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 official capacity as Attorney General of the United States, Defendants. WENDY DAVIS, *et al.*, Defendant-Intervenors, MEXICAN AMERICAN LEGISLATIVE CAUCUS, Defendant-Intervenor, GREG GONZALES, *et al.*, Defendant-Intervenors, TEXAS LEGISLATIVE BLACK CAUCUS, Defendant-Intervenor, TEXAS LATINO REDISTRICTING TASK FORCE, Defendant-Intervenor, TEXAS STATE CONFERENCE OF NAACP BRANCHES *et al.*, Defendant-Intervenors.	Civil Action No. 1:11-cv-1303 (RMC-TBG-BAH) Three-Judge Court

THE UNITED STATES' PROPOSED FINDINGS OF FACT

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Defendants the United States of America and Attorney General Eric H. Holder (collectively, the "United States") hereby file the following Proposed Findings of Fact.

I. TEXAS HOUSE OF REPRESENTATIVES: DISCRIMINATORY EFFECT

1. Compared to the benchmark plan, the proposed plan diminishes the ability of minority citizens to elect their preferred candidates of choice to the Texas House of Representatives by five districts: 33, 35, 41, 117, and 149.

2. In the benchmark plan, there are a total of 50 districts in which minority citizens currently have the ability to elect their preferred candidates of choice to the Texas House of Representatives. Compl. ¶¶ 20, 22; DX 609 at 3-8 (Informal House Submission); ECF No. 53 at 3 [hereinafter "Identification of Issues"]; DX 326 at 4-8 (Handley House Rep.).

3. Hispanic citizens currently have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 34 benchmark districts: 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90, 103, 104, 116, 117, 118, 119, 123, 124, 125, 137, 140, 143, 145, and 148. Compl. ¶¶ 20, 22; DX 609 at 3-8 (Informal House Submission); DX 326 at 4-8 (Handley House Rep.).

4. Black citizens currently have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 12 benchmark districts: 22, 95, 100, 109, 110, 111, 131, 139, 141, 142, 146, and 147. Compl. ¶¶ 20, 22; DX 609 at 3-8 (Informal House Submission); Identification of Issues at 3; DX 326 at 4-8 (Handley House Rep.).

5. Minority citizens also currently have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following four additional benchmark districts: 27, 46, 120, and 149. Compl. ¶¶ 20, 22; DX 609 at 3-8 (Informal House Submission); DX 326 at 4-8 (Handley House Rep.).

6. In the proposed plan, there are a total of 45 districts in which minority citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives. Compl. ¶¶ 20, 22; DX 609 at 3-8 (Informal House Submission); Identification of Issues at 4; DX 326 at 8-13 (Handley House Rep.); Tr. 10:11-11:5 (Jan. 26 a.m.) (Handley).

7. Hispanic citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 29 proposed districts: 31, 34, 36, 37, 38, 39, 40, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90, 103, 104, 116, 118, 119, 123, 124, 125, 140, 143, 145, and 148. Compl. ¶¶ 20, 22; DX 609 at 3-8 (Informal House Submission); Identification of Issues at 4; DX 326 at 8-13 (Handley House Rep.); Tr. 10:11-11:5 (Jan. 26 a.m.) (Handley).

8. Black citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 13 proposed districts: 22, 27, 95, 100, 109, 110, 111, 131, 139, 141, 142, 146, and 147. Compl. ¶¶ 20, 22; DX 609 at 3-8 (Informal House Submission); Identification of Issues at 4; DX 326 at 8-13 (Handley House Rep.).

9. Minority citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following three additional proposed districts: 46, 120, and 137. Compl. ¶¶ 20, 22; DX 609 at 3-8 (Informal House Submission); Identification of Issues at 4; DX 326 at 8-13 (Handley House Rep.).

A. <u>House District 33</u>

10. Benchmark House District 33 is located in Nueces County in the heart of Corpus Christi, Texas. DX 816 at 1, 5 (H100 Plan Packet)

11. According to data from 2010, benchmark House District 33 has a Hispanic voting age population (HVAP) of 61.9%, Hispanic citizen voting age population (HCVAP) of 60.4%, and Spanish surname voter registration (SSVR) of 55.3%. DX 816 at 5, 14 (H100 Plan Packet); DX

878 at 1 (Red-106 H100).

12. It is undisputed that Hispanic citizens currently have the ability to elect their preferred candidates of choice to the Texas House of Representatives in benchmark House District 33. Compl. ¶¶ 20, 22; DX 609 at 3-5 (Informal House Submission); Identification of Issues at 3; DX 326 at 5 (Handley House Rep.); DX 319 at 7, 14 (Alford Rep.).

13. In the proposed plan, the number of districts in Nueces County is reduced from three to two, and the area encompassed by benchmark House District 33 is redistributed to proposed House Districts 32 and 34. DX 609 at 6 (Informal House Submission).

14. Proposed House District 33 is located in Collin County and Rockwall County, near the City of Dallas. DX 817 at 1, 5 (H283 Plan Packet).

15. Proposed House District 33 has an HVAP of 13.5%, an HCVAP of 8.5%, and SSVR of 6.5%. DX 817 at 5, 14 (H283 Plan Packet); DX 879 at 1 (Red-106 H283).

16. It is undisputed that Hispanic citizens will not have the ability to elect their preferred candidates of choice to the Texas House of Representatives in proposed House District 33. Compl. ¶¶ 20, 22; DX 609 at 3-6 (Informal House Submission); Identification of Issues at 4; DX 319 at 14 (Alford Rep.); DX 320 ¶ 17 (Arrington Rep.).

B. <u>House District 35</u>

17. Benchmark House District 35 is located in southwest Texas and includes Atascosa, Bee, Goliad, Jim Wells, Karnes, Live Oak, and McMullen counties. DX 816 at 1, 5 (H100 Plan Packet).

18. According to data from the year 2000, benchmark House District 35 had an HVAP of 52.1% and SSVR of 50.2%. DX 4 at 19 (2001 House Rep.).

19. According to data from the year 2010, benchmark House District 35 has an HVAP of

60.6%, an HCVAP of 54.6%, and SSVR of 55.3%. DX 816 at 5, 14 (H100 Plan Packet); DX 878 at 2 (Red-106 H100).

20. Hispanic citizens in benchmark House District 35 elected their candidate of choice to the Texas House of Representatives in 2002, 2004, 2006, and 2008. DX 326 at 5, 34 (Handley House Rep.). The Hispanic-preferred candidate won narrowly in 2002 and 2004 and lost narrowly in 2010. DX 22 at 35 (Red-225 H100 2002 Gen.); DX 23 at 18 (Red-225 H100 2004 Gen.); DX 26 at 44 (Red-225 H100 2010 Gen.).

21. Hispanic citizens currently have the ability to elect their preferred candidates of choice to the Texas House of Representatives in benchmark House District 35. Compl. ¶¶ 20, 22; DX 609 at 3-5 (Informal House Submission); Identification of Issues at 3; DX 326 at 5 (Handley House Rep.); DX 726 at 6 (Engstrom Supp. Rep.); DX 319 at 7 (Alford Rep.).

22. Proposed House District 35 is reconfigured to remove Goliad, Jim Wells, and Karnes counties and to add Duval, La Salle, and San Patricio counties. DX 817 at 1, 5 (H283 Plan Packet).

23. Proposed House District 35 has an HVAP of 54.9%, an HCVAP of 52.5%, and SSVR of 53.4%. DX 817 at 5, 14 (H283 Plan Packet); DX 879 at 2 (Red-106 H283).

24. Hispanic turnout is lower than Anglo turnout in general elections in proposed House District 35. DX 6 at 127, 129 (OAG RPVA Rep.).

25. Compared to benchmark House District 35, proposed House District 35 decreases HVAP by 1.5 points, decreases HCVAP by 2.1 points, and decreases SSVR by 1.9 points. *Compare* DX 816 at 5, 14 (H100 Plan Packet) and DX 878 at 2 (Red-106 H100) *with* DX 817 at 5, 14 (H283 Plan Packet) and DX 879 at 2 (Red-106 H283).

26. Compared to benchmark House District 35, proposed House District 35 increases the

degree of racially polarized voting in exogenous general elections. *Compare* DX 6 at 107-10 (OAG RPVA Rep.) *with* DX 6 at 131-34 (OAG RPVA Rep.).

27. Compared to benchmark House District 35, proposed House District 35 decreases the performance of Hispanic-preferred candidates in exogenous general elections. DX 326 at 9, 11 (Handley House Rep.) (exogenous index decreases from 40% to 20%); DX 319 at 7 (Alford Rep.) (exogenous index decreases from 58% to 48%); DX 801 at 11 (Alford pre-filed direct) (OAG 10 index decreases from 5 to 4).

28. In light of the foregoing, it is not likely that Hispanic citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in proposed House District 35.

C. House District 41

29. Benchmark House District 41 is located in Hidalgo County, deep in the Rio Grande Valley along the border with Mexico. DX 816 at 1 (H100 Plan Packet).

30. According to data from the year 2000, benchmark House District 41 had an HVAP of 77.0% and SSVR of 60.5%. DX 4 at 19 (2001 House Rep.).

31. Benchmark House District 41 has an HVAP of 81.8%, an HCVAP of 77.5%, and SSVR of 69.2%. DX 816 at 5, 15 (H100 Plan Packet); DX 878 at 2 (Red-106 H100).

32. Voting in general elections in benchmark House District 41 is racially polarized. DX 6 at 158-61 (OAG RPVA Rep.).

33. Hispanic citizens in benchmark House District 41 elected their candidate of choice to the Texas House of Representatives from 2002 through 2010. DX 326 at 4 (Handley House Rep.).

34. It is undisputed that Hispanic citizens currently have the ability to elect their preferred candidates of choice to the Texas House of Representatives in benchmark House District 41.

Compl. ¶¶ 20, 22; DX 609 at 3-5 (Informal House Submission); Identification of Issues at 3; DX 326 at 4 (Handley House Rep.); DX 726 at 5 (Engstrom Supp. Rep.); DX 319 at 7-8 (Alford Rep.).

35. Proposed House District 41 remains in Hidalgo County. DX 817 at 1 (H283 Plan Packet).

36. Proposed House District 41 has an HVAP of 76.2%, an HCVAP of 72.1%, and SSVR of 64.6%. DX 817 at 5, 15 (H283 Plan Packet); DX 879 at 2 (Red-106 H283).

37. Proposed House District 41 splits 17 of 42 precincts in the district. DX 800 (Red-375 Report).

38. Split precincts introduce error into the reconstituted election returns reported for a proposed district because the Texas Legislative Council allocates precinct-based election returns to the census-block level based on voting age population. DX 874 at 12 (Data for Texas Redistricting); Tr. at 74:25-78:21 (Jan. 24 p.m.) (Alford); Tr. at 19:4-23 (Jan. 25 p.m.) (Engstrom); Tr. at 11:7-13, 50:19-23, 74:10-75:13 (Jan. 26 a.m.) (Handley); Joint Deposition Designations at 126-137 (Archer Dep. 134:20-142:11, 166:5-174:19, Oct. 12, 2011) [hereinafter "JDD"]. This allocation process assumes that all blocks within a precinct exhibit the same voting pattern, which is not likely to be the case. DX 874 at 12 (Data for Texas Redistricting). The allocation process does not take into account citizenship or racial differences in turnout or voting patterns. DX 326 at 9-10 (Handley House Rep.).

39. Over 31% of the population of proposed House District 41 resides in the split precincts. DX 326 at 9 (Handley House Rep.); DX 886 at 76-77 (Red-110 Report).

40. Proposed House District 41 includes 69.5% of the Anglo voting age population (Anglo VAP), *i.e.*, non-Hispanic White voting age population, of the split precincts but only 40.2% of the HVAP of the split precincts. DX 326 at 10 n.17 (Handley House Rep.); DX 320 at 30 tbl.11

(Arrington Rep.).

41. Because the portions of the split precincts included in proposed House District 41 have a distinct Anglo skew compared to the whole precincts, the reconstituted election returns reported for proposed House District 41 likely overestimate the votes received by the Hispanic-preferred candidates. DX 326 at 10 n.17 (Handley House Rep.).

42. The reconstituted election returns for proposed House District 41 show the Hispanic-preferred candidate winning about half of the time in the racially-contested exogenous general elections that the parties analyzed, but there are a substantial number of contests in which the Hispanic-preferred candidate prevailed by margins small enough to cast doubt on the outcome. DX 6 at 186-90 (OAG RPVA Rep.); DX 326 at 10-11, 28 (Handley House Rep.); DX 319 at 14 (Alford Rep.); DX 790 at 10 (Alford Supp. Report); Tr. at 74:10-75:25, 76:2-77:4 (Jan. 26 a.m.) (Handley).

43. Jaime Longoria, Assistant Chief Administrator to the Hidalgo County Judge, provided various examples of how the map drawers systematically destroyed the mixed-race nature of House District 41 by packing Anglo, higher income areas into proposed House District 41, while excluding predominately Hispanic areas. Tr. 14:20-15:12, 16:18-22, 19:2-21:1, 21:7-22:7, 22:20-18, 23:19-24:6 (Jan. 19 p.m.) (Longoria). "There are neighborhoods that are separated, there's precincts that are separated. There's just a lot of relationships, and the coalitions that we've built over the last ten years are being kind of cast aside. And it really destroys a lot of cohesiveness in the district." *Id.* 12:2-6.

44. Mr. Longoria and Mr. Michael Seifert, a former Catholic priest who now works in a non-profit organization called the Rio Grande Valley Equal Voice Network, have both worked extensively in the Rio Grande Valley's *colonias*. As they explained in their testimony, *colonias*

are primarily Hispanic unincorporated settlements on the outskirts of cities that lack basic infrastructure like paved roads, electricity, and running water and are marked by extremely high poverty rates. Tr. 5:25-14 (Jan. 19 p.m.) (Longoria); Tr. 148:14-153:13 (Jan. 18 p.m.) (Seifert). Mr. Seifert vividly described these areas as the American shantytowns. Tr. at 148:20-23 (Seifert).

45. In light of the foregoing, it is not likely that Hispanic citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in proposed House District 41.

D. House District 117

46. Benchmark House District 117 is located in western Bexar County near San Antonio, Texas. DX 816 at 1 (H100 Plan Packet).

47. According to data from the year 2000, Benchmark House District 117 had an HVAP of 67.5% and SSVR of 66.3%. DX 4 at 26 (2001 House Rep.).

48. According to data from the year 2010, Benchmark House District 117 has an HVAP of 58.7%, an HCVAP of 58.8%, and SSVR of 50.8%. DX 816 at 11, 18 (H100 Plan Packet); DX 878 at 4 (Red-106 H100).

49. Hispanic citizens in benchmark House District 117 elected their candidate of choice to the Texas House of Representatives in 2004, 2006, and 2008. DX 326 at 5, 35 (Handley House Rep.). The Hispanic-preferred candidate lost narrowly in 2010. DX 326 at 35 (Handley House Rep.); DX 26 at 170 (Red-225 Report).

50. It is undisputed that Hispanic citizens currently have the ability to elect their preferred candidates of choice to the Texas House of Representatives in benchmark House District 117. Compl. ¶¶ 20, 22; DX 609 at 3-5 (Informal House Submission); Identification of Issues at 3; DX

326 at 5 (Handley House Rep.); DX 726 at 6-7 (Engstrom Supp. Rep.); DX 319 at 8 (Alford Rep.).

51. In the proposed plan, House District 117 remains in western Bexar County near San Antonio, Texas. DX 817 at 1, 11 (H283 Plan Packet).

52. Proposed House District 117 swaps out higher Hispanic-turnout precincts in San Antonio for lower Hispanic-turnout precincts in the City of Somerset and the community of Whispering Winds. Tr. at 13:14-13:17; 15:18-17:9 (Jan. 24 p.m.) (Joe Farias); DX 320 ¶¶ 16-17, 26-29 (Arrington Rep.).

53. Proposed House District 117 has an HVAP of 62.7%, an HCVAP of 63.8%, and SSVR of 50.1%. DX 817 at 11, 19 (H283 Plan Packet); DX 879 at 4 (Red-106 H283).

54. Hispanic turnout is lower than Anglo turnout in general elections in proposed House District 117. DX 6 at 382, 384 (OAG RPVA Rep.).

55. Voting in general elections in proposed House District 117 is racially polarized. DX 6 at 386-89 (OAG RPVA Rep.).

56. Hispanic voters are not likely to constitute a majority of those casting votes in general elections for the Texas House of Representatives in proposed House District 117. DX 6 at 384-85 (OAG RPVA Rep.).

57. Compared to benchmark House District 117, proposed House District 117 increases HVAP by 4.8 points; increases HCVAP by 5.0 points; but decreases SSVR by 0.7 points. *Compare* DX 816 at 11, 19 (H100 Plan Packet) and DX 878 at 4 (Red-106 H100) *with* DX 817 at 11, 19 (H283 Plan Packet) and DX 879 at 4 (Red-106 H283).

58. Compared to benchmark House District 117, proposed House District 117 decreases Hispanic turnout in general elections. *Compare* DX 6 at 358, 360-61 (OAG RPVA Rep.) *with*

DX 6 at 382, 384 (OAG RPVA Rep.).

59. Compared to benchmark House District 117, proposed House District 117 increases the degree of racially polarized voting in exogenous general elections. Compare DX 6 at 362-65 (OAG RPVA Rep.) with DX 6 at 386-89 (OAG RPVA Rep.).

60. Compared to benchmark House District 117, proposed House District 117 decreases the performance of Hispanic-preferred candidates in exogenous general elections. DX 326 at 5, 11 (Handley House Rep.) (exogenous index decreases from 60% to 20%); DX 726 at 8-9 (Engstrom Supp. Rep.); DX 319 at 8 (Alford Rep.) (exogenous index decreases from 60% to 33%); DX 801 at 11 (Alford pre-filed direct) (OAG 10 index decreases from 5 to 2).

61. In light of the foregoing, it is not likely that Hispanic citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in proposed House District 117.

E. House District 149

62. Benchmark House District 149 is located in southwestern Harris County and encompasses the Alief community in the City of Houston. DX 816 at 1 (H100 Plan Packet).

63. Benchmark House District 149 is currently represented by Hubert Vo, an Asian-American. DX 736 at 11:1-16 (Calvert).

64. According to 2000 Census data, benchmark House District 149 had an Anglo VAP of 40.9%, a Black voting age population (Black VAP) of 17.8%, Hispanic VAP of 21.1%, and "Other" voting age population (Other VAP), of 20.6%, which includes Asians. DX 4 at 29 (2001 House Rep.).

65. According to 2010 Census Data, benchmark House District 149 has Anglo VAP of 26.6%, Black VAP of 22.9%, Hispanic VAP of 30.2%, and Other VAP of 21.1%.

66. Benchmark House District 149 has an Anglo CVAP of 37.6%, a Black CVAP of 26.1%, a Hispanic CVAP of 19.0%, and an Asian CVAP of 16.2%. DX 878 at 5 (Red-106 H100).

67. Voting in general elections in benchmark House District 149 is racially polarized. PX 26 at 3557-60 (OAG RPVA Report).

68. In 2004, Asian-American, African-American, and Hispanic citizens worked together to elect their chosen candidate, Hubert Vo, to the Texas House of Representatives for the first time in benchmark House District 149. Vo had a diverse group of volunteers and received endorsements from Asian, Hispanic, and African-American groups. DX 736 at 11 (Calvert); DX 738 at 13:8-20 (Hochberg); Tr. at 49:14-17 (Jan. 19 p.m.) (Coleman).

69. There is a political coalition of Asian-American, African-American, and Hispanic citizens in benchmark House District 149 that elected its candidate of choice, Hubert Vo, to the Texas House of Representatives in 2004, 2006, 2008, and 2010. DX 326 at 3, 7, 13 n.20, 19 (Handley House Rep.); DX 736 at 11 (Pre-filed Direct Testimony of Rogene Calvert); DX 721 at 3 (Testimony of Congressman Alexander Green); Tr. at 129:8-132:2, 136:11-137:13 (Jan. 20 a.m.) (Green); DX 738 at 13:8-20 (Hochberg); Tr. at 7:5-9:8 (Jan. 23 p.m.) (Jackson-Lee).

70. This political coalition also successfully elects candidates of choice to other local offices such as District F of the Houston City Council and trustees of the Alief Independent School District. DX 736 at 12.

71. Minority citizens currently have the ability to elect their preferred candidates of choice to the Texas House of Representatives in benchmark House District 149. DX 326 at 3, 7, 13 n.20, 19 (Handley House Rep.).

72. The proposed plan removes House District 149 from Harris County, splitting most of its residents among several proposed house districts. DX 817 at 1 (H283 Plan Packet); DX 352 at

16 (Pre-filed Direct Testimony of Rogene Calvert).

73. Proposed House District 149 is located in Williamson County, near Austin, Texas. DX 817 at 1, 12 (H283 Plan Packet).

74. Proposed House District 149 has an Anglo citizen voting age population of 77.4%. DX 879 at 5 (Red-106 H283).

75. It is undisputed that minority citizens will not have the ability to elect their preferred candidates of choice to the Texas House of Representatives in proposed House District 149. Compl. ¶¶ 20, 22; DX 609 at 7 (Informal House Submission); Identification of Issues at 4; DX 326 at 13 (Handley House Rep.).

F. House District 74

76. Benchmark House District 74 spreads across 13 counties in the western part of Texas and contains over half of the Texas-Mexico border within its limits. DX 816 at 1, 8 (H100 Plan Packet); PX 177 (Rep. Gallego's webpage).

77. According to data from the year 2000, benchmark House District 74 had an HVAP of 57.3% and SSVR of 48.7%. DX 4 at 22 (2001 House Rep.).

78. According to data from the year 2010, benchmark House District 74 has an HVAP of 65.8%, an HCVAP of 59.7%, and SSVR of 58.1%. DX 816 at 8, 16 (H100 Plan Packet); DX 878 at 5 (Red-106 H100).

79. Hispanic citizens in benchmark House District 74 elected their candidate of choice, Representative Pete Gallego, to the Texas House of Representatives from 2002 through 2010. DX 326 at 5 (Handley House Rep.).

80. Representative Gallego was first elected in 1990. PX 177 (Rep. Gallego's webpage).

81. Representative Gallego served as chair of the Mexican-American Legislative Caucus from

2001 through 2009. PX 177 (Rep. Gallego's webpage).

82. Representative Gallego won by substantial margins in 2002, 2008, and 2010, and he ran unopposed in 2004 and 2006. DX 22 at 73 (Red-225 Report); DX 23 at 39 (Red-225 Report); DX 24 at 76 (Red-225 Report); DX 25 at 68 (Red-225 Report); DX 26 at 90 (Red-225 Report).

83. Representative Gallego appears to have considered benchmark House District 74 to be a Hispanic opportunity district when, while debating the House redistricting bill, he complained that "there are no new minority opportunity districts that are created" in West Texas. DX 32 at 115-16 (Apr. 27 House Journal).

84. Hispanic citizens currently have the ability to elect their preferred candidates of choice to the Texas House of Representatives in benchmark House District 74. Compl. ¶¶ 20, 22; DX 609 at 3-5 (Informal House Submission); Identification of Issues at 3; DX 326 at 5, 17 (Handley House Rep.).

85. In the proposed plan, House District 74 is reconfigured to remove Edwards, Uvalde, and Ward counties, and to add Kinney and Maverick counties. DX 817 1, 8 (H283 Plan Packet).

86. Proposed House District 74 has an HVAP of 76.6%, an HCVAP of 69.4%, and SSVR of 69.6%. DX 817 at 8, 16 (H283 Plan Packet); DX 879 at 3 (TLC Red-Report 106).

87. It is undisputed that Hispanic citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in proposed House District 74. Compl. ¶¶ 20, 22; DX 609 at 3-6 (Informal House Submission); Identification of Issues at 4; DX 326 at 11 (Handley House Rep.); DX 790 at 10 (Alford Supp. Report).

G. <u>House Districts 34, 43, 80, 118, and 137</u>

88. Benchmark House Districts 34, 43, 80, 118, and 137 each have a minority citizen voting age population in excess of 60%. DX 878 at 1-5 (Red-106 H100). In the proposed plan, the

minority citizen voting age population of each district stays the same or increases. DX 879 at 1-5 (Red-106 H283).

89. Minority citizens in benchmark House Districts 43, 80, 118, and 137 elected their candidate of choice to the Texas House of Representatives from 2002 through 2010. DX 326 at 4-5 (Handley House Rep.). Minority citizens in benchmark House District 34 elected their candidate of choice to the Texas House of Representatives in 2002, 2004, 2006, and 2008. DX 326 at 5 (Handley House Rep.).

90. It is undisputed that Hispanic citizens currently have the ability to elect their preferred candidates of choice to the Texas House of Representatives in benchmark House Districts 34, 43, 80, and 118, and it is undisputed that they will continue to have that ability in proposed House Districts 34, 43, 80, and 118. Compl. ¶¶ 20, 22; DX 609 at 3-6 (Informal House Submission); Identification of Issues at 3-4; DX 326 at 4-5 (Handley House Rep.); DX 319 at 8, 14 (Alford Rep.). Minority citizens also have the ability to elect their preferred candidates of choice to the Texas House of Representatives in benchmark House District 137, and they will continue to have that ability in proposed House District 137. Identification of Issues at 3-4; DX 326 at 4, 11 (Handley House Rep.); DX 790 at 11 (Alford Supp. Report).

II. TEXAS HOUSE OF REPRESENTATIVES: DISCRIMINATORY PURPOSE

A. House Redistricting Process: Public Proceedings

91. House Redistricting Committee Chairman Burt Solomons announced in early 2011 that the Committee would use a "member-driven" process and urged members to draw maps by consensus. ECF No. 137-2 at 3 (Solomons); JDD at 271-75 (Downton Dep. at 72:10-73:25, 79:17-80:2, Oct. 20, 2011); JDD at 856 (Interiano Dep. at 44:20-45:3, Aug. 2, 2011). A consensus process protects incumbents. Tr. at 40:25-42:20 (Jan. 20 p.m.) (Solomons); Tr. at

43:25-44:7 (Jan. 19 p.m.) (Coleman).

92. In the landslide 2010 election, a few districts that provide minority voters with the ability to elect their candidate of choice elected legislators who were not the minority-preferred candidates. DX 326 at 4-5 (Handley House Rep.); DX 320 ¶¶ 16-17, 131 (Arrington Rep.).

93. Therefore, Chairman Solomons effectively instructed members to purposefully eliminate minority voters' ability to elect their candidates of choice in certain districts. DX 320 ¶¶ 16-17. 132-134.

94. The House Committee never announced a number of protected districts under the Voting Rights Act or that it intended to deviate in any way from legal guidance provided by the Texas Legislative Council ("TLC"). Tr. at 62:14-72:4 (Jan. 20 p.m.) (Solomons).

95. Even under the 50.1% SSVR bright line standard advanced by the Chairman Solomons on the floor of the House, DX 32 at 4 (Apr. 27 House Journal), the Chairman's initial proposal was retrogressive. JDD 294-295 (Downton Dep. at 133:19-135:7, Oct. 20, 2011).

96. Majority members of the Texas House had access to substantial redistricting resources, including outside counsel and sophisticated statistical analysis. Tr. at 59:25-60:8 (Jan. 20 p.m.) (Solomons); Tr. at 174:22-175:12 (Jan. 17 a.m.) (Interiano). Many resources were not publicized or shared, and minority legislators did not receive substitute funds. DX 574 at 70-71 (*Perez* Tr. at 70:19-71:24) (Martinez Fischer); JDD 756 (Hunter Dep. at 64:11-16, Oct. 21, 2011); JDD 976-78 (Napier Dep. at 39:12-42:8).

97. The House Committee publicly released the draft redistricting plan for the Texas House of Representatives on April 13, 2011 and simultaneously announced two public hearings to be held on April 15 and April 17. Tr. at 71:23-72:3 (Jan. 17 a.m.) (Hunter).

98. Such short notice required waiver of the Texas House five-day posting rule, which

mandates five days of notice prior to a committee hearing. Waivers limit public participation and are uncommon concerning major bills. DX 738 at 9:2-8, 18:5-8, 19:3-7 (Hochberg).

99. April 15, 2011 was a Friday, and April 17, 2011 was Palm Sunday. Friday hearings are rare, and Sunday hearings are very unusual. Tr. at 41:3-6 (Jan. 25 p.m.) (Hochberg); DX 738 at 9:9-14 (Hochberg).

100. In 2001, the House Redistricting Committee conducted five public hearings, allowing greater public input. Tr. at 43:8-17 (Jan. 25 p.m.) (Hochberg); DX 811 (Mar. 17 email).

101. During the public process, most changes to House districts in which minority voters have the ability to elect were trivial or detrimental. DX 320 ¶¶ 108-129 (Arrington Rep.). When the position of minority-preferred legislators conflicted with the interests of Anglo-preferred legislators, minority-preferred legislators were unable to influence the plan. DX 320 ¶¶ 108-129; DX 574 at 214-216 (*Perez* Tr. at 237:4-238:14) (Kousser); DX32 at 34-38, 64-72, 73-82, 90-107, 114-42, 149-54; DX 5 ¶ 44 (Kousser Report).

102. The final vote for the proposed House plan was 92-54, with only two minority-preferred legislators from districts in which minority voters have the ability to elect voting in favor. ECF No. 137-2 at 6 (Solomons).

103. The United States Census Bureau released 2010 block-level census data to the State of Texas on February 17, 2011. Redistricting hearings before this date were severely limited by the lack of data or proposals. Tr. 64:21-25, 115:14-116:1 (Jan. 17 a.m.) (Hunter); DX 320 ¶ 109.

104. Chairman Solomons did not serve on the Redistricting Committee during these hearings, and no summary of the hearings was available to guide the 2011 process. ECF No. 137-2 at 2 (Solomons); Tr. at 114:6-115:12 (Jan. 17 a.m.) (Hunter); JDD at 1016-17 (Peña Dep. at 46:24-47:5, Oct. 19, 2011).

B. House Redistricting Process: Internal Proceedings

105. The internal House redistricting process centered around four key figures: Burt Solomons, committee chairman; Ryan Downton, committee counsel; Gerardo Interiano, counsel to the Speaker; and David Hanna, an attorney for the TLC. ECF No. 173-2 at 2-4 (Solomons). Other important figures include Bonnie Bruce, the committee clerk; Stacy Napier, the Attorney General's liaison for redistricting; Denise Davis, Chief of Staff to House Speaker Joe Straus; and Eric Opiela, a political operative who worked for the Speaker and then became a liaison between Congressional Republicans and the Speaker. *Id.* at 2; JDD at 972-73 (Napier Dep. at 32:20-35:11, Oct. 18, 2011); DX 739 ¶¶ 6-11 (Arrington Supp. Report); Tr. 147:4-6 (Jan. 18 a.m.) (Downton).

106. The TLC is a nonpartisan body that provides legal advice to the Texas Legislature. Throughout the process, the TLC advised Chairman Solomons and his staff to use a functional analysis under Section 5, to preserve coalition districts (particularly District 149), to draw an additional Hispanic district in Dallas County, and to address retrogression from the elimination of a seat from Nueces County. DX 293 (Feb. 17 email); DX 333 (TLC guidance); JDD at 73-75, 87-89, 93-96, 100-03 (Archer Dep. at 8:20-9:9, 13:8-14:23, 53:14-56:1, 59:17, 60:2, 69:18, 70:14, 75:3-77:2, 88:4-17, 90:14-93:21, Oct. 12, 2011); Tr. at 56:11-57:1 (Jan. 20 p.m.) (Solomons).

107. By March 21, the Committee had rejected TLC advice and turned to its litigation team concerning Nueces County and eliminating District 149. DX 298 at 2 (Mar. 21 e-mail).

108. The April 3 draft committee schedule included a ten-day period when only "key legislators" and a "kitchen cabinet" could see the statewide map. DX 298 at 1 (Apr. 3 email).

109. Before the release of Chairman Solomons' statewide plan, David Hanna provided Section 5

analysis that raised retrogression concerns in some of the districts at issue in this litigation. DX 336 (Apr. 8 analysis); DX 317 (Apr. 8 email). Subsequent iterations of this analysis reveal that nothing was done to remedy these issues. Tr. at 71:2-72:23 (Jan. 17 p.m.) (Interiano); DX 337 (Apr. 12 analysis); DX 338 (Apr. 20 analysis); JDD at 537-42 (Hanna Dep. 94:14-103:12, Jan. 12, 2012).

110. Before Chairman Solomons released the initial statewide plan, David Hanna pushed for public disclosure and cautioned that the proposed hearing schedule would not allow for "meaningful input." DX 208 (Apr. 13 email); DX 316 (Apr. 13 email). He suggested a third public hearing on April 18 and warned that the committee must allow time for public consideration prior to a floor debate. DX 217 (Apr. 13 email); DX 21 (Apr. 17 email). The Committee did not hold a public hearing on the 18th. Tr. at 71:23-72:3 (Jan. 17 a.m.) (Hunter).

111. The ultimate result of this secretive process was a lack of information concerning members' own districts. When the Hidalgo County delegation asked Chairman Solomons who had drawn their map, he stated that he did not want to answer any questions. DX 32 at 98-99 (Apr. 27 House Journal). Redistricting Committee Vice-Chairman Mike Villareal did not know the answer to the question. *Id.* at 98-99. In light of the foregoing, even the Hispanic Vice-Chairman of the Redistricting Committee was not a part of the critical internal committee process.

112. Immediately after Chairman Solomons had released his map, Interiano, the Office of the Attorney General, and the Speaker's outside counsel began to devise a novel standard under which the State could argue that the proposed plan complied with Section 5. DX 10 (Apr. 13 email); DX 306 (Apr. 14 email); DX 742 at 31-32 (Hanna Dep. at 123:11-127:19, Jan 12, 2011).

113. The State's informal submission to the Department of Justice defined the ability to elect

using a set of demographic cut-offs. DX 609. Hanna previously had advised that 51% Hispanic electorates would not have the ability to elect, DX 305 (Feb. 7 e-mail), and he described demographic standards as "phony," DX 312 at 5 (Hanna edits). Interiano was "fine with" including a newly developed standard. DX 221 at 16 (Interiano edits).

C. Statewide Indicia of Discriminatory Intent

114. The House Redistricting Committee established a policy to minimize split voting tabulation districts ("VTDs"), the Census equivalent of precincts. Chairman Solomons based his opposition to a Hispanic-preferred legislator's amendment on this policy. Tr. 46:20-51:22, 108:19-109: (Jan. 20 p.m.) (Solomons); DX 32 at 37-38 (Apr. 27 House Journal).

115. The Senate had the same policy about trying to minimize the splits of VTDs, and the Senate only split ten VTDs in the proposed Senate redistricting plan passed by the legislature. Tr. 42:3-10 (Jan. 18 a.m.) (Davis)

116. The enacted redistricting plan for the Texas House of Representatives splits 412 VTDs. DX 876 (Red-381 H283); Tr. at 94:4-23 (Jan. 23 p.m.) (Arrington). These splits are concentrated in minority communities and frequently divide precincts to exclude or include racial minority groups in specific districts in a non-random fashion. DX 320 ¶¶ 92-103, 136 (Arrington Rep.). The statistical relationship between splitting precincts and the racial character of the district is significant at the .0009 level, meaning that there is less than 9 chances out of 10,000 that a relationship this strong would occur by chance. DX 320 ¶ 92 & tbl.27.

117. Split VTDs reduces voter participation and increases election costs. Concentrating splits in minority communities will depress minority voter turnout. DX 320 ¶¶ 77-103.

118. Texas's geographic information system ("RedAppl") provides political data including election returns, Spanish surname voter registration, and turnout at the VTD level. Population

data is available down to the census block. DX 874 at 3, 9-12 (Data for Redistricting); DX 320 ¶¶ 78, 80-81; JDD at 117-21 (Archer Dep. at 121:5-124:6, 126:9-23, Oct 12, 2011).

119. The State presented plausible but hypothetical reasons why one might split a precinct, but did not tie these hypothetical examples to the number or concentration of splits. Tr. 93:16-97:19 (Jan. 18 a.m.) (Downton).

120. House districts in which minority voters have the ability to elect their candidate of choice are overpopulated in comparison to Anglo-controlled districts. Only part of this disparity can be explained by the County Line Rule. DX 320 ¶¶ 104-107; Tr. at 99:14-100:14 (Jan. 23 p.m.) (Arrington); DX 5 ¶¶ 37-43 (Kousser Report); DX 574 at 236-238 (*Perez* Tr. 236:17-238:14) (Kousser).

121. The House publicly applied a bright line standard defining Hispanic ability to elect a candidate of choice as 50.1% Spanish surname voter registration. Tr. at 116:18-117:3, 123:6-124:18 (Jan. 18 a.m.) (Downton); Tr. at 14:17-15:17, 18:7-20, 26:9-18 (Jan. 24 p.m.) (Farias); DX 577 at 100 (*Perez* Tr. at 1006:5-20) (Downton).

122. The TLC advised that this bright line standard would not maintain minority ability to elect candidates of choice. DX 305 (Hanna e-mail), and the Department of Justice had not suggested the standard. Tr. 58:11-65:18 (Jan. 17 p.m.) (Interiano); Tr. at 129:3-130:16 (Jan. 18 a.m.) (Downton). Rather, Texas used the 50.1% threshold to mask elimination of Hispanic ability districts. DX 577 at 100 (*Perez* Tr. at 1006:5-20) (Downton); DX 320 ¶¶ 134-136; JDD at 881-84 (Kousser Dep. at 79:24-84:9, Aug. 16, 2011).

123. Past discrimination hinders the ability of minority voters to participate effectively in the political system. In Texas, Hispanics and Blacks have lower levels of educational attainment, lower income levels, and higher poverty rates than Anglos. ECF No. 177 ¶¶ 44-47 (Joint

Stipulations); DX 574 at 162-166 (*Perez* Tr. 175:4-180:2) (Chapa). Although federal intervention has remedied de jure segregation, disparities in educational opportunities persist. DX 574 at 175-177 (*Perez* Tr. at 191:14-192:20) (Chapa).

124. Deviations in district population cumulatively bias the proposed House plan against minority voters by overpopulating minority ability-to-elect districts, despite higher rates of minority population growth and claimed undercounts in minority communities. DX 320 ¶¶ 104-107 (Arrington Rep.).

125. Traditional districting criteria did not prevent the State from creating additional ability-to-elect districts. DX 320 ¶¶ 61-76 (Arrington Rep.).

126. The State of Texas has a history of intentional discrimination in redistricting. *See LULAC v. Perry*, 548 U.S. 399, 439-440 (2006); *White v. Regester*, 412 U.S. 755, 767-70 (1973). Federal intervention has also been necessary to remedy intentional restrictions on minority voting. *See White*, 412 U.S. at 768 (poll tax); *Terry v. Adams*, 345 U.S. 461 (1953) (private primary); *Smith v. Allwright*, 321 U.S. 649 (1944) (white primary); *Nixon v. Herndon*, 273 U.S. 536 (1927) (exclusion of minorities).

127. The Attorney General has objected to voting changes in Texas 170 times in matters unrelated to redistricting. DX 223-225. In addition, the Attorney General has objected 51 times to redistricting changes below the statewide level. DX 226-276, and to the statewide redistricting plans for its 1990 State Judicial Districts, DX 280, 1991 Statewide Hospital Districts, DX 282, 1992 Post-Redistricting Elections procedures, DX 283, and 1992 State Hospital Districts, DX 284. Furthermore, the Department has provided consent decrees with two jurisdictions for violations of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. DX 524-525.

128. After each census since Congress extended Section 5 to cover Texas, the State has enacted

redistricting plans for the State House of Representatives that violated Section 5. DX 278 (1982 Objection); DX 281 (1991 Objection); DX 286 (2001 Objection). The State also submitted House plans that violated Section 5 after its pre-coverage plan was found to intentionally discriminate against minority voters. DX 229 (1976 Objection); DX 230 (1976 Objection).

129. The Department of Justice has also interposed objections to Texas's statewide redistricting plans for its 1982 Congressional Districts, DX 277, 1982 State Senate Districts, DX 279, and 1992 State Senate Districts, DX 282.

130. The Department of Justice has filed ten consent decrees (with five counties, one city, and four independent school districts within the State of Texas) related to violations of sections of the Voting Rights Act requiring assistance for limited-English-proficient voters (Ex. 515-23 and 526). In each instance, the jurisdiction failed to provide written election materials in Spanish, a sufficient number of bilingual elections workers, or both.

D. House District 33

131. The Texas County Line Rule requires that districts for the House of Representatives must preserve county lines whenever possible. Tex. Const. art. III, § 26.

132. The proposed plan splits the boundary of Henderson County in order to comply with the federal one-person, one-vote requirement. Tr. at 85:9-86:1 (Jan. 20 p.m.) (Solomons). However the leadership of the Texas House was unwilling to split the boundary of Nueces County in order to comply with the Voting Rights Act, DX 323 at 99-100 (floor debate), even after being warned of retrogression issues by the TLC. DX 293 at 1 (email); DX 336 (plan review).

133. Texas deliberately eliminated District 33 – a performing district represented by a Hispanic Republican – and the only replacements suggested on the House Floor were Districts 90 and 148, which already performed in the benchmark. DX 32 at 4-5.

134. Proposed District 32 has a substantially lower SSVR than either of the two benchmark districts wholly contained in Nueces County, District 33 and District 34, whereas proposed District 34 has substantially higher Spanish surname voter registration. DX 510 (Red-202 H283); DX 511 (Red-202 H100).

135. The Hispanic population of Nueces County is growing substantially, while the Anglo population exhibited minimal growth over the last decade. ECF No. 180 ¶¶ 41-44 (Request for Judicial Notice). Proposed District 32 contains 6,075 fewer persons than proposed District 34, and because of growth trends, that deviation is likely to expand. DX 792 (Red-100 H283).

136. Proposed District 32 includes none of the Hispanic individuals who have represented Nueces County in the House in the last seven years. Representative Torres and former Representative Ortiz are excluded from District 32 by an appendage of District 34 that includes their homes. ECF No. 161-3 at 13-15 (Herrero); Tr. at 110:20-112:8 (Jan. 17 a.m.) (Hunter).

137. Based on the foregoing, proposed House District 32 was drawn to maintain Anglo control and to ensure that Hispanic voters would not have the ability to elect their candidate of choice in two districts wholly within Nueces County, as they had in the benchmark plan.

E. House District 41

138. Representative Aaron Peña was elected as a Democrat in District 40 but changed parties after the 2010 election and is the only incumbent in proposed District 41. Tr. at 163:2-9 (Jan. 17 a.m.) (Interiano). He is the only incumbent in proposed District 41 because the Hispanic-preferred representative was excluded. Tr. at 163:2-9 (Jan. 17 a.m.) (Interiano); DX 32 at 91-108.

139. Representative Peña refused to work with the Hidalgo County delegation because leadership would "maximize" his seat. JDD at 1027 (Peña Dep. at 91:20-92:2, Oct. 19, 2011);

DX 574 at 66, 147-48 (*Perez* Tr. at 73:8-18, 159:22-160:11) (Martinez Fischer).

140. The dense Hispanic population that elected Peña was angered by his party switch, Longoria 92: 9 – 21, Jan. 6, 2012, and proposed District 41 contains less than 2% of the electorate from benchmark District 40. DX 575 at 73-75 (*Perez* Tr. at 365:25-367:8) (Martin); DX 888 (Red-334 H283); DX 320 ¶ 18 (Arrington Rep.); DX 32 at 90-107 (Apr. 27 House Journal).

141. Proposed District 41 is oddly shaped and has been described as a "transformer" and a "running man." DX 32 at 102. It is both the most Anglo district in the Rio Grande Valley and the most under-populated; District 41 is 4.41% below the ideal district size, even though the other districts in Hidalgo County are overpopulated by an average of 2.83%. DX 861 at 4 (Red-100 H283); DX 865 (H283 map); DX 320 ¶ 19; DX 5 at 92-97 (Kousser Report).

142. Gerardo Interiano drew the initial map of House District 41, which is memorialized as District 40 in H113, the first statewide proposal. Tr. at 56:1-11 (Jan. 25 p.m.) (Interiano); JDD at 285, 289 (Downton Dep. at 119:2-4, 125:1-12, Oct. 20, 2011). Interiano collected relatively Republican precincts in Hidalgo County and split only four precincts. Precinct 28 is split to exclude Democratic-leaning precinct 9. Precinct 14 is split to include Representative Peña's home. Precincts 62 and 124 are split to exclude Representative Veronica Gonzales's home. Tr. 58:15-63:5 (Jan. 25 p.m.) (Interiano); DX 864 (H113 Map); DX866 (Precinct Map).

143. The initial proposal includes those precincts in and around the City of McAllen that exhibit the highest Republican performance. PX 77 (Proposed District 41 political map).

144. Interiano purposefully under-populated the District and split precincts in order to maximize Representative Peña's changes of being reelected. JDD 839 (Interiano Dep. 183:8-20, Oct. 20, 2011).

145. David Hanna expressed Section 5 concerns about this draft District. DX 337 at 2 (Hanna

Memo H110). Rather than address these concerns, the next proposal further weakened minority voting strength in this district. DX 338 at 2 (Hanna Memo H153).

146. Representative Peña met with Ryan Downton and asked that his district include part of Precinct 107 and omit part of Precinct 103 that contained Representative Muñoz's office. JDD at 285-86 (Downton Dep. at 119:7-120:15, Oct. 20, 2011); JDD at 1063-64, 1069-70 (Peña Dep. at 161:4-162:20, 171:9-172:8, Oct. 19, 2011). Representative Peña did not request any other splits, and he is not familiar with many of these precincts. JDD at 1058-1071 (Peña Dep. at 154:2-173:24, Oct19, 2011).

147. Representative Peña did not meet with Gerardo Interiano to discuss his district. JDD at 1030-31 (Peña Dep. at 96:25-98:20, 100:5-8, Oct. 19, 2011); JDD at 286 (Downton Dep. at 120:1-12, Oct. 20, 2011).

148. Anglo voters are more likely than Hispanic voters to support a Hispanic Republican in the area included in proposed District 41. DX 205 at 8 (racially polarized voting analysis).

149. Proposed District 41 eliminates several Hispanic neighborhoods from the benchmark. Some are whole VTDs, but others are only portions. Tr. at 14:7-28:9 (Jan. 17 p.m.) (Longoria). As noted above, election data is available only at the whole VTD level. *See* ¶ 118, *supra*.

150. Proposed District 41 divides precincts by race in order to maximize the Anglo population. DX 784 (RedAppl with block-level racial shading). The demographic division of six representative precincts is set out in the following table describing Anglo VAP and Hispanic VAP. "IN" indicates population split into District 41 and "OUT" indicates population split into an adjacent district.

Precinct	AVAP IN	AVAP OUT	HVAP IN	HVAP OUT	AVAP IN%	AVAP OUT%	HVAP IN%	HVAP OUT%
25	1,152	10	410	2,264	33.2%	2.4%	65.3%	97.2%
47	198	250	394	2,771	31.7%	8.2%	63.1%	91.2%
48	65	79	466	4,583	11.1%	1.7%	79.3%	97.7%
88	63	543	211	7,528	22.8%	6.7%	76.4%	93.0%
95	176	74	1,175	5,679	12.0%	1.3%	80.2%	98.4%
103	622	115	1893	822	24.1%	12.1%	73.4%	86.5%

DX 787 (RedAppl screen captures); DX 886 at 71, 75-77 (Red-110 HD283).

151. Available political data and the political shading in RedAppl cannot provide a political rationale for splitting these precincts. PX 77.

152. The map drawers knew from racially polarized analyses available to them that Hispanic voters in proposed House District 41 generally preferred Democratic candidates and that – compared to benchmark House District 41 – the boundaries of proposed House District 41 decreased the performance of Hispanic preferred candidates. DX 216 (OAG 10 report).

153. Texas has not provided a plausible alternative explanation for these precinct splits. The precincts were not split to follow roads as a general matter. JDD at 292-93 (Downton Dep. at 129:13-130:16, Oct. 20, 2011). Representative Peña lacks the requisite knowledge to guide the divisions on political grounds, JDD at 1055 (Peña Dep. at 168:24-169:5, Oct. 19, 2011), and denied asking that the precincts be split. *Id.* at 154:2-173:24. Finally, Representative Guillen lacks local knowledge needed to select census blocks based on political characteristics. Tr. at 97:2-20 (Jan. 23 p.m.) (Arrington).

154. Based on the foregoing, proposed House District 41 was drawn on the basis of race in an effort to eliminate the ability of Hispanic voters to elect their candidate of choice. Race was used as a proxy in order to allow Representative Peña a better chance to be elected.

F. House District 117

155. Representative John Garza, a Hispanic Republican, was elected from District 117 in 2010, although he received less than 20% of the Hispanic vote. DX 326 at 35 (Handley House Rep.).

156. During the redistricting process, Representative Garza initially requested that heavily Republican and Anglo areas in northern Bexar County be added to his district. JDD at 477, 485 (Garza Dep. at 30:1-31:3; 50:3-50:19, Oct. 19, 2011); Tr. at 107:1-107:11 (Jan. 25 p.m.) (Interiano).

157. Mike Villarreal, Vice Chairman of the House Committee on Redistricting, did not draft the House districts for the members of the Bexar County delegation. Tr. at 106:14-108:1 (Jan. 25 p.m.) (Interiano). Each member drafted their "ideal" district. *Id.* Vice Chairman Villarreal compiled each member's ideal district into a countywide map and returned it to the members and instructed them to negotiate with their neighbors for areas in the county that had not been selected or areas in the county that two or more members had selected. *Id.*

158. After Representative Garza was told that his district had to remain majority-Spanish surname voter registration, JDD at 485 (Garza Dep. at 50:3-50:19, Oct. 19, 2011); Tr. at 107:1-107:11 (Jan. 25 p.m.) (Interiano), he refused to accept a SSVR share above 50.1%. Tr. at 15:11-15:17 (Jan. 24 p.m.) (Farias).

159. At the beginning of the redistricting process, Gerardo Interiano had discussed how districts could maintain demographic figures while eliminating minority voters' ability to elect their candidate of choice by selecting geography based on low turnout. DX 304 (Nov. 19 Opiela email); ¶¶ 206-212, *infra*. Interiano was responsible for drawing maps in Bexar County. Tr. at 14:7-16 (Jan. 24 p.m.) (Farias).

160. Representative Garza rejected the inclusion of Hispanic voters in politically organized

portions of San Antonio in his district. Instead, he replaced them with Somerset and Whispering Winds, poor communities in southern Bexar County which are known to have low Hispanic voter turnout. Tr. at 13:14-13:17, 15:18-17:9 (Jan. 24 p.m.) (Farias).

161. Somerset and Whispering Winds are two of the poorest communities in Bexar County and are plagued by inadequate water, sewer services, housing, and education. Residents in these communities are, most often, living at or under the poverty level. JDD at 429 (25:18-26:2) (Farias).

162. The changes to the countywide map, which removed the poor communities of Somerset and Whispering Winds from District 118 and placed them into District 117, were made at the behest of Speaker of the House Joe Straus, who is also a member of the Bexar County delegation. JDD at 429-30 (26:3-26:20) (Farias). Speaker Straus wanted these low-turnout Hispanic communities added to District 117 to help ensure the reelection of Rep. Garza so that there would be three Republican districts in Bexar County. *Id.*

163. Although the SSVR in House District 117 declines by less than 1% between the benchmark and proposed plans, DX 510 (Red-202 H283); DX511 (Red-202 H100), projected Hispanic turnout falls between 40% and 50%. DX 6 at 358, 382 (OAG RPVA Rep.).

164. Based on the foregoing, Proposed District 117 purposefully eliminates the ability of Hispanic voters to elect their candidate of choice while maintaining deceptive Hispanic registration levels.

G. House District 149

165. According to the 2000 Census, Harris County had 24.46 times the population of an ideal Texas House district. Nevertheless, Harris County contains 25 districts in the benchmark plan. Tr. at 150:11-19 (Jan. 17 p.m.) (Interiano); DX 1012 at 10-11 (Red-100 H100)

166. According to the 2010 Census, Harris County had 24.41 times the population of an ideal Texas House district. However, Harris County contains only 24 districts in the proposed plan. Tr. at 148:1-10 Jan. 17 p.m.); DX 792 at 10-11 (Red-100 H283). This forced the pairing of incumbents in an area with a rapidly growing minority population, despite Chairman Solomons's state intent to minimize pairing. DX 32 at 3 (Apr. 27 House Journal).

167. The proposed plan removes District 149 from Harris County and places the incumbent, Hubert Vo, in District 137 along with the District's incumbent, Scott Hochberg. Representative Vo is the only Vietnamese American in the House and represents a district in which a coalition of minority voters have elect their candidate of choice. DX 738 at 14:8-11, 19:8-15 (Hochberg); ¶¶ 62-71, *supra*.

168. The TLC advised the architects of the proposed House Plan that Districts 137 and 149 were protected under the Voting Rights Act and that coalition districts are protected under the Section 5. DX 293 (Hanna email); DX 333 at 96-97 (TLC Guidance); JDD at 87-89 (Archer Dep. 53:14-56:1, Oct. 12, 2011). Rather than follow that counsel, the Redistricting Committee sought alternative legal advice from its litigation team. DX 298 at 3 (Bruce email).

169. Proposed District 137 excludes Representative Vo's base by removing a heavily Asian precinct from benchmark District 137 and excluding most of benchmark District 149. DX 738 at 20:9-21:3 (Hochberg). Multiple Anglo legislators told Representative Hochberg that he would be "comfortable" in proposed District 137, suggesting that the District had been drawn to favor him over Representative Vo. *Id.* at 21:4 - 22:11.

170. In 2001, the majority party targeted senior members of the opposition. *Id.* at 12:7-10. By contrast, proposed District 137 demonstrates the targeting of a junior member of the opposition. The distinguishing factor between the paired incumbents is that Vo is a member of a racial

minority group.

171. Based on the foregoing, proposed District 137 and the removal of District 149 from Harris County purposefully eliminate the ability of Asian voters, alone or in coalition, to elect their candidate of choice. *Id.*

H. Harris County

172. The Harris County delegation began the redistricting process working in a bipartisan manner under the direction of Representative Wayne Smith. Smith Dep. 6:18-7:9, 11:20-12:20, 14:2-7 Oct. 13, 2011; Tr. at 42:25-43:13 (Jan. 19 p.m.) (Coleman).

173. Chairman Solomons initially advised the delegation to draw a 25-district plan but soon thereafter privately advised Representative Smith to draw a 24-district plan. Tr. at 43:13-19 (Jan. 19 p.m.) (Coleman); JDD at 1106-07, 110 (Smith Dep. 6:18-7:9, 11:20-12:20, 23:18-24:13).

174. After members of the delegation decried the bipartisan process, Speaker Straus gave his imprimatur to a separate Republican-drawn map under the control of Representative Beverly Woolley. JDD at 1741, 1744 (Woolley Dep. at 11:8-23, 16:3-9, Oct. 13, 2011). Lobbyist Mike Hull drew a Harris County map at Representative Woolley's direction using only input provided by Anglo Republicans. JDD 1744 (Woolley Dep. at 16:10-25, Oct. 13, 2011); JDD at 605-607, 626-27 (Hull Dep. at 46:19-25, 48:7-23, 80:16-22, 81:18-20, Jan. 11, 2012).

175. Hull drew districts represented by minority members without their input. KDD at 607, 618-19 (Hull. Dep. at 48:20-23, 68:9-25); JDD at 1771-72 (Woolley Dep. at 67:22-68:24, Oct. 13, 2011). Hull concluded that the Voting Rights Act does not protect coalition districts and that no coalition districts exist in Harris County. JDD at 633-34 (Hull Dep. at 91:16-92:27, Jan. 11, 2012); JDD at 1743-44, 1750 (Woolley Dep. at 15:1-7, 25:1-7). The proposed map eliminated

Representative Vo's district in March, DX 298, but minority leaders did not learn of the reduction to 24 districts until April 7. DX 7 (Coleman Letter); Tr. at 4248:20-49:4 (1/9 p.m.) (Coleman).

176. With minor changes, the Woolley map was dropped into the statewide plan adopted by the House Redistricting Committee, H153. Trial Tr. at 52:5-19 (Jan. 19 p.m.) (Coleman).

177. Following adoption of H153, Rep. Woolley called a delegation meeting. Tr. at 53:2-11 (Jan. 19 p.m.) (Coleman). Representative Garnet Coleman objected to the secretive process, the reduction to 24 districts, and the pairing of Representative Vo and Representative Hocheberg. *Id.* at 53:19-54:10. Representative Woolley responded that "y'all's districts are protected under the Voting Rights Act" and that she had done what was necessary to protect Republicans from minority population growth. Tr. at 54:12-55:18, 68:10-22 (Jan. 19 p.m.) (Coleman).

178. Representative Woolley then submitted a retaliatory amendment to her own map that gutted Representative Coleman's District. *Id.* at 71:3-72:-24 (Coleman).

179. Representatives elected from minority-controlled districts were eventually permitted to change the boundaries between their districts so long as they did not disturb Anglo-controlled Republican districts. *Id.* at 62:17-63:8 (Coleman); DX 577 at 34-35 (*Perez* Tr. at 933:16-22) (Downton).

III. TEXAS CONGRESSIONAL DELEGATION: DISCRIMINATORY EFFECT

A. Statewide Effect

180. The benchmark Congressional Districting Plan (C100) provides minority voters with 10 districts in which they have the ability to elect their candidates of choice. DX 327 at 5-6 (Handley Congress Rep.). Benchmark Districts 15, 16, 20, 23, 27, 28, and 29 provide Hispanic voters with an ability to elect their candidates of choice. *Id*. at 5. Benchmark Districts 9, 18, and

30 provide black voters with an ability to elect their candidate of choice. *Id*.

181. The proposed Congressional Districting Plan (C185) provides minority voters with 10 districts in which they have the ability to elect their candidates of choice. *Id*. at 7-8. Proposed Districts 15, 16, 20, 28, 29, 34 and 35 provide Hispanic voters with an ability to elect their candidates of choice. *Id*. Proposed Districts 9, 18, and 30 provide black voters with an ability to elect their candidate of choice. *Id*.

182. According to the 2010 ACS one-year estimate, 39.3% of the total citizen voting age population statewide was black and Hispanic. ECF No. 177 ¶ 38 (Joint Stipulations).

183. After the 2000 Census, the Texas Congressional delegation had 32 seats. ECF No. 177 ¶ 11 (Joint Stipulations). Today, if black and Hispanic voters were able to elect members of Congress in proportion to their citizen voting age population, they would elect 13 of 32 Congressional seats.

184. After the 2010 Census, the Texas Congressional delegation has 36 seats. ECF No. 177 ¶ 14 (Joint Stipulations). Today, if black and Hispanic voters were able to elect members of Congress in proportion to their citizen voting age population, they would elect 14 of 36 Congressional seats.

185. The Department of Justice is not seeking to maximize the number of districts that give minority voters the ability to elect that Texas should provide through the Section 5 process. The Department of Justice has contended that one additional majority Hispanic district, a total of 11, must be created to avoid retrogression because proportionality for black and Hispanic voters is 13 in the benchmark and 14 in the proposed. This change means that the proposed plan increases the dilution of minority voting strength – that is, the gap between existing electoral ability and full proportionality – by exactly one seat.

186. The benchmark Congressional Districting Plan (C100) provides 4,974,087 Hispanic voters and 1,083,344 black voters with the ability to elect their candidates of choice in the districts in which they live. DX 327 at 2. The proposed Congressional Districting Plan (C185) provides 4,494,383 Hispanic voters and 1,168,026 black voters with the ability to elect their candidates of choice in the districts in which they will live. *Id.* at 9. There will be 479,704 Hispanic voters who will no longer reside in districts in which they can elect their candidates of choice under the proposed plan. *Id.*

187. The map-drawer for the Congressional plan on the Senate side suggested that Texas was not required to add any new majority-minority seats with the four new Congressional districts, and that "even if you have 20 new seats" and created no new majority-minority seats, there was no retrogression under Section 5 of the Voting Rights Act. JDD at 228 Davis Dep. at 103:9-22, Oct. 18, 2011.

B. Congressional District 23

188. Benchmark District 23 in Plan C100 is located in Southwest Texas and includes 17 whole counties and parts of three others. DX 818 at 1 (Map of C100).

189. According to data from 2010, benchmark District 23 has a total Hispanic population of 66.4%, an HVAP of 62.8%, and SSVR of 52.0%. DX 858 (Red-202 C100). The district's HCVAP is 58.4%. DX 880 (Red-106 C100).

190. In 2006, District 23 in the benchmark plan was created as a minority opportunity district under Section 2 of the Voting Rights Act following the Supreme Court's decision in *LULAC v. Perry*, 548 U.S. 399, 425-42 (2006).

191. Voters in District 23 first elected Ciro Rodriguez to the U.S. House of Representatives in 2006, then again in 2008. PX 17 at 368; DX 15 at 42. Francisco Canseco was elected as the

Representative from Congressional District 23 in the November 2010 General Election, defeating Representative Rodriguez. DX 15 at 62; DX 576 at 777.

192. Hispanic citizens in benchmark Congressional District 23 elected their candidate of choice to the United States House of Representatives in 2006 and 2008, but not in 2010. DX 327 at 5 (Handley Congress Rep.).

193. Hispanic voters in the area of Congressional District 23 vote cohesively. DX 327 at 15–19 (Handley Congress Rep.); PX 24 at 529-52 (State's Racially Polarized Voting Analysis of CD 23 in C100); PX 25 at 529-50 (OAG RVPA Rep.).

194. Voting in benchmark Congressional District 23 is highly polarized. DX 327 at 5. In the 2010 election for Congress in CD23, the Hispanic preferred candidate received 84.2% of the Hispanic vote but only 12.4% of the Anglo vote according to ecological inference. DX 327 at 19 (Handley Congress Rep.). Regression analysis provides similar results. *Id.*

195. Proposed Congressional District 23 in Plan C185 stretches across all or parts of thirty counties in Southwest Texas. DX 89 (Map of C185 District 23).

196. According to data from 2010, proposed District 23 has a total Hispanic population 67.8%, an HVAP of 63.8%, and SSVR of 54.5%. DX 859 at 2 (Red-202 Report). The district's HCVAP is 58.5%. DX 881 at 1 (Red-106 C185).

197. Turnout of Hispanic voters decreases in the proposed Congressional District 23 compared to the benchmark. DX 364 (Racially Polarized Voting Analysis for CD 23); DX 436. As one example, in the 2002 General Election contest for Governor, the Hispanic-preferred candidate received an estimated 59,681 votes from Hispanic persons in benchmark District 23. DX 364 at 189. In the proposed district, this figure falls to only 48,455 votes, a decrease of more than 11,000 votes. *See id.* at 5. The Hispanic votes for the Anglo candidate do not change

substantially from the benchmark (7,614) to the proposed (8,572). *See id.* at 1, 5.

198. In the proposed Congressional plan, District 23 is no longer an ability-to-elect district. DX 327 at 7-8 (Handley Congress Rep.); DX 581 at 127-128 (*Perez* Tr. at 1878:5-6) (Alford). Compared to benchmark Congressional District 23, proposed Congressional District 23 decreases the performance of Hispanic-preferred candidates in exogenous general elections. DX 327 at 9, 11 (exogenous index decreases from 40% to 0%); DX 319 at 13 (Alford Rep.) (exogenous index decreases from 46% to 29%); DX 801 at 11 (Alford pre-filed direct) (OAG 10 index decreases from 3 to 1).

C. Congressional District 27

199. Benchmark District 27 in Plan C100 is located in South Texas, bordering on both Mexico and the Gulf of Mexico. The district includes all of Kenedy, Kleberg, Nueces, and Willacy counties, and parts of Cameron and San Patricio counties. DX 818 at 1 (Map of C100).

200. According to data from 2010, benchmark District 27 has a total Hispanic population 73.2%, an HVAP of 69.2%, and SSVR of 61.1%. DX 880 (Red-106 C100); DX 857 (Red-100 C100). The district's HCVAP is 63.8%. DX 880 (Red-106 C100).

201. Hispanic citizens in benchmark Congressional District 27 elected their candidate of choice to the United States House of Representatives in 2004, 2006 and 2008, but not in 2010. DX 327 at 5 (Handley Congress Rep.).

202. Under the proposed plan, District 27 is substantially reconfigured and moved north—removing the southern counties of Kenedy, Kleberg, Willacy, and Cameron from the district. C185 adds the counties of Aransas, Calhoun, Jackson, Lavaca, Matagorda, Refugio, Victoria, and Wharton counties, and parts of Bastrop, Caldwell, and Gonzales counties to the district. DX 819 at 1 (C185 Plan Packet).

203. According to data from 2010, District 27 has a totalHispanic population of 49.5%, an HVAP of 45.1%, and SSVR of 36.7%. DX 859 at 2 (Red-202 C185). The district's HCVAP is 41.1%. DX 881 at 1 (Red-106 C185). Therefore, HVAP decreased by 24.4%, SSVR decreased by 22.6%, and the Hispanic citizen voting age decreased by 22.7% from the benchmark.

204. In the proposed Congressional plan, District 27 is no longer an ability-to-elect district. DX 327 at 7-8 at 13 (Handley Congress Rep.). Dr. Handley found that Hispanic voters in District 27 can no longer elect their candidate of choice under C185. DX 327 at 13, Appendix A (Handley Congress Rep.). Because of the severe reduction in Hispanic population, the experts did not perform reconstituted election analysis of the proposed district. DX 327 at 13; DX 319 at 13 (Alford Rep.).

205. The State has admitted that District 27 no longer provides an opportunity for Hispanic voters to elect their candidate of choice. ECF No. 41 at 5 (Tex. Mot. Summ. J.).

IV. TEXAS CONGRESSIONAL DELEGATION: DISCRIMINATORY PURPOSE

A. Direct Evidence of Intent

206. In 2010, Eric Opiela and Gerardo Interiano were both counsel to Speaker Straus. Tr. at 54:12-20 (Jan. 17 p.m.) (Interiano). On November 19, 2010, while still employed by the Speaker, Opiela wrote in an email that a useful metric would be to calculate for every Census block "a ratio of Hispanic CVAP/Total Hispanic Population, a ration of Spanish Surname RV/Hispanic CVAP, and ratio of Spanish Surname RV/ Total Hispanic Population." DX 304 (email); Tr. at 54:12-20 (Jan. 17 p.m.) (Interiano). According to Opiela, "[i]t also would be good to calculate Spanish Surname Turnout/Total Turnout ration for the 2006-2010 General Elections for all VTDs (I already have the data for this for 2006-2008 in a spreadsheet, just need to gather it for every VTD for 2010)." DX 304.

207. Opiela's e-mail continues: "These metrics would be useful in identifying a 'nudge factor' by which one can analyze which Census blocks, when added to a particular district (especially 50+1 minority majority districts help pull the district's total Hispanic Pop and Hispanic CVAPs up to majority status, but leave the Spanish Surname RV and TO the lowest. This is especially valuable in shoring up Canseco and Farenthold." *Id.*; Tr. at 52:19-54:11 (Jan. 17 p.m.); JDD at 851 (71:18-73:4) (Interiano).

208. The shorthand for this effort to maintain Hispanic concentration and drive down Hispanic performance was called "OHRVS" or "Optimal Hispanic Republican Voting Strength." DX 304.

209. Both Interiano and Downton were responsible for drawing the Congressional redistricting maps. Interiano requested and received the data required, although at the time of his request 2010 turnout data was not yet available. DX 294 (Dec. 8 email); DX 197 (Dec. 13 email).

210. During the 2011 legislative session, Opiela worked for the Republicans in the Texas Congressional Delegation. Tr. at 104:16-22 (Jan. 18 a.m.) (Downton). Interiano had previously worked for Congressman Lamar Smith. Tr. at 129:8-14 (Jan. 17 a.m.) (Interiano). "The Texas Republican delegation elected Congressman Smith to be the liaison to the state legislature knowing that redistricting was around the corner." *Id.* at 129:15-19. Interiano communicated frequently with Opiela to receive the views of the Congressional delegation. Tr. at 56:20-57:12 (Jan. 17 p.m.) (Interiano).

211. On June 11, 2011, Opiela provided maps to Downton and Interiano "that should (1) improve CD 23's Hispanic performance while maintaining it as a Republican district." DX 739 at 40 (Arrington Supp. Rep.).

212. On June 13, 2011, Eric Opiela wrote an email to Jennifer Brown explaining that he had given the mapmakers the "tools to fix this," in other words to be able to shore up District 20.

However he stated that they used it for other districts instead, including District 23. "I had a voice wondering in the back of my head how they were able to find enough Hispanics to jack Quico [Canseco] up from 52.8 to 54.1. I knew they couldn't do it alone with just 10k more in Maverick." PX 164 (June 13 email).

213. As a general matter, email discussion between State redistricting officials and a member of Congress demonstrate how an awareness of race infected the redistricting process apart from any partisan motivation. DX 320 ¶ 135 (Arrington Rep.).

214. The emails exchanged by the map drawers were not simply theoretical; they successfully weakened minority voting strength. *See* Part III, *supra*. The implementation of the map drawers' intent is also evidenced by the number of split VTDs in the proposed congressional plan. The proposed plan for the Congress splits 518 VTDs. DX 875 (Red-381 C185); DX 320 tbl.19 (Arrington Rep.). These splits are concentrated in minority communities and frequently divide precincts to exclude or include racial minority groups in specific districts. Although there is a need to zero out the population in the Congressional plan, it does not justify 518 split VTDs. DX 320 ¶¶ 164-173.

B. <u>Congressional Redistricting Process</u>

215. Proposed Congressional Plan C185 was a product of an exclusive process that prevented meaningful participation by minority citizens and their elected officials. DX 320 at 58-60 (Arrington Rep.); Tr. at 8:7-9:4 (Jan. 18 p.m.) (Veasey).

216. The House Committee on Redistricting in conjunction with the Senate Select Committee on Redistricting held a number of field hearings prior to the release of 2010 Census data and the release of a statewide Congressional redistricting plan. DX 320 at 58-60.

217. Several field hearings were held during the work day in non-public transportation

accessible locations which made meaningful public participation by minority citizens extremely difficult. Tr. at 9:5-12:24 (Jan. 18 p.m.) (Veasey); DX 320 at 58-60.

218. On May 31, 2011, the Seliger-Solomons plan (C125), the first proposed Congressional redistricting plan, was publically released. DX 366 (Congressional Redistricting Timeline).

219. A notice of the House-side public hearing for plan C125 was issued in the late afternoon on May 31, 2011. DX 320 at 59; DX 366.

220. Less than 48 hours later, at 9 am on June 2, 2011, the only public hearing held by the House Committee on Redistricting after the release of the proposed plan occurred at the State Capital in Austin. DX 320 at 59; DX 366.

221. A notice of the Senate-side public hearing for plan C125 was issue in the late afternoon on May 31, 2011. DX 320 at 59; DX 366.

222. Less than 48 hours later, at 9 am on June 3, 2011, the only public hearing held by the Senate Select Committee on Redistricting after the release of the proposed plan occurred at the State Capital in Austin. DX 320 at 59; DX 366.

223. Holding these public hearings less than 72 hours after the public release of Plan C125 limited meaningful public participation by minority citizens who are financially and logistically unable to travel to the capitol with such short notice. DX 320 at 59-60; Tr. at 16:4-16:14 (Jan. 18 p.m.) (Veasey)

224. On June 3, 2011, the Senate Select Committee considered Plan C125 and C130. At that meeting, minority members of the Committee complained of being excluded from the Congressional redistricting process. Minority Committee members stated that they were not consulted or otherwise included in drafting the proposed Congressional plan. DX 370 at 1. This concern was shared by minority members of the House Committee who also complained of

being excluded from the process. Tr. at 8:7-9:4 (Jan. 18 p.m.) (Veasey)

225. Outside counsel for the Senate Select Committee described the redistricting process as "quite different from what we've seen in the past" because they did not see the Plan before the regular session ended, they saw C130 for the first time at eight a.m. the morning of the hearing, they were not asked to evaluate Section 5 compliance, and they were given limited election returns with which they could properly evaluate the Plan's compliance with the Voting Rights Act. DX 370 at 2-3.

226. In 2003, the Senate committee had hearings all over the state regarding the congressional redistricting plan, and they hired experts to do retrogression analysis. DX 370 at 2-3.

227. On June 6, 2011, notice was given on House floor that the House Committee on Redistricting would meet to consider the proposed Congressional Plan at 9 am on June 9, 2011. DX 320 at 59; DX 366.

228. On June 9, 2011, the House Committee on Redistricting met to consider the proposed Congressional Plan. The Committee did not take public comment prior to passing the proposed plan passed out of Committee for a floor vote. DX 320 at 59; DX 366.

C. <u>Congressional District 23</u>

229. Those responsible for developing C185 deliberately excluded from District 23 areas with a high percentage of Hispanic voters. DX 642. At the same time, they intentionally included in District 23 precincts in which Hispanic voters turn out at a significantly lower rate. In areas moved into District 23 estimated Hispanic turnout is 30.62%; whereas in areas moved out of District 23 estimated Hispanic turnout is 35.98%. DX 436; JDD at 860 (120:5-11 (Interiano); JDD at 1084-87 (13:12-15:20) (Seliger).

230. According to the State's reconstituted election analysis, Hispanic voters turn out at a lower

rate in the area encompassed by proposed District 23 than they do in the area encompassed by benchmark District 23. DX 364 (OAG RVPA Rep.). Interiano said that reports he reviewed showed that in proposed District 23, Spanish surnamed voters stayed the same, but the turnout of Hispanic voters decreased. Tr. at 53:23-54:11 (Jan. 17 p.m.) (Interiano); JDD at 853 (75:1-76:11) (Interiano).

231. There are 39 VTD splits in proposed District 23; 18 are in Bexar County alone. DX 875 at 8-9 (Red-381 C185). Plan C185 splits the south side of San Antonio, including the community of Harlandale, among three Congressional districts (20, 23, and 35). DX 576 at 154-56 (*Perez* Tr. at 784:4-785:11) (Rodriguez). Historically, this area has been home to a highly effective and politically active Hispanic community that wielded considerable influence within a single Congressional district. *Id.* at 151-52 (*Perez* Tr. at 781:1-10). In Harlandale, precincts 1044, 1045, 1046 and 1048 are split, and Precinct 1048 is actually in three separate Districts: 20, 23, and 35. DX 887 at 139, 160, 240 (Red-110 C185).

232. No political information was available to divide these precincts, *see* ¶ 118, *supra*, and the VTD splits along the borders of these Congressional districts show a statistically significant racial bias. DX 320 at 56 tbl.21. Therefore the only plausible explanation for the concentration of VTD splits is the use of race as a proxy for political preference.

233. The South Side community has historically been a community of interest within Congressional District 23. DX 826 at 9 (Flores Rep.).

234. Plan C185 also splits the politically cohesive Hispanic community of Maverick County, as well as the city of Eagle Pass. Residents are divided between Congressional Districts 23 and 28, a Laredo-based district in which Hispanics already could elect a preferred candidate. DX 764 (map showing split between CD 23 and CD 28); Tr. at 116:17:-117:19 (Saucedo) (Jan. 18 p.m.).

Previously, Maverick County had never been split between two Congressional districts. Tr. at 112:24-113:1 (Saucedo) (Jan. 18 p.m.).

235. Maverick County had become a significant force in determining the outcome of elections in Congressional District 23. *Id.* at 114:8-115:18. The division of Maverick County in Plan C185 would dilute Hispanic voting strength and diminish the Hispanic community's political influence. *Id.* at 114:8-116:12.

236. The poor performance of District 23 in the proposed plan led the state's own expert to state that he would "not recommend changing the 23rd in the way in which it was changed." DX 581 at 92, 129 (*Perez* Tr. at 18391:-24, 1879:21-22) (Alford); s*ee also* DX 319 at 2-4 (Alford Rep.).

237. In his deposition, Hanna stated he "didn't feel like [his] concerns" about proposed Congressional District 23, which he had expressed during the redistricting process, had been resolved, "even to this day." DX 742 at 19.

238. Congressional District 23 easily could have been maintained as a Hispanic ability-to-elect district with relatively minor changes to the configuration proposed Plan C185. Redrawing the district's lines to raise slightly the number of Hispanic voters significantly increases Hispanic voters' ability to elect candidates of choice. DX 327 at 9-10 & app. E (Handley Congress Rep.).

D. <u>Dallas-Fort Worth Metroplex</u>

239. In the benchmark plan, Plan C100, there are nine congressional districts that converge in the Dallas-Fort Worth Metroplex. DX 818 at 1 (C100 Plan Packet).

240. The benchmark congressional plan has one minority ability-to-elect district in the Dallas-Fort Worth Metroplex – District 30. DX 327 at 2 (Handley Congress Rep.).

241. According to 2010 data, African Americans and Hispanics account for a combined 55% of the voting age population in Dallas County and 37% of the voting age population in Tarrant

County. ECF No. 180 ¶¶ 33, 37 (Judicial Notice).

242. In the proposed plan, Plan C185, there are ten congressional districts that converge in the Dallas-Fort Worth Metroplex. Due to significant population growth in north Texas, the proposed plan allocates one of the State's newly apportioned congressional districts to the Dallas-Fort Worth Metroplex. DX 819 at 1 (C185 Plan Packet).

243. Despite significant minority population growth, the proposed congressional plan does not reflect the minority growth in the Dallas-Fort Worth Metroplex. Tr. at 13:1-13:13 (Jan. 18 p.m.) (Veasey); DX 320 at ¶¶ 148-152 (Arrington Rep.).

244. At the outset of the redistricting process, Congressperson Lamar Smith submitted a Congressional plan on behalf of the Texas Congressional delegation that provided minority voters in Tarrant and Dallas counties with an opportunity to elect their candidates of choice in the newly allocated district. DX 536 (Smith proposal); JDD at 996-97 (118:25-119:23) (Opiela).

245. Instead of allowing a minority-controlled congressional district to occur naturally within the compact minority communities in the Dallas-Fort Worth Metroplex, the map drawers intentionally divvied up urban, low-income, minority population among four Anglo-controlled congressional districts. Tr. at 17:1-17:9 (Jan. 18 p.m.) (Veasey); DX 320 at ¶¶ 148-152 (Arrington Rep.); DX 677-680, 683-684 (DFW Congressional Maps).

246. The African-American and Hispanic communities in the Dallas-Ft. Worth Metroplex were split into four separate Anglo-controlled congressional districts – CD6, CD12, CD26, and CD33. Tr. at 17:1-17:12 (Jan. 18 p.m.) (Veasey); DX 320 ¶¶ 148-152 (Arrington Rep.).

247. Proposed Congressional District 6 is anchored in majority Anglo Ellis and Navarro Counties. Tr. at 21:3-21:8 (Jan. 18 p.m.) (Veasey); DX 819 at 1 (C185 Packet). District 6 has a combined Black and Hispanic CVAP of 38.6%, with most of the minority population in Dallas

County. DX 857 at 2 (Red-100 C185) Proposed Congressional District 6 removes much of the growing minority population bordering Tarrant and Dallas Counties, just east of the City of Arlington and submerges that population into Ellis and Navarro Counties. Tr. at 21:9-22:13 (Jan. 18 p.m.) (Veasey). The configuration of proposed Congressional District 6 fractures minority communities of interest and dilutes the voting strength of African-American and Hispanic voters on the Tarrant and Dallas County border. Tr. at 22:21-23:2 (Jan. 18 p.m.) (Veasey).

248. Proposed Congressional District 12 is located entirely within Tarrant County. Tr. at 20:5-20:7 (Jan. 18 p.m.) (Veasey). District 12 has a combined Black and Hispanic CVAP of 28.1%. Congressional District 12, as proposed, severs minority communities of interest in Tarrant County. Tr. at 20:8-20:25 (Jan. 18 p.m.) (Veasey). Proposed Congressional District 12 combines a majority of Tarrant County's northern Anglo, rural population with Southeast Fort Worth. Tr. at 20:8-20:25 (Jan. 18 p.m.) (Veasey). Southeast Fort Worth is situated south of Interstate 30 and east of Interstate 35 and is made up of several inner-city, low-income communities that are predominantly minority. Tr. at 20:8-20:25 (Jan. 18 p.m.) (Veasey). Pairing Southeast Fort Worth with Anglo communities in northern Tarrant County nullifies the voting strength of the extensive minority population in Southeast Fort Worth. Tr. at 20:8-20:25 (Jan. 18 p.m.) (Veasey).

249. Proposed Congressional District 26 is anchored in rural, majority Anglo Denton County. Tr. at 18:17-18:23 (Jan. 18 p.m.) (Veasey); Tr. at 102:11-103:1 (Jan. 18 p.m.) (Jiminez). District 26 has a combined Black and Hispanic CVAP of 22%, most of which is in Tarrant County. The Denton County-based proposed Congressional District 26 strikes downward in a "lightning bolt" and removes two significant minority communities of interest in Tarrant County – Near North Side and South Fort Worth. Tr. at 19:4-19:13 (Jan. 18 p.m.) (Veasey). Near North Side is an

urban, low-income, majority Hispanic community in Fort Worth. *Id.*; Tr. 99:1-99:10, 100:3-8 (Jan. 18 p.m.) (Jiminez). South Fort Worth is another urban, low-income, majority Hispanic community in Fort Worth. Tr. at 19:4-19:13 (Jan. 18 p.m.) (Veasey).

250. Race was used to split the VTDs in proposed District 26. The boundary of District 26 divides 49 precincts, and 38 of these splits are located in the "lightning bolt" in Tarrant County. DX 875 at 10-11 (Red-381 C185). The split VTDs brought in Hispanic population and the Hispanic population is split in while the non-Hispanic population in the VTD is split out. DX 887 at 74-82, 185-188 (Red-110 C185). Ryan Downton admitted that when he drew the map that he sought to keep the Hispanic population together, and he alsoadmitted that they may not want to be submerged into Denton county. DP at 347-48 (130:24-132:23).

251. The boundary between Congressional District 26 and District 12 at the eastern boundary of the "lightning bolt" divides minority communities according to race. DX 630 (Tarrant County racial maps). The divided area is uniformly Democratic, and therefore the division could not have been driven by political data. PX 133 (Tarrant County political map).

252. The removal of the Near North side and South Fort Worth communities from southern Tarrant County only serves to dilute the minority vote in these communities, as the overwhelming majority of the proposed district's voting strength comes from Anglo-dominant Denton County. Tr. at 19:20-20:2; 24:11-25:18 (Jan. 18 p.m.) (Veasey); Tr. at 105:17-106:5, 106:23-107:7 (Jan. 18 p.m.) (Jiminez); Tr. at 104:3-107:18 (Jan. 20 p.m.) (Solomons).

253. Proposed Congressional District 33, one of the State's newly apportioned congressional districts, encompasses all of Parker County and parts of Wise County. DX 819 at 8 (C185 Plan Packet) Tr. at 23:4-24:1 (Jan. 18 p.m.) (Veasey). Anglos make up 85.3% of the population in Parker County and 78.7% of the voting age population in Wise County. DX 857 at 8.

254. African-American and Hispanic voters in the Dallas-Fort Worth Metroplex are politically cohesive. Tr. at 7:8-7:10 (Jan. 18 p.m.) (Veasey). The African-American and Hispanic communities in the Dallas-Fort Worth Metroplex have similar economic, educational, employment, and social needs. DX 579 at 16-17 (*Perez* Tr. at 1285:11-86:3) (Johnson).

255. The configuration of the proposed Congressional Districts in the Dallas-Fort Worth Metroplex, which intentionally cracks the minority population, is evidence of discriminatory intent. DX 320 at 50-52, 67.

256. In the proposed plan, the State packs a large concentration of Dallas County's minority population into Congressional District 30. Proposed Congressional District 30 has a Black voting age population of 45.6% and an HVAP of 40.3%. *See* DX 859 at 2 (Red-202 C185). The State increased the combined minority voting age population from the benchmark district by 4.8%. *Compare* DX 859 at 2 *with* DX 858 at 2 (Red-202 C185). This excessive concentration of African-American and Hispanic population is not necessary for minorities to elect their candidate of choice in District 30 and thus serves only to further suppress minority voting strength in the Dallas-Fort Worth Metroplex. DX 579 at 194-196 (*Perez* Tr. at 1484:6-1486:2) (Interiano); *id.* at 13 (*Perez* Tr. at 1281:3-1281:15) (Johnson).

V. CREDIBILITY

A. The United States' Witnesses

257. The United States presented live testimony from five lay witnesses: Representative Marc Veasey, Jaime Longoria, Representative Garnet Coleman, Representative Joe Farias, and Representative Scott Hochberg. Having observed and considered the testimony presented, the Court concludes that these witnesses provided credible testimony.

258. The United States presented live testimony from Dr. Lisa Handley, an expert in

redistricting and election analysis, and Dr. Theodore Arrington, an expert in political science and election administration. The experts' demeanor and responsiveness showed their comfort with the subjects of their expertise. Dr. Handley also demonstrated candor by pointing out an error in her initial report during direct examination. Tr. at 13:5-16 (Jan. 26 a.m.) (Handley). Dr. Handley has also applied a consistent methodology over decades of experience. ECF No. 161-7 (Handley CV). For these reasons, the court finds that these experts offered credible opinion testimony.

B. The State of Texas's Witnesses

259. Representative Todd Hunter testified about the redistricting process and particularly concerning hearings conducted in 2010. Representative Hunter admitted a lack of knowledge regarding minority concerns, internal proceedings, and the proposed House districts in Nueces County. Tr. at 92:3-112:7 (Jan. 17 p.m.). Having observed the witness, the court concludes that Hunter provided credible testimony only concerning the public process.

260. Gerardo Interiano testified concerning the internal map-drawing process for the proposed House and Congressional plans. Interiano contradicted himself regarding whether and when he had used racial shading, 65:1-66:7, 86:20-87:1, 88:24-89:18 (Jan. 25 p.m.). His testimony that he did not know how to shade maps by race at the block level and that he had not revealed his consistent reliance on a 2001 Department of Justice letter because of attorney-client privilege was deeply implausible. 59:4-62:8, 92:24-94:12 (Jan. 17 p.m.). Finally, Interiano's testimony is contradicted by several of Texas's other witnesses. *Compare* Tr. 77:14-81:3; 104:6-105:9 (Jan. 25 p.m.) (Interiano) *with* Tr. at 70:8-25 (Jan. 20 p.m.) (Solomons); JDD at 286 (Downton Dep. at 120:1-12, Oct. 20, 2011); JDD at 1028-31 (Peña Dep. at 96:25-98:20, 100:5-8, Oct. 19, 2011). The court offered Interiano the opportunity to explain what really occurred when it appeared that

the Staff said they were told what to do and the election officials said that the staff made all the decisions, but Interiano evaded answering the question. Tr. 99:7-104:25 (Jan. 25 p.m.) (Interiano). Having observed and considered the testimony presented, the court concludes that he did not provide credible testimony.

261. Ryan Downton testified concerning the internal map-drawing process for the proposed House and Congressional plans. Downton directly contradicted Interiano concerning whether Interiano relied on demographics alone, Tr. at 184:14-20 (Jan. 17 a.m.) (Interiano); Tr. at 124:9-19 (Jan. 18 a.m.) (Downton), and Downton acknowledged his proposal to serve both as a witness and as a litigator who did not sign pleadings he authored. Tr. at 145:9-149:12 (Jan. 18 a.m.) (Downton). Moreover, Downton testified under oath during his deposition, "The initial proposal was just that, an initial proposal in a work in progress. We hadn't done a Section 5 analysis on that map when we released it." JJD at 295 (Downton Dep. at 134:10-16, Oct. 20, 2011). In fact, David Hanna circulated substantial memoranda concerning Voting Rights Act compliance prior to the release of the chairman's plan. DX 336 (Hanna Apr. 7 Memo); DX 337 (Hanna Apr. 10 Memo). Having observed and considered the testimony presented, the Court concludes that Downton did not provide credible testimony.

262. Representative Burt Solomons provided brief pre-filed direct testimony concerning his experience as chairman of the House Redistricting Committee. On cross-examination, Solomons was unable to recall basic facts concerning the redistricting process and claimed that his staff were wholly responsible for decisions underlying the proposed plans. Tr. at 65:3-72:4; 97:1-98:21 (Jan. 20 p.m.). Solomons also claimed to have made Voting Rights Act compliance a key priority of the redistricting process but admitted that he had never communicated to the House membership the simple number of protected districts in the benchmark plans. Tr. at 60:9-

72:4. Having observed and considered the testimony presented, the Court concludes that Chairman Solomons did not provide credible testimony.

263. Texas elected not to call David Hanna, an attorney from the Texas Legislative Council who provided substantial advice to the House Redistricting Committee. The State contended that Mr. Hanna was unable to leave the State because of revived proceedings in San Antonio, Tr. at 13:2-15:4 (Jan. 20 p.m.), but the San Antonio panel had not yet begun to draw a new set of interim maps. Order, *Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex. Jan. 28, 2012) (No. 593).

264. Texas presented live testimony from Dr. John Alford. Dr. Alford's initial and supplemental reports offered divergent methodologies, and his trial testimony omitted endogenous elections, which he had previously described as the "best demonstration" of the ability to elect. Tr. at 101:19-102:4 (Jan. 24 p.m.). Alford acknowledged that he had never seen a "statewide functional analysis" applied in a Section 5 matter. Tr. 50:16-18 (Jan. 24 p.m.) (Alford). Alford admitted under cross-examination that his supplemental report was a "collaborative effort" drafted by counsel, Tr. at 120:24-124:8 (Jan. 24 a.m.), and that he is "not much of a Section 5 expert." Tr. at 50:18-16 (Jan. 24 p.m.). Dr. Alford's demeanor and inability to provide concise answers further undermine his credibility. Dr. Alford ultimately disclaimed offering an opinion concerning retrogression, Tr. at 94:15-96:25 (Jan. 24 p.m.), and having observed and considered the testimony he presented, his underlying analysis is entitled to little weight.

265. The ten elections contained in summary reports produced by the Texas Office of the Attorney General ("the OAG 10") were chosen by Todd Gibberson, a staff analyst. Gibberson selected elections because he thought they would be interesting, rather than for their academic merit, and received no guidance from attorneys or experts. Gibberson Dep. at 16:5-21:5, 27:2-28:8, Oct. 18,

2001. Dr. Alford's reliance on the OAG 10 is further evidence that his analysis is not entitled to substantial consideration.

Date: February 3, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2012, I served a true and correct copy of the foregoing via the Court's ECF system on the following counsel of record:

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