IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ, et al., Plaintiffs	§	
	§	CIVIL ACTION NO. 11-CA-360
v.	§	OLG-JES-XR (Lead Case)
STATE OF TEXAS, et al., Defendants	§	

PLAINTIFF MALC'S POST SEGMENT ONE CLOSING ARGUMENT SUMMARY

Pursuant to this Court's order, the Mexican American Legislative Caucus (MALC) hereby submits its summary of its closing arguments, being prepared for presentation on July 29, 2014.

INTRODUCTION

The evidence presented to this Court in September 2011 and in July of 2014, establishes that the plan adopted by Defendant State of Texas for the election of members of the Texas House of Representatives (Plan H283) discriminates against Latino voters of Texas and other minority citizens of Texas in violation of the Fourteenth Amendment and Section 2 of the Voting Rights Act. In addition the plan violates the one person, one vote principle of the 14th Amendment. The evidence offered by the Defendants in this case, rather than establishing a clear, unambiguous and legal explanation of H283's obviously adverse impact on minority voters offers no legitimate explanation, is inconsistent, seems to evolve with time and appears unbelievable.

Texas had population growth over the decade of over 20%. The Latino population growth over the decade accounted for about 65% of that growth and together with other minority

residents of Texas accounted for almost 90% of the growth. Remarkably, the Defendants' witnesses explained that no efforts were undertaken except as an afterthought,[1] to determine whether the dramatic population growth in the Latino and minority populations would permit or require the creation of additional minority districts. (Testimony of Solomons, Interiano and Downton). Instead, the Texas House of Representatives redistricting plan adopted by the State actually reduced the number of minority opportunity districts when compared with the benchmark, H100. Experts for the United States and MALC and other plaintiffs determined that H283 reduced the number of minority opportunity districts by as many as five districts from the benchmark, H100. The Defendants produced no evidence making a similar comparison or providing a different calculation. In fact, the Defendants' witnesses admitted that its use of already performing minority opportunity districts in which minority voting strength was marginally increased in H283, did not provide replacements for minority districts that were eliminated or reduced to the point of ineffectiveness.

These facts, as dramatic as they are, are only the beginning. While the Court should begin here in its analysis of Plaintiffs claims, those facts are by no means the totality of the inquiry.

FOURTEENTH AMENDMENT

"ONE PERSON ONE VOTE"

In the 2011 portion of the trial, Plaintiff MALC submitted the analysis of Dr. Morgan Kousser regarding the use of population disparities between districts were improperly used to limit the political participation of racial, ethnic and political minorities. See MALC Exhibit 19,

[1] Defendants map drawer Mr. Interiano admitted that he knew it was possible to draw a new Latino opportunity district in the Hidalgo County and Cameron County area without affecting the whole county line rule. Mr. Downton, the other map drawer for the State admitted that he knew it was possible to create an additional Latino opportunity district in El Paso without affecting the whole county line rule. Yet neither did. No other efforts were made to determine the possibility for such districts.

pp. 19.62-19.70. With regard to Hidalgo County this Court recognized that: "Most problematic is the enacted HD 41 – the only district in Hidalgo County that has a realistic chance of electing a Republican – is substantially underpopulated (by 4.1% from the ideal district size, but the rest of the districts in the county are substantially overpopulated (2.83% on average)." (Dkt. 690, p. 4, OPINION, March 19, 2012).

The Defendants responded to these claims through the analysis and testimony of Dr. John Alford. Dr. Alford's analysis rests on an approach of reviewing the deviations that depends on grouping districts and examining deviation differences on an average basis. Dr. Alford's analysis included one for all districts in H 283 and also an analysis for districts in all "drop-in counties". As to the drop-in county analysis, Dr. Alford admitted inclusion of districts in Counties that are not the focus of Plaintiffs population variance challenge and that contain no Latino majority districts. (Denton and Travis).[2]. However Dr. Alford's analysis did not account for situations where: there were systematic population deviations within any one county.[3] In fact, Dr. Alford's analysis did not examine whether systematic population deviations advantage one racial or political group over another in Nueces, Hidalgo, Harris or Dallas Counties.[4] As a result, Dr. Alford's analysis is of little benefit to this Court and simply does not dispute the analysis of Dr. Kousser or Dr. Arrington.

The facts on this issue show a violation of the "one person one vote" rule and Plaintiff MALC requests judgment for Plaintiff for the violation of the 14th Amendment's requirement of population equality. *See: Larios v. Cox,* 300 F. Supp. 2d 1320 (N.D. Ga. 2004), *aff'd mem.sub nom. Cox v. Larios* , 542 U.S. 947 (2004).

[2] 2014 TT. Vol. 6, p. 1899
[3] *Id.* p. 1900
[4] *Id.*

"INTENT TO DISCRIMINATE"

Admittedly, determining legislative intent is not for the weak of heart. Some believe wrongly that this requires an excavation into the emotional lives of state legislators. For instance, the State has routinely asked whether or not minority state legislators believe that Chairman Solomons is a good man or whether or not a minority legislator can name another legislator they believe is a racist. This parlor game is dispositive of nothing. However, determining legislative intent is the unique province of this court. The federal judiciary has been determining legislative intent since *Marbury v. Madison*. It is not a metaphysical séance with a crystal ball. It is a fact-based investigation performed by this court.

Arlington Heights offers a rubric by which courts may determine legislative intent in violation of the 14th Amendment. A review of the facts here, consistent with the *Arlington Heights* factors leads to the conclusion that that the adverse impact of the redistricting actions of the State were intentional.

Impact of the Challenged Decision

The impact of the state house map on the minority community is undisputed. The benchmark plan, H100, contained 50 minority opportunity districts. H283 contains only 45. [5] This reduction in the amount of ability to elect seats came while the minority population fueled 89.1% of the population growth in the intercensal period.[6] There is simply no way this is some kind of accident. The only way the minority community would lose this many seats is if a

[5] 2014 TT. at 118:19-24

[6] Texas often cities the difference between Citizen Voting Age Population Growth and Total Population. Even if this mattered, CVAP population among the minority population in Texas far outpaced the Anglo CVAP in the same time period. "In a state where during the preceding decade the Latino citizen voting age population was more than 700,000 compared to the Anglo growth in citizen voting age population of only 487,000, Texas managed to artfully craft the lines for its State House plan to create a net decrease in the number of districts in which Latinos could elect their candidate of choice." 2014 TT. at 67:8-14.

purposeful series of decisions were made to the detriment of the minority community. And, that is exactly what happened.

Historical Background of Decisions

Texas has a long, racist history no matter who has been in control of elections. Legislative intent is in redistricting is principally about the policy decisions that were made. A few spare decisions going against the minority community could be explained as unlucky. Even several made over the course of six months could be explained. But, when nearly every critical decision made in the state house map that affected minorities was decided in a way that diluted their votes, a pattern of intent has been established. It is MALC's belief that the evidence shows that when the State had discretion to make a policy choice that would help or harm the ability of minorities to elect candidates of their choice, the state chose the latter.

Precinct Splits

Generally, the evidence has shown that "there are twice as many splits per district in the minority districts than in the Anglo districts."[7] This fact was also first highlighted by Dr. Kousser in his initial report for this court back in 2011. "Two hundred and fifty-two, or 61% of the precincts that were split in H283 had BHVAP populations of more than 50%, yet only 3154 of the state's 8400 precincts, or 37.5%, had such concentrations of Latinos and African-Americans. It was a difficult task for those who drew the lines to confine a rapidly-growing minority population into as few districts as possible. The disproportionate concentration of split precincts in minority areas makes clear that the line-drawers accomplished their task with considerable precision."[8]

Specifically, these precinct splits were used to divide neighborhoods along racial lines in

[7] Tr. 140: 3-5. (speaking of solely of legislative districts in the so-called "drop-in" counties).
[8] MALC Exhibit No. 19, p. 85, ¶ 54.

order to dilute the strength of the minority vote. This claim is also nothing new, as MALC has often highlighted the split precinct issue as to HDs 26, 41, 78 and 105 in several of our previous filings in this court. However, during this phase of the trial, the micro-detail explaining the harm to the minority community of the precinct splits in El Paso, Hidalgo, and Dallas Counties was compelling.

Dallas County

"[HD] 105 goes down, in splitting precincts, picks up white population and excludes the Hispanic population on the other side."[9] Mr. McPhail, the United States' witness, went into specific detail about how the precinct lines had been used to exclude minority population from HD 105's tail that dips into HD 104.[10] The State's sole response to this is that the tail was necessary in order to pair two Republican incumbents and to ensure that HD 104 remained an SSVR majority district.[11] Empirically, this court in its first proposed interim maps (H299 & H302) drew HD 104 as an SSVR majority district and eliminated the split precincts along the HD 105 protrusion. The desire to pair two specific Republican incumbents in a Republican district cannot be a justification for a racial gerrymander. There is no political data at the precinct level. The unrebutted testimony in this case is that these splits occurred along racial lines. There were many alternate plans that the State could have chosen. But, once locked, rather than try to use race-neutral redistricting principles and keep Arlington whole, the state choose to divide the City and throw as many Latinos as it could into HD 104 and 103, two of the most over-populated districts in the House map. It's not just that the broke open precincts. They did it only to ensure that HD 104 & 103 were as big as possible in order to soak up more Latino voters like a sponge.

Hidalgo County

[9] 2014 TT. 147:7-9.
[10] *See generally* 2014 TT. 1108 – 1126.
[11] 2014 TT. 2020-2025.

The initial house map coming out the House Redistricting Committee, H113, only contained 4 precinct splits in HD 40. This map had already gotten Rep. Peña's approval. Yet and without explanation, many more precinct splits were added on the finally enacted map. There was ample testimony from Mr. Longoria describing in precise detail the policy choices made by Mr. Downton & Rep. Peña as they carved up HD 41. Mr. Downton's testimony was that precinct divisions were made because of proximity to roads, perhaps a bridge, or maybe the location of childhood friends of Rep. Peña.[12] This is another time in which Mr. Downton's memory fades as to specifics, but he is absolutely sure that none of these decisions were based on race. All or nearly all precinct lines are bounded by roads; this cannot be a credible defense to racial gerrymandering. Mr. Downton's testimony as to other precinct splits is equally vague. Mr. Downton's sole explanation as to why these splits occurred is because Rep. Peña told him to do so. Yet Mr. Peña's memory was just the opposite. However, the evidence is quite clear that this was down to maximize as near as possible the amount of Anglos in HD 41. Pointing the finger at Rep. Peña does not undo a racial gerrymander. In short, there is no credible counter evidence disproving the obvious evidence of the use of race in precinct splits in Hidalgo County.

El Paso

Mr. Downton received a map that had been agreed to by members of the El Paso delegation and, then, he began to work to split precincts. In sum, Mr. Downton chose to split 14 precincts between HD 77 & 78.[13] When he made these splits, he was using the block level racial data.[14] These precinct splits were not requested by Chairman Pickett, the dean of the El Paso delegation. In Mr. Downton's own words, "But the testimony [Pickett] gave was that he never asked me to split precincts. And that is true. He never asked me to split precincts. **I did that.**"

[12] 2014 TT. 2030-2032
[13] 2014 TT. 2117: 7-13
[14] 2014 TT. 2117: 14-22

(emphasis added). These precinct splits had a demonstrable effect on HD 78, rendering it a non SSVR majority district in sharp contrast to its delegation mates. There is also testimony from Rep. Joe Moody about the effect of the precinct splits and how they tend to exclude Hispanic neighborhoods and low-income housing from HD 78.[15] The State has made some ancillary references through cross examination of Chairman Pickett and direct testimony by former Rep. Margo about the precinct splits being necessary to exclude possible political opponents for Rep. Marquez. However, this cannot explain the cuts because Mr. Downton never met with Rep. Marquez between April 11th and 13th. Even he had or he had been given some knowledge about whom Rep. Marquez wanted to exclude, it is simply not credible that **all 14 precinct cuts** were to accommodate Rep. Marquez.

There are other precinct splits throughout the map. Most notably, several exist between HD 26 and other districts in Fort Bend County. All of the evidence points to the fact that the State used race-based mapping splitting precincts along racial lines to lessen minority voting strength.

Population Deviation

There is substantial evidence that where the state had discretion to over-populate Latino districts in drop-in counties it did so. This trend was first highlighted by Dr. Kousser in his expert report to this panel. "If these 5 districts [El Paso] were excluded, then more than twice as many Latino-majority districts would be over-populated as under-populated." Dr. Alford, the state's expert witness, makes the opposite conclusions. However, Dr. Alford did not analyze whether or not there were systemic population deviations in any one county.[16] He did not analyze Hidalgo County to explain why HD 41 is one of the smallest districts in the state while every

[15] 2014 TT. 842-877
[16] 2014 TT. 1900: 1-4

neighboring district is above population.[17] He also did not analyze whether or not population deviations were skewed against Latinos in Dallas County or Nueces County. [18]

The State has not ever provided any explanation as to why the only Latino majority district in Nueces County has nearly 5 thousand more population than its neighboring district. There is no explanation as to why three out of 4 majority Latino districts in Harris County are overpopulated. There is no explanation as to why the two districts represented by Latinos in Dallas County (HD 103 & 104) are substantially over-populated by 13,000 people.

The only conclusion is that when the State had the discretion to use population deviation as a tool to lessen the political influence of Latinos it did so. El Paso was too underpopulated to allow for much wiggle room. In Bexar County, the opposite was true. But, in delegations where Latino representatives were only a small portion of the delegation, then nearly all of their districts were overpopulated (Dallas, Nueces, and Harris, County). This Court is only left with the most obvious explanation: where possible (i.e. in drop-in counties and counties in which there was not near unanimous consensus) the State choose to pack as many Latinos in as few districts as possible.

When taken together with the evidence from the 2011 proceedings the evidence of intent is substantial.

SECTION 2 OF THE VOTING RIGHTS ACT

The Supreme Court first construed the amended version of § 2 of the Voting Rights Act, 42 U.S.C. § 1973, in *Thornburg v. Gingles,* 478 U.S. 30, (1986). In *Gingles*, the plaintiffs were African-American residents of North Carolina who alleged that multimember districts diluted minority voting strength by submerging black voters into the white majority, denying them an

[17] 2014 TT. 1900: 5-7
[18] 2014 TT. 1900: 14-16

opportunity to elect a candidate of their choice. The Court identified three "necessary preconditions" for a claim that the use of multimember districts constituted actionable vote dilution under § 2: (1) The minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district," (2) the minority group must be "politically cohesive," and (3) the majority must vote "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id.* at 50-51.

The first of the *Gingles* preconditions is commonly referred to as *Gingles I.*

1. *Gingles I*

In the Fifth Circuit, a bright-line test for meeting the *Gingles I* precondition requires the presentation of district(s) in which the minority group is at least 50% of the **citizen voting age population.** *Valdespino v. Alamo Heights I.S.D.*, 168 F.3d 848 (5th Cir. 1999) cert. denied, 528 U.S. 1114 (2000).

2. *Gingles II and III*

Whether the minority group demonstrates it is politically cohesive embodies a functional focus. "If the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests." *Gingles,* 478 U.S. at 51. In *Gomez v. City of Watsonville,* 863 F.2d 1407, 1415 (9th Cir. 1988), *cert. denied,* 489 U.S. 1080, 103 L. Ed. 2d 839, 109 S. Ct. 1534 (1989), the Ninth Circuit observed, "the inquiry is essentially whether the minority group has expressed clear political preferences that are distinct from those of the majority." Thus, political cohesiveness is determined by looking at the "voting preferences expressed in actual elections." ***Id.*** Necessarily, when we examine the evidence of political cohesiveness as voting preferences, we look to the same statistical evidence plaintiffs must offer to establish vote polarization. Indeed, political cohesiveness is implicit in racially

polarized voting.[19]

Gingles adopted a straightforward definition of racial bloc voting provided by the expert witness upon whom the district court had relied. Racial polarization or bloc voting "exists where there is a consistent relationship between the race of the voter and the way in which the voter votes ... or to put it differently, where black voters and white voters vote differently." 478 U.S. at 53, n.21 (internal quotation marks omitted).

While these three pre-conditions are necessary to establish a vote dilution claim, they alone are not sufficient. *Johnson v. De Grandy,* 512 U.S. 997, 129 L. Ed. 2d 775, 114 S. Ct. 2647, 2657 (1994).

The Court in *De Grandy*, determined that a court's examination of relevant circumstances is not complete "once the three factors were found to exist, or in the sense that the three in combination necessarily and in all circumstances demonstrated dilution." *Id***.** This is so "because the ultimate conclusions about equality or inequality of opportunity were intended by Congress to be judgments resting on comprehensive, not limited, canvassing of relevant facts." *Id***.** Failure to prove the totality of circumstances establishes the minority is not harmed by the challenged practice and rebuts the inference of discrimination arising from proof of the three preconditions. *Uno v. City of Holyoke,* 72 F.3d 973, 980 (1st Cir. 1995).

In a review of the totality of circumstances the court should be guided by the factors identified by Congress commonly referred to as the Senate factors. The Senate Report accompanying the 1982 amendments elaborates on the proof for a § 2 analysis, specifying a "variety of relevant factors, depending upon the kind of rule, practice, or procedure called into question." S. Rep. No. 417, 97th Cong., 2d Sess. 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N.

[19] *Gingles* stated that one purpose of determining the existence of racially polarized voting is "to ascertain whether minority group members constitute a politically cohesive unit ...." *478 U.S. at 56*.

177, 206-07. The Senate Report added that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *Id.* at 207. Most importantly, "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,' and on a 'functional' view of the political process." *Id.* (quoting S. Rep. No. 417, 1982 U.S.C.C.A.N. 177, 208). The lack of electoral *opportunity* is the key.

Section 2 Factual Record

1. *Gingles I*

With regard to the ability to develop redistricting plans for the Texas House of Representatives with more Latino and minority opportunity districts than were created in the new Texas House plan, the record is not seriously disputed. In the initial trial of this matter, Plaintiff MALC presented two plans that showed alternative plans with more: Spanish Surnamed Voter Registration (SSVR) majority districts than H283, more Hispanic Voting Age Population (HVAP) majority districts than H283, and more Citizen Voting Age Population (HCVAP) majority districts than H283.[20]

Plaintiff MALC's witness Representative Trey Martinez Fischer testified regarding the goals of the plans submitted by MALC. [21] The two plans on which MALC focused, plans H201 and H205, showed viable alternatives that produced additional Latino opportunity districts above those produced in H283.[22] Plan H205 for instance developed two districts in west Texas HD 81 and 84.[23] In these plans HD 81was reasonably compact, and had 51.8% SSVR, 61.1 HVAP, and

[20] Plaintiff MALC's Exhibit 70, p.3.
[21] 2011 TT. pp. 72-91.
[22] *Id.*; Plaintiff MALC's Exhibits 1, 2, 5, 6.
[23] 2011 TT. pp. 81-84. (Martinez Fischer testimony)

51.2 HCVAP. [24] District 84, in Lubbock had 54% SSVR, 58% HVAP and 53% HCVAP.[25] No comparable districts exist in the State's plan, H283.

In the subsequent trial of this matter Plaintiff MALC presented additional plans for West Texas as described by Mr. Korbel. First, in Plan H360 MALC presented a "plug-in" districts that affects only HD 81 and 82 without any ripple effect on other districts and which created a compact house district with 50.1% Hispanic citizen voting age population.[26] MALC also submitted a plan for the Midland/Ector County area that created a compact district that was 55% Hispanic citizen voting age population in plan H329. [27] In Lubbock, MALC's plan H329 created a compact district which only split Lubbock County (as did plan H283) with Hispanic citizen voting age population of 50.9%.[28] No comparable district exists in H283.

In 2011, MALC also presented Gingles I plans for the Cameron/Hidalgo County area, for Nueces, El Paso and Harris Counties that produced Hispanic citizen voting age population districts.[29] In the more recent trial MALC also presented compact "plug-in" districts for Bell

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[24] 2011 TT. 1, p.84; Plaintiff MALC's Exhibits 1 and 2.
[25] Plaintiff MALC's Exhibit 1 and 2; 2011 Tr. Vol. 1, p. 83.
[26] 2014 TT. pp. 1398-40; MALC Exhibits 91, 92, and 93.
[27] See MALC Exhibits 94, 95 and 96.
[28] MALC Exhibits 100, 101, and 102.
[29] Plan H205 also created a new Latino opportunity district, HD 72, in the Hidalgo County/Cameron County area. Plaintiff MALC's Exhibits 1 and 2. HD 72 in plan 205 is reasonably compact and has an 88% HVAP, 82% SSVR, and 83% HCVAP. 2011TT. Vol. I, pp. 85; Plaintiff MALC's Exhibit 1 and 2. District 72 in Plan H205 was created without impacting the other Latino opportunity districts in Hidalgo and Cameron County and no comparable district exists in H283. In addition, plan 205 restored a Latino opportunity district in Nueces County eliminated by the state in Plan H283. 2011TT. Vol. I, pp. 79-80; Plaintiff MALC's Exhibits 1 and 2. In MALC's plan H205 district 33 in Nueces County contains 60.3% HVAP, 56% SSVR, and 58% HCVAP. *Id.* In the state's plan H283 district 33 is removed from Nueces County and transferred to Rockwall County in north Texas and is no longer a Latino opportunity district.

In Harris County plan 205 maintains the current Latino opportunity districts, but also enhances the Latino population in district 144 so that it goes from an emerging Latino district to a true Latino opportunity district. 2011TT. Vol. I, pp. 79-81; Plaintiff MALC's Exhibits 1 and 2. In MALC's plan 205, Harris County district 144 contains 72% HVAP, 53% HCVAP and 51.3 % SSVR. Plaintiff MALC's Exhibits 1 and 2. In the state's plan H283, Defendants no new Latino opportunity districts in Harris County are created. Instead, the Defendants suggest that their obligation under the Voting Rights Act was met when they raised the SSVR numbers of an existing Latino opportunity district HD 145. 2011 TT. Vol. I, pp. 80-81; Plaintiff MALC's Exhibit 19, p. 71 n. 33; Thus no comparable district to MALC's plan H205, district 144, exists in Harris County under H283. In El Paso MALC's plan 205 creates 5 reasonably compact districts with majority SSVR, majority HVAP, and majority HCVAP districts

County and Fort Bend County showing majority minority citizen voting age population districts where none exist in H283. [30]

Defendant's reliance on the whole county rule as a defense to the creation of these *Gingles* districts is misplaced. First, Article III, Section 26 of the Texas Constitution is not a shield that prevents the creation of new Latino opportunity districts. Yet, the chairman of the Redistricting Committee, Chairman Solomons was unequivocal that in a conflict with the Voting Rights Act, the Texas constitutional requirement would control.[31] Only a ruling from the United States Supreme Court would alter his judgment on this point.[32] Similarly, the main architect of the State's redistricting strategy, Mr. Interiano, testified that unless the county lines could be maintained, Latino opportunity districts would not be drawn.[33] Yet, the United States Supreme Court has clearly set out that state election-law requirements such as the whole county line provision may be superseded by federal law. *Bartlett v. Strickland*, 129 S. Ct. 1231, 1239 (2009). Here, when faced with the choice of complying with Section 2 of the Voting Rights Act and the development of viable, reasonably compact Latino opportunity districts or maintaining a county line, the State chose the county line.

Alternative plans that more strictly adhere to the requirements of Article III, Section 26, of the Texas Constitution and contained no more county cuts than the plan H283, such as Plaintiff MALC's plan H201, demonstrate that, more Latino opportunity districts could have been created than were developed under the State's 2011 Texas House redistricting plan.[34]

Clearly, Plaintiff MALC met the requirements of *Gingles I.*

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compared to only 4 in the Defendants' plan H283.
[30] See TT. pp. 1402-09; MACL Exhibits 115-123, and 126-131.
[31] 2011 TT. pp. 1592-95.
[32] 2011 TT. p. 1593
[33] 2011 TT. p. 1447.
[34] MALC's Exhibits 5, 6 and 91.

2. *Gingles II and III*

In 2011 Plaintiff MALC presented evidence of racial polarized voting using the traditional statistical methods approved by the United States Supreme Court in *Gingles*.[35] Dr. Kousser, Plaintiff MALC's expert reviewed a number of state-wide and local elections employing ecological regression statistical methodologies in three different ways: least squares, weighted least squares and ecological inference or King's EI. [36] Dr. Koussers' conclusion was that the data was driving the result, so regardless of the method employed the same results were achieved – elections in Texas continue to be polarized, Latinos are politically cohesive and Anglos vote sufficiently as a bloc to defeat the Latino preferred candidate in Texas General Elections.[37] Moreover, Latinos and African American voters vote together and are politically cohesive in the General Elections in Texas. [38] All of the other Plaintiffs' experts on polarized voting came to the same conclusions as the results of their statistical analyses were remarkably similar.

In the 2014 trial of this cause Plaintiff MALC submitted the testimony and analysis of Dr. Robert Brischetto. Dr. Brischetto reviewed the expert reports of Dr. Kousser and others and updated MALC's analysis with a polarized voting study of 2012 elections in regions of focus for MALC's claims. [39]Specifically, Dr. Brischetto focused on elections in Midland, Ector, Lubbock, Nueces, Kleberg, Bell, and Fort Bend Counties. His findings were remarkable. – Latinos voted cohesively in primary and general elections in Midland/Ector, Lubbock, Nueces, and Kleberg Counties, Latinos and other minorities voted cohesively in general elections in Bell and Fort Bend Counties. In addition, elections were polarized so that non-Latinos voted cohesively

[35] MALC's Exhibit 19, pp. 7-53.
[36] MALC's Exhibit 19, pp. 26-53 ; 2011TT. pp. 214-217.
[37] 2011TT. pp. 217, 229, 249-250; Plaintiff MALC's Exhibit 19, pp. 26-52.
[38] 2011 TT. pp. 229; Plaintiff MALC's Exhibit 19, pp. 51-52.
[39] MALC Exhibits 161, 163-166.

against Latino preferred candidates in both primary and general elections in Midland, Ector, Lubbock, Nueces and Kleberg Counties and non-minority voters voted cohesively against minority preferred candidates in general elections in Fort Bend and Bell Counties.

Dr. Brischetto's findings were consistent with the conclusions reached by Dr. Kousser in 2011. Moreover, Dr. Brischetto's determination that elections were polarized in primary elections as well as in general elections is evidence that partisan voting does not justify or explain the racial voting differences. Finally, while counsel for the State conceded racial polarized voting in Midland, Ector, Lubbock, Bell, and Fort Bend Counties, the argument against racial polarized voting is Kleberg and Nueces County amounts to sophistry.

Plaintiff MALC's evidence on *Gingles II and III* is compelling and not seriously challenged.

3. Totality of Circumstances

Substantial evidence of the totality of circumstances issues was presented at the initial trial. More recently, MALC updated the continuing effects of discrimination through Mr. Korbel. Not only are Latinos and minorities continuing to lag significantly behind their Anglo counter parts, throughout the State, Mr. Korbel's review of the data shows that in the focus regions those disparities are equal to or worse to the State-wide numbers. In addition, Plaintiff MALC presented the testimony of Commissioner Sanchez of Midland County and Commissioner Sedeño of Lubbock County. Both gave compelling testimony regarding not only the cohesion of the Latino community in their respective counties but also of the need for minority opportunity districts to allow full and meaningful participation in elections in Midland, Ector and Lubbock Counties.

The record in this case establishes Plaintiff's Section 2 claim and this Court should enter

Judgment for Plaintiff.

CONCLUSION

On the record of this case, the MALC is entitled to Judgment on all of the claims presented in this case. Plaintiff MALC has presented evidence establishing that Texas House plan H283 violates the 14th Amendments requirements of one person, one vote; that plan H283 violates Section 2 of the Voting Rights Act, 42 U.S.C. §1973 both as to effect and intent; and that the challenged plans were adopted with the intent to discriminate against and disadvantage Latino voters in violation of the 14th Amendment of the United States Constitution. Plaintiff MALC should be granted Judgment in this case.

DATED: July 25, 2014

Respectfully submitted,

/s/ Jose Garza

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CAUSE NO. 5:11-CV-361-OLG-JES-XR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent by the Court's electronic notification system July 25, 2014, to counsel of record registered with the court to receive same and to those not so registered the foregoing document has been sent by email as agreed by the parties for each of the cases referenced above, .

/s/ Jose Garza
Jose Garza