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, and WENDY DAVIS *et al.* Defendant-Intervenors.	Civil Action No. 1:11-cv-01303 (RMC-TBG-BAH)

PROPOSED FINDINGS OF FACT

The Gonzales Intervenors and the League of United Latin American Citizens ("LULAC") submit these proposed findings of fact.[1]

I. The Gonzales Intervenors

1. Greg Gonzales is a Hispanic voter living in San Antonio, Texas. He currently resides in Congressional District 20 and would continue to live in Congressional District 20 under the proposed congressional redistricting plan, Plan C185 ("Congressional Redistricting Plan"). Gonzales Intervenors' Memorandum in Support of Motion to Intervene as Defendants (Document No. 14, filed August 17, 2011), at 1 .

[1] These proposed findings are drawn from trial evidence. However, due to time constraints, some record citations are to the evidence cited by the Gonzales Intervenors in their opposition to Texas's motion for summary judgment. The Gonzales Intervenors will submit an updated version of these proposed findings that replaces the summary judgment record references with the actual trial record references, including the extensive deposition and trial designations collected into one document by the Texas OAG and submitted to the Court on flash drives on January 28, 2012.

2. Lisa Aguilar is a Hispanic voter living in Clint, Texas. She currently resides in Congressional District 23 and would continue to live in Congressional District 23 under the Congressional Redistricting Plan. *Id.*

3. Daniel Lucio is a Hispanic voter living in Corpus Christi, Texas. He currently resides in Congressional District 27 and would continue to live in Congressional District 27 under the Congressional Redistricting Plan. *Id.* at 2.

4. Victor Garza is a Hispanic voter living in San Benito, Texas. He currently resides in Congressional District 27 and would live in Congressional District 34 under the Congressional Redistricting Plan. *Id.*

5. Blanca Garcia is a Hispanic voter living in Austin, Texas. She currently resides in Congressional District 25 and would live in Congressional District 21 under the Congressional Redistricting Plan. *Id.*

6. Josephine Martinez is a Hispanic voter living in Fort Worth, Texas. She currently resides in Congressional District 12 and would live in Congressional District 26 under the Congressional Redistricting Plan. *Id.* at 2-3.

7. Katrina Torres is a Hispanic voter living in Irving, Texas. She currently resides in Congressional District 32 and would live in Congressional District 6 under the Congressional Redistricting Plan. *Id.* at 3.

II. Texas's Population Growth

8. Texas's population has gown by 4,293,741 in the last decade. Defendants' Ex. 724 (Stephen Ansolabehere, Report on Minority and White Representation Under the Texas

Congressional District Plans C185 and C100 (Oct. 21, 2011)) ("Ansolabehere Rpt..") at 7 & tbl. A.1.

9. 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 White, and roughly ten percent was Black. *Id.*

10. Because of the increase in Texas's minority population, the state has gained four additional seats in the U.S. House of Representatives, bringing the state's congressional delegation to 36. *Id.* at 11.

11. If Hispanics had grown at the same rate as whites (4.1 percent), Texas would have lost congressional seats rather than gained them, as the nation's population grew by 9.7 percent over the decade. *Id.*

12. As a result of this large growth in the minority population, Whites are no longer a majority of Texas's total population. Instead, Whites are now a plurality in Texas, comprising 45.3 percent of the total population, while Hispanics and Blacks combined comprise nearly half, or 49.4 percent, of the state's population. *Id.* at 20 & tbl. A.1.

13. The composition of Texas's eligible electorate reflects a similar trend. 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. Whites, on the other hand, declined from 62.5 percent of eligible voters in 2000 to 55.8 percent in 2010. *Id.*

III. Congressional Plan C185 Is Retrogressive

14. Despite the growth in the state's minority population, the Congressional Redistricting Plan decreases the number of congressional districts in which minorities will have the ability to elect their candidates of choice. *Id.* at 7.

15. While Plan C100 ("the Benchmark Plan") contained 11 minority-ability districts (CDs 9, 15, 16, 18, 20, 23, 25, 27, 28, 29, and 30), the Congressional Redistricting Plan creates only 10 minority-ability districts (9, 15, 16, 18, 20, 28, 29, 30, 34, and 35). *Id.* at 29. This decrease in the absolute number of minority opportunity districts constitutes retrogression.

16. Plan C185 decreases the number of minority-ability districts from 34% to 28%. Trial Tr., Afternoon of Day 7, at 46 (Ansolabehere Direct).

17. At least 780,000 Blacks and Hispanics lose their ability to elect candidates of choice under Plan C185. *Id.* at 47.

18. The significant changes in the Whites and Hispanics shares of the Texas population are not reflected in the composition of districts. Even though White population declined from 52 percent to 45 percent, Whites remain the majority in 70 percent of congressional districts in the State. By contrast, Hispanic population grew from 32 to 38 percent, but Hispanics remain the majority in just 22 percent of congressional districts. Defendants' Ex. 724, Ansolabehere Rpt. at 8.

19. The Texas Legislature accomplished this retrogression by dismantling three minority opportunity districts and failing to offset those losses elsewhere in the state.

20. First, the Legislature destroyed the opportunity district found in benchmark CD 27 by carving out largely-Hispanic Nueces County, a decision that had a ripple effect throughout the state to the detriment of minority voters. *Id.* 45-48.

21. Second, the Legislature broke apart Benchmark CD 25, a district the State has conceded was a crossover district in which the minority group was able to elect its candidate of choice. *See* Perez v. *Perry*, No. SA:11-cv-00360-OLG-JES-XR, Dkt. #457 (W.D. Tex. Oct. 21, 2011) (Defendant's Response to Plaintiffs' Post Trial Briefs), at 17 & n.9 (stating that "CD 25 in the benchmark plan is a crossover district" and defining the term as "a district in which African-Americans or Latinos make up less than 50% of voters but can usually elect their candidates of choice with reliable crossover voting by members of the Anglo majority").

22. Third, the Legislature re-crafted CD 23 to render it no longer a performing opportunity district. Defendants' Ex. 724, Ansolabehere Rpt. at 8.

23. The Congressional Redistricting Plan also creates minority rule in the five most populous counties in the state. The five most populous counties in the state (Harris, Dallas, Tarrant, Bexar, and Travis) contain over 11 million people, almost half the state. In 2000, whites were the plurality of the people in these five counties combined. Today, Hispanics are the plurality, and Whites are the minority. The Congressional Redistricting Plan configures the districts in these counties in such a way that Whites increase the number of districts in these areas in which they are a majority. In the 19 districts that have a plurality or majority of persons in one of these counties, 12 are majority White districts. In Dallas and Harris Counties, Hispanics are the plurality of the population, but a majority in only 1 of 12 districts. Whites retain their majorities in these districts even though they became a minority of the population between 2000 and 2010. *Id.* at 9.

IV. The Texas Legislature Enacted Congressional Plan C185 With Discriminatory Purpose.

24. Because of its long history of disenfranchising minority voters, Texas was classified as a jurisdiction covered under Section 5 of the Voting Rights Act ("VRA") in 1975. 40 Fed. Reg. 43746 (Sept. 23, 1975). Just a few years earlier, the Supreme Court had reviewed the redistricting plan for Texas's House of Representatives and affirmed that in Texas, "the black community . . . was . . . generally not permitted to enter into the political process in a reliable and meaningful manner." *White v. Regester*, 412 U.S. 755, 767 (1973). It also affirmed that the Hispanic community "in Texas had long suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others." *Id.* at 768 (internal quotation marks and citation omitted).

25. Because Texas continued to discriminate against racial and language minorities, the Department of Justice under Democratic and Republican presidents has refused to preclear many voting changes proposed by Texas. As recently as 2006, the Supreme Court found that Texas's congressional redistricting plan violated Section 2 of the Voting Rights Act. *See LULAC v. Perry*, 548 U.S. 399, 442-43 (2006).

A. The Legislature Excluded Blacks And Hispanics From The Process That Led To The Enactment Of Plan C185.

26. In the Spring of 2011, the Republican leadership began to draw congressional maps without involving minority state representatives. Opiela Dep. at 13-15.

27. As described by Marc Veasey, an African-American representative in the Texas House of Representatives and a member of its redistricting committee, no minority state representatives had any input into the proposed redistricting maps before they were made public. Defendants' Ex. 335 (Veasey Dep.) at 25-27.

28. The representatives of minority-ability districts confronted their Republican colleagues about being excluded from the redistricting process, but the Republican leadership continued to exclude them. On the floor of the Texas Senate, where the first bill redrawing congressional districts appeared, Judith Zaffrini, a Hispanic state senator, asked Kel Seliger, an Anglo state senator and Chairman of the Senate Select Committee on Redistricting, if "any Minority members [were] involved in developing" the redistricting maps under consideration; Senator Seliger responded, "[n]ot that I recall." Devaney Summary Judgment Decl., Ex. 9 at A-12.

29. Representative Veasey explained that, as a member of the House redistricting committee, "a lot of the map drawing and a lot of the changes that were done were done in secret . . . to keep the African-American and Latino members of the redistricting committee sort of discombobulated and not really knowing what's going on." Defendants' Ex. 335 (Veasey Dep.) at 23.

30. The Republican leadership not only excluded minority legislators from the redistricting process but they excluded the public as well. Senate Bill 4, which included the first congressional redistricting map, was made public on Tuesday May 31, 2011, the same day it was received by the Secretary of the Senate and referred to the Senate Redistricting Committee. Devaney Decl., Ex. 10. The first and only hearing open to public testimony was held on Friday, June 3, 2011—only three days after the plan was released. *Id.* On June 6, 2011—the Monday after the Friday hearing—the full Senate considered the bill. *Id.*

31. On the Senate floor, Senator Zaffrini explained that of the witnesses who were able to attend the Senate committee's only public hearing, with the exception of one, "everybody else, every African American, every Anglo American, every Mexican American, Hispanic American, more generally speaking, every single witness testified against the plan."

Devaney Decl., Ex. 9 at A-14. When Senator Zaffrini asked Senator Seliger, "[i]s that your recollection, Senator?", he responded "I believe it is." *Id.* Representative Veasey testified that public hearings should have been conducted throughout Texas to allow citizens of all races to comment on the plan, but this never happened. Defendants' Ex. 335 (Veasey Dep.) at 22-23.

32. On the House floor, State Representative Dawnna Dukes criticized the rushed and secretive process through which the Republican leadership ushered through a map that destroyed several minority opportunity districts, including Benchmark CD 25. Trial Tr., Afternoon of Jan. 19, 2012, at 95-96 (Dukes Direct); Defendants' Ex. 673. She explained that "the hearing was only a shadow, a route box process, a box to be checked because they always knew they weren't going to let a plan pass that preserved the voice of Austin minorities." *Id.*

33. The hurried legislative process and exclusion of citizens and representatives of minority opportunity districts departed from previous redistricting practices. Compared to prior redistricting cycles, this redistricting process provided the legislators with considerably less time to debate and consider the proposed Congressional Redistricting Plan.

34. Even counsel for the Senate Redistricting Committee testified on June 3, 2011, that they had not had the opportunity to review the congressional plan before it was submitted to the Senate and that "this process has been quite different from what we've seen in the past [because] . . . [n]obody has had the opportunity to study it the way it has been done in the past." Devaney Decl. ¶ 14 (Testimony of Michael Morrison, Hearing of Senate Select Committee on Redistricting (June 3, 2011), http://www.senate.state.tx.us/75r/senate/commit/c625/c625.htm, at 4:51:42). He explained further that this procedure differed from the one followed in 2003 when the committee's staff

"went all over the state . . . spent sixteen hours in one place, twenty in another. We sat down . . . we visited. We hired experts to do retrogression analysis." *Id.* at 4:52:27. He concluded that "if time permits, that would be the way to do it this time." *Id.* The Republican leadership chose not to do it that way in 2011.

35. During the legislative session, several alternative plans were proposed that more fairly reflected minority population growth and did not lead to retrogression. For instance, Plan C166, offered by State Representative Dawnna Dukes, created additional Hispanic opportunity districts in the Dallas-Tarrant County metroplex, Harris County, and South and Southwest Texas. Trial Tr., Afternoon of Jan. 19, 2012, at 93-100 (Dukes Direct); Defendants' Ex. 688. Plan C166 also kept CDs 25 and 23 in tact as minority opportunity districts, resulting in a total of 14 minority opportunity districts for the state. *Id.* The Republican leadership, however, rejected this and other alternatives. *Id.*

36. Even early concerns about complying with the Voting Rights Act were jettisoned as a proposed minority-opportunity district in the Dallas-Fort Worth area, suggested by Congressman Lamar Smith in a "confidential" memo, never made it into the plan adopted by the Texas legislature. Devaney Decl., Ex. 7. Congressman Smith urged the creation of that district based on the "surging growth of Hispanic population." Devaney Decl., Ex. 8 (Second Opiela Dep. at 120). In a much publicized dispute, however, an Anglo Republican Congressman, Joe Barton, opposed the district, and his view ultimately prevailed in the Texas Legislature. *Id.* at 117-123.

B. The Legislature Repeatedly Ignored And Undermined The Interests Of Minority Legislators While Accommodating The Interests Of White Legislators.

37. While Republicans rejected any requests from the representatives of minority ability districts, they granted even whimsical requests of Anglo legislators. In the

Congressional Redistricting Plan, for example, the district offices of all three Black Members of Congress would no longer be in their districts, but the Republican leadership never fixed these districts to include the district offices. Defendants' Exs. 574-83 (*Perez v. Perry*, Trial Tr. at 1279; 1335; 1515-1516).

38. The Republican leadership's redrawing of the district held by Congressman Charlie Gonzalez, Chair of the Congressional Hispanic Caucus, not only excluded Congressman Gonzalez's district office but also removed key economic and cultural landmarks that had long been located in the district, including the Alamo and the Convention Center named after Congressman Gonzalez's father. Devaney Decl., Ex. 16 ¶¶ 3-9, 11.

39. By contrast, the Republican leadership ensured that White Congresswoman Kay Granger, whose office originally had been drawn out of her district, had her office drawn back in before adoption of the final plan. Devaney Decl., Ex. 5 (First Opiela Dep. at 63); Ex. 17.

40. White Congressman Kenny Marchant requested on May 31, 2011, that his district lines be drawn to cross a street to include his "grandbabies'" school. Devaney Decl., Ex. 18. The Republicans accommodated that request.

41. White Congressman Lamar Smith requested on June 8, 2011, that his district lines be drawn to include a precinct with the San Antonio Country Club. Devaney Decl., Ex. 19. The Republican leadership also granted that requests. Devaney Decl., Ex. 20.

C. The Republican Legislators And Staff Members Responsible For Drawing The Congressional Redistricting Map Misapplied The Voting Rights Act To Dilute Minority Voting Rights.

42. The Republican legislators and staff members responsible for drawing the congressional map misapplied the Voting Rights Act to undercut the ability of minorities to

elect the candidates of their choice. Their starting premise was that Texas did not have any obligation to create any new minority-ability districts, even though Texas received four new congressional seats primarily because of growth in minority population. Reflecting this prevailing view, a key staff member involved in creating the congressional map stated that "[e]ven if you have 20 new seats," the legislature could make all of them White districts without violating Section 5 of the VRA. Devaney Decl., Ex. 21 (Davis Dep. at 103-104).

43. Further showing Texas's disregard for the VRA, the staffers involved in preparing the Congressional Redistricting Plan ignored racial bloc voting and the electoral performance of districts in evaluating the benchmark plan and creating the new plan. Thus, Eric Opiela, who was counsel to the Republican congressional delegation and one of the original developers of the new Congressional map, testified that racial bloc voting and electoral performance – factors integral to the VRA – are nothing more than "hocus-pocus." Devaney Decl., Ex. 9 (Second Opiela Dep. at 171-72).

44. The Republican legislators and staff continued to show their disregard for the VRA when they redrew CD 23. They deliberately drew the district in a way that makes it look like a Hispanic-ability district but prevents it from electing Hispanic preferred candidates. In other words, they manipulated the statistics for Congressional District 23 so that, on paper, it would look like a Hispanic-opportunity district but, in practice, would not perform as one. Defendants' Ex. 304; Trial Tr., Afternoon of Jan. 17, 2012, at 51-57 (Interiano Cross).

45. As redrawn by the Republican legislators and their staff, CD 23 is not a minority-ability district. Texas's only expert witness, Dr. John Alford, admits that CD 23 is not a district in which minorities have the ability to elect candidates of their choice. Defendants' Exs. 574-83 (*Perez v. Perry*, Trial Tr. at 1279; 1335; 1515-1516).

46. When he reviewed the Republican Congressional Redistricting Plan eleven days before the final plan was adopted, Dub Maines, the district director for Congressman Joseph Barton, grew concerned with the proposed plan and felt the need to ask his Republican colleagues "is there any reason why every effort should not be made to make the map more likely to pre-clear, especially if it doesn't hurt the political aims in any way?" Devaney Decl., Ex. 25.

47. The Republican leadership and their staff excluded representatives of minority-ability districts and members of the public from the redistricting process; ignored changes requested by minority representatives while granting those of White representatives; and disregarded basic requirements of the VRA.

D. The Legislature's Configuration Of The Districts In The Congressional Redistricting Plan Reflects Discriminatory Intent.

1. Overview Of Discriminatory Configuring Of Congressional Districts

48. The Congressional Redistricting Plan creates disproportionate numbers of districts in which Whites comprise the majority. White Non-Hispanics are a plurality of the population (45.3 percent), and Hispanics and Blacks combined account for almost half of the state's population (49.4 percent). Yet, White Non-Hispanics are an outright majority of the population of 20 of Texas' 36 congressional districts under the Congressional Redistricting Plan, and a plurality of all persons in three more. Hispanics are a majority of total population in eight districts and a plurality in three others, while Blacks are a plurality of all persons in two districts. In other words, although Hispanics and Blacks combined out-number Whites, Whites are the majority or plurality of the total population in 64 percent of Texas' congressional districts. Defendants' Ex. 724 (Ansolabehere Rpt.) at 20.

49. The opportunity for whites to elect a majority of the Congressional delegation is magnified further upon considering the voting age population. White Non-Hispanics comprise 49.6 percent of persons over 18 years old in Texas, and they are a majority or plurality of the VAP in 69.4 percent of U. S. House seats under Plan C185. By comparison, Hispanics are 33.6 percent of the voting age population, but they are a majority of the VAP in only 22.2 percent of seats. Blacks comprise 12.0 percent of the voting age population. They have majorities of the VAP in no seats and are pluralities of the voting age population in 8.3 percent of seats. Blacks and Hispanics, then, are 45.8 percent of the Voting Age Population, but majorities or pluralities in just 30.5 percent of the seats. *Id.* at 20-21.

50. The Congressional Redistricting Plan C185 also does not reflect the growing presence of Hispanics in the eligible electorate measured using CVAP. Nor does it reflect the shrinking presence of White Non-Hispanics among eligible voters. In 2000, Hispanics were 22.3 percent of the Citizen Voting Age Population, and under the Benchmark Plan, Hispanics were a majority of adult citizens in 21.9 percent of districts. By 2010, Hispanics had increased to 25.8 percent of the CVAP, but plan the Congressional Redistricting Plan keeps their share of seats constant at 22.2 percent. *Id.* at 21.

51. The number of districts in which White Non-Hispanics comprise the majority of the eligible electorate increases under the Congressional Redistricting Plan, even though White Non-Hispanics decreased as a share of the eligible electorate. In 2000, White Non-Hispanics were 62.5 percent of adult citizens in the State of Texas. The 2005-2009 ACS put their share of the CVAP at 59.0 percent, and the projection of the ACS to 2010 suggests that White Non-Hispanics are 55.8 percent of the eligible electorate – a 7 percentage point drop since 2000. And yet, Whites gained three districts in which they comprise a majority of the eligible electorate. The number of districts in which White Non-Hispanics are a majority of

the CVAP also increased from 22 to 25, and that increase kept the share of districts in which they are a majority at 69 percent. *Id.* at 21-22.

52. A comparison of Blacks with White Non-Hispanics is similarly revealing. Blacks and White Non-Hispanics gained approximately 500,000 persons each in the 2010 Census. Blacks comprise 3 million people in the state and roughly 2.5 million people of Voting Age Population. Each group also saw similar increases in the number of eligible voters. Since the growth of each group accounts for less than one district, logic dictates that the group with more geographically concentrated growth would stand a better chance of gaining seats. Black population growth is concentrated in three counties: 60 percent of the Black population growth occurred in Dallas, Harris, and Tarrant Counties. White population growth, by contrast, was distributed across the state, and White populations declined in Harris and Dallas Counties. Nevertheless, the Congressional Redistricting Plan adds three White districts and no additional Black districts. *Id.* at 22.

53. Under the Benchmark Plan and the Congressional Redistricting Plan, there is one majority Black CVAP district (CD 30) and two plurality Black CVAP districts (CDs 9 and 18). The Benchmark Plan had 22 majority White CVAP districts, and the Congressional Redistricting Plan has 25 majority White CVAP districts. Whites thus gain three seats and Hispanics one seat even White population growth was much smaller than Hispanic population growths. And Blacks gain no seats, even though their population growth was at least equal to Whites and was much more highly concentrated geographically than White growth. *Id.* at 22-23.

54. The five most populous Texas counties account for 11 million people, almost half of the population of the state of Texas. Hispanics are the plurality of the population of these five counties combined. Of the 19 congressional districts that contain a majority or

plurality of these counties' populations, just four have majority or plurality Hispanic populations. Twelve of these districts are majority White Non-Hispanic. Three are majority or plurality Black. 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.*at 23.

55. The Census Bureau projects that by 2020 Hispanics will be a plurality of all persons in Texas. The trends in citizenship suggest further that White Non-Hispanics will not be a majority of the eligible electorate by the end of the coming decade. Yet, the districts set in place in the Congressional Redistricting Plan create solid majorities of White Non-Hispanics in two out of every three congressional districts. *Id.*

56. White Non-Hispanics are overwhelmingly represented by congressional districts in which the majority are White Non-Hispanics, while a minority of the Hispanic and Black population lives in districts that are majority Hispanic or majority Black. Of the 9.1 million White non-Hispanics of voting age in Texas, 8 million live in White majority districts, and 1.1 million live in districts in which minorities are the majority or plurality of the eligible electorate. 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. Blacks and Hispanics, by contrast, are disproportionately in districts where they are the minorities. Of the 6.1 million Hispanics of voting age, 2.7 million live in districts in which Hispanics are the majority and 3.4 million live in districts where they are not the majority. Of the 2.3 million Blacks of voting age, 623,195 reside in districts that are Plurality or Majority Black, while 1.6 million live in districts where they are the minority. Only 40 percent of Blacks and Hispanics live in districts where each of these groups is the

majority or plurality, and 51 percent live in districts where Whites are the majority. *Id.* at 24-25.

57. The stranding of minority voters is a problem precisely because Whites tend to vote cohesively and as a bloc opposed to Hispanic and Black voters.[2] Under the Congressional Redistricting Plan, almost 90 percent of Whites in Texas end up in districts where they are the majority and, therefore, where the large majority of Whites have the opportunity to elect candidates of their choice. A majority of Black and Hispanic voters, however, end up in districts where Whites are the majority and, thus, where they likely will not be able to elect their candidates of choice. The Congressional Redistricting Plan clearly treats Blacks and Hispanics differently from Whites: just 1.1 million White voters are stranded in majority-minority districts while 4.2 million Black and Hispanic voters are stranded in majority-White districts. *Id.* at 25.

2. Evidence Of Discriminatory Intent Relating To The Texas Legislature's Configuration Of Districts In Dallas And Harris Counties

58. Harris County, where Houston is located, is the largest county in Texas. Its population grew 20 percent, rising from 3.4 million persons in 2000 to 4.1 million persons in 2010. All of that population growth came from minorities. Harris' Hispanic population grew from 1.1 million to 1.7 million, an increase of 550,000 persons. And Harris' Black population grew from 645,000 to 807,000, an increase of 160,000 persons, while the County's White Non-Hispanic population declined by 70,000 persons. *Id.* at 26.

[2] See the ecological regression results in Table 4 in Stephen Ansolabehere, "Report on Minority and White Representation and Voting Patterns Under Congressional District Plan C185," in the case of *Perez v. Perry*, No. 5:11-CV-00360-OLGJES-XR (N.D. TEX.), Docket Number 123, Exhibit 1. The exception, as discussed below, is Travis County.

59. Whites were the plurality group in 2000, but Hispanics are the plurality group today. The county's population is 41 percent Hispanic, 33 percent White Non-Hispanic, and 19 percent Black. *Id.*

60. Harris County has sufficient population for six congressional districts. Under the Congressional Redistricting Plan, Harris County's population is spread across seven districts, six of which drew a majority or plurality of their populations from Harris County. These were districts 2, 7, 9, 10, 18, 29, and 36. The County's Hispanic population is distributed across districts in such a way that only 31 percent of Hispanics are in districts that are majority or plurality Hispanic. This is striking because Hispanics are the single largest racial or ethnic group in the county. By contrast, over 80 percent of White Non-Hispanics in Harris County are in districts that are majority White. Two-thirds of the Black population of Harris is in the two Black Plurality districts. The district lines in Harris County magnify White representation and shrink Hispanic representation. *Id.* at 26-27.

61. Dallas County has patterns similar to those in Harris County. Dallas is the second largest county in the state with 2.4 million persons. In 2000, Whites were 44 percent of the Dallas County population; Hispanics were 30 percent; and Blacks were 12 percent. Between 2000 and 2010, the White population of Dallas County fell 200,000 persons, dropping from 983,317 to 784,693. The Hispanic population jumped 250,000 persons, rising from 662,729 to 905,940. And the Black population climbed from 462,609 to 548.141. By 2010, Hispanics accounted for 38 percent of people in Dallas County, Whites are 33 percent, and Blacks are 23 percent. *Id.* at 27.

62. The Congressional Redistricting Plan adds a fifth congressional district to Dallas County, even though the county's population grew at about the national average. Whites, who already controlled most of the seats, gained another, even though they lost 200,000

persons. Under the Benchmark Plan, Whites held the majority in three of the four Dallas Districts (numbers 5, 24, and 32). The Legislature's reshuffling of district lines in Dallas added another White district in the area, CD 6. Under the Congressional Redistricting Plan, Whites – the minority group in the county – are now the majority in four of five Dallas Districts (CDs 5, 6, 24, and 32). Blacks are a majority in one district, CD 30. And Hispanics are not the majority in *any* district in Dallas County, even though they are the plurality group. *Id.* at 27-28.

63. Over 90 percent of White Non-Hispanics in Dallas County live in congressional districts in which Whites are the majority, compared with 58 percent of Blacks and 0 percent of Hispanics. None of the nearly one million Hispanics in Dallas County is in a majority Hispanic district. *Id.* at 28.

64. Dallas and Harris are the largest counties in Texas, with over 6 million people combined. There are 2.5 million Hispanics in these two counties combined, and Hispanics are the single largest group in these counties, with roughly 40 percent of the combined populations. Two and a half million persons are the equivalent of the entire population of three and a half Congressional Districts. However, only one of the 12 Harris or Dallas Districts is a majority or plurality of Hispanic. White Non-Hispanics are one-third of the populations of these counties, and the second largest ethnic group. Yet, they comprise the majority or plurality of 8 of the 12 districts in these two counties. *Id.*

3. Evidence Of Discriminatory Intent Relating To The Texas Legislature's Configuration Of Other Congressional Districts

65. In constructing CD35 and dividing Travis County, the Legislature went to considerable lengths to split precincts to obtain Hispanic voters while avoiding Black and White voters. The Congressional Redistricting Plan splits 55 precincts (for a total of 110

precinct splits) in Travis County. Defendants' Exs. 574-83 (*Perez v. Perry*, Trial Tr. at 675 Korbel Test.). The plan cuts off part of the Black population in East Austin to reach Hispanic voters, splitting precincts to reach the more heavily Hispanic precincts (but low performing) in north central Austin. *Id.* at 1194-97 (Butts Test.). In another area, C185 split a precinct to isolate dormitories at a Catholic university, St. Edward's, from the university's administration building in order to include the Hispanic students in CD35. *Id.* at 1197-99. In yet another area, C185 splits another precinct to separate Hispanic population into CD35, sending the Anglos in that split precinct into CD21. *Id*. at 1199. This effort dilutes growing Hispanic strength in the county.

66. In San Antonio and Bexar County, Plan C185 removed the downtown heart of the district (CD20) held by Congressman Charlie Gonzalez, the current Chair of the Congressional Hispanic Caucus. It also removed two historic high schools from the district, schools which had provided education to Hispanic students during the era of segregation.

67. In drawing Plan C185's CD35, the legislature drew a narrow strip for 50 miles along the interstate highway connection San Antonio and Austin to accommodate the request of a White Republican state representative, Edward Kuempel, that Guadalupe County be kept whole. Defendants' Exs. 574-83 (*Perez v. Perry*, Trial Tr. at 919 (Downton Test.).

68. The state has failed to provide factual support for its legal position that the disparate impact on minority voters in Plan C185 is explained by partisanship rather than the racially polarized voting across the breadth of Texas attested to by essentially all experts who testified in the case. The state's expert, Dr. Alford, testified that "race still matters" in Texas voters' choice of which candidates to support. *Id.* at 1851 (Alford Test.). Dr. Alford undertook no independent analysis of Texas voting patterns to test the state's supposition and

offered nothing more concrete than that the explanation involving racial and partisan voting patterns was "conflated." *Id*. at 1917.

69. CD 25 is among the most dramatically changed districts in the Congressional Redistricting Plan. It kept only 126,000, lost 489,000, and added 392,000 voting age persons. Only 28 percent of the voters (2008 Turnout) were in the old district. The small area kept in CD 25 votes 60 percent for the minority-preferred candidates. The Congressional Redistricting Plan 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-ability to a district in which minorities cannot elect their candidates of choice. Defendants' Ex. 724 (Ansolabehere Rpt.) at 39.

70. District 27 shows a variation on the same theme. As with CD 25, Plan C185 removed a large number of eligible voters who voted for the minority preferred candidates, and replaced them with an equally large number of eligible voters who voted against minority preferred candidates. *Id.*

71. There is an additional component to the change in CD 27. The area removed had a much lower rate of turnout than the area added. In the area taken out, only 28 percent of the VAP voted in 2008. In the area added in, 48 percent of the VAP voted in 2008. The difference reflects, in part, lower citizenship rates in the area taken out. This shift means that the area added in ends up being a much larger component of the vote and of electoral performance in the district than the area taken out, even though they are about the same number of persons. This is an example where the districting process uses the turnout to shape the political performance of the district. *Id.* at 40.

72. District 6, in the Dallas-Fort Worth area and counties to the south, shows the opposite pattern. In this district, a large, relatively high turnout area was moved out of the district, and a somewhat smaller, relatively low turnout area was moved into the district. The area moved in was majority Hispanic; the area moved out was majority White. The area kept the same in this district, although less populous than the area moved in, has very high turnout and votes overwhelmingly against minority preferred candidates. In short, Plan C185 appends a low turnout minority area to a high turnout, but smaller White area to form District 6. The resulting district votes somewhat more favorably to minority-preferred candidates than it did before, but that came off of a low base, and the district remains one where minority-preferred candidates are highly unlikely to win. This is an example of a change in district lines that results in stranding of minority voters. *Id.*

73. District 26, also in the Dallas-Fort Worth area, reveals a somewhat different pattern. Here there is a straight-up swap of a White area in the Fort Worth area (moved out) for an Hispanic area (moved in). The White area moved out of the district voted approximately 50-50 for the minority preferred candidates and had relatively high turnout; 50 percent of the VAP voted in 2008. The Hispanic area that is added to the district has extremely low turnout, less than 30 percent of the VAP votes, but it votes overwhelmingly for the minority preferred areas. The White urban area that splits its vote is added to a White suburban area in CD 12, and the Hispanic area in east and central Fort Worth is added to the more rural Denton County to the North. Like District 6, this is an example of the stranding of minority voters. Also, Districts 6 and 26 are examples of decisions under Plan C185 to divide the Dallas-Fort Worth area in ways that ultimately preclude the creation of a minority district in these counties. *Id.* at 40-41.

74. CDs 6, 25, 26, and 27 exhibit some of the patterns of large shifts in population exhibited in Plan C185. Turnout, race, and electoral performance all factored into the changes in the electoral performance in some districts, such as 25 and 27. In other cases, such as 6 and 26, these very large changes in population were used to keep the districts performing about the way they had been, and they split off significant Hispanic vote from their immediate communities, in these examples, central Fort Worth and central Dallas. *Id.* at 41.

75. District 23 represents some of the most subtle changes in district demography. The Congressional Redistricting Plan shaves 3 to 4 percentage points off the electoral performance of minority-preferred candidates in this district, converting the district from a competitive seat where minority-preferred more often than not won to a district where minorities likely will not elect their preferred candidates. *Id.* at 41-42.

76. The change in district 23 is driven by turnout of the areas kept, added, and removed, and to some extent by the racial composition as well. The area kept by the redistricting plan has the highest percent White (34 percent) of the three types of areas (same, out, and in), the highest turnout (42 percent), and the lowest support for minority-preferred candidates (46 to 49 percent). The area removed has the lowest percent White and the highest combined percent Hispanic and Black; it has somewhat lower turnout (39 percent), and the highest support for minority preferred candidates (58 to 60 percent). The areas added to the districts have the highest percent Hispanic (67 percent) but very low percent Black; it has the lowest turnout rate (33 percent), and somewhat lower support for minority preferred candidates than the areas taken out (51 to 56 percent). 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.

77. The Southwest Texas Triangle is the area enveloped by the triangle with vertices at El Paso, San Antonio, and Cameron County. Under the Benchmark Plan, there were six districts in this area: 15, 16, 20, 23, 27, and 28. All were majority Hispanic districts and all were Hispanic-ability districts. The 2010 Census revealed that the combined population of these districts was 4,697,636. This exceeded the total population for six districts by 506,708. A simple adjustment to the envelope of these districts could have added the 191,780 persons needed to have sufficient population for a seventh district in the triangle. In fact, if the Legislature had included all of Bexar County, not just the part that is encompassed in CDs 20, 23, and 28, there would have been more than enough population for seven congressional districts. The Legislature also could have secured the additional population by adding in nearby counties, such as Crane and Ector in Southwest Texas or Gonzales, Lavaca, and Victoria in South Central Texas. *Id.* at 43.

78. Instead of taking the straightforward steps necessary to create a seventh Hispanic district, the Legislature took affirmative steps to preclude that possibility. For example, the Congressional Redistricting Plan expands CD 23 northward across the Pecos River, thereby adding 224,964 Hispanics to the district. That number alone would have been more than the 191,780 persons required for a seventh district. *Id.* at 44.

79. At the same time that it refused to create a seventh Hispanic district in the Southwest Texas Triangle, the Legislature chose to weaken CD 23. It did this by adding large numbers of voters to the district from outside the area previously enveloped by the Southwest Texas districts, and it removed key Hispanic communities from the old CD 23, such as the southern half of Maverick County and high turnout Hispanic areas in Bexar

County. All told, 375,155 people were taken out of this district. And these changes markedly weakened the electoral performance of minority-preferred candidates in this district, transforming the district into one in which minorities are no longer able to elect the candidates of their choice. *Id.*

4. The Ripple Effects From The Legislature's Race-Based Decision To Move Hispanics In Nueces County Into A Majority White District

80. The Legislature showed an equally glaring disregard for Hispanic-ability districts through its dismantling of CD 27 in the southern vortex of the Southwest Texas Triangle. Nueces County, with 340,222 persons, was one of two population centers in Benchmark CD 27, with Cameron County being the other. The 2010 Census showed that the population of the district exceeded the ideal population of a district by 43,505 people. To create a seventh Hispanic district in the Rio Grande Valley, the Legislature could have used this excess population, as several alternative plans did, such as Plan C202. Instead, the Congressional Redistricting Plan removes Nueces County from the triangle districts altogether. This county, which anchored a majority Hispanic district, is put into a district that extends north and northwest, along the Gulf Coast. The new CD 27 is now a majority White district. The 240,000 Hispanics in Nueces previously were in a district where Hispanics could elect their candidates of choice; now they are not. *Id.* at 44-45.

81. The decision to wrench Nueces County out of Benchmark CD 27 had ripple effects on the construction of districts throughout southern and central Texas. It affected the configuration of districts throughout the Rio Grande Valley and the triangle and precluded the creation of a seventh district there. It affected the crafting of districts in the San Antonio and Austin area, including the construction of CD 35 and the destruction of CD 25. And it

constrained the ability to craft a new Hispanic district in the Houston area, as many alternative plans were able to do (such as Plans C166 and C202). *Id.* at 46.

82. The most immediate effect of this decision was on the creation of a seventh Hispanic district in Southwest Texas. The populations of CDs 15, 16, 20, 23, 27, and 28 as configured under the Benchmark Plan, plus the additional 200,000 persons brought in by expanding the boundaries of CD 23 under the Congressional Redistricting Plan, contained more than enough population to create seven Hispanic majority districts in this area. But moving Nueces County into a White district in the Southeast removed 340,000 persons – 206,000 whom are Hispanic – from the envelope of the Southwest Texas districts. This was too great a deficit to overcome, particularly when coupled with the changes in the area above CD 23. As a practical matter, then, moving Nueces County into a White district all but 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.*

83. A second effect of the decision to take Nueces County out of Benchmark CD 27 was to limit the potential for creating Hispanic districts in Bexar County. Given the population growth around San Antonio, that area was a logical location for a seventh Hispanic district. Plan C202, for example, places a new Hispanic district, numbered 33, immediately to the south of Bexar County. Plan C166 adds another Hispanic district, running south and west of Bexar. By contrast, the Congressional Redistricting Plan cuts into the very area where most of the other plans create a seventh Hispanic district in the Rio Grande Valley in order to have enough population for new CD 34 – the Hispanic district sewn together from the scraps of Benchmark CD 27. *Id.*

84. The Legislature then proceeded to create a Hispanic district by taking Hispanic population in northern Bexar County and connecting it with Hispanic population in southern

Travis County. These two clusters are connected by a strip along Interstate 35 that is three miles wide and 50 miles long. The creation of CD 35 took 161,254 Hispanics out of CD 25, the cross-over district anchored in Travis County and Austin, contributing directly to the elimination of that district as a minority-ability district. Again, a direct reaction to react to moving Nueces County led to loss of yet another minority-ability district. *Id.* at 46-47.

85. The outer waves of the ripple effect reach all the way to Harris County. If one overlays the Benchmark Plan and the Congressional Redistricting Plan, there is an evident shift in the location of all the districts in the Harris area to the Southwest. The reason for this is that moving Nueces into the new CD 27 pulled all of the districts along the Gulf to the Southwest. Nueces County alone is half of the population of a Congressional District. Adding that population to counties to the north and northeast meant that the district in that area (old District 14, now numbered 27) had to shift its geographic location. In turn, CD 22 is pulled out of Galveston County to the east and into Fort Bend County, to the West. And all of the Harris County districts are pulled further in this direction. *Id.* at 47.

86. The shift in these districts left no flexibility for the creation of an additional Hispanic seat in Harris County. Other maps, such as Plans C166 and C202, place a new minority-ability district there. Instead, the Congressional Redistricting Plan creates a new White Majority District (new CD 36) to the East of Harris County, and it pulls CD 2 out of this area, putting it entirely into Harris. In doing so, new CD 2 adds a sizable minority population from Houston to White suburban communities to reconfigure this majority White district. *Id.* at 47-48.

87. The Legislature's decision to take Nueces County out of Benchmark CD 27 thus had far-reaching consequences on minority-ability districts. It prevented the creation of a

seventh Hispanic district in Southwest Texas, led to the dismantling of CD 25, and greatly constrained the ability to make a new Hispanic district in Harris County.

E. Congressional District 25 Was A Minority-Ability District Under Plan C100.

88. In June 2006, the Supreme Court of the United States invalidated the district map enacted by the State of Texas in 2003. In response to that ruling, a three-judge panel in the Texas federal district court redrew five districts. As part of that reconfiguration, the panel created CD 25. Under Plan C100, CD 25 was majority White, drew most of its population from Travis County, and covered seven less populous counties to the south and southeast of Travis.

89. Historically, courts have concluded that a tri-ethnic voting coalition, in which minority-preferred candidates prevail with White crossover support in spite of the presence of a White voting majority, is at work in partisan and non-partisan elections in Travis County and the City of Austin. In the voting rights case, *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989), the Fifth Circuit found that Austin voters "repeatedly elected black and Mexican-American council members during the last 17 years," and that minority candidates "have routinely been elected to other posts in Austin and the surrounding Travis County." Similarly, in the later voting rights case, *LULAC v. Clements*, 999 F.2d 831 (5th Cir. 1993) (*en banc*), *cert. denied*, 510 U.S. 1071 (1994), the Fifth Circuit concluded that "the undisputed facts indicate that Travis County's political system is open to Hispanic and white candidates alike." 999 F.2d at 888.

90. Expert testimony in this case confirms that Travis County is unique with respect to the number of cross-over White voters. *See, e.g.*, M. Kousser Report at 129 (noting "long-successful tradition of coalition politics in Travis County, in which Latinos, African-

Americans, and liberal Anglos had often joined together in both partisan and non-partisan contests"); R. Murray Report at 21 ("sizeable part of Travis County shares" the pattern in which Anglo voters crossover in significant numbers to support the same candidates supported by minority voters); Tr. of Sept. 14, at 1787 (Test. of J. Alford) (in Travis County, "Anglo crossover is substantially higher than it is in the other counties in Texas"). The average White cross-over vote in Travis County is approximately 47%, which contrasts with the statewide average of approximately 28%. Tr. of Sept. 10, at 1120-21 (Test. of S. Ansolabehere).

91. As it was configured under Plan C100, CD 25 was a minority-ability district because of White cross-over voting. Whites were the majority of the electorate under Plan C100, but Hispanics were the decisive voting group in the elections. Ecological regressions and homogeneous precinct analyses show that Hispanics and Blacks in the Travis County portion of CD 25 voted cohesively. These same analyses establish that Whites in the Travis County portion of CD 25 did not vote as a block, and enough Whites supported the minority-preferred candidates to give minorities the ability to elect candidates of their choice. Defendants' Ex. 724 (Ansolabehere Rpt.) at 35.

92. Between 37 percent and 50 percent of the White population of Benchmark CD 25 from Travis County votes for minority-preferred candidates. Replacing that White population with White population typical of the rest of the state would transform Benchmark CD 25 into a district in which Blacks and Hispanics would no longer be able to elect their preferred candidates. The reason is that the amount of White cross-over voting in Benchmark CD 25 as a whole and in the Travis County portion of it in particular is higher than anywhere else in Texas. The amount of White cross-over voting is sufficiently high that the Black and Hispanic population of Benchmark CD 25 can elect their preferred candidates

to Congress, even though minorities are not a majority of the population in Benchmark CD 25 and even though a majority of Whites vote, on average, for candidates not preferred by minorities. The White cross-over voting in Benchmark CD 25 underscores the unique nature of racial politics in Travis County, and the very unique situation in Benchmark CD 25 within Texas and perhaps the entire nation. Defendants' Ex. 724 (Ansolabehere Rebuttal Rpt. to Supp. Rpt. of Alford) at 24-25.

93. Importantly, although minority-preferred candidates in CD 25 and in Travis County win virtually all general elections, they usually do so with the support of less than a majority of the White vote. While the average White cross-over vote is approximately 47%, minority-preferred candidates have won with as little as 38% cross-over vote. Notwithstanding that a majority of Whites usually does not support the minority-preferred candidate, Blacks and Hispanics have been able to elect the candidates of their choice in CD 25 and Travis County because of the significant size of the minority population, the amount of turn-out among minority voters, the cohesion between Black and Hispanic voters, and cross-over support from significant numbers of White voters. *Id.* at 20-23.

1. Results From General Elections In CD 25 And Travis County Establish That Benchmark CD 25 Was A Minority-Ability District.

94. Proof of the voting patterns in Benchmark CD 25 and Travis County that are described above is found in ecological regressions for candidates with Spanish Surnames, which show very high levels of cohesion among Hispanic and Black voters and divisions among Whites. In all nine Travis County general elections examined by Professor Richard Engstrom, Hispanics and Blacks expressed a clear common preference, with over 70 percent of each of these groups voting for their preferred candidates. In all cases, Hispanics and

Blacks preferred the same candidate. By contrast, Whites divided their votes, with an average of 47 percent of Whites supporting the minority-preferred candidate. *Id.*

95. In eight of the nine elections analyzed by Professor Engstrom, the minority-preferred candidates won. They prevailed because of cohesive support among Black and Hispanic voters and enough cross-over support from White voters. *Id.*

96. The congressional elections involving Congressman Lloyd Doggett further demonstrate that minorities in Benchmark CD 25 are able to elect the candidates of their choice because of voting cohesion between Blacks and Hispanics and enough cross-over support from Whites. Congressman Doggett won the special election for Benchmark CD 25 in December 2006. In the 2008 and 2010 elections, Congressman Doggett was the candidate preferred overwhelmingly by Black and Hispanic voters in Benchmark CD 25, and he won both elections. *Id.*

97. Congressman Doggett won the 2010 election in Benchmark CD 25 with overwhelming support from Black and Hispanic voters, combined with support from 38% of White voters. Congressman Doggett would have been defeated in the 2010 general election but for the minority voters of Travis County. This result confirms that Congressman Doggett is the minority-preferred candidate in benchmark CD 25, and that minorities are able to elect him because of cohesion between Blacks and Hispanics, the size and turnout of the minority voting population, and sufficient cross-over support from White voters. *Id.*

98. Results from other general elections in Benchmark CD 25 and Travis County further demonstrate that Benchmark CD 25 was a minority-ability district. President Obama, the minority-preferred candidate for President in 2008, won 60 percent of the vote in the area defined by CD 25 under Plan C100. In addition, there were 35 general elections in Travis

County between 2002 and 2010 in which minority candidates prevailed. These candidates won because of racial cohesion between Blacks and Hispanics and a sufficient amount of White cross-over voting to permit minorities to elect candidates of their choice. There are numerous other examples over the last two decades of the tri-ethnic voting coalition in Travis County coming together to elect minority-preferred candidates, who themselves are minorities, to school districts and Texas Senate races in White-dominated districts. Defendants' Ex. 671; Tr. of Sept. 10, at 1189-91 (Test. of D. Butts).

2. Results From Primary Elections In CD 25 And Travis County Confirm That Benchmark CD 25 Was A Minority-Ability District.

99. Blacks and Hispanics are also able to consistently elect their preferred candidates in Democratic primaries in Travis County. Black and Hispanic preferred candidates succeed as often, or more often, than White-preferred candidates in those primaries. Defendants' Ex. 724 (Ansolabehere Rebuttal Rpt. to Supp. Rpt. of Alford) at 23-24.

100. No racial group dominates the primary process in Travis County. Power is shared equally and in such a way that the racial groups succeed in nominating their preferred candidates 75 percent of the time. Of 43 primaries in Travis County analyzed by Dr. Anoslabehere, Whites backed the winner in 31 primaries; Hispanics backed the winner in 32 primaries; and Blacks backed the winner in 31 primaries. These results demonstrate that minority-preferred candidates have the ability to win the Democratic primaries in Travis County, and that the primaries do not block or prevent minority-preferred candidates from moving on to the general elections. *Id.*

101. The ability of Blacks and Hispanics to elect candidates of their choice in Democratic primaries is also demonstrated by the Democratic Congressional primary elections for benchmark CD 25 in Travis County. In those elections, Congressman Doggett was also the preferred candidate of Hispanic and Black voters, as well as White voters. Since Congressman Doggett eventually won with a majority of the Hispanic and Black vote in the general election, it is clear that the primary election process facilitated, rather than interfered with, the ultimate election of the candidate preferred by Hispanic and Black voters. *Id.*

3. The Texas Legislature's Proposed Congressional Redistricting Plan Takes Away The Ability Of Minorities In Benchmark CD 25 to Elect Candidates Of Their Choice.

102. The Texas Legislature's Congressional Redistricting Plan completely restructures Benchmark CD 25, removing large numbers of minorities and putting in large numbers of Whites from counties to the north. The voting behavior of the Whites in these counties differs substantially from the voting behavior of Whites in Austin, the seat of Travis County. *Id.* at 28-29.

103. Unlike the White population encompassed by Benchmark CD 25, the White vote in the new CD 25 created by the Congressional Redistricting Plan has high levels of racial cohesion and polarization. Ecological regression analysis of the relationship race and vote among the Voting Tabulation Districts in the new CD 25 yields an estimate of White cohesion of .85, meaning that 85 percent of Whites in this new district vote for the same candidate. And that candidate is not the minority-preferred candidate. *Id.*

104. Under Plan C100, Travis County was divided into three Congressional Districts, CD 10, CD 21, and CD25. These districts corresponded to the western and northwestern part of the County (CD 21), the northeastern part of the County (CD 10), and the central and

southern part of the County (CD 25). The majority of the population of Benchmark CD25 C100 resided in Travis County. *Id.* at 25.

105. Plan C 185 splinters Travis County into five Congressional Districts. Travis County residents are not a majority of the population in any of the districts, even though the County has sufficient population to encompass one entire congressional district and much of a second. *Id.* at 25-26.

106. The reconfiguration of Benchmark CD 25 is among the most dramatic changes Texas Legislature's proposed Congressional Redistricting Plan. The part of new CD 25 that is in Travis County follows most of the footprint of the part of the old CD 21 under Plan C100 in Travis County, and not the footprint of the old CD 25. The new CD 25 encompasses western and northwestern Travis County, the part of Travis County that had been within Benchmark CD 21. The new CD 25 picks up two parts of the old CD 25. One part is in the south and central part of the county and is roughly 25 percent Hispanic and Black. A second part is in the center of Austin. *Id.* at 26.

107. Under the Benchmark Plan, CD 21 in Travis County did not cross Interstate 35 into the center of the City of Austin. Under the Texas Legislature's proposed Congressional Redistricting Plan, however, CD 25 crosses Interstate 35 and encompasses an area with the highest concentration of Blacks in the County. To reach this area, the new version of CD 25 must pass through a narrow isthmus defined by other districts. The result is to place much of the Black population in the center of the City of Austin into a district that extends northward all the way to the Tarrant County border and encompasses nine predominantly White rural counties. Under the Benchmark Plan, that population resided in CD 25 as well, but the configuration of the district was very different, as the Black population in the center of

Austin resided in a district in which it was able to elect its preferred candidate to Congress. *Id.*

108. Under the Texas Legislature's proposed Congressional Redistricting Plan, CD 21 now reaches into Travis County from the south and takes a portion of the County that was in Benchmark CD 25. The rest of CD 21 remains largely unchanged. Outside of Travis County, CD 21 under both plans encompasses Bandera, Blanco, Comal, Gillespie, Kendall, Kerr, and Real Counties in their entirety and part of Bexar County. The Texas Legislature's proposed CD 21 now reaches through Hays County so that it can extend into Travis County. The part of Travis County encompassed by the Texas Legislature's proposed CD 21 has much higher density of Hispanics and Blacks than the part of Travis County that was included in Benchmark CD 21. *Id.* at 26-27.

109. According to TLC Report Red 100, the part of Travis County that was included in Benchmark CD 21 had 24,397 Blacks and Hispanics; that district was 13 percent Black or Hispanic. By contrast, the Texas Legislature's proposed new CD 21 has 62,014 Travis County Blacks and Hispanics. This means that fully one-third of the population that newly proposed CD 21 takes from Travis County is Black or Hispanic (compared with 13 percent under Plan C100). Nearly all of the Hispanic and Black population from Travis County that the Texas Legislature has added to proposed CD 21 were in Benchmark CD 25 and therefore had the ability to elect their preferred candidates. The Texas Legislature's proposal would eliminate the ability of these minorities to elect the candidates of their choice. *Id.* at 27.

110. The Texas Legislature's elimination of the ability of minorities in Travis County to elect candidates of their choice also is seen in newly proposed CD 10 and CD 17, which divide the northeastern and north-central part of Travis County. These proposed districts follow the footprint of Benchmark CD 10 in Travis County, and they split that area in half.

The proposed CD 10 also extends further into Travis County, across the northern boundary of the County, and captures an area that used to be in CD 21. CD 17 contains a cluster of nine counties in the central part of the state to the north and east of Travis. These are Brazos, Burleson, Falls, Freestone, Leon, Limestone, McLennan, Milam, and Robertson Counties. An arm extends due west from the southern tip of that cluster of counties across the northern part of Lee County and into the northern part of Travis County. That arm captures an area of Travis County that has significant Black and Hispanic populations. The part of Travis County that the Texas Legislature's proposal would put into CD 17 is 41 percent Black or Hispanic. By comparison, Benchmark CD 17 was 31 percent Black or Hispanic. *Id.* at 27-28.

111. The reconfiguration of Benchmark CD 25 and Travis County under the Congressional Redistricting Plan would have serious adverse consequences for Black voters in Travis County. Under the Benchmark Plan, most Blacks in Travis County Blacks resided in a district in which they routinely elected their preferred candidate to Congress in the general election, and their preferred candidate won in the primaries. Under the Congressional Redistricting Plan, neither CD 21 nor CD 25 provides Blacks the ability elect their preferred candidates. The ability of the Black population of 96,235 in Travis County to elect the candidates of their choice would be eliminated almost completely. *Id.* at 28.

112. The reconfiguration of Benchmark CD 25 and Travis County under the Congressional Redistricting Plan also would have serious adverse consequences for Hispanic voters in Travis County. Under the Benchmark Plan, 205,200 of Travis County's 342,766 Hispanics resided in CD 25 – where they routinely elected their preferred candidate to Congress – and 137,566 of Travis County Hispanics resided in other districts (10 and 21) where they did not have the ability to elect their preferred candidates. Under the

Congressional Redistricting Plan, 140,885 Travis County Hispanics will reside in CD 35, where they will have the opportunity to elect their preferred candidates. However, approximately 201,881 Travis County Hispanics would reside in congressional districts in which they would no longer have the ability to elect their preferred candidates. The net effect of the Congressional Redistricting Plan, compared with the Benchmark Plan, is to reduce by 63,000 the number of Travis County Hispanics residing in districts where they can elect their preferred candidates. *Id.* at 29.

113. In addition to reducing the representation of Blacks and Hispanics, the Congressional Redistricting Plan divides the population of Travis County and the surrounding area along racial lines to an extent that it previously had not been. Benchmark CD 25 contained half of the population of Travis County. That district had a more even mix of the racial groups than does any of the Travis-area districts in the Congressional Redistricting Plan. Under the Benchmark Plan, CD 25 was 50 percent White, 39 percent Hispanic, and 9 percent Black. Minorities and Whites in Benchmark CD 25 were thus approximately equal in number, which reflects the population composition of Travis County as a whole: 51 percent White Non-Hispanic, 34 percent Hispanic, and 9 percent Black. *Id.*

114. Under the Congressional Redistricting Plan, new CD 25 is 70 percent White and 25 percent Black and Hispanic. New CD 35 is 73 percent Black and Hispanic (and most of that Hispanic) and 25 percent White. In Travis County, therefore, the Congressional Redistricting Plan divides the population significantly more along racial lines than it had previously been. At the same time, it sharply reduces the number of Travis County Hispanics and Blacks who are able to elect their preferred candidates. *Id.*

RESPECTFULLY SUBMITTED: February 3, 2012

/s/ John M. Devaney

John M. Devaney
Marc Erik Elias
Kevin J. Hamilton
Perkins Coie LLP
700 13th Street, NW, Suite 600
Washington, DC 20005-3960

Renea Hicks
Law Offices of Max Renea Hicks
101 West 6th Street, Suite 504
Austin, TX 78701

Attorneys for Gonzales Intervenors

/Luis Roberto Vera, Jr.

Attorney and Counselor at Law
LULAC National General Counsel
1325 Riverview Towers
111 Soledad
San Antonio, Texas 78205
(210) 225-3300
lrvlaw@sbcglobal.net

Counsel for LULAC

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2012, I electronically filed the foregoing PROPOSED FINDINGS OF FACT 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 3, 2012

Respectfully submitted,

PERKINS COIE LLP

By: /s/ John M. Devaney
John M. Devaney, Bar No. 375465
JDevaney@perkinscoie.com
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: 202.654.6200
Facsimile: 202.654-6211