IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA; ERIC HOLDER in his official capacity as Attorney General of the United States, Defendants, *et al*.	Civil Action No. 1:11-cv-1303 (RMC-TBG-BAH)

POST-TRIAL BRIEF OF DEFENDANT-INTERVENORS THE TEXAS STATE CONFERENCE OF BRANCHES OF THE NAACP, HOWARD JEFFERSON, BILL LAWSON, JUANITA WALLACE, REGINALD LILLIE, NELSON LINDER, AND ERICKA CAIN

Defendant-Intervenors the Texas State Conference of Branches of the NAACP, et al., ("NAACP") respectfully submit the following post-trial brief, pursuant to the Court's Minute Order of January 25, 2012. Defendant-Intervenors also adopt the points and arguments set forth in the post-trial briefs submitted by the Texas Legislative Black Caucus ("TLBC") and the Davis Intervenors (focused on the Senate plan).

I. INTRODUCTION

Section 5 of the Voting Rights Act of 1965 was enacted in order to enforce the Fifteenth Amendment—that is, to keep jurisdictions from creatively undermining minority electoral success. Although Texas was not brought under the coverage of Section 5 until 1972, the evidence offered in this trial makes clear that jurisdictions like Texas continue to justify the need for Section 5.

An enormous amount of evidence has been presented to this Court and to the District Court in San Antonio on the intent and effect of the Congressional, State House and State Senate redistricting plans enacted by Texas. This Court has requested that post-trial briefing be focused not on Section 5 law, which this Court amply explained in its December 22, 2011, memorandum opinion on the denial of Texas' motion for summary judgment, but rather applying that law to all the facts in front of the Court. As such, this brief will go through the challenged districts, one by one, and explain the source of violation of Section 5 given the relevant facts.

II. LAW APPLIED TO THE FACTS

Several of this Court's specific interpretations of Section 5 law, as laid out in its December 2011 opinion, make clear, when applied to the facts before the Court, that Texas' enacted congressional, State House and State Senate plans have a retrogressive effect on minority voters and, indeed, were enacted with an intent to discriminate against and minimize the political voice of minority voters in the state.

When it comes to effect, as this Court noted, a Section 5 retrogression analysis must focus on the "functioning of the electorate." *Texas v. United States*, 1:11-cv.01301 (D.D.C.), 2011 WL 644006 at *26. Further, '[t]he question of retrogressive effect under Section 5 looks at gains that have already been realized by minority voters and protects them from future loss." *Id.* at *27. The fundamental problem in Texas' position on retrogressive effect is its refusal to admit where minority voters have been electing a candidate of their choice. The first step must always be an examination of the "functioning of the electorate" in the benchmark plan. As this Court noted, Texas, "[i]n county ability districts, ignored those in which coalitions of minority voters and coalitions of minority and White voters formed to support the minority-preferred candidate." *Id*. at *34. Instead, as discussed in detail below, Texas focused on exogenous, reconstituted

elections, arguing that because in exogenous elections, a minority opportunity district tended to elect Republicans, its proven ability to elect a minority-preferred candidate in the endogenous election must be ignored. That does not comport with the law.

A Section 5 analysis must include consideration for coalition districts. A House Report from the reauthorization process commented that, "[v]oting changes that leave a minority group less able to elect a preferred candidate of choice, either directly or when coalesced with other voters, cannot be precleared under Section 5." H.R. Rep. No. 109-478, at 46. Moreover, despite Texas' obstinate refusal to acknowledge the ability of coalition voters to elect a minority-preferred candidate, Texas' own analysis belies this claim. As this Court noted, "Texas' reliance on a forty percent BVAP and not a BVAP greater than fifty percent suggests that Texas also recognizes the importance of factors beyond majority status in determining which districts will provide minority voters the ability to elect." 2011 WL 6440006 at *30 n. 23. Thus, this Court's interpretation of Section 5, when applied to the facts in this case, indicates that the State's enacted plan will reduce the number of districts in which minority voters are able to elect a candidate of their choice.

Finally, Section 5 of the Voting Rights Act, as reauthorized by Congress in 2006, prohibits implementation of any voting change in a covered jurisdiction that was enacted with a discriminatory purpose. *South Carolina v. Katzenbach*, 383 U.S. 301, 316 (1966). The State took numerous discriminatory steps to undermine minority ability-to-elect districts—including Congressional Districts 9, 19, and 30, districts that the State acknowledged as minority ability-to-elect districts—and offered no explanation for these invidious actions other than coincidence. The purpose prong under the reauthorized Voting Rights Act is a broad bar against the implementation of redistricting plans guided by discriminatory intent, and thus the evidence in

this regard justifies a denial of preclearance. Finally, the Supreme Court's language in *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987), amply captures why Texas' refusal to create new minority opportunity districts and its fracturing of fast-growing minority populations into conservative Anglo districts is impermissible under Section 5's purpose prong. The Court held that "an impermissible purpose under §5 may relate to anticipated as well as present circumstances." *Id.* at 471. The Court noted that by annexing non-Black areas into the city, the City was "diluting the black vote in advance," and that "[n]othing could be further from the purposes of the Voting Rights Act." *Id.* at 472. This intentional "dilution in advance" is blatantly present in each of three redistricting plans in question in this case, and as such, renders those plans in violation of Section 5 of the Voting Rights Act.

A. The State's Enacted Congressional Plan Is Retrogressive in Effect and Was Motivated by Discriminatory Intent

Minority voters in Texas are electorally worse off under the State's enacted plan, C185, and given the process by which that redistricting plan was developed, this should come as no surprise. Dr. Richard Murray, an expert involved in all redistricting litigation in Texas since the 1970s, after examination of the legislative record, noted that the process of developing this Congressional plan was "unusual in its extreme degree of secrecy, non-involvement of legislative members, Congressional members, drawn internally by a tiny group of folks with very tight control of information, and certainly excluding any input from minority leaders or representatives or voters." Tr. Test. of Dr. Richard Murray, 22:21-25, January 20, 2012. He said it was unusual even compared with the very aggressive Congressional plan pushed through by Tom DeLay in 2003. *Id.* at 22:19-21. Discriminatory intent broadly infected the drawing of C185, and is evident both from the destruction of districts where minority voters had previously

been able to elect their preferred candidates, and even from the changes that may not ultimately effect that ability.

a. Congressional District 9

The changes made to Congressional District 9 in C185 are indicative of an invidious and intentional attempt to discriminate against minority voters in the district, to undermine their ability to continue electing their candidate of choice, and to deprive them of the full ability to participate in the political process by removing economic generators from the district. The State offered no evidence or justification for these actions and, indeed, no other plausible explanation exists aside from an impermissible intent to discriminate. Section 5 of the Voting Rights Act, as amended in 2006, does not allow a plan motivated by such intent to be precleared.

Congressional District 9 is represented by Alexander Green. Congressman Green is an African-American attorney who has served as representative of CD 9 for the last 8 years. Tr. Test. of Congressman Alexander Green, 212: 14-18, January 20, 2012. In the benchmark plan, C100, CD 9 was 48.2% African-American in citizen voting age population, 19.1% Latino in citizen voting age population, and 9.8% Asian-American in citizen voting age population. C100, Red-106. In the State's proposed plan, C185, CD 9 was 47.5% African-American in citizen voting age population, 18.3% Latino in citizen voting age population, and 10.7% Asian-American in citizen voting age population. C185, Red-106. Congressman Green testified that his district had "substantial surgery done on it." Tr. Test. of Congressman Alexander Green, 124: 6-7, January 20, 2012. This despite the fact that the district was only about 35,000 people overpopulated, a very small deviation. *Id.* at 125: 15-17.

Another piece of direct evidence of the intentionally discriminatory way in which Congressional District 9 was drawn was the inexplicable removal of significant economic

engines in the district. State map-drawers removed a number of economic generators from Congressional District 9, including the rail line that many parties, including the mayor, had worked so hard to bring to the district. The Astrodome, Houston Baptist University, and the medical center were removed from the district. *Id.* at 124: 12-16. The Congressman explained that these properties give voters in the district not only economic powers, but political powers, and removing them thus diminishes the political power of voters in the district. *Id.* at 124: 17-20. Congressman Green also explained that the "ability to elect a candidate of choice is significant for more than just the mere election—voters want there to be tangible benefits to that. A candidate responsive to the community's needs will bring economic generators that will benefit that community. This removal of economic generators creates an invidious taking to the detriment of the voters in CD 9 ." Pre-filed Direct of Congressman Green, p. 3-4.

Also inexplicably, Congressional District 18 had the district office removed from the district. Tr. Test. of Congressman Alexander Green, 124: 16, January 20, 2012. While Gerardo Interiano testified that the mapdrawers did not have the addresses of any congressional district offices when they were redrawing the congressional map, the only members of Congress to have their district offices drawn out the district were minority members of Congress. Pre-filed Direct of Congressman Green, p. 4. Mr. Interiano characterized the end result as mere coincidence. Tr. Test. of Gerardo Interiano, 95: 5-8, 18-19, January 25, 2012. Loss of a district office is significant for minority voters in the district. First, where a district office is located is usually chosen with careful consideration of accessibility, both for those constituents who may lack personal transportation, and those constituents who may have physical challenges that require accommodations. Pre-filed Direct of Congressman Green, p. 4. Congressman Green worked

with Congresswoman Sheila Jackson Lee to propose changes to C185 that would restore both of their district offices to the districts, but that proposal was rejected. *Id.* at 6.

Moreover, despite being overpopulated to begin with, areas were actually added to the district, and these areas, such as Sienna Plantation and Shadow Creek, are likely to be developed into upper-middle class Anglo neighborhoods over the next decade. Tr. Test. of Congressman Alexander Green, 125: 19-24, January 20, 2012. These areas do not have socioeconomic or cultural commonalities with the largely minority and heavily lower-income regions that are currently a part of the district. *Id.* at 125: 23-25. Given the amendments to Section 5 that prohibit preclearance of voting changes motivated by any discriminatory intent, the burden was on the State of Texas in this action to justify these remarkable and detrimental changes to Congressional District 9. By offering only "coincidence," the State failed to carry that burden.

b. Congressional District 18

The State made similarly unnecessary and destructive changes to Congressional District 18. Congresswoman Sheila Jackson-Lee is an African-American attorney and member of Congress who has been representing Congressional District 18 since 1995. Tr. Test. of Congresswoman Sheila Jackson-Lee, 4: 7-22, January 23, 2012. Again, these changes, which undeniably wrought detriment to the minority voters in the district, were explained by the State as nothing other than coincidence.

The process by which the new congressional plan was developed was indicative of an intent to discriminate against minority voters. Congresswoman Jackson-Lee testified that she recognized that she served in the United States Congress and was not a state legislator, and so she approached the process respectfully. *Id.* at 9: 20-21. She traveled to Austin to meet with the chairman of the House Redistricting Committee and the chairman of the Senate Redistricting

Committee. *Id.* at 9: 22-25. She was not invited by those state legislators, but initiated the meetings herself. *Id.* at p. 10: 3-4. In those meetings, she hoped to convey the historic nature of CD 18 and advocate for a respect for communities of interest within the district. *Id.* at 9: 23-25. Congressional District 18 is a special one in Texas, whose diversity and economic situation reflects the "blue collar-ness of Texas." *Id.* at 7:5-7. Its diverse residents rally around issues that face their communities, including education and criminal justice issues. *Id.* at 7:9-25. She went to speak at a public redistricting hearing at the University of Houston, again speaking about the historic nature of the district and urging respect for communities of interest. *Id.* at 10: 17-23. Not only did those state legislators fail to follow up or respond to her efforts, but they also completely ignored her recommendations and advocacy on behalf of the voters in her district. *Id.* at 10: 6-13, 17, 24-25.

Congresswoman Jackson-Lee also shared with the Court her interactions with Congressman Smith, who she believes to be well-intentioned. She was told that the Comgressman was going to take the lead on working with the Republican and Democratic congressional delegations from Texas, the delegations would work together on developing a redistricting plan, and that state legislators would give serious consideration to that plan. *Id.* at 11: 5-10. But, inexplicably, after only one initial meeting with Congressman Smith, it appeared that an outside halt was put on the process, and no more meetings were conducted. *Id.* at 11: 11-15. The Congresswoman was given no opportunity to view what was being done to her district in the State's proposed plan. *Id.* at 11: 16-18. She saw the map only the night before it was voted on, and she sent a letter registering her extreme dismay at what the State proposed to do to the voters of Congressional District 18 in the plan. *Id.* at 11: 23-25; 12: 1-8. Thus, the

Congresswoman, as a leader of the minority community, was excluded from advocating on behalf of her voters when it came to redrawing the district.

What the State's plan proposed to do was, in essence, carve the heart and soul out of the historic district. The plan removed significant economic generators from the district. The Congresswoman explained that loss of economic engines in the downtown area will affect the partnerships that allow her to provide services to her constituents. The Congresswoman has worked with business partners in the downtown business region to secure funding to keep community pools open in the summer, so that children and seniors in her district would have some relief from the sweltering heat. *Id*. at15: 1-11. Those corporate partnerships also led to job fairs, an important service to constituents in difficult economic times. *Id.* at 15: 11-14.

Additionally, the State's proposed plan, C185, completely dismantled important communities of interest in the district. The Third Ward and MacGregor areas were removed from the district. The Third Ward contains Texas Southern University, which is a historic black college. *Id.* at 13: 5-12. The loss of Freedmen's Town, where freed slaves lives, was a huge blow to voters in the district. *Id.* at 13: 3-5. Finally, like Congressional District 9, Congressional District 18 also lost its district office, which has been a place known to voters since Mickey Leland held the congressional seat. *Id.* at 13: 17-22. Loss of that office is loss of continuity for the voters and loss of a connection to their political representation. *Id.* at 14: 1-11. Congresswoman Jackson-Lee explained the devastating effect that loss of economic generators and dismantling of communities of interest will have on voter participation and turnout. *Id.* at 16:23-25; 17:1-12. Time and time again, the State made changes to this minority district that were explicable only by a motivation to deprive minority voters of the full ability to participate in the electoral process, and that is not allowed by Section 5.

c. Congressional District 30

The suspicious pattern that emerged when looking at the first two African-American ability-to-elect districts continues with Congressional District 30. Eddie Bernice Johnson is the African American representative of Congressional District 30, now serving in her 20th year in Congress. Tr. Test. of Congresswoman Eddie Bernice Johnson, 67:9-10, January 18, 2012. Congresswoman Johnson testified that she and other members of the state's congressional delegation were told that if they worked with Congressman Lamar Smith to come to agreement on a congressional plan, that it was likely that the state legislature would adopt it. *Id.* at 73: 20-25. Those efforts went nowhere.

Congresswoman Johnson explained how the State, in C185, took her house and district office out of the redrawn Congressional District 30. She noted that while it may not seem so significant to lose a district office, it is very significant to the voters the district, people who know where that point of contact is and travel many miles to seek assistance at that office. *Id.* at 79: 20-25. She pointed out that the office was accessible to freeways and had free parking. *Id*. at 80: 1-9. She begged to get the district office and her home back in the district, on several occasions, but was not able to get map-drawers to put those key district features back into the district. *Id*. at 80:9-24.

Congressional District 30 also lost significant economic generators from the district, and those areas, which were carved out of the district, were not removed for population because those were not heavily populated areas. *Id*. at 81: 12-15. Areas where the Congresswoman had gotten Brownfield money for development, including the American Center where the Dallas Mavericks play, areas where the Congresswoman brought in money for DART and transportation infrastructure, and areas where the Congresswoman brought in HUD money for

revitalizing old empty buildings—all of these areas were removed. Id. at 81: 5-16. These changes were not motivated by evening out the population in the districts—they appear to be simply a vindictive means of depriving minority voters of what their votes had brought to the district.

Congresswoman Johnson also noted that in C185, the State fractured solid African-American growth in Dallas and Tarrant Counties into five or six different Congressional districts. *Id*. at 75: 17-19. She submitted a plan to Congressman Lamar Smith that would have maintained her district, without packing in more minority voters than necessary to maintain the ability to elect, and would also have created an additional Latino opportunity district in the area. *Id*. at 76: 23-25, 77: 1-10. She noted that when she was working with Congressmen Marchant and Smith, they were looking at the population growth in the area that used to be Congressman Frost's district, but when the NAACP plan, C193, was released, she realized that there was actually enough minority population growth in the region to support a new Latino and new African-American district. *Id*. at 78: 4-11.

In C185, though, it required intentional, well-crafted mapping to avoid creating one or two new minority opportunity districts that would reflect the population growth. Congressional District 30 needed only to shed a few voters, as it was 1.14% overpopulated in the benchmark plan. C100, Red-100. In the benchmark plan, the combined black and Hispanic population was 76.7% of the voting age population. In C185, the State packed a combined black and Hispanic population of 81.5% of the voting age population into the district. C185, Red-100. This increase was unnecessary to maintain the ability of minority voters in the district to continue electing their candidate of choice, and the State has offered no justification for this increase in minority population in the district and its failure to create new minority districts in the Dallas area.

The State gave the same discriminatory treatment to all three African-American congressional ability-to-elect districts, Congressional Districts 9, 18, and 30. While attempting to maintain the population numbers and thus avoid claims of retrogression, the State nonetheless did everything in its power to undermine the ability of minority voters in these districts to fully participate in the political process and to benefit from the proven coalitions they had established. Offering no reasons for these changes, the State thus failed to carry its burden of showing that C185 was enacted without discriminatory intent.

d. Congressional District 25

The State completely dismantled Congressional District 25 with the intent of depriving black and Latino voters in Travis County, Texas, of the ability to elect the candidate of their choice. The State's intent successfully manifested itself in a retrogressive effect on those voters' proven ability to elect a candidate of their choosing and responsive to their needs. This Court has recognized that a coalition or crossover district in the benchmark plan must be analyzed for its ability to elect minority-preferred candidates, and evidence before this Court establishes that ability. The State does not recognize the ability to elect in the benchmark Congressional District 25, and thus offers no offset for its loss in C185. Thus, the loss of CD 25 is retrogressive in effect.

In the benchmark plan, C100, Congressional District 25 is represented by Lloyd Doggett. Tr. Test. of Dawnna Dukes, 115: 2-4, January 19, 2012. Congressman Lloyd Doggett is the candidate of choice of minority voters in Congressional District 25. *Id.* at 101: 8-23. Drs. Lictman and Ansolabehere, in their analysis for the present action and in their analysis for the San Antonio Court, both expressly confirm this. Ex. DX-372, Lichtman Expert Report, 7; Ex. DX-724, 30, 34-35, Expert Reports of Stephen Ansolabehere. This conclusion is further borne

out by the support that Congressman Doggett receives from the African-American community. The NAACP produces Civil Rights Legislative Report Cards, which document the votes of members of Congress on certain civil rights issues. According to those Report Cards, Congressman Doggett has consistently received "A's" for his support of the NAACP's position on key legislative votes from 2005 to 2010. Ex. DX-572, NAACP Report Cards. Thus, the uncontroverted dismantling of a district in which minority voters had the ability to elect the candidate of their choice, unaccompanied by any offset, is retrogressive and thus prohibited by Section 5.[1]

Additionally, the destruction of Congressional District 25 was motivated by impermissible discriminatory intent. Significantly, the treatment of the historic African-American East Austin community is a clear indication of an intent to discriminate against black voters. The Anglo voters and communities in western Austin and Travis County were largely kept together as a community of interest, but the eastern part of Austin, a heavily minority area, was not afforded such consideration. Ex. DX-802, "Sworn Statement of Dawnna Dukes," *Perez* Dkt. No. 317-1, 33. For more than 40 years, East Austin has had only one Congressperson. That area is a clearly identifiable community of interest. In the 1940s, African-Americans in Austin were required to live east of Interstate 35. It became a thriving, but segregated, community where African-American and Hispanic families lived. *Id.* at 34. Voters in this community were able to elect a candidate responsive to their needs. In C185, the State has split this community

[1] The State argued in trial that the lower levels of racially polarized voting (i.e., the higher levels of white crossover voting) in Travis County somehow negate a finding that the loss of CD 25 results in retrogression. First, the presence of racially polarized voting is relevant to a retrogression analysis, but it is only one of many factors to be considered, and is not, in and of itself, entirely determinative. DOJ 2011 Guidance, 28 C.F.R. 51.52, 54, 57-59. Second, if retrogression is to be analyzed on a statewide level, *Georgia v. Ashcroft*, 539 U.S. 461, 479 (2003), it follows logically that racially polarized voting should be analyzed on a statewide level. Numerous experts concluded based on statewide examination that voting in Texas is racially polarized. *Perez*, Tr. Test. of Dr. Richard Murray, 880: 3-5, September 8, 2011; Ex. DX-43, Lichtman Report (*Perez v. Perry*), 6-7, 20; Ex. DX-5, Kousser Expert Report, 26-53; Ex. DX-724, Expert Reports of Stephen Ansolabehere, p. 26.

amongst a large number of congressional districts, and in none of them will African-American voters be able to elect a candidate of their choice.

Some of the black voters will be put in a district centered in Burnett County, a rural county that has nothing in common with urban parts of Austin. *Id.* at 33. Some of the black voters will be put in a district anchored in Bexar County. Bexar County and Travis County have little in common. Communities in these counties observe different festivals and dates of celebration, have different housing and economic patterns, different transportation needs and layouts, and do not share churches or schools. *Id.* at 34; *see also*, ex. DX-802, "Sworn Statement of Jeffrey Travillion," *Perez* Dkt. No. 317-1, 18-21. A congressional representative responsible for both of these communities would often have to pick and choose between them, and it is likely that the area with the smallest population—the small part of Austin in the district—would lose. Ex. DX-802, "Sworn Statement of Dawnna Dukes," *Perez* Dkt. No. 317-1, 34. Under both the intent and purpose prong of Section 5 of the Voting Rights Act, the destruction of Congressional District 25 is impermissible.

e. New Congressional District

After the 2010 Census, based on enormous population growth due almost entirely to minority population growth, Texas was allotted four additional Congressional representatives, and yet the State created no additional minority ability-to-elect districts. In the benchmark plan, minority voters had the ability to elect the candidates of their choice in 11 districts—three African-American ability-to-elect districts, seven Latino ability-to-elect districts, and one multi-ethnic coalition or crossover district (CD 25). The State does not acknowledge CD 25 as an ability-to-elect district, but it claims to have preserved the other 10 ability-to-elect districts, or offset the loss of one of those with the addition of a different district. But, fundamentally, the

State itself acknowledges that despite the gain of 4 congressional districts because of minority population growth in the state, the State's enacted plan contains only 10 minority ability-to-elect districts. This extreme effort to keep minority voters in their place is prohibited by the purpose prong of the Voting Rights Act.

Specifically, the failure to create a new minority opportunity district in the Dallas-Forth Worth region exemplifies the great lengths that the State had to go to in order to create no new minority districts. Dallas and Tarrant Counties comprise the counties in which the Dallas-Fort Worth Metroplex area is centered. These two counties experienced enormous minority population growth over the last decade. Dr. Richard Murray noted that the Anglo population in Dallas and Tarrant counties decreased by 156,732 people, while the minority population in these two counties increased by 668,597. Ex. DX-347, Murray Report, 31. Dr. Murray noted that in Dallas and Tarrant Counties, there are 11 or 12 districts reaching into the counties, yet only one of them—Congressional District 30—provides minority voters an opportunity to elect the candidate of their choice. Tr. Test. of Dr. Richard Murray, 23:20-23, January 21, 2012. Dr. Murray noted that based on his many years of studying elections in urban areas of Texas, he has observed strong and effective minority coalitional voting specifically in these areas. *Id*. at 24:23-25. Even Congressman Lamar Smith, an Anglo Republican, urged state lawmakers to draw a new minority opportunity district in the Dallas-Fort Worth Metroplex. Ex. DX-347, Murray Report, 27, 38. Thus, it becomes clear that the decision not to create another minority opportunity district was not a partisan one—it was a deliberate attempt to minimize the political power of a growing group of minority voters, based on their race and ethnicity.

Instead of creating a new minority opportunity district that would reflect the natural population growth of minority residents in the region, the State instead fractured that community

amongst a number of districts. It did add a new Congressional District, CD33, to the region, but despite the loss of Anglo population in this area, the new district is an Anglo district. The State carefully drew CD 33 around the minority population in Fort Worth, taking only enough small pieces of it to ensure that those voters would not be able to elect a candidate of their choice. *See* Ex. DX-591, C185, Dallas Zoom. The State also drew Congressional District 26, the "Lightning Bolt District," so that it extended an awkward arm into Tarrant County, pulling out enough Latino voters from Fort Worth that those voters would be split amongst a number of districts and unable to exercise their political voice. *See* Ex. DX-591, C185, Dallas Zoom. This is all apparent simply from a visual examination of the State's enacted plan.

Defendant-Intervenors offered significant evidence to this Court on minority political coalitions in the Dallas-Fort Worth Metroplex region. Congresswoman Johnson, on the stand, explained that historical minority voting rights successes in the area have been achieved only by African-Americans and Latinos working together. Tr. Test. of Eddie Bernice Johnson, 71: 22-23, January 18, 2012. She and a number of other lay witnesses in the San Antonio case documented the number of local races in which a coalition of different minority groups elected various officials of differing races or ethnicities. *Id.* at 72: 7-12; *see also,* Ex. DX-802, Sworn Statement of Anthony Bond, ¶¶10-14; Ex. DX-802, Sworn Statement of Bob Lydia 2; EX-802, Sworn Statement of Juanita Wallace ¶¶8-9; Ex. DX-804, Sworn Statement of Fredrico "Lico" Reyes ¶9-11; Ex. DX-804, Sworn Statement of Franklin Moss ¶¶6-16. Congressswoman Johnson further explained the shared interests and needs facing African-American, Latino and Asian-American communities in Dallas and Tarrant Counties. Tr. Test. of Eddie Bernice Johnson, 72: 16-25; 73: 1-14.

In conclusion, the State's arguments that it only had to draw a new minority opportunity district in the Dallas-Fort Worth region if that district could be drawn as 50% citizen voting age population is an error as a matter of law. Moreover, the rejection of a number of plans that did create new opportunity districts evidences a clear intent to keep minority voters in their place, limiting their electoral voice and ability to participate in the political process. Section 5, as amended in 2005, does not allow this.

B. The State's Enacted House Plan Is Retrogressive in Effect and Was Motivated by Discriminatory Intent.

Just as with the process by which the State developed its congressional redistricting plan, the process by which the state house redistricting plan was developed was plagued by irregularities indicative of intent to exclude minority participation. Representative Sylvester Turner, chairman of the Texas Legislative Black Caucus, testified that when compared to his previous experience with redistricting in the Texas House of Representatives, this round was by far the most hasty, with insufficient time to receive input from constituents and to provide feedback to the map-drawers. *Perez* Tr. Test. of Sylvester Turner, 7:14-19, September 7, 2011. And, like with the State's congressional plan, that discriminatory intent infected the drawing of many districts, rendering some of them no longer able to elect the candidate of their choice. In particular, the State acted intentionally to fracture growing minority communities on the precipice of electing their candidate of choice, in violation of the purpose prong of Section 5.

a. House District 26

The electorate in House District 26, in Fort Bend County adjacent to Houston, is incredibly diverse, fast-growing, and politically cohesive. In recognition of this, the State redrew House District 26 in way that fragmented the minority population and intentionally diluted in advance their ability to elect a minority-preferred candidate. In the benchmark plan, HD 26 was

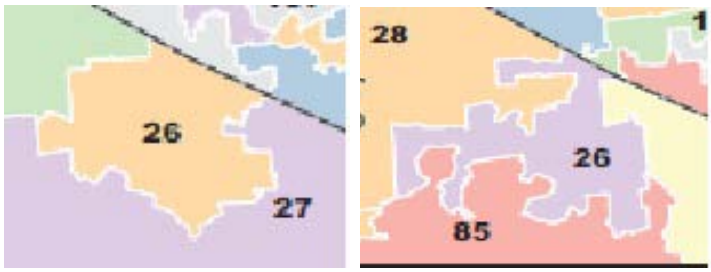
12.1% black in voting age population, 13.4% Latino in voting age population, and 32.9% "other" in voting age population. H100, Red-100. It was only 41.9% Anglo in voting age population. *Id.* These are very similar demographics as District 149 in the benchmark plan, a district that currently elects Hubert Vo, the only Vietnamese-American member of the Texas State House of Representatives. *See*, *infra* p. 23-24. In the State's enacted House plan, the House District 26's Anglo population is increased to 46.7% of the voting age population. H283, Red-100. The percentage of "other" population, which includes Asian-Americans, is reduced to 27.3% of the voting age population. *Id.*

Voting in the larger Houston metro area is racially polarized, and the area has historically demonstrated high levels of political cohesion amongst minority voters, particularly Latino, African American, and Asian voters. Ex. DX-508, Murray Expert Report, 26; Ex. DX347, Murray Report, 21-22. This tri-ethnic coalition successfully elected a Vietnamese-American House Representative in neighboring Harris County. Lay witnesses provided many examples of Asian-American, Latino and African-Americans working together elect Asian-American, Latino and African-American candidates. Perez Tr. Test. of Rogene Calvert, 421:7-10, Sept. 7, 2011; *Perez* Tr. Test. of Sheila Jackson-Lee, 1521: 15, 1522:12, Sept. 12, 2011, *Perez* Tr. Test. of Alexander Green, 1333: 15-23, Sept. 12, 2011. This is a region where there are proven electoral coalitions, and the diverse make-up of the electorate functions to elect a diverse body of candidates, all minority-preferred.

House District 26 was poised to start electing its candidate of choice. A Vietnamese-American, Vi Nguyen, had announced her candidacy for House District 26, and had received the support of Congresswoman Sheila Jackson-Lee, which likely would have afforded her significant support from the African-American community in the larger Houston/Fort Bend area. Frederico

"Lico" Reyes, a former Latino candidate for House District 26, offered sworn testimony that when he ran for this office, he received substantial African-American support. Ex. DX-804, "Sworn Statement of Frederico Reyes," ¶11. In short, this is a district in which there are powerful minority voting coalitions, and given the minority population growth, it is clear that voters in the district are on the precipice of being able to elect their candidate of choice. As recently as 2009, the Supreme Court, in *Bartlett v. Strickland*, 556 U.S. 1 (2009), noted that just because Section 2 did not compel the creation of a crossover district, that did not mean that the purposeful dismantling of such a district could not run afoul of the Equal Protection Clause. *Id.* at 20. This is precisely what happened with House District 26.

Moreover, the offensive extent to which the State had to gerrymander this district in order to draw out as many Asian-American voters as possible and to capture as many Anglo voters as possible is undeniable when one visually compares the benchmark and enacted plans:



H100, H283. The State of Texas offered no justification for the shape of this district, and based on the numbers alone, it is clear that the highly irregular shape causes an increase in Anglo numbers and a decrease in Asian-American numbers in a district that was poised to follow in the footsteps of HD 149, electing an Asian-American candidate supported by Latino and African-American voters. The prohibition on intentional discrimination cannot be read to allow this kind of racially gerrymandering clearly intended to undermine natural minority population growth and its resultant political power.

b. House District 54

As in District 26, the State's redrawing of House District 54 in Bell County was motivated by intent to discriminate against and dilute in advance the voting strength of the growing minority population in the district. In the benchmark, HD 54 was 23.1% Black in voting age population, 18.8% Latino in voting age population, and 5.9% "other" in voting age population. H100, Red-100. Between 2000 and 2010, the non-white population grew three times faster than the Anglo population in Bell County, accounting for 71% of population growth in the county. Ex. DX-734, Decl. of Dean Rogelio Saenz, 5-6. The District Court in San Antonio recognized that the fast growing population was in a predominantly minority urban center, surrounded by slow-growing rural areas. Rather than uniting the city of Killeen and drawing a district in which minority voters would be able to exercise their political voice, the State continued to split the city between Districts 54 and 55, thus preventing like-minded minority voters from being able to elect their candidate of choice. *Perez v. Perry*, Doc. No. 549, 19 (W.D. Tex. Dec 2, 2011) (supplemental opinion clarifying legal issues in two prior orders). The residents of that urban center have shared economic and other interests and are an easily definable community of interest. Ex. DX-734, Supplemental Report and Direct Testimony of Rogelio Saenz, 10.

In the San Antonio case, the NAACP Plaintiffs offered a proposed drawing of House District 54 as Section-2-compelled majority-minority district. The NAACP proffered House plan H202, a plan that the Texas Legislative Black Caucus had submitted during the legislative process. House District 54 in H202 was a coalition district in which Anglo voters constituted a minority of the district's citizen voting age population. In voting age population, House District 54 in H202 is 43.7% Anglo, 30.8% Black, 19.5% Hispanic, and 7.6% Other. In citizen voting

age population, House District 54 in H202 is 46.4% Anglo, 28.7% Black, 17.7% Hispanic, 3.2% Asian, and 0.8% Indian American. H202, Red-100, Red-106.

In a declaration, lay witness Phyllis Jones, a 17-year resident of Bell County, spoke to the political cohesion that exists between minority voters in the county. *See* Ex. DX-802, "Sworn Statement of Phyllis Jones," Dkt. No. 317-1, p. 28-29. Ms. Jones stated that Hispanic, African-American and Asian-American community members worked together on the campaign of Timothy Hancock, an African-American candidate for mayor in 2010. She also supplied anecdotal evidence of multi-racial coalition support for Juan Rivera, a Hispanic candidate for the Killeen City Council, and for Barack Obama in the 2008 presidential election. She spoke to her experiences with the Korean community in Bell County supporting African-American candidates. *Id.* at 29. Thus, the minority population growth in Bell County has been explosive, and strong multi-racial political coalitions have formed. But the State has become creative in its discrimination, and has done to House District 54 the exact same thing it did to House District 26—gerrymander the district to ensure that the growing minority population will not be able to participate in the political process.

c. House District 107

Much like the failure to recognize the enormous minority population growth with the addition of a new congressional district in the Dallas-Fort Worth Metroplex, the failure of the State to add a new minority opportunity State House district in Dallas County is indicative of an impermissible intent to discriminate and to keep minority voters "in their place." Again, after Congress amended the Voting Rights Act in 2006 to prohibit any discriminatory intent, such action constitutes grounds for finding a violation of Section 5 and denial of preclearance.

Plan H202 introduced by the Texas Legislative Black Caucus created a new African-American opportunity district, District 107, in Dallas County. This district is a Black and Latino coalition district. In that plan, House District 107 is 21.0% Black, 48.2% Hispanic, and 25.3% Anglo in voting age population. In citizen voting age population, House District 107 was 26.5% African-American, 23.9% Hispanic, and 42.8% Anglo. H202, Red-100, Red-106.

As for the appropriateness of drawing a new minority opportunity under Section 2 of the Voting Rights Act, all of the briefing applicable to the creation of new minority Congressional districts in the Dallas area (Tarrant County) is equally applicable to the creation of a new minority State House District in that area. *See, supra* p. 16-17. Voting in Dallas County is racially polarized. Dallas County has historically demonstrated high levels of political cohesion amongst minority voters, particularly Latino and African American voters. Lay witnesses provided many examples of Latino and African Americans working together to elect both Latino and African American candidates. Anglo voters in the county are not supportive of the candidates of choice of minority voters. As in so many instances before, in its enacted plan, the State has acted to undermine minority voters in their place, intentionally keeping them stuck in the political minority despite the massive population growth that would have reasonably resulted in a different outcome. This cannot be precleared under Section 5.

d. House District 149

In a stunning refusal to acknowledge that minority voters of different racial and ethnic backgrounds can vote together to elect a candidate of their choice, the State completely destroyed one district where this dynamic had been occurring. In the benchmark plan, House District 149 was 26.1% African-American in citizen voting age population, 19.0% Latino in citizen voting age population, and 16.2% Asian-American in citizen voting age population.

H100, Red-106. That district was entirely removed from Harris County, despite awareness on the part of State lawmakers that it was a performing minority ability-to-elect district. Ex. DX-508, Murray Expert Report, 30-31.

In House District 149, a multi-ethnic coalition of minority voters has a **proven track record** of being politically cohesive and able to elect its candidate of choice. Because Asian-American voters do not comprise a plurality of voters in that district, the election of Hubert Vo quite obviously required the support of other minority voters in the district. Rogene Calvert, an Asian-American leader in the Alief region of Houston, supplied the San Antonio Court with specific evidence of how this multi-ethnic coalition in the larger Houston area faces some of the same issues, is a community of interest, and has worked together to ensure the election of Representative Vo in multiple elections. Ex. DX-736, Tr. Test. of Rogene Calvert. Congresspersons Sheila Jackson Lee and Al Green also testified to political cohesion among different racial groups in the area. Perez Tr. Test. of Sheila Jackson-Lee, 7:2-9:10; Perez Tr. Test. of Alexander Green, 129:19-21, 130:16-23. In four endogenous elections—2004, 2006, 2008, and 2010—a diverse group of minority voters have elected Hubert Vo, who is the candidate of choice of each of those groups of minority voters. In the face of this irrefutable fact, reconstituted election results from exogenous races pale in significance. The State took away a district that had a proven ability to elect a minority-preferred candidate. This is classic retrogression, and as such, means that the State's House plan should be denied preclearance.

C. The State's Enacted Senate Plan Is Retrogressive in Effect and Was Motivated by an Intent to Discriminate Against Minority Voters

The destruction of Senate District 10 is similar to the destruction of Congressional District 25 in both its discriminatory intent and retrogressive effect on minority voters in the benchmark district. In the benchmark plan, Senate District 10 was a socioeconomically and

racially diverse district, reflective of the urban nature of the core of Fort Worth, Texas. Tr. Test. of Sen. Wendy Davis, 11:22-12:2, January 19, 2012. In that district, Anglos made up 52.7% of the voting age population, African-Americans made up 17.9% of the voting age population, and Latinos made up 24.8% of the voting age population. *Id.* at 49:22-51:16. In the State's enacted plan, that minority population is fragmented, and the minority voters will no longer be able to elect their candidate of choice.

African-American and Latino voters have, in recent years, been voting in an overwhelmingly cohesive pattern in Tarrant County. Tr. Test. of Rep. Marc Veasey, 50:12-14, January 18, 2012. Such cohesion was seen in the election of the District Attorney in Tarrant County in 2006. *Id.* at 29:18-30:21. In 2008, Dr. Allan Lichtman's analysis showed that Wendy Davis was, without question, the candidate of choice of African-American and Latino voters in that election, and she was elected by a unified coalition of minority voters. Ex. DX-372, Report of Lichtman, ¶ 2. Even the State's witnesses agreed on this fact. The State's expert, Dr. John Alford, admitted on the stand that Wendy Davis was the candidate of choice of minority voters in Senate District 10. Tr. Test. of Dr. John Alford, 38:17-19, January 23, 2012. Sen. Kel Seliger, the chairman of the Senate Redistricting Committee, also acknowledged that the committee chairs were aware that Sen. Davis was elected by Latino and African-American voters, who turned out in high numbers to elect Senator Davis. Tr. Test. of Sen. Kel Seliger, 52:19-21; 54:3-8, January 24, 2012.

The support that Senator Davis enjoyed from the minority voters in her district was widely known. African American and Latino leaders in the community had urged Senator Davis to run for Senate District 10 in the run up to the 2008 elections. Those leaders and their constituent groups worked hard to turn out the votes to get her elected. Tr. Test. of Rep. Marc

Veasey, 7:30, 34-36, January 18, 2012; Tr. Test. of Sen. Rodney Ellis, 109:17-23, January 20, 2012. Senator Davis was excluded from the redistricting process in much the same way that minority representatives were. Draft Senate redistricting plans were shown to Anglo Republican Senators, but Senator Davis was denied the opportunity to see the draft plans and offer input. Tr. Test. of Sen. Wendy Davis, 39:15-25, January 19, 2012. The loss of Senate District 10 as an ability-to-elect district is retrogressive, and the State did not meet its burden in showing that it was not motivated by an impermissible intent to diminish the voting strength of the minority voters in the district.

III. CONCLUSION

The burden in this action is on Plaintiff, the State of Texas, to prove that it enacted its Congressional, State House and State Senate redistricting plans without any discriminatory intent, and that those plans will not have a retrogressive effect on the ability of minority voters to elect their candidates of choice. Not only did Texas not carry this burden, but this Court has been presented with a significant amount of affirmative evidence showing that discriminatory intent infected the State's redistricting process, and that minority voters will no longer be able to elect their candidate of choice in a number of districts. Based on this evidence, the NAACP Defendant-Intervenors respectfully request that this court deny the State's request for preclearance of its redistricting plans under Section 5 of the Voting Rights Act.

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Respectfully Submitted,

/s/ Allison J. Riggs

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2012, I electronically filed the foregoing document 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.

/s/ Allison J. Riggs_____