

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

SHANNON PEREZ, *et al.*,

*Plaintiffs,*

v.

STATE OF TEXAS, *et al.*,

*Defendants.*

CIVIL ACTION NO.  
SA-11-CA-360-OLG-JES-XR  
[Lead case]

**STATE DEFENDANTS' BENCH BRIEF: 2011 HOUSE TRIAL**

Defendants the State of Texas, Rick Perry, in his official capacity as Governor of Texas, and Nandita Berry, in her official capacity as Texas Secretary of State (the "State Defendants") submit the following summary of evidence for the 2011 House trial.

**I. Split Precincts/Voting Tabulation Districts**

Plaintiffs allege that split precincts are inherently suspect because they indicate race-based line-drawing. This claim is based on the false premise that only racial data is available below the precinct level; therefore, precincts must be split based on race.

Racial data is not the only data that RedAppl provides at the block level. Clare Dyer testified (and demonstrated) that RedAppl allows a user to display political information—specifically, the percentage of votes won by a candidate in a particular election—in a statistics bar on the RedAppl screen. When the user displays election results, any change to the district boundaries will change the election results shown. This is true even if the district is altered by splitting a precinct: the results for the blocks included in the district will be factored into the total election performance indicator in the statistics bar. 2014 Transcript

279:3-25 (Dyer).<sup>1</sup> As Ms. Dyer testified at trial, “election data is allocated down to the block level, so that when people split VTDs, you can still get election results for the district.” 265:25-266:2 (Dyer). In addition to political performance, precincts may be split for a number of race-neutral reasons, including (1) following city boundaries, (2) including financial supporters, (3) following roads, (4) incorporating airports and government buildings, (5) including a member’s home, (6) complying with the Texas Election Code, and (7) complying with the Voting Rights Act. 177:7–178:23 (Arrington).

Splitting precincts is consistent with Texas law, which expressly provides for changes to precincts in redistricting. *See* Tex. Elec. Code § 42.023. And the Texas Legislative Council’s guidance on redistricting, *State and Federal Redistricting Law in Texas* (Exhibit D-128), likewise does not prohibit or even caution against splitting VTDs. 1203:2-7 (Hanna); 179:3-180:3 (Arrington). Nor did TLC advise the House Redistricting Committee or individual map drawers not to split precincts. 2020:25-2021:2 (Downton). The House Redistricting Committee did not have a policy against splitting precincts in 2011. 1592:4-7 (Interiano). The Committee asked individual members to maintain whole precincts in their proposed districts so the Committee could assemble all districts into a statewide proposal without having to reconcile inconsistent precincts. 2020:6-24 (Downton).

## **II. El Paso County**

El Paso County was a drop-in district in the 2011 House plan. 783:10-14 (Pickett). All five members of the county delegation had input into the map that was proposed to the House Redistricting Committee. 732:19-733:1 (Pickett). Rep. Joe Pickett was the unofficial leader of the delegation and organized the map drawing efforts. 725:18-22. Rep. Marquez had the most involvement in the process, 820:13-22 (Margo), submitting multiple proposals and requesting that potential political opponents—including Joe Moody, former El Paso Mayor John Cook, and Rep. Quintanilla’s chief of staff, Robert Grijalva—be excluded from

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<sup>1</sup> Unless otherwise indicated, all page and line citations refer to the transcript of the July 2014 trial on the 2011 Texas House redistricting plan.

her district. 788:12-789:8 (Pickett); 820:23-821:15 (Margo). Rep. Quintanilla also had significant involvement through his staff. 783:21-784:1 (Pickett). Reps. Gonzales and Margo had comparatively little input. 784:2-4, 8-10 (Pickett).

Rep. Pickett sent three proposed plans for the configuration of the El Paso delegation to Chairman Solomons's RedAppl account. *See* D-271; D-304. The first proposal was sent on March 15, 2011. *See id.* Rep. Pickett later withdrew this proposal because certain members of the delegation did not approve it. 785:2-786:11, 790:8-14 (Pickett); 1950:10-1951:2 (Bruce). The El Paso delegation met again in an effort to come to a consensus, and following this meeting Rep. Pickett sent two different versions to Chairman Solomons's RedAppl account. 762:19-763:13 (Pickett). One was a proposed plan he received from Rep. Marquez, which is identified in his RedAppl account as "PICK H120." *See* D-272; D-297; 760:12-21 (Pickett). These plans were downloaded to Chairman Solomons's account on March 21, 2011 and became "SOLO H109" and "SOLO H110." D-271; D-301; D-302. The plan identified as "SOLO H109" was the first version sent from Rep. Pickett for El Paso County, and "SOLO H110" was the second version of the county plan. *See* D-271. Bonnie Bruce, the primary user of the Solomons RedAppl account, forwarded both plans to Downton, counsel for the House Redistricting Committee, on or about that same day. 1992:1-24 (Downton); 1972:6-22 (Bruce); 2009:7-2010:11 (Downton).

Although Ms. Bruce sent both plans to Mr. Downton, he only downloaded the second version of the El Paso plan on March 23, 2011. 2009:7-2010:11, 2012:9-22 (Downton); D-270; D-244. Rep. Pickett had informed Ms. Bruce and Mr. Downton that the delegation agreed to use the second version of the El Paso plan, which included the "antler" configuration initially proposed by Rep. Marquez. 1953:19-1954:11 (Bruce); 1989:23-1990:1, 2010:2-11 (Downton). Downton included this exact configuration of El Paso County in his draft of the statewide plan. This plan became "HRC1 H169" in Downton's account. *See* D-270; D-244.

As Downton prepared the full statewide plan, he included the configuration for El Paso County districts that existed in “PICK H120.” D-209. The House Redistricting Committee presented this version of HD 78, based on a draft plan entitled “HRC1 H215,” to Rep. Margo on April 5, 2011. *See id.* This version of District 78 had a total SSVR of 45.8%.

On April 6, 2011, Downton sent a draft statewide plan to David Hanna and asked him to run a retrogression analysis. D-325. Mr. Hanna identified a possible retrogression risk in El Paso and recommended increasing the Total SSVR in District 78. D-122. Based on Mr. Hanna’s comments, Downton made changes to the boundary line between District 78 and District 77. 2011:18-2012:3 (Downton). These changes are reflected in “HRC1 H258” in Downton’s RedAppl account. *See* D-270, D-366. By splitting precincts along the border, Downton was able to increase the Total SSVR from 45.8% to 46.8% in District 78. 2006:15-21, 2117:14-22 (Downton); D-367.<sup>2</sup> Downton testified that he considered racial data at the block level while splitting these precincts in order to comply with the Voting Rights Act and avoid retrogression. 2013:6-14. The changes to the configuration of Districts 77 and 78 appeared in Plan H110, a pre-public plan, created on April 12, 2011. D-317<sup>3</sup>; D-368. On or about April 12, 2011, Hanna performed a second retrogression analysis of the El Paso districts. D-327. Based on the modifications to District 78, Hanna changed his assessment and no longer identified this district as a retrogression risk. *See id.* As a result, the House Redistricting Committee included this version for the El Paso districts in Plan H113, Chairman Solomons’ first public plan. D-112\_00001; D-112\_00030. The configuration for the El Paso districts never changed after Downton made the adjustments to District 78 to comply with the Voting Rights Act. *See* D-123 (Hanna memo dated April 22, 2011); D-

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<sup>2</sup> Another effect of these changes to HD 78 was to remove precinct 23, which included Rep. Margo’s district office, many of his financial supporters, and his mother-in-law’s residence. 824:3-9 (Margo).

<sup>3</sup> The United States has raised a hearsay objection to this exhibit to the extent it is used to prove the truth of the matter asserted.

109\_00011 (map of El Paso County in Plan H283); D-109\_00045 (Red 109 report for Plan H283); 2006:22-2007:22 (Downton).

There is no evidence of intentional discrimination in the configuration of El Paso House districts under Plan H283. Two of the witnesses who testified about El Paso, Senator Rodriguez and Rep. Moody, had no involvement in the creation of the House districts. 707:19-22 (Rodriguez); 882:6-16 (Moody). Rep. Pickett was aware that the districts had to comply with the Voting Rights Act, and he made sure that an analysis was performed to ensure that they did. 798:10-19 (Pickett). At no time did any member of the El Paso delegation express a desire to discriminate against Latinos, African-Americans, or any other minority. 798:20-25 (Pickett); 827:20-22 (Margo). Reps. Pickett and Margo testified that they would not have tolerated it had it occurred. 799:1-2 (Pickett); 827:23-24 (Margo). The plaintiffs have not provided any evidence reflecting any intent to discriminate against minority voters in El Paso on the part of any member of the county delegation or any member of the Legislature.

### **III. Hidalgo County**

House District 41 was not drawn to include Anglo population or exclude Hispanic population. Gerardo Interiano drew the initial version of HD 41, using partisan shading, to include areas in Hidalgo County that favored Attorney General Greg Abbott in his 2010 election. Dr. Arrington admitted that the boundaries of HD 41 were consistent with areas of greater support for General Abbott, 191:20-192:5 (Arrington), and he conceded that he has no knowledge of the area, 192:7-196:4 (Arrington). A shaded map of HD 41 in Plan H283 shows several areas of concentrated Anglo population that were not included in HD 41. D-296; 186:25-189:10 (Arrington). Based on the 2005-2009 ACS survey, HD 41 maintained 65% SSVR under Plan H283. 185:16-19 (Arrington); D-109.

The evidence also proves that VTDs were split in HD 41 for race-neutral reasons. Mr. Interiano testified that precincts were split to include Pena's home, to exclude Gonzalez's home and provide a link to the adjacent district, to remove a Democratic

precinct and maintain a link to the adjacent district, and to follow a road. 1507-1508 (Interiano). Mr. Downton was not involved in the initial creation of HD 41, but he worked with Rep. Pena to make additional changes to the district after the initial proposal was created. Mr. Downton testified that every precinct he split was based on Rep. Pena's request. 2027:3-2030:25; 2067:11-2068:4 (Downton). Precincts 0107 and 0014 were split to bring in Rep. Pena's home. 192:6-20 (Arrington); D-295. Precinct 0062 was split to exclude Rep. Veronica Gonzalez's home, and Precinct 0214 was split to maintain contiguity with the neighboring district; Precincts 0006, 0008, 0025, 0035, 0047, 0048, 0063, and 0095 were split to follow roads; Precincts 0028 and 0103 were split to remove Democratic areas from the district; Precinct 0088 was split to follow the City of Alton's boundary; and Precinct 0105 was split at the direction of Reps. Pena and Guillen. D-295.

The plaintiffs' witnesses provided no evidence that anyone divided precincts in HD 41 on the basis of race. The United States' witness Jaime Longoria admitted that precincts might be split for any number of reasons, 531:9-13 (Longoria), and he acknowledged that many of the precinct splits in HD 41 followed roads, 530:23-531:8, 531:14-19 (Precincts 63, 47, 48, and 95); 538:9-17 (Precincts 6 and 25). Moreover, Mr. Longoria had no personal knowledge about the creation of HD 41 or the reason behind any part of its boundary. 535:25-536:3. He did not speak to any legislator or legislative staffer who was involved in drawing the district, 526:22-527:4, and he had no personal knowledge why any precinct in HD 41 was split, 528:17-20; 529:1-5; 529:22-25; 530:5-8; 533:11-14; 538:18-22.

#### **IV. Bexar County**

Bexar County was a drop-in county in which the delegation worked collectively to reach agreement on a countywide map. 1074:2-17 (Solomons); 1517:4-7 (Interiano). In 2011, the 10-member Bexar County delegation included 7 Democrats and 3 Republicans. 338:1-5 (Farias). The Bexar County redistricting process was overseen by Rep. Mike Villarreal, Vice-Chairman of the House Redistricting Committee, and Rep. Ruth Jones McClendon, the dean of the Bexar County delegation. 1517:4-11 (Interiano); 315:14-316:15 (Farias). At the

beginning of the process, Rep. Villarreal asked members to provide him with an ideal configuration of their districts. 1519:2-8 (Interiano). Rep. Villarreal instructed members that their maps needed to comply with the Voting Rights Act. 364:23–365:1 (Garza). Rep. Villarreal provided instructions to Bexar County members about how to draw their ideal districts, including three parameters: (i) maintain 10 districts in Bexar County; (ii) keep all districts within +/- 5% of the ideal district population; and (iii) do not eliminate “any minority-majority voting age districts.” D-2654; 375:25–377:2 (Garza). Rep. Villarreal subsequently incorporated the members’ preferences into a combined countywide map. To the extent that more than one member requested a particular area, Rep. Villarreal urged them to work together to resolve the conflict. 1519:12-22 (Interiano); 419:11-18 (Garza). The delegation met on numerous occasions to try to work out an agreed county-wide map. 1517:11-13 (Interiano).

The delegation eventually reached consensus on a countywide map; all but one Bexar County member (Rep. Joe Farias) agreed to the delegation’s map. 1594:25–1595:6 (Interiano); 325:18-326:2 (Farias). Even though he opposed the delegation’s proposal, Rep. Farias admitted that all of the Bexar County districts, including HD 117, satisfied the three goals that Rep. Villarreal had set out for the delegation. 340:9-12, 341:1-4 (Farias); *see also* 418:5-8 (Garza).

During the 2011 session, HD 117 was represented by Rep. John Garza, a first-term Republican who had narrowly secured election in November 2010. 362:9-11 (Garza). HD 117 was overpopulated by 52,723 people. 416:3-13 (Garza); Ex. D-100, Plan H100, Red-100 Report (2005-2009 ACS Survey) at 10. At the same time, districts in central Bexar County were largely underpopulated and needed to gain population by extending beyond the City of San Antonio. 372:6-7 (Garza); Ex. D-100, Plan H100, Red-100 Report (2005-2009 ACS Survey) at 10. The goals for HD 117 in the 2011 redistricting process were to provide Rep.

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<sup>4</sup> The United States has raised a hearsay objection to this exhibit to the extent it is offered to prove the truth of the matter asserted.



Garza with an opportunity to be reelected; create a rural, conservative district outside the City of San Antonio; and comply with the Voting Rights Act by maintaining the district's SSVR over 50%. 1518:9-15, 1523:2-18 (Interiano); 399:4-13 (Garza). Speaker Straus and his staff determined that in order to achieve these goals, HD 117 needed to include rural areas of southern Bexar County that were previously represented by Rep. Farias (HD 118) under the benchmark plan. 1559:7-15 (Interiano). HD 117's Hispanic CVAP increased from 58.8% in the benchmark plan to 63.8% in the 2011 enacted map, while HD 117's non-suspense SSVR reduced slightly from 50.8% in the benchmark to 50.1% in the 2011 enacted map. 415:13-23, 423:5-11 (Garza); Ex. D-100, Plan H100, Red-109 Report at 4; Ex. D-109, Plan H283, Red-109 Report at 4. Rep. Garza did not have much influence on the creation of HD 117, 420:1-4 (Garza), and the configuration of HD 117 in the delegation map was not entirely what he had sought for his district, but he eventually agreed to the map. 1596:20–1597:4 (Interiano).

There is no evidence that voter turnout analysis played any part in the creation of HD 117. In the drawing of HD 117, the State's mapdrawers did not utilize voter turnout data or otherwise seek out precincts with low Hispanic voter turnout. 1600:16–1601:8, 1601:19-24 (Interiano). Rep. Farias admitted that Rep. Garza never mentioned voter turnout with respect to HD 117. 344:3-11, 345:11-17 (Farias).

Rep. Farias opposed the delegation's map because he wanted to retain certain areas of southern Bexar County, particularly the city of Somerset and the neighborhood of Whispering Winds. 326:3-8 (Farias). Rep. Farias raised his concerns with Rep. Garza, Speaker Straus, Rep. Villarreal, Rep. McClendon, and other members of the Bexar County delegation, but Rep. Farias' concerns were not resolved. 326:12–327:4 (Farias). Rep. Farias introduced an amendment on the House floor that would have returned Whispering Winds to HD 118, but the amendment was tabled by a majority vote of the House. 327:5-13, 333:10-12 (Farias). Rep. Farias recognized that the 2011 redistricting process was partisan and



that partisanship, not race, motivated the voting, including the defeat of his floor amendment. 354:3-9 (Farias).

## **V. Dallas County**

The Dallas County House districts were drawn to absorb the loss of two districts and to maintain all existing minority opportunity districts. Dallas County lost two seats after the 2010 Census, which required the pairing of four Republican members. 183:22-184:4 (Arrington), 2014:25-2015:15 (Downton). The Dallas County delegation could not agree on a countywide map because no one wanted to be paired. 2014:25-2015:15 (Downton). Chairman Branch asked Ryan Downton to help create a plan for Dallas County that would be agreeable to as many members as possible. 1989:5-10, 2015:16-2016:1 (Downton).

Ultimately, the Dallas County plan paired 4 Republicans—Rodney Anderson and Linda Harper-Brown in HD 105, and Cindy Burkett and Joe Driver in HD 113. D-109. To pair Reps. Anderson and Harper-Brown, Ryan Downton was directed by one of the chairmen to extend HD 105 south to pick up Rep. Anderson's house. 2018:2-9 (Downton); 614:22-614:15 (Lopez); DOJ-299A. Rep. Harper-Brown's house is located in precinct 4626 in the northern portion of HD 105, and Rep. Anderson's house is located in precinct 4528 in the southern portion of HD 105. 2018:15-22 (Downton), D-319.

David Hanna recommended maintaining HD 103's benchmark SSVR level and maintaining SSVR above 50% in HD 104 if possible. 2143:10-2144:2 (Downton); D-122. In drawing the countywide map, Mr. Downton started with HD 103 and HD 104 because of their status as Hispanic opportunity districts and concerns about maintaining their SSVR levels. 2069:11-21 (Downton). Maintaining HD 104's SSVR above 50% presented a challenge due to the lack of concentrated Hispanic population necessary to maintain the SSVR level in HD 103. 2017:11-2018:1 (Downton). Mr. Downton met with Democratic Reps. Rafael Anchia (HD 103) and Eric Johnson (HD 100) to draw their districts. 2016:23-2017:7 (Downton). The enacted plan maintained SSVR in both HD 103 and 104 in response to the concerns raised by David Hanna. 2144:3-9 (Downton).

Precincts were split between HD 104 and 105 to facilitate the pairing of Reps. Anderson and Harper-Brown while maintaining HD 104's SSVR above 50% to comply with the Voting Rights Act. 200:14-202:1 (Arrington); D-109. Precinct 4504 was split because of the large population in the precinct that did not need to be moved into HD 105 as Ryan Downton attempted to draw a line down HD 105 to Rep. Anderson's house, and create a pathway up to precincts 4510, 4514, and 4516. 2021:3-22 (Downton). If precinct 4504 had not been split, this would have left HD 104 underpopulated by 35,000. 2022:9-13 (Downton). In order to create a pathway to Rep. Anderson's house, Ryan Downton split precinct 4508. 2022:14-19 (Downton). Because Mr. Downton was attempting to assure Voting Rights Act compliance by maintaining SSVR levels in HD 103 and HD 104, he relied on racial data to include Hispanic population in HD 104 and put Anglo population in HD 105. 2080:8-2081:4, 2144:23-2145:2 (Downton). Mr. Downton testified that there was no other way to draw the 2011 house map in Dallas County and accomplish the goals of pairing Rep. Anderson and Harper-Brown, keeping HD 104 above 50% SSVR, and maintaining the SSVR level in HD 103. 2081:5-17 (Downton).

There is no evidence of intentional discrimination in the Dallas County House districts. None of the plaintiffs' lay witnesses had any personal knowledge of the legislative process or the purpose of any district boundary in Dallas County. *See* 579:19-580:3 (Wallace); 610:22-611:8, 614:19-23, 615:6-11 (Lopez); 1128:13-1129:6 (McPhail); 1140:12-14 (Magdaleno).

## **VI. Harris County**

In the benchmark plan, Harris County had 25 House districts, represented by 13 Republicans and 12 Democrats. D-100, Plan H100, Red-350 Report at 3. Based on the 2010 Census, Harris County was entitled to 24.41 House districts. 1666:11-14 (Hochberg); D-221 at 1. In 2001, when Harris County was entitled to 24.46 House districts, the House adopted a redistricting plan that allocated 24 districts to Harris County. 1328:1-3 (Coleman); D-127, May 7, 2001 House Journal at 2704. The 24-member plan adopted by the House in 2011 was

supported by Harris County Democrats, including Rep. Garnet Coleman, Rep. Jessica Farrar, Rep. Scott Hochberg, Rep. Senfronia Thompson, and Rep. Sylvester Turner. D-127, May 7, 2001 House Journal at 2704.

After the 2010 census figures were released in February 2011, David Hanna provided a risk assessment regarding the number of House districts in Harris County. 1201:25–1202:23 (Hanna); D-135. Mr. Hanna advised that Harris County should get 24 districts because the “as nearly as may be” language of the Texas Constitution’s county line rule<sup>5</sup> “means something, and one number only,” and “putting the wrong number in Harris County is a catastrophic error if you guess wrong” because it would require Harris County and most of the rural areas of the State to be redrawn. 1202:14–23 (Hanna); D-135. Applying the county line rule, and consistent with the advice of TLC, Chairman Solomons determined that Harris County would be allocated 24 districts in the 2011 House map. 1012:24–1013:2 (Solomons). After making this decision, Chairman Solomons notified Harris County delegation members of his decision. 1986:11–14 (Bruce).

In the beginning of the 2011 redistricting process, Rep. Wayne Smith and Rep. Senfronia Thompson were working together on a 25-member map for Harris County. 1611:4–7 (Interiano); 1241:10–1242:3 (Thompson). Republican and Democratic members of the Harris County delegation attempted to reach agreement on a countywide map, but they were unable to reach consensus. 1242:4–7 (Thompson). The Harris County map that was dropped into the statewide map submitted to the House Redistricting Committee was a 24-member plan provided by Rep. Beverly Woolley, which had the agreement of the Harris County Republican delegation. 1609:7–14 (Interiano). When the statewide House plan was considered on the House floor, members obtained several changes to the configuration of the Harris County map, including amendments offered by Rep. Garnet Coleman, Rep.

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<sup>5</sup> *See* Tex. Const. art. III § 26 (“The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed . . .”).

Senfronia Thompson, and Rep. Alma Allen. 1608:22–1609:6, 1610:9-13 (Interiano); 1336:2-6 (Coleman).

The TLC also provided advice about the potential pairing of Rep. Scott Hochberg (HD 137) and Rep. Hubert Vo (HD 149). *E.g.*, D-122; 1192:20–1194:18 (Hanna). David Hanna advised that the pairing did not create any retrogression problems because HD 137 was not a performing Hispanic opportunity district, and it would require a “novel retrogression theory” to extend Voting Rights Act protection to HD 149 because no single racial or ethnic group comprised more than a quarter of the district’s voting age population. D-122; 1193:4–1194:18 (Hanna). Mr. Hanna confirmed at trial that he did not believe HD 149 was a protected district. 1158:8-9 (Hanna). Rep. Vo testified that he did not believe that the enacted House plan intentionally fragmented the Asian-American community. 1381:17-21, 1381:25-1382:8 (Vo).

## **VII. Nueces County**

Based on its 2000 Census population, Nueces County was entitled to 2.26 House seats; thus, in the benchmark plan, Nueces County contained two whole districts and a portion of a third, which joined surplus population with San Patricio, Aransas, and Calhoun County. Based on its 2010 Census population, Nueces County was entitled to 2.029 House seats. 657:9-658:7 (Herrero); D-212; D-214. Accordingly, the Texas Constitution required that only two districts be apportioned to Nueces County. 1185:16-22 (Hanna). Failure to comply with the Texas Constitution’s whole-county rule would have exposed the entire plan to a challenge in state court. 1201:15-22 (Hanna).

Because Nueces County’s level of Spanish-surnamed registered voters was just under 50%, it was not possible to create two SSVR-majority districts without removing a portion of the county’s population and violating the whole-county rule. 1186:6-12 (Hanna); 2037:23-2038:5 (Downton); 199:14-17 (Arrington). Plaintiffs contend that the Legislature’s failure to include part of a third district in Nueces violates the Voting Rights Act; however, Mr. Downton testified that Nueces County raised concerns under the VRA regardless of

whether it had 2 or 3 districts. 2095:25-2096:14 (Downton). Ultimately, the Legislature elected to ensure that one of the two Nueces County House districts would be a strong Hispanic opportunity district. 2011 Transcript 1498:6-23 (Interiano). As a result of the 2011 redistricting, the Nueces County delegation went from three Republicans to one Republican and one Democrat in 2012. 660:10-12, 661:11-15 (Herrero).

### **VIII. Fort Bend County**

Under the benchmark House plan, Fort Bend County was represented by two Republicans, Charlie Howard (HD 26) and John Zerwas (HD 28), and one Democrat, Ron Reynolds (HD 27). Consistent with Chairman Solomons's instruction, the members of the Fort Bend delegation worked together to determine a proposed plan. Each member consented to the configuration by signing a map of his proposed district. D-229 at 51, 98, 120. Rep. Senfronia Thompson, who gave limited testimony about Fort Bend County, was not aware that the members of the county delegation had drawn and approved their districts. 1283:12-23 (Thompson).

### **IX. Bell County**

The districts in Bell County were created by Rep. Jimmy Don Aycock (HD 54) and Ralph Sheffield (HD 55). Rep. Aycock was a member of the Redistricting Committee, and he took the lead in drawing the districts. 1729:9-11, 19-21 (Aycock). Rep. Aycock's primary motivations in the redistricting process were to maintain communities of interests, create a legal map, and maintain as many Republican seats as possible. 1740:25-1741:7 (Aycock).

Under the benchmark plan, HD 54 included part of Bell County and all of Lampasas and Burnet. Because of population growth in Bell and Burnet County, Bell County could no longer be joined with Burnet County in a single district. As a result, Burnet County was removed from HD 54, and only Lampasas County and part of Bell County remained. 1727:7-20 (Aycock). Because Burnet County had been a strong Republican area in HD 54, Rep. Aycock wanted to gain Republican strength in other areas, particularly Salado. Although Rep. Sheffield did not want to lose Salado, he eventually agreed to its inclusion in

HD 54. 1730:21-1731:4 (Aycock). The final configuration of HD 54 and HD 55 in Plan H283 reflects the give and take between Rep. Aycock and Rep. Sheffield. 1775:3-6 (Aycock).

In Plan H283, HD 54 includes most of Killeen<sup>6</sup>, all of Harker Heights and Salado, southwestern Bell County, and all of Lampasas County. *See, e.g.*, D-341. Rep. Aycock testified that Lampasas County and Killeen share a community of interest because Killeen is the closest major population center, and many Lampasas County residents have a connection to the military. By contrast, Lampasas County does not share the same community of interest with Temple and Belton, which are manufacturing and transportation centers in eastern Bell County. 1734:5-24 (Aycock). Rep. Aycock therefore wanted to keep Lampasas County in a district with Killeen rather than Temple and Belton. 1732:1-1734:9 (Aycock). As a result of the changes to HD 54 from the benchmark to Plan H283, Hispanic CVAP increased from 14.8% to 15.8%; Black CVAP increased from 20.5% to 22.2%; Asian CVAP increased from 2.1% to 2.6%; and Anglo CVAP decreased from 59.4% to 56.1%. *Compare* D-100\_00029, *with* D-109\_00039; *see also* 1728:9-16; 1731:14-25 (Aycock).

Rep. Aycock testified that he relied on his own knowledge to determine which areas would be included in HD 54 and HD 55. 1735:12-14. When he needed assistance in drawing the districts, he consulted with Ryan Downton, who drew boundary lines at Aycock's direction. 1755:1-9. As a non-lawyer, Rep. Aycock relied on staff and the resources of the House Redistricting Committee to review the proposed districts and ensure legal compliance. 1741:8-17 (Aycock). At no time did Rep. Aycock draw districts on the basis of race or with the intent to discriminate against minorities. 1775:7-12 (Aycock).

#### **X. Eric Opiela's "Useful Metric"**

In November 2010, Eric Opiela sent an e-mail describing what he termed a "useful metric" for redistricting. Mr. Opiela proposed calculating "a ratio for every census block in

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<sup>6</sup> The City of Killeen had been divided between districts in previous redistricting plans. 1773:17-25 (Aycock). The Legislative Black Caucus's alternative plan, H202, also split the City of Killeen between two districts. 1715:11-1716:10 (Jones).

the state” showing (1) “CVAP/Total Population,” (2) “Hispanic CVAP/Total Hispanic Population,” (3) Spanish Surname RV/Hispanic CVAP,” (4) “Spanish Surname RV/Total Hispanic Population,” and (5) “Spanish Surname Turnout/Total Turnout.” DOJ-75. Mr. Opiela’s e-mail suggested that these ratios could be used to create a “nudge factor” to identify census blocks that would “pull [a] district’s Total Hispanic Pop and Hispanic CVAPs up to majority status, but leave the Spanish Surname RV and TO the lowest.” *Id.*

Despite the plaintiffs’ repeated reference to Mr. Opiela’s e-mail, there is no evidence that he ever acquired the necessary data, calculated the proposed ratios, or used his metric to draw districts. In fact, the evidence shows that most of the data required to put his theory into practice did not exist. TLC could not provide the data necessary for block-level calculations of (1) CVAP/total population, (2) HCVAP/total Hispanic population, (3) SSRV/HCVAP, or (5) Spanish-surname turnout/total turnout. DOJ-86\_0003. TLC simply did not have block-level CVAP data, 290:18-291:3 (Dyer), and RedAppl did not have Spanish-surname voter-turnout data, 265:18-24 (Dyer); DOJ-86\_0003-4. The only ratio that *could have been* calculated was (4) SSRV/total Hispanic population, but even that data was limited to 2000 Census blocks, not the 2010 Census blocks that would be used for redistricting in 2011. 291:4-10 (Dyer); DOJ-86\_0003. Converting that data from 2000 Census blocks to 2010 Census blocks would have been complicated and extraordinarily time-consuming. The number of Census blocks in Texas increased from approximately 675,000 in 2000 to approximately 915,000 in 2010. 291:13-16 (Dyer). That means that creating even one of Mr. Opiela’s five ratios would require at least 675,000 separate calculations for the 2000 Census blocks alone. 302:21-25 (Dyer).

Moreover, there is not a shred of evidence that Mr. Opiela’s “useful metric” was ever developed, much less implemented to draw districts in any plan. The only evidence before the Court shows that the necessary data were not available. The evidence proves only one thing: Eric Opiela dreamed up a dubious statistical tool that he could not possibly have gotten to work. There is no evidence before the Court that the necessary data were ever



available, that Opiela ever obtained them, or that his hypothetical statistical tool was ever developed, much less applied. To bridge the gap between Opiela's bad idea and the Legislature's 2011 House plan (as the plaintiffs must do to carry their burden of proof) they offer nothing but speculation—speculation that the evidence refutes. Whatever the so-called “nudge factor” was meant to prove, the plaintiffs have failed to prove it.

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Respectfully submitted.

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