IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
and ERIC H. HOLDER, JR. in his	)	Case No. 11-CV-01303
official capacity as Attorney General	)	(RMC-TBG-BAH)
of the United States,	)	[Three-Judge Panel]
	)	
Defendants,	)	
	)	
WENDY DAVIS, et al.,	)	
	)	
Defendant-Intervenors.	)	

DEFENDANT INTERVENOR MEXICAN AMERICAN LEGISLATIVE CAUCUS' SUMMARY OF REPORT OF EXPERT DR. MORGAN KOUSSER

Defendant Intervenor the Mexican American Legislative Caucus, (MALC) hereby submits its summary of Dr. Morgan Kousser's expert report:

BACKGROUND

Dr. Kousser was retained by the MALC to determine whether voting in recent elections in Texas was racially polarized, whether the redistricting plans for the Texas House of Representatives and the Texas delegation to the United States Congress were adopted with a racially discriminatory purpose.

PLANS H283 AND C185 WERE ADOPTED WITH A DISCRIMINATORY INTENT

Racially Polarized Voting

Using the statistical methods conventionally employed in voting rights cases to determine racially polarized voting and the legal and commonsensical definitions of racial

polarization adopted by courts and nearly all social scientists, Dr. Kousser found that voting has been markedly racially polarized in recent general and Democratic primary elections in Texas. Dr. Kousser's investigation documents the racial polarization of Texas elections and the cohesiveness of minority voters in general elections and Latino voters, in favor of Latino candidates, in primary elections, as well. His investigation has proven that where minority voters are in a minority, they generally lose.

More specifically, Dr. Kousser found that Latino voters in the state overwhelmingly choose to vote for Democratic candidates, even when Republicans nominate candidates with Spanish surnames. In general elections, African-Americans almost unanimously support Democratic candidates, regardless of whether Republicans nominate Anglos or Latinos. A majority of Asian-Americans supported Latino Democratic statewide candidates in the 2010 general election. The statewide Democratic primary contests in 2010 involving Latino candidates were also racially polarized, demonstrating that racial polarization in Texas is not merely partisanship by another name.

Discriminatory Intent – Texas House of Representatives

Dr. Kousser found both quantitative and qualitative evidence which casts doubt on the legality of H.B. 150 (PLANH283) under the intent prong of Section 5 of the Voting Rights Act. Dr. Kousser finds nine specific validations for his conclusion that the map enacted by the State of Texas for the state house were adopted with a racially discriminatory purpose.

First, the process for adopting the maps was controlled by Anglo Republican legislators, and all Democratic and minority amendments were defeated.

Second, the districts have wide population disparities that are strongly correlated with racial concentrations. More minority than Anglo districts are overpopulated, both in the state as a whole and within the large urban counties.

Third, districts with lower average and total deviations were proposed, specific legislators pointed out in the floor debate the disparities in population deviations between Latino and minority districts and Anglo districts, and no known racial justifications were offered for the disparities, so that the legislature must have deliberately chosen districts farther from the equal population standard.

Fourth, disregarding the TLC's published legal advice that the "county line rule" had to give way to population equality under *Larios* and to the Voting Rights Act, and rejecting widespread and repeated criticisms of its elevation of the county line rule above most other concerns, the majority in the legislature refused to adopt plans that recognized the minority proportion (89%) of Texas's 20% population growth over the decade. Dr. Kousser found that it is not that minorities were entitled to seats in proportion to their population growth, but that unless that growth was very scattered, a neutral process could be expected to produce new seats roughly in proportion to that growth. That it resulted in *fewer* effective state House districts for minorities is further evidence that the process was not neutral.

Fifth, the Redistricting Committee and the House employed the county line rule inconsistently – for example, to condemn the Texas Legislative Black Caucus' state house plan, and to justify the elimination of a Latino opportunity district in Nueces County, but not to prevent Hidalgo County territory and population from being added to an existing Latino opportunity district from Webb County. Moreover, the county line rule would not explain racially discriminatory population disparities within the urban counties.

Sixth, no other rational legislative or administrative policy considerations explain the population disparities or the retrogression in the number of effective minority seats. In PLANH283, the districts are less compact, split many more precincts, and split the same number of counties as almost all of the alternative plans. For example the districts drawn for Hidalgo County HD 40 and HD 41, in El Paso County HD 78 and in Dallas for HD 103, HD 104 and HD 105 show the lengths to which the State's maps go to avoid the consequences of the substantial population growth in the Latino community of Texas. (See: Figures 7A-C, 8A-E, and 9A-B) As the discussion of districts in Dallas, Hidalgo, El Paso and Harris Counties above especially emphasizes, H283 only inconsistently protected incumbents or the cores of previous districts, at least in those counties, and was especially unlikely to do so for districts in which minorities had been able to elect candidates of choice. The shifting of effective minority districts HD 33 and HD 149 to different areas of the state and their transmogrification into Anglo Republican districts provides striking evidence that the desire to protect incumbents and to preserve the cores of previous districts were followed inconsistently. The debate on the House floor reveals no offsetting rationale for the population disparities or the geographical shifts. Moreover, as Tables 12-14 and 24 of Dr. Kousser's report (DX 5) demonstrate, minority ethnic group Republican legislators were not elected with the support of minority voters. To protect Republican incumbents only, as H283 did, is to protect the choices of Anglos only.

Seventh, as in *Larios*, there were overpopulated districts in H283, for instance, in Hidalgo and Dallas Counties, that were adjacent to under populated districts.

Eighth, several other plans, including the MALC plans, draw considerably more districts with minority concentrations that enable minority voters to elect candidates of choice, as judged

by the results of the 2008 and 2010 State House contests. The State's choice not to draw them indicates an intention to place other interests ahead of racial fairness.

Ninth, detailed investigations of individual districts, including revealing boundaries, especially when those boundaries are superimposed on ethnic maps, indicate both bias against minorities and racial gerrymandering.

Discriminatory Intent – Congressional Plan

As to the state of Texas' plan for congress, PLANC185, Dr. Kousser also demonstrates that more compact congressional districts than the state drew can be drawn, and other plans produce substantially more districts that offer minority voters more opportunities than C185 does to elect candidates of choice. Dr. Kousser demonstrate the packing of minorities into already demonstrably "performing" districts and the consequences of that careful packing and the precise line-drawing for surrounding districts: They became safer for Anglos and made it almost impossible in those districts for Latinos, African-Americans, or coalitions between them and, in some places, Asian Americans, to elect candidates of their choice.

The maps demonstrate intentional racial gerrymandering at least as clearly as anything in *Shaw v. Reno, Miller v. Johnson* or *Bush v. Vera*, although this time, racial minorities were the victims, rather than the beneficiaries of that line-drawing. Dr. Kousser's report demonstrated the racial gerrymanders through overlays of the districts in Dallas and Tarrant Counties on minority population concentrations. See Figures 10A-C, and 11A-D. (DX 5).

Dr. Kousser also determined that the U.S. Supreme Court had repeatedly found that Texas has discriminated against minorities in its election laws and specifically in its redistricting plans, most recently in a decision that condemned a district based very much on the same principles as C185's District 23, and that there is much more evidence of such discrimination in

the scholarly literature. Like the state house plan, the congressional plan not only had a retrogressive effect by more than one index, but it also bears plentiful signs of having been adopted with a racially discriminatory intent.

Finally, Dr. Kousser reviewed the actions and words of the map drawers and the legislators charged with the responsibility of development of the plans for both State House and Congress. Dr. Kousser found support for his conclusions both from the public pronouncements as well as the private discussions among these individuals. In addition, upon review of additional documents released by the State on the eve of trial, Dr. Kousser found that the internal, mostly staff-to-staff emails and divers documents not only strengthen the case for discriminatory intent, but they also strengthen his conviction that the natural implications of objective, circumstantial evidence of intent set forth in his earlier reports can be confidently relied upon as revealing the discriminatory intent of those who designed the redistricting plans. (Kousser Addendum, Doc. 166-1, Jan. 20, 2012).

Dated February 6, 2012

Respectfully submitted,

FOR INTERVENOR MEXICAN AMERICAN LEGILATIVE CAUCUS (MALC)

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2012, I electronically served the foregoing via ECF on all other parties in this litigation.

s/ Jose Garza