IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,

Plaintiff,

v.

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

Defendant,

WENDY DAVIS *et al.*

Defendant-Intervenors,

MEXICAN AMERICAN LEGISLATIVE CAUCUS,

Defendant-Intervenor,

GREG GONZALES *et al.*

Defendant-Intervenors,

TEXAS LEGISLATIVE BLACK CAUCUS,

Defendant-Intervenor,

TEXAS LATINO REDISTRICTING TASK FORCE,

Defendant-Intervenor,

TEXAS STATE CONFERENCE OF NAACP BRANCHES *et al.*

Defendant-Intervenors,

LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

Defendant-Intervenor.

Civil Action No. 1:11-cv-01303 (RMC-TBG-BAH)

GONAZALES INTERVENORS' SUMMARY OF EXPERT TESTIMONY

I. INTRODUCTION

After performing a detailed analysis of both the benchmark congressional plan (Plan C100) and Texas's enacted congressional plan (Plan C185), the Gonzales Intervenors' expert, Dr. Stephen Ansolabehere, concludes that Plan C185 undoubtedly causes retrogression in minority voting rights in Texas. Dr. Ansolabehere focuses his analysis on the three benchmark minority ability districts that Texas dismantled in crafting Plan C185—CDs 25, 27, and 23—and explains how Texas's strategic shuffling of populations in and out of these districts resulted in a net loss for Texas minorities. Dr. Ansolabehere further demonstrates the discriminatory impact Plan C185 has on minority voters; not only does it decrease minority representation in the wake of massive minority population growth, it also increases representation for the state's shrinking Anglo population. Finally, Dr. Ansolabehere's written report and live testimony confront the serious flaws in the analysis performed by the State's expert, demonstrating why that analysis is both unreliable and telling of Texas's problematic approach to redistricting. Dr. Ansolabehere's analysis, in sum, conclusively proves that Plan C185 is retrogressive, and it provides unrefuted evidence of Texas's discriminatory purpose in enacting its congressional redistricting plan.

II. SUMMARY

A. Population and Demographic Changes Since 2010

Before diving into an analysis of the congressional maps, Dr. Ansolabehere's written report provides a summary of population and demographic trends in the last decade. As Dr. Ansolabehere explains, Texas's population grew by 4.3 million people since 2000. Defendants' Trial Ex. 724 ("Ansolabehere Rpt.") at 7 & tbl. A.1. Of those nearly 4.3 million people, approximately two-thirds were Hispanics. *Id.* Only about ten percent of the additional population in the state was Anglo, and roughly ten percent was African-American. *Id.* Due almost entirely to the increase in the state's minority population, Texas gained 4 additional seats in the U.S. House of Representatives, bringing the state's congressional delegation to

36. *Id.* at 11. Dr. Ansolabehere explains that if Hispanics had grown at the same rate as Anglos (4.1 percent), the state would have lost congressional seats rather than gained them, as the nation's population grew by 9.7 percent over the decade. *Id.* As a result of this massive growth in the minority population, Anglos are no longer a majority of the state's total population. Instead, Anglos are now a plurality in Texas, comprising 45.3 percent of the total population, while Hispanics and African Americans combined comprise nearly half, or 49.4 percent, of the state's population. *Id.* at 20 & tbl. A.1.

The composition of Texas's eligible electorate reflects a similar trend. In fact, Dr. Ansolabehere presents a unique perspective on the data used to determine the state's voter population. The Census Bureau measures citizenship using a separate, smaller survey called the American Community Survey ("ACS"). *Id.* at 12. The annual ACS does not have sufficient precision to measure population characteristics at the level of census blocks, which are the building blocks for congressional and legislative districts. *Id.* To gain sufficient precision, the Census Bureau constructs and releases a 5-year average of the annual ACS, and the most recent such data available at the time the Texas Legislature enacted Plan C185 was the 2005-2009 ACS average. *Id.* But as Dr. Ansolabehere's analysis reveals, because the ACS data reflect only an average population between 2005 and 2009, the ACS undercounts both the state population and the voting age population for 2010. *Id.* at 12-13. A side-by-side comparison of the ACS and Census figures reveals that the ACS underestimates the total population of Texas by 1.3 million and the voting age population by 1.1 million, Ansolabehere Rpt. app. at 2, a difference that exceeds the margin of error of the survey and thus reflects a systematic error or bias in the estimate rather than a sampling error, *id.* at 3. "Nearly all of the error in the population and voting age population is in the Hispanic population figures." Ansolabehere Rpt. at 13.

Dr. Ansolabehere explains that this error "appears to be due to population trends and the different time frames of the Enumeration and of the 5-year average of the ACS 2005-2009 study." Ansolabehere Rpt. app. at 3. As a result, "[t]he 5-year ACS average looks like the population circa 2007, not 2010." Ansolabehere Rpt. at 13. In other words, the ACS data lags the Census data by three years and therefore fails to account for three years' worth of growth in the Texas population. But even though the ACS underestimates the total and voting age populations in Texas, the percentages of each group who are citizens remains stable over time, so one can simply rescale the ACS figures so that they are consistent with the population counts in 2010 and the linear trends Dr. Ansolabehere has observed in order to determine citizen voting age population by racial group. Ansolabehere Rpt. app. at 5.[1]

Dr. Ansolabehere's report explains that, due to this three-year lag, the ACS slightly overestimates the Anglo citizen voting age population and "substantially underestimates" the African-American and Hispanic citizen voting age population." Ansolabehere Rpt. at 14. After rescaling the ACS figures to be in line with the 2010 population counts, Dr. Ansolabehere projects that the actual figure for Anglo citizens of voting age is about 18,000 less than the ACS estimate, the figure for African-Americans citizens of voting age is about 132,000 (or 8 percent) above the ACS estimate, and the actual figure for Hispanic citizens of voting age is 390,000 (or 10 percent) above the ACS estimate. *Id.*[2]

As Dr. Ansolabehere explains, the ACS estimates matter to the Section 5 assessment of the racial composition and electoral performance of congressional districts because citizen

[1] On January 12, 2012, the Census Bureau released the 2006-2010 ACS. As Dr. Ansolabehere explains in his Supplemental Report, the midpoint of that data is 2008, and "[t]he new data only underscore the main results of my original report." Dkt. #155, Attach. 3 ("Supplemental Rpt.") at 14.

[2] The Texas Legislature, meanwhile, made no effort to determine the accuracy of the ACS data but chose to rely on it as the exclusive measure of citizen voting age population. *See Perez v. Perry*, No. 5:11-cv-00360-OLG-JES-XR (W.D. Tex. Sep. 12, 2011), Trial Tr. at 1488-89. One may question the State's strict adherence to data it knew were out of date and out of sync with the Census figures. The State can hardly dispute that it had before it both ACS estimates and Census figures and could discern the obvious discrepancies.

voting age population is a "critical component" of such analyses. *Id.* "It is also essential to understand that the Hispanic population was the fastest growing segment not only of all persons in the state but of the eligible electorate over the past decade." *Id.* According to Dr. Ansolabehere's projections, the number of Hispanic citizens of voting age increased by 1.1 million persons over the last decade, and Hispanics' share of the eligible electorate rose from 22.3 percent in 2000 to 25.8 percent in 2010. *Id.* at 15 & tbl. A.2. Anglos, on the other hand, declined form 62.5 percent of eligible voters in 2000 to 55.8 percent in 2010. *Id.*

B. Retrogression

Dr. Ansolabehere explains that despite the growth in Texas's minority population—both as a measure of total population and among the eligible electorate—Plan C185 actually *decreases* the number of congressional districts in which minorities will have the ability to elect their candidates of choice. While the benchmark plan contained 11 minority ability districts (CDs 9, 15, 16, 18, 20, 23, 25, 27, 28, 29, and 30), Plan C185 creates only 10 minority ability districts (9, 15, 16, 18, 20, 28, 29, 30, 34, and 35). Ansolabehere Rpt. at 29; *see also* Supplemental Rpt. at 30. Remarkably, after a decade of massive minority population growth, Plan C185 decreases the number of minority ability districts by one and increases the number of Anglo-dominated districts by five. *Id.* at 32.

According to Dr. Ansolabehere, Texas accomplished this retrogression by dismantling three minority ability districts: CDs 25, 27, and 23. Dr. Ansolabehere's written reports discuss the specific techniques Texas employed with respect to each of these districts.

1. CD 25

"The most dramatically changed district is 25." Ansolabehere Rpt. at 39 (citing *id.* tbls. C.2 & C.4). As Dr. Ansolabehere explains, Plan C185 eliminates a minority ability district in the Travis County area by dismantling CD 25. Although benchmark CD 25 has a majority-Anglo population, *id.* tbl. B.3, the minority group has the ability to elect its

preferred candidates due to high levels of minority cohesion and sufficient levels of Anglo crossover voting, *id*. at 34. Hispanics and African Americans in benchmark CD 25 vote cohesively and overwhelmingly for minority-preferred candidates, while a portion of Anglos in Travis County chooses those candidates as well. *Id*. at 34-35; *see also* Supplemental Rpt. at 17-18 ("[T]he area and the existing CD 25 are such that Blacks and Hispanics have the ability to elect their preferred candidates precisely because Whites in the area vote at sufficiently high rates (though not always a majority) for the candidates preferred by Blacks and Hispanics."). As a result, the minority-preferred congressional candidate in general elections "won handily" in 2006, 2008, and 2010, even with as little as 37 percent of the Anglo vote. Ansolabehere Rpt. at 35.

In his Supplemental Report, Dr. Ansolabehere provides detailed ecological regression and election performance analyses to prove that benchmark CD 25 is an effective crossover district in which Hispanics, African Americans, and a sufficient portion of Anglos consistently vote for the minority-preferred candidate. Dr. Ansolabehere's analyses demonstrate, for instance, that African Americans and Hispanics overwhelmingly preferred Congressman Lloyd Doggett in the 2008 and 2010 general elections (100 percent of African Americans and over 80 percent of Hispanics voted for him) and a sufficient number of Anglos (between 37 and 53 percent) supported this candidate as well. Supplemental Rpt. at 21 & Attachment 3. In addition, Dr. Ansolabehere's findings were supported by other expert witnesses. *See, e.g.*, *id.* at 22 (though on average less than a majority of Anglos voted for the minority-preferred candidate, "[b]lacks and Hispanics succeeded in electing their preferred candidates in eight of the nine elections examined by Professor Engstrom."). Dr. Ansolabehere further examined benchmark CD 25's primary elections to determine whether benchmark CD 25 provides minorities an opportunity to *nominate* their preferred candidates as well. The results of his analyses make clear that "the primary election process facilitated,

rather than interfered with, the ultimate election of the candidate preferred by Hispanic and Black voters." *Id.* at 23. Dr. Ansolabehere found that "no one group dominates the primary process" in the Travis County area; rather "[p]ower is shared very equally and in such a way that the racial groups succeed in nominating their preferred candidates 75 percent of the time." *Id.*; *see also* Trial Tr. (Jan. 25, 2012) at 50. Dr. Ansolabehere's comprehensive analysis "underscores the unique nature of racial politics in Travis County within the State of Texas." Supplemental Rpt. at 24.

Plan C185, however, "completely restructures the district, taking out large numbers of minorities and putting in large numbers of whites from communities to the north." Ansolabehere Rpt. at 35. Dr. Ansolabehere explains how Texas strategically moved certain populations in and out of CD 25 based on voter turnout for minority-preferred candidates:

> The small area kept in CD 25 votes 60 percent for the minority preferred candidates. Plan C185 removed a large number of voters (roughly 225,000) who voted 60 percent for the minority preferred candidates. The Plan, then added back into the district an almost equally large number of voters (about 200,000) who voted roughly 40 percent for the minority preferred candidates. As a result of these shifts, CD 25 moves from minority opportunity to not.

Id. at 39. In other words, Plan C185's removal of minorities from CD 25 renders it a non-performing district, regardless of Anglo crossover votes. Dr. Ansolabehere further explains how Plan C185 divides Travis County across five congressional districts, none of which comprises a majority of Travis County residents, even though the county has sufficient population to encompass one entire congressional district and much of a second. Supplemental Rpt. at 25. In short, Plan C185 unravels a benchmark district in which minority voters, thought not a majority, were in the driver's seat to elect their candidates of choice.

2. CD 27

"Plan C185 simply dismantled an Hispanic district and made it into a White district, both in racial composition and electoral performance." Ansolabehere Rpt. at 33. Under the

benchmark plan, CD 27 ran from Nueces County down to Cameron County and was 63.8 percent Hispanic. *Id.* tbl. B.3. Hispanics in this benchmark district had a reasonable opportunity to elect their candidates of choice. *Id.* at 34. Plan C185, however, carves out Nueces County, which is majority-Hispanic, resulting in a new CD 27 that is just 41.1 percent Hispanic. *Id.* tbl. B.3. Under the State's plan, CD 27 is now an Anglo-majority district in which racially polarized voting will result in defeat of the minority-preferred candidate. *Id*. at 34 ("This is no longer a district in which minority preferred candidates have a good shot of winning the congressional seat.").

While the State has suggested that its decision to dismantle benchmark CD 27 was no harm, no foul, since it replaced that district with a new majority-Hispanic district in CD 34, *see* Pl.'s Mem. in Supp. of Summ. J., Dkt. #41 at 8, and that "it would not have been possible" to draw a seventh majority-Hispanic district in Southwest Texas, *id.* at 7, Dr. Ansolabehere's analysis reveals both of these propositions to be false. Benchmark CD 27 was anchored by Nueces County, a majority-Hispanic area. Ansolabehere Rpt. at 44. The district had an excess of approximately 40,000 people for an ideal congressional district. *Id.* "The path of least resistance would have been to take some of the population from this county to help construct a seventh [majority-Hispanic] district somewhere in the Rio Grande Valley." *Id.* at 44. In fact, several alternative plans, including Plan C166 offered by State Representative Dawnna Dukes, did just that. *Id*. Instead, the State chose to remove Nueces County from the Southwest Texas districts altogether and put it into a new district extending north along the Gulf Coast. *Id.* at 44. "The [206,000] Hispanics in Nueces previously were in a district where Hispanics could elect their candidates of choice; now they are not." *Id.* at 45.

Dr. Ansolabehere explains that the State's decision to excise Nueces County from benchmark CD 27 had a ripple effect throughout the State, to the detriment of minority voters. First, it precluded the creation of a seventh majority-Hispanic district in Southwest

Texas. *Id.* at 44. The districts in largely-Hispanic Southwest Texas exceeded the total population for 6 districts by 506,708, and "a simple adjustment to the envelope of these districts could have easily added the needed 191,780 persons so as to have sufficient population in the area for a seventh district[.]" *Id.* at 43. But moving Nueces County into a majority-Anglo district in the Southeast removed 340,000 persons—the majority of whom are Hispanic—from the Southwest Texas area, leaving insufficient population for a seventh majority-Hispanic district. "In essence, then, moving Nueces County into a White district guaranteed that there would not be a seventh Hispanic District in Southwest Texas, even though there was sufficient population to support such a district." *Id.* at 46.

Second, removing Nueces County from benchmark CD 27 necessitated the elimination of the crossover district in CD 25. *Id.* After sewing together new CD 34 out of the scraps of benchmark CD 27, the only way to create an additional majority-Hispanic district was to fashion new CD 35 by connecting two clusters of Hispanic population by a 50-mile-long strip along Interstate 35. *Id.* at 47. This required taking a quarter of the Hispanic population out of CD 25, destroying what was once a minority ability district. *Id.* "Again, an attempt to correct the error of moving Nueces County led to loss of yet another opportunity district." *Id.*

Third, moving Nueces County out of the Southwest Texas districts pulled all of the districts along the Gulf Coast to the southwest, including the Harris County districts, leaving no flexibility for the creation of an additional Hispanic seat in Harris County. *Id.* at 47. To compensate for the population loss from Nueces, the large Hispanic population in Harris County was pulled into—and stranded within—new Anglo CD 36. Several alternative plans, including Plan C166, managed to create a new minority ability district in Harris County by leaving Nueces County alone. *Id.* Plan C185, by contrast, creates a new majority-Anglo district to the east of Harris County. *Id*.

Thus, according to Dr. Ansolabehere's analysis, the decision to remove Nueces County out of benchmark CD 27 had far-reaching effects on what could be accomplished elsewhere in the state. In dismantling CD 27, the State eliminated a majority-minority district *and* a crossover district and replaced those with a single majority-minority district. This move also prevented the creation of a seventh majority-Hispanic district in Southwest Texas and constrained the ability to draw a new Hispanic district in Harris County. Contrary to the State's suggestion that it had "limited options when it altered CD27's lines," Dkt. #41 at 8, Dr. Ansolabehere reveals how the State rejected the path of least resistance and instead chose the path that resulted in maximum gains for Anglos and minimal gains for Hispanics.

3. CD 23

Finally, Dr. Ansolabehere's report explains that Plan C185 also eliminates a minority ability district in CD 23. Under the benchmark plan, CD 23 was a district in which the minority-preferred candidate had a reasonable opportunity of winning and won the district more often than not. Ansolabehere Rpt. at 36 & tbl. C.1. Minority-preferred candidates received between 48.7 percent and 51.4 percent of the district's vote. *Id.* tbl. C.1. Plan C185, however, lowers the electoral performance of minority-preferred candidates in CD 23 to the point that it would no longer be a minority ability district. *Id.* at 36. The electoral performance of minority-preferred candidates in new CD 23 now lies in the range between 45.0 percent and 47.9 percent. *Id.* at 37. As Dr. Ansolabehere notes, this range falls "below the lowest performance of any of the minority opportunity seats" under the benchmark plan and is now "clearly at the level of districts that all agree are not minority opportunity districts." *Id.* at 37. For instance, all parties agree that benchmark CD 32 is not a minority ability district. *See* Dkt. #41 at 6. In that district, minority preferred candidates won 46.6 percent for President in 2008 and 45.2 percent for Governor in 2010. Ansolabehere Rpt. at 37

& tbl. C.1. The performance of the minority-preferred candidates for Governor in 2010, at just 45.0 percent, is lower in new CD 23 than it is in benchmark CD 32. *Id.* at 37.

Dr. Ansolabehere explains the very subtle but significant manipulation through which the State achieved this result. Although the Hispanic percentage of the total population in this district remained the same between the benchmark plan and Plan C185, the State removed the portion of the Hispanic population that had the highest support for minority-preferred candidates and replaced it with a low-turnout Hispanic population. *Id.* at 41-42. The State also removed a large portion of the African-American population. *Id.* "The combination of very low turnout and lower support for minority-preferred candidates in the areas added compared with the areas subtracted, due in part to the lower percent Black, reduced the electoral performance of minority preferred candidates in CD 23 by 3 to 4 percent and rendered the district no longer a minority opportunity seat." *Id.* at 42.

C. Disproportionate Impact

Dr. Ansolabehere's testimony further provides evidence of Texas's discriminatory intent in enacting its congressional redistricting plan. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977), establishes the factors that a court should use to determine whether a voting change has a discriminatory purpose, the first of which is whether the "impact of the official action . . . 'bears more heavily on one race than another,'" *id.* (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976). As Dr. Ansolabehere's analysis makes clear, Plan C185 has a disproportionate impact on Texas's Hispanic and African-American residents.

Dr. Ansolabehere demonstrates that, even by Texas's own standard of measuring electoral opportunity by racial composition alone, Plan C185 creates a disproportionate number of majority-Anglo districts compared to Anglos' share of the state population. Anglos are no longer the majority racial group in Texas; rather, they are a plurality, comprising 45.3 percent of the total population. Ansolabehere Rpt. at 20. Hispanics and

African Americans combined, meanwhile, account for almost half of the population, or 49.4 percent. *Id.* Yet Anglos are an outright majority of the population in 20 of the State's 36 congressional districts under Plan C185, and a plurality of all persons in 3 more. *Id.* "In other words, although Hispanics and Blacks combined outnumber Whites, Whites are the majority or plurality of the total population in 64 percent of Texas's Congressional Districts." *Id.* An analysis of the citizen voting age population only amplifies the problem. According to Dr. Ansolabehere's calculations, Anglos' share of the eligible electorate dropped from 62.5 percent to 55.8 percent since 2000. *Id.* at 21. Yet the number of districts in which Anglos are a majority of the citizen voting age population *increased* from 22 to 25, an increase that keeps the share of districts in which Anglos are a majority of the voters at 69 percent. *Id.* at 21 & tbl. B.1. In short, "Plan C185 does not reflect the growing presence of Hispanics in the eligible electorate[,] . . . [n]or does it reflect the shrinking presence of White Non-Hispanics among eligible voters." *Id.* at 21.

Dr. Ansolabehere's account of Plan C185's disparate treatment of African Americans and Anglos is particularly striking. These two groups each gained approximately 500,000 persons, with similar increases in the number of eligible voters. *Id.* at 22 & tbls. A.1 & A.2. Because each group's growth accounts for less than a single congressional district, one would expect that the group with more geographically concentrated growth would be more likely to gain seats. African-American population growth was concentrated in three counties: Dallas, Harris, and Tarrant Counties. *Id.* at 22. Anglo population growth, by contrast, was distributed across the state; in fact, the Anglo population actually declined in Harris and Dallas Counties. *Id.* In spite of these factors, Plan C185 added three majority-Anglo districts, including one in Dallas County, and no additional majority-African-American districts. *Id.* at 22, 27.

Dr. Ansolabehere's in-depth analysis of Texas's largest counties further illuminates the extent to which Plan C185 increases representation for a decreasing segment of the

population. The five most populous counties account for 11 million people, almost half of Texas's population. *Id.* at 23. Hispanics are a plurality of the population of these five counties combined. *Id.* Yet of the 19 districts that contain a majority or plurality of these counties' populations, just four have majority or plurality Hispanic populations, while 12 of these districts are majority-Anglo. "Even though Whites comprise the second largest racial or ethnic group in the five largest counties, they have majorities or pluralities in three times as many seats as the largest group, Hispanics." *Id.*; *see also id.* at 28.

At the same time that it increases representation for the decreasing Anglo segment of the population, Plan C185 also fragments the growing minority population in districts where their votes will be drowned out by Anglo voters. Of Texas's 9.1 million voting-age Anglos, 8 million live in majority-Anglo districts. *Id.* at 24. "In other words, 88 percent of White adults live in districts where most people are of the same racial group as they are, and just 12 percent live in districts where they are the minority." *Id.* By contrast, African Americans and Hispanics are disproportionately in districts where they are the minorities. Only 40 percent of minorities live in districts where a minority group comprises the majority or plurality, while over half of minorities live in majority-Anglo districts. *Id.* at 25. "The difference is a stark one—just 1.1 million White voters are stranded compared with 4.2 million Black and Hispanic voters." *Id.*

Nor is this disparity a simple function of plurality rule, as Dr. Ansolabehere's detailed analysis makes plan. In Harris County, the largest county in the state, all of the 700,000 in population gain came from minorities, while the county's Anglo population actually declined by 70,000. *Id.* at 26. The county's population is now 41 percent Hispanic, 33 percent Anglo, and 19 percent African-American. *Id.* Still, Plan C185 distributes the county's Hispanic population across districts such that only 31 percent of Hispanics are in majority- or plurality-Hispanic districts. By comparison, over 80 percent of Anglos in Harris County are

in majority-Anglo districts. The same holds true for Dallas County, the second largest in the state. While the Anglo population fell by 200,000 over the last decade, Hispanics in Dallas County grew by 250,000 persons, accounting for 38 percent of the county's population. (Anglos are now 33 percent of Dallas County and African Americans comprise 23 percent of the county population.) *Id.* at 27. "Curiously enough, Whites, who already controlled most of the seats [in Dallas County], gained another, even though they lost 200,000 persons." *Id.* As a result, "[o]ver 90 percent of White Non-Hispanics in Dallas County live in Congressional Districts in which Whites are the majority. Compare that with 58 percent of Blacks and 0 percent of Hispanics. None of the nearly 1 million Hispanics in Dallas County are in majority Hispanic districts." *Id.* at 28.

These are just a few of the examples Dr. Ansolabehere illuminates across the state "of violations of majority rule, where the minority Whites are the majority of Congressional Districts, and missed opportunities, where Hispanics account for most of the growth in population and eligible voters, but did not receive any increase in representation." *Id.* at 49. As a result of this systematic stranding of minority voters, the vast majority of minorities are unable to elect candidates of their choice. In this way, Plan C185 enhances voting opportunities for Anglos and suppresses minority voting opportunities.

Perhaps most striking is the sheer number of Texas minorities who will lose out under Texas's enacted congressional plan.

> Plan C185 substantially reduces the number of Blacks and Hispanics in districts where they have the ability to elect their preferred candidates. Under Plan C100, there were 6,443,817 Blacks and Hispanics in congressional districts where they had the ability to elect their preferred candidates. Under Plan C185, that number was reduced to 5,662,409. Using the standard approach to retrogression, Plan C185 reduced the number of Blacks and Hispanics in minority districts by 781,408. This is more than the growth in the total number of White Non-Hispanics from 2000 to 2010.

Supplemental Rpt. at 31. In a decade in which the minority population made record gains, Texas's enacted congressional plan would yield record losses for minority representation. Dr. Ansolabehere has presented a detailed statewide analysis that demonstrates the extent to which Plan C185 squelches opportunities for minority advancement by manipulating district lines while maximizing Anglo voting power throughout the state, maintaining a majority of the power in a racial group that is no longer a majority.

D. Rebuttal of John Alford's Supplemental Report

Finally, in his Supplemental Report, Dr. Ansolabehere confronts the flawed methodology employed by the State's expert, Dr. John Alford. First, Dr. Ansolabehere explains how Dr. Alford's approach to the retrogression analysis diverges from the standard approach endorsed by experts and case law alike. "[R]ather than determine those districts where minority-preferred candidates have the ability to win based on . . . past elections, Dr. Alford sums across all districts to measure *the proportion* of all contests in districts in which minority-preferred candidates won a majority of the vote." Supplemental Rpt. at 8. For instance, Dr. Alford's approach would find no retrogression where a state chooses to eliminate a district in which minority-preferred candidates won 100 percent of the time and replaces it with ten districts in which minority-preferred candidates win 10 percent of the time. *See id.*; *see also id.* at 3 ("That approach allows the state legislature to draw districts in such a way that small gains in one part of the state for minority-preferred candidates can be used to offset large losses for minorities in a given area."). Under the traditional approach, on the other hand, the loss of a clear minority ability district would constitute retrogression and would not be remedied by smaller, insignificant gains elsewhere in the state. *Id.* at 9.

Second, Dr. Ansolabehere points out that, despite Dr. Alford's claims to the contrary, the State's expert does not provide a statewide retrogression analysis. *See id.* at 11; Trial Tr. at 53. Rather, Dr. Alford's analysis is limited to a subset of congressional districts that does

not include CDs 9, 18, 25, and 30, all of which are minority ability districts in the benchmark plan according to Dr. Ansolabehere's analysis. Supplemental Rpt. at 11. "Clearly, Dr. Alford first applied undisclosed criteria in restricting his analysis to this subset and does not provide a statewide analysis at all." *Id.* As Dr. Ansolabehere notes, "[a]bsent an analysis of all congressional districts in the state, there are no sound conclusions to draw from the evidence [Dr. Alford] presents regarding the reduction or gain in the total number of terms that might have been gained or lost by minorities statewide as a result of redistricting." *Id.* at 12.

Finally, Dr. Ansolabehere notes the flaws in Dr. Alford's bright line test for determining an Hispanic ability district. While Dr. Alford argues that, as a rule, a 60 percent Hispanic citizen voting age population makes for a minority ability district, Dr. Ansolabehere cautions that the uncertainty of the ACS citizenship data require "some flexibility in their application." *Id.* at 14. "Use of a bright-line test is unreasonable given the state of the data, and the evidence clearly shows that application of such a test would harm minorities more than Whites." *Id.*

III. CONCLUSION

Dr. Ansolabehere's comprehensive analysis provides a unique and illuminating perspective on Texas's congressional redistricting plan. Dr. Ansolabehere's testimony proves that Plan C185 is retrogressive, as it reflects a decrease in the absolute number of minority ability districts and the absolute number of minority residents who will be able to elect their candidates of choice. At the same time, Dr. Ansolabehere's analysis demonstrates the discriminatory purpose that drove enactment of Texas's congressional plan, as evidenced by the burdens it places on Texas's growing minority population and the benefits it confers upon the shrinking Anglo population. Finally, Dr. Ansolabehere discredits the analysis performed by the State's expert for his flawed approach to measuring retrogression. In sum, Dr. Ansolabehere's reports and testimony caution against preclearance of Texas's retrogressive and discriminatory congressional plan.

RESPECTFULLY SUBMITTED: February 6, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2012, I electronically filed the foregoing Summary of Expert Testimony with the Clerk of the United States District Court for the District of Columbia by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

DATED: February 6, 2012

Respectfully submitted,

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