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. 11-CA-360-OLG-JES-XR [Lead Case]
MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES, Plaintiffs, v. STATE OF TEXAS, et al., Defendants.	§ § § § § § § §	CIVIL ACTION NO. SA-11-CA-361-OLG-JES-XR [Consolidated Case]
TEXAS LATINO REDISTRICTING TASK FORCE, et al., Plaintiffs, v. RICK PERRY, Defendant.	§ § § § § §	CIVIL ACTION NO. SA-11-CA-490-OLG-JES-XR [Consolidated Case]
MARGARITA V. QUESADA, et al., Plaintiffs, v. RICK PERRY, et al., Defendants.	§ § § § § §	CIVIL ACTION NO. SA-11-CA-592-OLG-JES-XR [Consolidated Case]

EDDIE RODRIGUEZ, et al.,	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO.
	§	SA-11-CA-635-OLG-JES-XR
RICK PERRY, et al.,	§	[Consolidated Case]
Defendants.	§	

RODRIGUEZ PLAINTIFFS' CLOSING ARGUMENT SUMMARY—CONGRESSIONAL 2011

The Rodriguez Plaintiffs submit this summary of their closing argument in the 2011 Congressional segment of the case, understanding the Court's instruction that it is not to be a full-blown post-trial brief, nor is any issue waived by non-inclusion in this summary.

I. SCOPE OF CLOSING ARGUMENT

A. Full scope of claims

The Rodriguez Plaintiffs have statutory and constitutional claims directed at: (i) Plan C185 as a whole; (ii) the failure to create one, and possibly two, additional minority opportunity districts in the Dallas-Fort Worth Metroplex; (iii) the diminution of Latino voting power in Plan C100's CD23 to remove it from the roster of performing Latino opportunity districts; (iv) the deliberate dismantlement of an existing crossover district (CD25 in Plan C100) centered in Travis County which functioned as a district in which minority voters were able to regularly elect their candidate of choice in congressional elections; (v) the deliberate isolation of more than 200,000 Latinos (65% of them citizens of voting age) situated in Nueces County in an Anglo-dominated district where they are stranded without any effective voice in congressional elections; and (vi) the concomitant failure under the *Gingles* framework for analyzing Section 2's require-

ments to create at least one, and possibly two, additional Latino opportunity districts in South, West, and Central Texas—the "envelope," to use Dr. Ansolabehere's descriptive term[1]—without deliberately destroying the preexisting crossover district centered on Travis County.

B. Argument's particular focus

Other plaintiffs will devote considerable attention to addressing the first three areas of the Rodriguez plaintiffs' claims. The Rodriguez plaintiffs endorse those arguments, as understood thus far from the evidence and previous briefing. But they will not repeat them.

Instead, the Rodriguez plaintiffs will direct their closing argument to the issues arising from C185's treatment of voters in Travis and Nueces Counties, plus the broad swath of the South/West Texas envelope. Although the precise legal claims vary from one of these areas to another, they actually are pieces—*linked* pieces—of a single puzzle.

C. Linked puzzle pieces

According to the principal mapdrawer (Ryan Downton) for the congressional plan that ultimately became C185, three key decisions were made at the outset of congressional mapping, before a statewide map was put together:

- ***Nueces.*** All of Nueces County would be pulled from the southward orientation given it since 1980, where its large Latino population could be linked with other Latinos to form performing opportunity districts rippling across the "envelope," and, instead, re-oriented to the north and east to embrace Anglo voters who would swamp the now-isolated Latino voters in Nueces to ensure the election of an incumbent Anglo congressman who was not supported by Latino voters.

- ***3-1 plan for allocation of new congressional districts.*** Chairman Solomons instructed Mr. Downton that, in inserting the four new congressional districts into the 2011 redistricting plan, he had to ensure that three of them would be Republican dis-

[1] The "envelope" is generally circumscribed by a line starting in Nueces County, running south to Cameron County, then along the Rio Grande River to El Paso County, then from El Paso County to Bexar County, thence northeast to the Hays/Travis County line, and over to end in Nueces County.

tricts. The fourth would be a minority opportunity district, which, by the mapdrawers' definition, equated to a Democratic district.

- ***Travis.*** Mr. Downton promptly seized on one of two alternative proposals by MALDEF (C122)[2] for a new Latino opportunity district that would link South San Antonio with Austin through a 50-mile long, 3-mile wide I-35 corridor and inserted this proposal into his "concept" map as the single *new* minority opportunity congressional district that would be created in 2011. He then melded that proposal with a thorough evisceration of Travis County, vivisecting it into five congressional districts and leaving Travis (the state's fifth most populous county) as the *only* Texas county among the twelve with enough population to otherwise do so without a single congressional district anchored in it.[3] In doing this, he divided significant portions of Travis's Latino population apart from one another and isolated the county's African-American population in pockets of Anglo-dominated congressional districts running as far away Tarrant County and Harris County. Said to be done for partisan political reasons, the carving of Travis used race as the tool—as Dr. Ansolabehere's unrefuted analysis establishes

II. C100'S TRAVIS-BASED CD25 WAS A CROSSOVER DISTRICT, PROVIDING MINORITY VOTERS AN OPPORTUNITY TO ELECT THEIR CANDIDATE OF CHOICE, AND ITS DELIBERATE DESTRUCTION BY THOSE CRAFTING C185 VIOLATED THE FOURTEENTH AMENDMENT.

A. The evidence firmly establishes former CD25 as a crossover district.

The state had been explicitly warned ahead of time not to do what it did to Travis County and CD25. In *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009), Justice Kennedy's plurality opinion—the lead opinion for the Court—drew a distinction between the Section 2 obligation to *create* a new crossover district and the constitutional prohibition against *dismantling* an existing one: "if a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions" under the Fourteenth Amendment. *Id.* at 1249.

[2] The other MALDEF alternative, C123, did *not* run a district from South San Antonio into central and north Austin. Mr. Downton simply disregarded that alternative. And even C122 did not "fill out" the rest of Travis County beyond the boundaries of its proffered district. The rest of the county was left blank.

[3] None of the five districts touching Travis has more than 35% of its population there. The City of Austin is even more divided than the county; it is in *six* congressional districts. Austin's share of any one of the six districts into which it was divided rises no higher than 23.8%. Exh. 941. In contrast, 60% of former CD25's population is in Travis.

C185 blatantly flouts the Supreme Court's warning. Using MALDEF's C122 alternative as a cat's paw, it deliberately destroyed former CD25, seeking to obscure its diminution of minority voting rights in Travis County by pointing to the creation of a new Latino opportunity district labeled CD35. But the evidence firmly establishes that creating a new Latino opportunity district in the envelope did not remotely require destruction of the Travis core of former CD25. The constitutional warning in *Bartlett* could easily have been heeded at the same time as the voting rights requirements of Section 2. As Travis-based State Representatives Rodriguez and Dukes both testified, it sets up a false choice to defend destruction of crossover CD25 by hiding behind Section 2.

As described in *Bartlett*, and explained by Dr. Ansolabehere, a "crossover district" is one in which minority voters can elect the candidate of *their* choice, but do so with the help of some—but less than 50%—Anglo voters who come across to support the same candidate. That former CD25 meets this definition is firmly established in the evidence. In fact, after the first round of trial in 2011, the state conceded CD25 had been a crossover district. Doc. 457 at 19 & n.9. And all three members of the panel of this Court, while differing in other parts of their analysis, concluded the same thing: that CD25 was a crossover district.

The just-concluded round of trial reinforces this characterization. Adding to the 2011 testimony of Travis County Judge Sam Biscoe (an African-American elected county-wide) and political consultant David Butts, Representatives Rodriguez and Dukes both testified to the long-standing operation and effectiveness of a tri-ethnic voting coalition (Latinos, African-Americans, and a bloc of Anglos) whose main locus is in the part of the county embraced by former CD25. Representative Dukes was "aghast" at the split of Travis into five districts, leaving the Anglo

community largely intact while splitting the Latino and African-American communities, even though, as she put it, Austin and Travis are very different from other places in Texas because, in the voting context, "labels" aren't placed upon a person "based upon the color of their skin." Representative Rodriguez saw the carve-up as "a direct assault on what I know to be a very successful coalition of minority voters and Anglo voters in Travis County," describing it as the "only place in Texas where that really occurs." Jeff Travillion, former President of the Austin branch of the NAACP, saw that the deep divisions in C185's Travis County part "diminished the influence of minority communities more" than had existed before. To him, it was "inescapable" that race played a "significant" role in carving up Travis County.

Even witnesses sympathetic at some level to creating a new Latino opportunity district in the San Antonio-Austin corridor found C185 disturbing. Ms. Villarreal acknowledged testifying to the Senate Redistricting Committee in early June 2011 that she was "personally outraged at the fractioning" of Travis County. The carve-up was so extensive that she still does not know who her congressman is. Former State Senator Barrientos, who had been elected over and over again, from the 1970s into the early 2000s, with the support of the Travis County tri-ethnic coalition including the cross-over Anglo voting that comes with it, could summon no more endorsement of CD35 than that he "generally" supported the idea and that it was better than the legally-invalidated 2004 district that ran from Travis to the underside of McAllen on the border with Mexico. He joined in Representative Dukes' description, identifying Austin in the context of discussing racial attitudes as "kind of a special place, even today." A widely respected long-time toiler in the fields of racial equality for Latinos in particular, he was particularly scathing about C185's evisceration of the county, terming it "obscene" and "ridiculous."

Expert testimony reinforces the accuracy of these descriptions of voting patterns in Travis County, especially as compared to the rest of the state. In the 2011 round, Dr. Ansolabehere found Travis to be an exception to the rest of the state, where he found high levels of racially polarized voting, with little in the way of Anglo voting support for minority-supported candidates. "[W]hites in Travis County appear to . . . vote for the same candidates preferred by black and Hispanic" voters. He determined the crossover vote of Anglos in the county to hover just at the 50% level—compared to only 28% on average in the rest of the state. (In CD25, he determiend that 41.6% of Anglos crossed over to vote with minorities.) Dr. Lichtman, an expert for the Quesada plaintiffs, concluded that, in every Texas county "with the exception of Travis County" a substantial majority of Anglo voters voted against the candidate of choice of African-American and Latino voters. Dr. Engstrom, the Task Force's expert, reported Anglo crossover voting in Travis County to be in the 41.3-49.89% range, much higher than in the other counties he analyzed. Dr. Kousser, MALC's expert, described C185 as it relates to Travis County as "part of an effort to break up the long-successful tradition of coalition politics in Travis County, in which Latinos, African-Americans, and liberal Anglos had often joined together in both partisan and non-partisan contests." Dr. Murray, the NAACP's expert, found a similar pattern.[4] Dr. Alford, the state's own expert, described Travis County as "unique," where "Anglo crossover is substantially higher than it is in the other counties in Texas."

Nothing from the latest trial round undermines the unanimity on this point. Dr. Ansolabehere contrasted—without any rebutting evidence—the Anglo voting patterns in Nueces and Travis Counties. He determined that Anglo voting cohesion was at is lowest point in Travis

[4] In this latest round, Dr. Murray testified that C185 "effectively neutered" the African-American voting community in Travis County.

(that is to say, Anglos split relatively evenly in the candidates they support) and at one of its highest points in Nueces (that is to say, Anglos tend to be of a nearly universal like mind in terms of the candidate for whom they will vote). There was no evidence to the contrary. Dr. Engstrom did a polarization analysis of the 2012 U.S. Senate general election contest between Cruz and Sadler. He found only one county—Travis—where Latino voters and non-minority voters preferred the same candidate.

The state did assay one approach to challenging the existence and operation of the tri-ethnic voting coalition in the county. It tried to suggest that the Democratic primaries in the county splits the coalition so that African-American and Latino voters divide from each other. No evidence supports these insinuations.

First, to the extent the primaries matter at all in determining the existence of a crossover district, and its functioning as a minority opportunity district, the thing that has to be tested is whether the primary serves as a barrier—or "screen"—to having the preferred candidate of one set of minority voters (say, Latino voters) make it through to the general election. Dr. Ansolabehere testified that this was the proper test. Significantly, so did Dr. Engstrom, who agreed that the reason for looking at primaries at all was to see if they served this screening function. (Dr. Engstrom explains, though, in his 2014 report that "the most important estimates for assessing polarized voting . . . are those for the General Election.")[5] In his report this round, Dr. Alford, the state's expert, undertook no separate analysis of the primaries in this regard; instead, he simply pointed to Dr. Engstrom's analysis. And Dr. Alford provided no testimony whatever on the topic.

[5] R. Engstrom, Supplemental Report on Racially Polarized Voting in Selected Areas of Texas (March 1, 2014). Task Force Exh. 967, at 5.

Dr. Engstrom, though, provides no analysis that answers the screening question—and, by extension, the state has offered no evidence to support its insinuations on this topic. Dr. Engstrom testified that, contrary to what Dr. Alford's report seemed to imply, he offered no opinion on the existence, or not, of an operative tri-ethnic coalition in Travis County. He also testified that he performed no analysis of the *outcomes* of primary elections in the county. As Dr. Ansolabehere explained, the question of whether the primary serves as a screening device, to filter out minority-preferred candidates, cannot be answered unless election outcomes are evaluated. Stopping at a cohesion analysis, as Dr. Engstrom (and, again by extension, Dr. Alford) did is to stop short of evaluating the critical question.[6] No one except Dr. Ansolabehere took this step of looking at outcomes. He performed an analysis of 43 elections ("we pulled down every election we could get our hands on"), found no screening out of minority candidates in the primary, and determined that there was essentially equal power sharing among Latinos, African-Americans, and Anglos in the Democratic primary in Travis County. There simply is no primary "screen."

B. The division of Travis County is correlated with race, not partisanship.

In this round, because of questions raised by the Court when it adopted interim maps in 2012, Dr. Ansolabehere undertook an evaluation of whether race or party better explains the congressional district divisions in Travis County, and also in former CD25 itself, in C185. His analysis concluded that, looking at all the districts that divided Travis or former CD25, "race is a stronger predictor of where the lines fell than party." This conclusion, of course, meshes perfectly with the "eyeball" test from looking at the racial divisions used to accomplish the Travis

[6] Independent of the failure to undertake the crucial step of analyzing outcomes, Dr. Engstrom's cohesion analysis itself does not carry the ball very far, even standing by itself. As he explained in response to questions from the state, there are "degrees of cohesion." It does not appear that he ever undertook to determine, with respect to Travis County, where any lack of cohesion he found between Latinos and African-American voters in the Democratic primary fell on the cohesion spectrum.

County carve-up. And this includes the more-practiced, on-the-ground conclusions of those such as Representatives Rodriguez and Dukes, as well as Mr. Travillion.

There is no refutation of Dr. Ansolabehere's testimony on this point. He wasn't even questioned about his analysis in the state's cross-examination. Mr. Downton, assuming he is believable on the general point in the first place, testified that he used partisan shading when he was dividing "*Anglo* Democrats" among the districts. He testified that he used RedAppl's *racial* shading features to figure out how to draw CD35. He says nothing specific about the extent of his use of this racial shading, but he could not have described the precise contours of CD35 without having thoroughly surveyed where the different races were in Travis County. A perfect example of this is shown by the divide between CD35 and CD25 (the *new* one) in East Austin, where the historic center of the African-American community (as Representative Dukes explained) was carved away, isolated in an Anglo district where their vote would mean nothing at all, and sent up the Hill Country all the way into Tarrant County. It was impossible for Mr. Downton to have been unaware of what he did, and it had to have been deliberate (as he seemed to admit when he explained how he had to take part of that African-American community to go into north Austin to pick up more Latino population). In fact, Mr. Downton admitted in his testimony that he split the African-American community in the county. In all, there were 65 precinct splits in Travis County alone, a particularly strong indication of racial, not partisan, division. Exh. 944. It was deliberate and it was racial—regardless of whatever partisan benefits might have accrued from such actions.[7]

[7] The Supreme Court has explained that the discriminatory intent element of a Fourteenth Amendment violation can be established under *Arlington Heights* even if another motivation also was present. *Hunter v. Underwood*, 471 U.S. 222, 232 (1985). Besides, the legislature in 2013 reenacted the exact map for Travis County even after the partisan

Mr. Downton's testimony also eliminates compliance with Section 2 as a reason requiring Travis County's evisceration, under the smokescreen of CD35. He testified that CD35's I-35 corridor location was not the only place a new Latino opportunity district could have been emplaced in a new map. CD35 was, by the state's own measure, the least compact of all the 36 districts. Todd Giberson, the state's compactness expert, testified in 2011 (by deposition that he would say "no," if someone were to propose drawing a district like that. Its shape was such that he did not believe a court would compel its drawing. Dr. Alford testified in 2011 that CD35 is "definitely not a compact district." It was, he said, "not a district I would be proud of." Mr. Downton even described it as "borderline," doubting it was required under Section 2.

The purpose of the foregoing discussion is not to lodge a challenge to the *bona fides* of CD35 standing alone. It is to show that nothing in the law required the unconstitutional destruction of former CD25's locus in Travis County as a crossover district. The obvious place to start with what Section 2 might actually *require* is Nueces County. Mr. Downton, in fact, testified that, if Nueces County were included back in the envelope, then Section 2 could have been met without bringing CD35 into Travis County to help eviscerate a preexisting, operative minority opportunity district. "Q. And instead of putting 206,000 Hispanics from Nueces County into a district that goes north, you could have put them into a district going south or southwest, couldn't you? A. Yes." He then goes onto suggest that this might have also alleviated the Maverick County split . . . but, in his view, it would entail "upset[ting] the Nueces people." There is no indication that upsetting minorities was a consideration.

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objective—"getting" Congressman Doggett—had demonstrably failed when he was overwhelmingly elected in new CD35. That leaves nothing but the racial action in place.

D. The state got things exactly backwards as between Nueces and Travis

As Dr. Ansolabehere explained in the 2001 trial, the reason in the first place for paying attention to the racial consequences of redrawing districts is that it may be necessary to keep underlying racial voting patterns (racially polarized voting) from operating to diminish minority voting opportunities. This, the Supreme Court has said, is often necessary—and Texas as a whole is the poster-child for the necessity and wisdom of such action—but, at bottom, it is the "politics of the second best." *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994): "There are communities in which minority citizens are able to form coalitions with voters from other racial or ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice." *Id.*

The evidence shows that Travis, and former CD25, fits this Supreme Court description. The Supreme Court already has said in the 2003 Texas re-redistricting of Texas congressional seats that a "noncompact district cannot . . . remedy a violation elsewhere in the State." *LULAC v. Perry*, 548 U.S. 399, 430 (2006). It held that Section 2 remedies should be where there are Section 2 rights, and "there is no § 2 right to a district that is not reasonably compact." *Id.* at 430-31. Travis County, as Dr. Ansolabehere testified, has the *least* Anglo cohesion; Nueces, among the most. The problem of racially polarized voting was in Nueces (and other places across the state, too), not Travis (particularly, in the locus of the tri-ethnic coalition). Mr. Downton understood that he could have added the one new district Chairman Solomons was willing to countenance by not isolating 206,000 Latinos in Nueces at the outset to protect an Anglo incumbent who didn't have minority voting support. Instead, with Chairman Solomon's implicit, if not explicit, blessing, he deliberately chose a different path: obliterate an existing minority opportunity district

without any compelling reason for doing so. That is unconstitutional, violative of the Fourteenth Amendment's prohibition against deliberate and invidious racial actions.

III. THE STRANDING OF OVER 200,000 LATINOS, INCLUDING OVER 133,000 ELIGIBLE LATINO VOTERS, IN AN ANGLO-DOMINATED DISTRICT WHERE THEIR VOTES EFFECTIVELY WOULD COUNT FOR NOTHING WAS A DELIBERATE CHOICE, MADE ON OPENLY RACIAL GROUNDS.

The stranding of Nueces Latinos—206,000 in population, over 133,000 in citizen voting age population—was a deliberate, racially discriminatory act. As Mr. Downton testified, this was pretty much the first thing he did in his mapping. In late November 2010, his office-mate at the legislature, Mr. Interiano, was forwarded an e-mail exchange between Mr. Opiela and Congressman Smith. *See* U.S. Exh. 76. That memo told Mr. Interiano, and by extension Mr. Downton, that the only way to salvage Congressman Farenthold's hold on a congressional seat was to take Nueces County north. And the reason was explicitly racial: "to pick up Anglo voters." The memo explained that this desired group of voters—not *Republican* voters but "Anglo" voters—could not be harvested if Nueces went south. And the message further explained the ripple effects of this choice—that is, Nueces north or Nueces south—reaching, in the message's words, all the way to "Anglo voters" in western Bexar County and even to "Anglo voters" in Midland County. In other words, the congressional mapdrawers knew from the beginning that there were racial reasons to take Nueces north, rather than southward as it had been oriented for 34 years because of voting rights requirements.

Mr. Downton testified that one of the reasons for putting Nueces into a new CD27 was because the Nueces community had wanted it. Even if this were one of the reasons, it does not assuage the racial element. But there is strong reason to question the proffered explanation. True enough, the belatedly-transcribed Corpus Christi field hearing of 2010 reflects that some in

Nueces wanted Nueces taken from its southward orientation. But the same transcript reflects that others—two Latino women in particular, Ms. Luna Saldana (with LULAC Council No. 1) and Ms. Meza-Harrison (with the Nueces Democratic Party)—emphasized the need to ensure minority voter protections. D. Exh. 574, at 52, 96. Mr. Downton provided no explanation of why he chose to honor the broad requests of Anglo representatives from Nueces, while disregarding opposing Latino requests from the same county. He certainly didn't deign to honor similar requests in Travis County, even when they came from all parts of the community. This directly suggests that honoring the requests of some—in one county but not in others—is just a *post-hoc* fig-leaf to cover what really motivated the new orientation of Nueces to the north: to find Anglo voters to protect an Anglo congressman elected by largely Anglo votes.[8]

III. THE DELIBERATE CHOICES OF MR. DOWNTON AND CHAIRMAN SOLOMONS AS THE INCEPTION OF THE MAP-DRAWING FORCED THE DELIBERATE DIMINISHMENT OF LATINO VOTING OPPORTUNITIES IN THE ENVELOPE.

A. The 3-1 limitation, combined with the Travis and Nueces choices, resulted in a Section 2 violation.

Not only was this action intentionally discriminatory on racial grounds, it also facilitated the violation of Section 2 in the envelope. As indicated earlier in this memorandum, the early policy directives included more than just adoption of the C122 approach to an I-35 corridor district and the ultimately-linked isolation of Latino voters in Nueces County in new CD27. There was also the directive that no more than one of the new districts could be a minority district (since the mapdrawers and Chairman Solomons equated minority districts with Democratic districts). The directive meant that nothing more would be allowed in the envelope in terms of exploring whether there was a reasonable possibility of creating one or more additional Latino opportunity dis-

[8] Senator Seliger testified that he did not believe that Congressman Farenthold was the candidate of choice of Latino voters.

tricts. New CD35 was in; Nueces, with its 133,000+ HCVAP population, was out; and that was the end of the matter, as far as Mr. Downton and Chairman Solomons were concerned in South, Central, and West Texas.

Yet, with Nueces in the "mix" in the envelope, Dr. Ansolabehere explained that there was enough HCVAP population to easily create at least one new Latino opportunity district in the envelope. The overwhelming bulk of the growth of HCVAP in the state had been in this area, and, if minority voting rights really were a prime concern in the addition of four new districts whose existence depended entirely on minority population growth, that would have been the place to add at least one new Latino opportunity district. The population, both total and CVAP, was there to do it. But that didn't happen. Instead, CD23 was undermined as a viable Latino opportunity district, South San Antonio and Harlandale ISD were carved into three pieces (one running to north Austin), and the only new districts created under C185 were either entirely or, in the case of CD35, partially (and unnecessarily) located where *Anglo* growth had been, not where Latino growth was.[9]

B. Numerous *Gingles* demonstration plans establish that C185 violates Section 2 in the envelope.

The record contains ample evidence that, with Nueces re-oriented to its historical alignment, at least one, and in some cases two, additional Latino opportunity districts could have been created in the "envelope" without destroying the preexisting minority opportunity district centered in Travis County as Plan C100's CD25. In other words, the plaintiffs have demonstrated that *Bartlett*'s constitutional stricture can be honored at the same time that Section 2 rights in the envelope are fully honored.

[9] Adding at least one new minority opportunity district in the DFW Metroplex also would have recognized the hugely disproportionate minority population growth there.

Examples are numerous. MALC's Plan C163 preserves a crossover district in Travis *and* creates a new, open Latino opportunity district in the envelope. The NAACP's Plan C193 does, too, adding a new open Latino seat in the I-35 corridor. The Quesada Plaintiffs' Plan C205 does likewise, with a slightly different configuration. And this Court's first interim plan, vacated but on grounds not relevant to this point, Plan C220 also accomplishes this.

Even more striking in this regard is LULAC's Plan C262. It preserves a crossover district in Travis County, consistent with the Constitution, and creates *two* new Latino opportunity districts in the envelope (and a little beyond in Odessa/Midland where in the past an El Paso district has gone), including one in the I-35 corridor running from San Antonio to the Hays/Travis line.

All these maps establish that honoring Section 2 in the envelope and the Constitution in Travis County are fully compatible, not mutually exclusive. While the Constitution would trump in the event of a clash, there simply is no need or reason for a clash.

CONCLUSION

The legal violations in C185 are extensive, and remedying them will require significant changes. But that is no reason to avoid confronting what the state has done. The state worked very hard, and engaged in the most cynical of racial manipulations, in devising C185. In the face of massive minority population growth, including minority CVAP growth, the state worked the redistricting system to not only *not* add to the number of minority opportunity districts but to actually reduce them by one (even as four new seats were added). The state intentionally discriminated on the basis of race in congressional redistricting, and the Court should so find.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 2014, I filed a copy of the foregoing for service on counsel of record in this proceeding through the Court's CM/ECF system.

/s/ Renea Hicks
Max Renea Hicks