addition to the discriminatory effect of the state-passed congressional plan, a strong indicia of intentional discrimination is the failure of the Texas congressional plan to respond to the dramatic minority population growth. Texas gained four additional districts as a result of the growth in minority population, which accounted for 89 percent of the population increase from 2000 to 2010. All minority groups combined now comprise a majority of Texas's population – 54.6 percent. In creating only 10 minority ability to elect districts out of 36 districts and wiping out the only effective crossover district for minorities, the state-passed congressional plan significantly fails to reflect the predominantly minority growth in population and, as indicated above, over-represents Anglos by nearly five districts based on citizen voting age population. These widely disproportionate results are explicable only by an intentional effort to avoid the creation of minority ability to elect districts. As the reports by Theodore Arrington and J.

Morgan Kousser indicate, the state-passed congressional districts cannot be explained by traditional, nonracial redistricting principles. To the contrary, those reports show that the state-passed proposed districts violate such principles, and Dr. Lichtman's reports reach this same conclusion.

An intentional effort by the state to fragment minority voter strength to avoid the creation of minority ability to elect districts is further demonstrated by examining the Dallas County and Tarrant County region in north Texas. The state created bizarrely configured congressional districts, especially CD 12, CD 26, and CD 33 in this region, which indicates a predominantly racially-driven redistricting with the intent to fragment minority communities in order to avoid creating minority ability districts. (See Outline Map 1 and detailed Maps 2 - 4 in Appendix I) Instead, minority voters are stranded in Anglo-dominated districts in which they have no ability to elect candidates of their choice to Congress. These oddly configured districts cannot be plausibly explained by the rationale provided by state plan drawer Ryan Downton. Under the state-passed proposed plan the only effective majority-minority ability district in the entire Dallas and Tarrant County region is CD 30. However, the creators of the state-passed plan packed this already effective ability to elect district with additional minorities whose votes are not necessary to provide minorities the ability to elect candidates of their choice. By expanding the minority population of CD 30, the state has deliberately created a heavily packed district that wastes many minority votes. Thus, the plan exhibits both the cracking and packing of minority communities. Moreover, the state-passed plan in the Dallas-Tarrant region failed to respond to the population changes there. Since 2000 the Latino population in Dallas and Tarrant Counties has grown by 83.7 percent, the African American population by 34.1 percent, and population of other minorities by 12.0 percent. In contrast the Anglo population in Dallas and Tarrant Counties

has *declined* by 29.8 percent since 2000. African American and Latinos now comprise a majority of the population of these two counties – 52.6 percent. Anglos comprise only 41 percent of the population in this area.

Other important indicia of intentional discrimination include the exclusion of minorities and those representing majority-minority districts from the redistricting process. This exclusion is demonstrated by letters, affidavits, and testimony from minority legislators and other minority political leaders. Along with other evidence of a discriminatory process, these legislators and leaders state that in contrast to past practices, the state did not hold any field hearings on any proposed plan after the release of redistricting 2010 census data. They failed to hold a single hearing during the regular legislative session. Minority legislators and members were not included in the discussion of detailed maps and plans between Anglo legislators and Anglo members of Congress. Legislators who represent districts which are predominantly minority did not have an opportunity to see, review, or comment about any proposed plan until it was, in effect, a *fait accompli*. Under questioning by Senators Zaffarini and West, Committee Chairman Kel Seliger could produce no evidence of minority involvement in the proposed congressional redistricting bill. At the time, minority legislators and other leaders protested against both the process and the discriminatory result. Alternative congressional plans that reflected the naturally occurring minority population growth in North Texas were proposed by minority members of the Legislature but uniformly rejected by Anglo-controlled Legislature.

Other indicia of a discriminatory process include testimony from outside counsel hired by the Senate Redistricting Committee documenting changed practices from the previous redistricting. These outside counsel acknowledged that the current process was much more truncated than the previous redistricting cycle and that unlike the past practice the counsel had no

input into the creation of the plan. Moreover, these outside counsel were not asked to provide advice on whether proposed plans were retrogressive or complied with the Voting Rights Act. Furthermore, the Texas congressional redistricting plan was adopted under conditions of considerable racial animosity and polarization. All of the foregoing suggest a racially discriminatory purpose drove the process and the congressional plan that emerged.

VII. Retrogression in the Texas Senate Redistricting Plan

Despite the growth in minority population, the state-passed State Senate plan adds no new districts in which minorities have the ability to elect candidates of their choice and actually creates retrogression by eliminating one such ability to elect district – SD 10 in Tarrant County. SD 10 is majority-minority in total population in the benchmark plan, but falls just short of majority-minority in voting age population. The state-passed proposed plan eliminates this ability to elect district by fragmenting the African American and Latino populations in existing SD 10 and placing the displaced minority population in districts controlled by Anglo voters. African Americans and Latinos accounted for 78.5% of Tarrant County's total population growth between 2000 and 2010. All minorities combined, as indicated in Table 1, accounted for 88.3% of the County's total population growth. The state passed plan reduces the black plus Latino voting age population in SD 10 by a politically significant 7.2 percentage points, from 42.4% to 35.2%.

The ability of minority voters in this district is demonstrated by the election of Democrat Wendy Davis in 2008 with near unanimous support from African American and Latino voters. John Alford, the expert for the state of Texas attributes the victory of Democrat Wendy Davis in 2008 to her higher than usual crossover vote from Anglo voters. However, more than 70% of Anglos voted against candidate Wendy Davis, who would not have won her victory in 2008

without an extraordinary mobilization of African American and Latino voters. Although this was a down-ballot election that typically produces a fall off in minority participation, statistical analysis demonstrated that Davis' mobilization of minority voters exceeded that of African American presidential candidate Barack Obama and Latino Senate candidate Rick Noriega in 2008. These findings are confirmed by evidence from local politicians in Tarrant County, which indicates that the Davis campaign for Senate, not these top-of-the-ticket races, was driving mobilization in SD 10 in the 2008 general election. These local leaders also indicate that a coalition of minorities united around Davis as their candidate of choice; she was nominated without a primary contest.

VII. Intentional Discrimination in the Texas Senate Redistricting Plan

The creation of the state senate redistricting plan in Texas exhibits the same indicia of intentional discrimination as the creation of the congressional plan. Despite the predominant growth of minority versus Anglo population in Tarrant County, the state legislature dismantled benchmark SD 10 by cracking cohesive Latino and African American communities and placing minority voters in districts in which they have no opportunity to elect candidates of their choice. The decision-makers did so in disregard of the traditional redistricting principle of maintaining communities of interest and in fact created a bizarrely shaped new SD 10. (See Map 5, Appendix I) These decision-makers knew precisely what they were doing. They were warned during the process against fracturing these communities by representatives of the Latino and African American communities, but did so regardless.

Other indicia of discriminatory intent include an Anglo-dominated decision-making process and the deliberate exclusion of minority input and Senators representing districts with majority-minority populations. Senators representing predominantly Anglo districts were given

privileged access to the decision-making process to the exclusion of minority Senators and those representing large minority populations, including Senator Davis. In addition, as compared to the previous redistricting cycle, there was a truncated process in 2011 and inadequate opportunity for public input. Minority senators at the time protested both the process and the discriminatory result. As with the congressional plan, the senate plan was passed in an atmosphere of considerable racial animosity and polarization. The Senate redistricting plan was enacted in the face of universal opposition from minority legislators, and nearly all members of the general public and public interest groups. Only one minority legislator in the Texas House or Senate redistricting committees voted for the senate redistricting plan in committee. That was Representative Pena, who had just switched to the Republican Party, and was given a favorable district in which to run in the House redistricting plan.

In sum, detailed analyses and evidence presented in Dr. Lichtman's reports indicate that both congressional and state senate redistricting in Texas retrogressed the ability of minority voters to elect candidates of their choice to Congress and the State Senate. In addition, both redistricting processes exhibit the indicia of intentional discrimination established in the scholarly literature and prior court cases, such as *Garza v. Los Angeles County*, a case in which Dr. Lichtman served as an expert witness.

Respectfully submitted,

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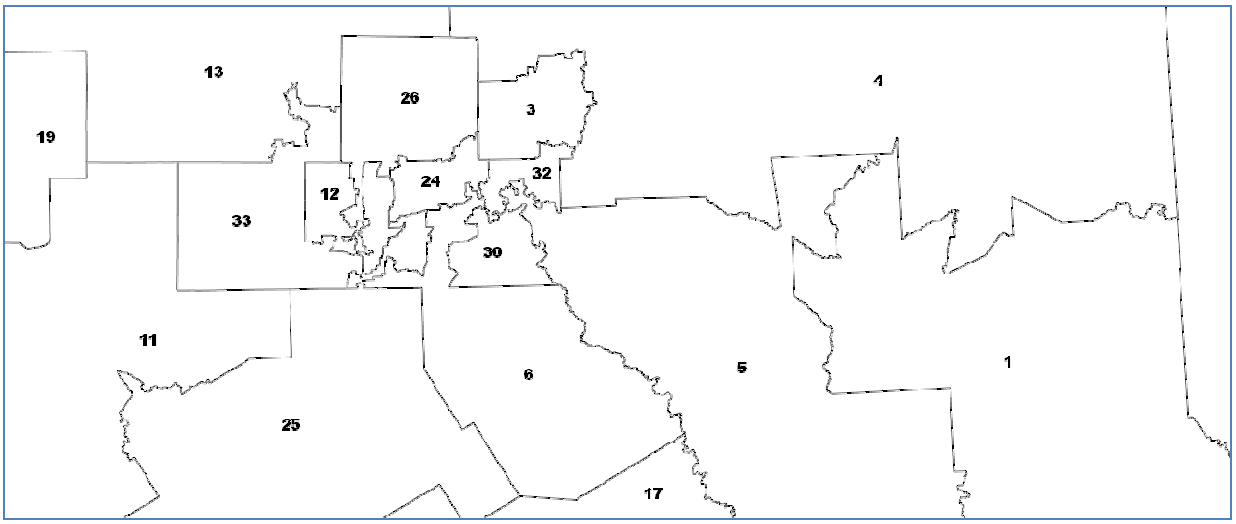
CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February 2012, I filed and served the foregoing Summary of Expert Witness Testimony and Reports 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.

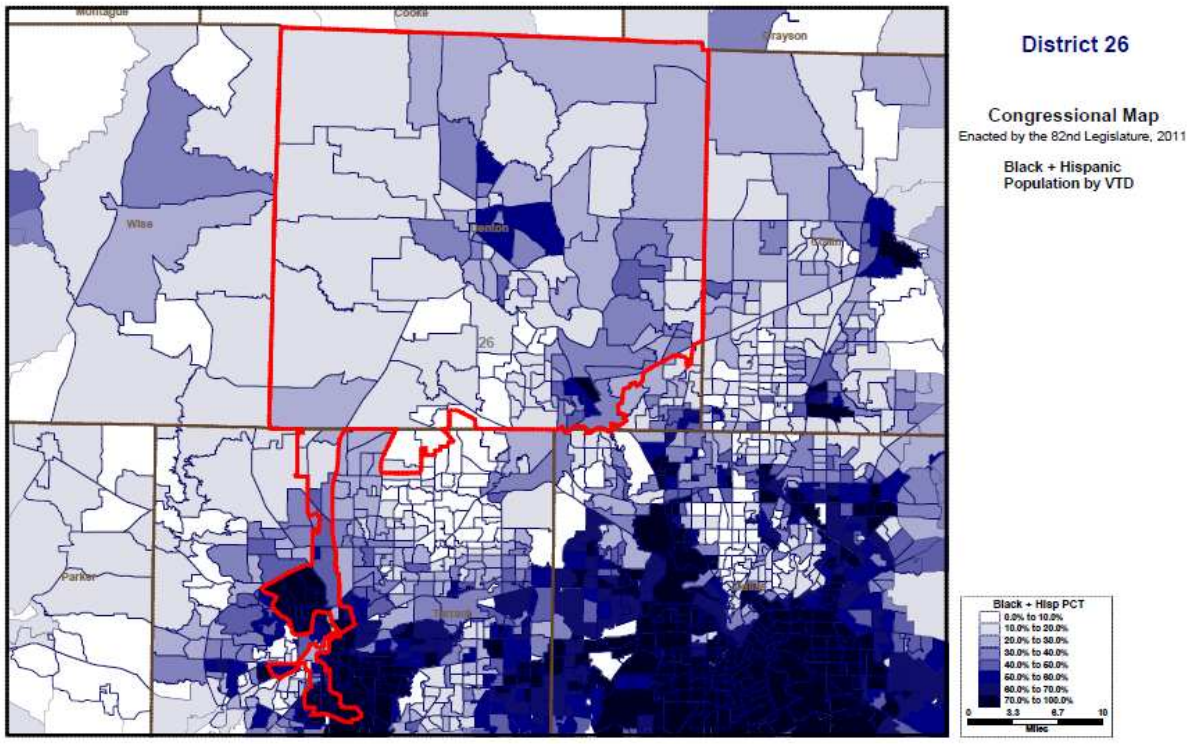
/s/ J. Gerald Hebert___
J. GERALD HEBERT

APPENDIX I: MAPS

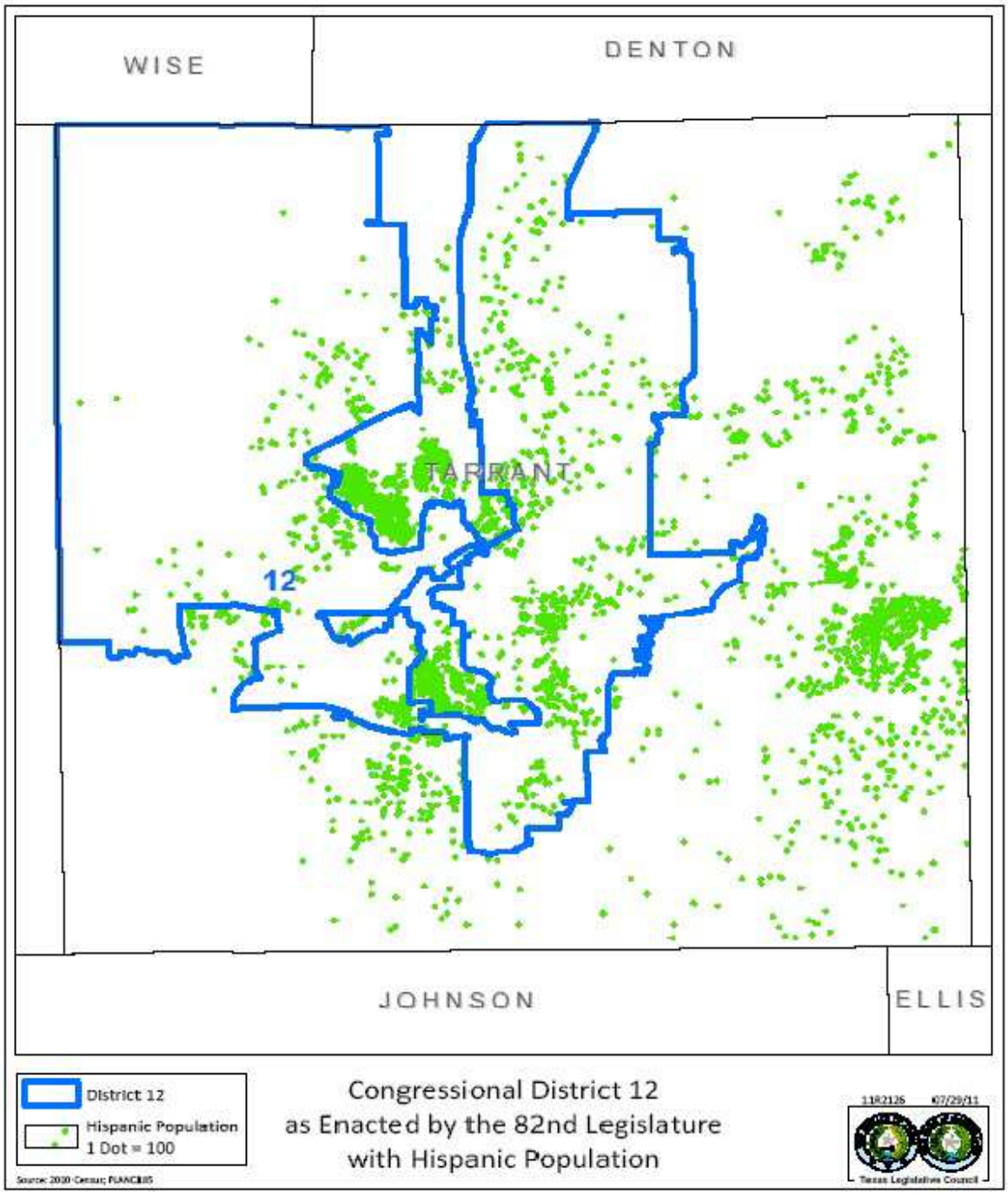
Map 1
Congressional Districts in Dallas/Tarrant Region, State-Passed Proposed Plan, C185



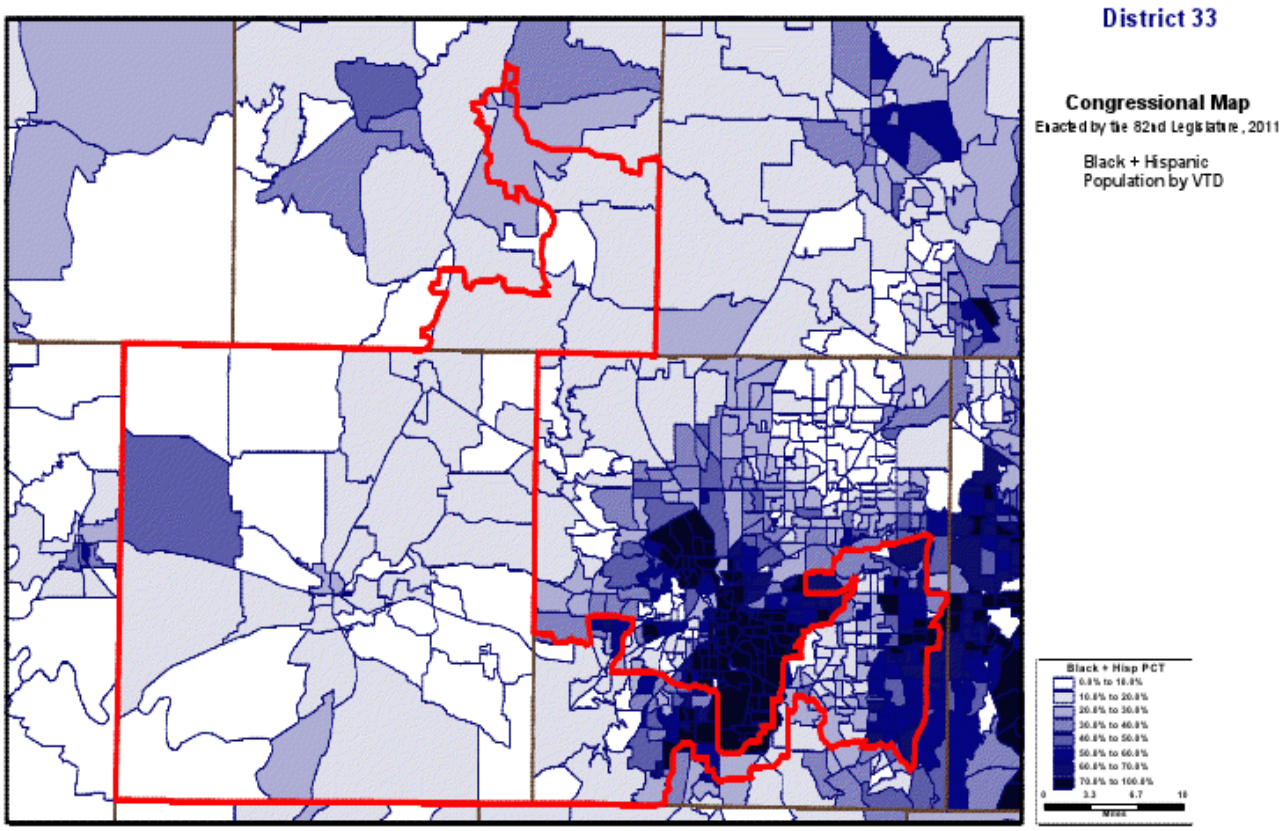
Map2
Congressional District 26, Extension into Congressional District 12
State-Passed Proposed Plan C 185, The Darker Blue Areas Are the Most Heavily Black and Hispanic



Map 3
Hispanic Concentration Areas Taken in By the Extension of CD 26 Into CD 12, State-Passed Proposed Plan C 185, Hispanic Areas in Green



Map 4
Congressional District 33: State-Passed Proposed Plan C 185, The Darker Blue Areas Are the Most Heavily Black and Hispanic



Map 5
Senate District 10, State-Passed Proposed Plan S148, Shaded for Black and Hispanic Population