

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 CONGRESSIONAL 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 congressional trial.

I. Population Growth: 2000-2010

The magnitude of minority population growth—particularly Hispanic population growth—is a central theme of the plaintiffs’ case. The plaintiffs allege that given the Hispanic population growth of nearly 2.8 million, TLRTF Plaintiffs Ex. 629-0001 (roughly 65% of all statewide growth) and the State’s gain of four congressional seats, it should be easy to create additional Hispanic opportunity congressional districts. But total population growth is not a reliable indicator of the ability to create additional Hispanic opportunity districts. Instead, the relevant measure is Hispanic citizen voting age population, Tr. 1822:11-13 (Alford), which increased by approximately 700,000, TLRTF Plaintiffs Ex. 631-0001—merely one-quarter of the amount of total Hispanic population growth.

The possibility of converting HCVAP growth into additional opportunity districts also depends on the distribution and geographic concentration of the Hispanic citizen-voting-age population. Tr. 1819:23-1820:5 (Alford). The evidence shows that based on

2010 estimates, the Texas Hispanic citizen-voting-age population is overwhelmingly concentrated in the South and Southwest regions of the State, just as it was under the 2000 Census. *See* Ex. D-230; Ex. D-231; Tr. 1823:18-1829:10 (Alford). The evidence also showed that the increase in HCVAP was distributed across all 32 benchmark congressional districts, from a low of approximately 14,000 to a high of approximately 90,000. Ex. D-439; Tr. 1832:6-14 (Alford). Although the HCVAP growth occurred in all 32 districts, the growth was concentrated in districts that already had an HCVAP majority; of the 11 benchmark districts with an estimated HCVAP gain of more than 40,000, 7 were existing Hispanic opportunity districts. Ex. D-439; Tr. 1832:15-1833:2 (Alford). Only CD 29, already considered a Hispanic opportunity district, became an HCVAP-majority district over the decade, increasing from approximately 46.8% to 59% HCVAP. Ex. D-439; Tr. 1832:21-24 (Alford). Similarly, Dr. Ansolabehere found that the six benchmark Hispanic opportunity districts in Southwest Texas experienced a similar average increase in total CVAP (approximately 77,000) as the remaining 26 benchmark districts (approximately 74,000); however, in these six Southwest Texas districts, the average increase in Hispanic CVAP was over 67,000, compared to just over 31,000 in the remaining 26 districts. Rodriguez Plaintiffs Ex. 913; Tr. 1834:11-1836:15 (Alford). Focusing on the relevant indicators—growth, magnitude, and concentration of Hispanic CVAP—demonstrates that, in reality, the increase in Hispanic population did not alter the ability to create HCVAP-majority districts as drastically as the total population statistics might suggest.

This reality is reflected in the demonstration maps offered during this litigation. After years of trying, none of the plaintiffs have offered a congressional redistricting plan with more than eight geographically compact HCVAP-majority districts. The Legislature's failure to accomplish in 2011 what none of the plaintiffs have been able to accomplish during more than three years of litigation is not evidence of intentional racial discrimination. In fact, the plaintiffs' inability to draw additional HCVAP-majority districts confirms Dr. Alford's conclusion: despite the substantial growth in the State's Hispanic population

between 2000 and 2010, it is not possible to draw more geographically compact HCVAP-majority districts than the Legislature created in Plan C185. The lack of additional HCVAP-majority districts in Plan C185 is not the product of intentional racial discrimination; it is the product of the location and concentration of Hispanic voting-age citizens in the State.

II. Economic Engines and District Offices

A second major theme of this litigation has been the alleged removal of “economic engines,” homes, and district offices from districts represented by African-American members of Congress. According to the plaintiffs, including the Department of Justice, the targeted removal of economic engines and offices from African-American districts is strong evidence of intentional racial discrimination. These claims do not stand up to scrutiny. The removal of economic engines and district offices was not confined to African-American members of Congress, and the removal of one member’s home from her district was based on a programming error.

The evidence suggests, at the very least, that the plaintiffs made their claims of intentional discrimination in the removal of economic engines from African-American congressional districts without adequate investigation. The evidence showed, for example, that Anglo members of Congress lost several economic engines in Plan C185. *See, e.g.*, Tr. 715:16-716:8 (Eddie Bernice Johnson), Ex. D-447 (AT&T Stadium and Rangers Ballpark); Tr. 717:2-718:5 (Eddie Bernice Johnson), Ex. D-448 (Texas Instruments’ corporate headquarters); Tr. 718:6-17 (Eddie Bernice Johnson), Ex. D-500 (Exxon-Mobil’s corporate headquarters); Tr. 718:18-719:2 (Eddie Bernice Johnson), Ex. D-499 (University of Dallas); Tr. 1453:17-1455:12 (Murray), Ex. D-481 (Hobby Airport); Tr. 1455:13-1459:16 (Murray), Ex. D-475, D-477 (Rice University, MD Anderson Cancer Center).

Congresswoman Eddie Bernice Johnson’s home was inadvertently excluded from CD 30 based on a mapping error by the Texas Legislative Council. Although TLC had the correct address, the residence was placed in the wrong census block. Tr. 723:12-724:15 (Eddie Bernice Johnson); Ex. D-504 at 3. As a result of this error, RedAppl indicated to

mapdrawers that Congresswoman Johnson's home was located in CD 30. Tr. 725:12-726:19 (Eddie Bernice Johnson); Tr. 1461:15-1462:7 (Murray).

The plaintiffs' allegation about the removal of congressional offices is unqualified: every African-American congressperson lost their district office; not a single Anglo congressperson did. Dr. Richard Murray, for example, testified without qualification that all African-American congresspersons, and only the African-American congresspersons, lost their district offices, making out a prima facie case of intentional discrimination. Tr. 1462:8-19; 1467:10-17 (Murray). That allegation is completely false. The Defendants demonstrated through the cross-examination of Dr. Murray that, among other members, Republican Congressmen John Culberson, Lamar Smith, Kevin Brady, Michael McCaul, and Joe Barton all lost district offices in Plan C185 (McCaul and Barton lost two each). Tr. 1467:18-1476:5 (Murray); Ex. D-491, D-489, D-490, D-492, D-493. The plaintiffs' claims of intentional racial discrimination based on the treatment of economic engines, offices, and homes are, like Dr. Murray's prima facie case, completely baseless. The confidence with which the plaintiffs, their witnesses, and their experts have repeated these false allegations—including in sworn testimony—casts serious doubt on every allegation of intentional discrimination that has been made in this case.

III. CD 23

The Legislature had two goals in CD 23: to maintain or improve the benchmark level of HCVAP and SSVR to comply with the Voting Rights Act, and to provide Republican incumbent Francisco "Quico" Canseco with the best chance of reelection. The Legislature accomplished the former goal by increasing CD 23's HCVAP from 58.4% under Plan C100 to 58.5% under Plan C185 and increasing non-suspense Spanish Surname Voting Registration (SSVR) from 52.6% to 54.8%. *Compare* Ex. D-400.6 *with* D-401.6. With respect to the latter goal, election analysis provided to the State's mapdrawers in 2011 indicated that CD 23 did not consistently perform for Democratic candidates (preferred by the majority of Hispanic voters in CD 23) under either Plan C100 or C185—the Hispanic-preferred

candidate prevailed in 3 out of 10 elections in the OAG 10 under Plan C100, compared to 1 out of 10 under Plan C185. Tr. 1637:9–1638:8 (Downton). Although the Legislature increased the performance of Republican candidates in statewide exogenous elections under Plan C185, Tr. 1858:24–1859:3 (Alford), the only available evidence regarding the possible outcome of an endogenous election suggests that Pete Gallego, the Democratic challenger, would have prevailed if the 2012 election had been conducted under Plan C185. Tr. 1855:8-13 (Alford); Ex. D-428. Thus CD 23 leaned slightly more Republican than it had in the benchmark plan, consistent with the Legislature’s stated goals, but it likely would have remained a highly competitive district in which Democratic congressional candidates outperformed Democratic candidates for statewide office. In any event, under Plan C185, District 23 provided the opportunity for cohesive Hispanic voters to elect their candidate of choice.

In the initial congressional plan released by Chairmen Burt Solomons and Kel Seliger (Plan C125), the El Paso boundary lines were based on the Texas Republican congressional delegation’s proposed map, Tr. 1640:24–1641:2 (Downton); Maverick County was wholly contained within CD 28, Tr. 1641:5-8 (Downton); and CD 20’s HCVAP and SSVR levels were well below the benchmark figures because of the ripple effect caused by the creation of CD 35, a new HCVAP-majority district that extended from Bexar to Travis County. Tr. 1642:20–1643:7 (Downton).

Following the release of Plan C125, Rep. Jose Menendez testified at a House Redistricting Committee hearing and requested that the configuration of CD 20 change to include more of downtown San Antonio. Tr. 1643:14-18 (Downton). Accommodating Rep. Menendez’s request required the mapdrawers to make changes to CD 20, CD 23, and CD 35; in doing so, they attempted to balance the goals of keeping CD 35’s HCVAP over 50% and maintaining CD 20 and CD 23 at or near benchmark demographic levels. Tr. 1643:14-22, 1664:24–1665:25 (Downton). Rep. Joe Pickett requested changes to the boundary lines of CD 23 and CD 16 in El Paso County on behalf of Congressman Silvestre Reyes, Tr.

1643:23-25 (Downton), but he eventually withdrew the amendment before it was offered in the House Redistricting Committee, Tr. 1643:25–1644:3 (Downton).

The congressional redistricting plan adopted by the House Redistricting Committee, Plan C149, made changes to Bexar County which included increasing CD 20's HCVAP to 60%. Tr. 1647:8-23 (Downton); Ex. D-559.7. Plan C149 retained a configuration of El Paso County similar to Plan C125. Tr. 1647:24–1648:6 (Downton); Ex. D-559.1. Maverick County remained entirely within CD 28 under Plan C149. Ex. D-559.1.

The State's mapdrawers believed that as a result of changes being made to CD 23 in Bexar County, a portion of Maverick County needed to be included in CD 23 to maintain compliance with the Voting Rights Act. Tr. 1664:24–1666:18 (Downton). On June 13, one day before the House floor debate, Mr. Opiela sent Mr. Downton and Mr. Interiano a proposed map—uploaded to Speaker Straus' RedAppl account as STRJ C116—that made changes to El Paso and Bexar Counties and split Maverick and Atascosa Counties. Tr. 1656:11–1659:15 (Downton); Tr. 313:22–314:4 (Interiano); Ex. D-541.1. At this point in the drafting process, Mr. Downton felt that he had received enough suggestions from Mr. Opiela, and he was more concerned with finalizing a plan that could be adopted in the House than he was with satisfying Mr. Opiela and his clients. Tr. 1690:11-18 (Downton). Mr. Downton ultimately drafted a floor amendment that borrowed the concept of splitting Maverick and Atascosa Counties from STRJ C116, but he revised their configuration, and the floor amendment did not incorporate the bulk of Mr. Opiela's proposals. Tr. 1660:18-25, 1726:20–1727:1 (Downton).

Chairman Solomons subsequently offered the floor amendment as Plan C170, which created a smoother boundary line between CD 16 and CD 23 in El Paso County, changed the configuration of district boundaries in Bexar County, and split Maverick, Atascosa, and La Salle Counties between CD 23 and CD 28. Tr. 1662:20–1663:14 (Downton). Plan C170 was adopted by a majority of the House. Representatives voting in favor of the amendment included Rep. Mike Villarreal, the Vice-Chairman of the House Redistricting Committee and

a member of the Bexar County delegation, who described the amendment as an improvement to CD 23 and thanked Chairman Solomons for offering it. Tr. 1339:14-25, 1353:20-25 (Solomons).

The adoption of Plan C170 demonstrates the divergence of the Legislature's goals from the goals of Mr. Opiela and the Republican Congressional delegation. District 23's HCVAP and SSVR levels were higher under Plan C170 (58.5% HCVAP, 54.8% non-suspense SSVR) than Mr. Opiela's proposal in STRJ C116 (56.8% HCVAP, 53.6% non-suspense SSVR), Ex. D-677, but its Republican performance was lower, *see* Ex. D-692 (52.5% McCain 2008 under STRJ C116; 51.6% under Plan C170). Tr. 1669:6-10, 24-25 (Downton). Mr. Opiela was dissatisfied with Chairman Solomons' floor amendment and was upset that the mapdrawers had not adopted his proposals. Tr. 1666:19-22 (Downton); Tr. 368:8-10 (Interiano); Ex. D-631; D-632.

This was only one of many instances in which the Legislature declined to accept Mr. Opiela's suggestions for the congressional plan. Other suggestions that the Legislature declined to incorporate were a proposal to add the City of Odessa to CD 23 (Tr. 1646:24–1647:7 (Downton)); a jagged boundary between CD 23 and CD 16 (Tr. 1649:2-5, 18-21 (Downton); Tr. 358:23–359:3 (Interiano)); and a proposal to take CD 20 outside of Bexar County (Tr. 363:6-21 (Interiano); Tr. 1656:18-1657:4 (Downton)). The Legislature also disagreed with the Republican congressional delegation about CD 35. Mr. Opiela and the congressional delegation believed it was more important to maintain benchmark demographic levels in CD 20 than to ensure an HCVAP majority in CD 35; the Legislature believed it was more important to create CD 35 as an HCVAP-majority district. Tr. 362:3-363:5, 371:19-23 (Interiano); Tr. 1646:8-22, 1691:19-22 (Downton). Ultimately, the bulk of Mr. Opiela's proposals for CD 23 were rejected, and he was not pleased with the result. *See, e.g.*, Ex. D-631 (“okay . . . this has to stop”), D-632 (“Why do this to me?”).

There is no evidence that the so-called “nudge factor” theorized by Mr. Opiela in a 2010 e-mail was ever developed by Mr. Opiela, provided to the State's mapdrawers, or used

to draw CD 23 (or any other district). Not only were the data required to calculate the “nudge factor” unavailable, *see, e.g.*, Ex. D-262, the State’s mapdrawers did not receive any communications from Mr. Opiela purporting to implement the “nudge factor” approach. Tr. 1671:23–1672:3 (Downton); Tr. 375:5-8 (Interiano). Mr. Opiela never indicated that he had sought to include low-turnout Hispanics in CD 23 in any of his proposed congressional maps. Tr. 375:9-13 (Interiano). The mapdrawers themselves did not rely on turnout data, 2011 Transcript 956:11–957:7, 1005:17-24 (Downton), and Spanish-surname voter turnout data was not even available in RedAppl, Tr. 623:15-21 (Handley); Tr. 784:19–785:10 (Dyer).

The evidence does not support the allegation that the Legislature set out to replace areas of high Hispanic voter turnout with areas of low Hispanic voter turnout in CD 23. Dr. Flores’s opinion that the mapdrawers deliberately manipulated turnout is unfounded. His turnout analysis was based exclusively on data from the 2010 general election—a low turnout election that the mapdrawers did not consider, Tr. 548:7-13 (Flores); Ex. D-661. He did not consider the 2008 election, which the mapdrawers used to measure partisan performance. He did not even consider whether political considerations played a role in the creation of CD 23 (they did), Tr. 550:5-7 (Flores), or whether the person who theorized the “nudge factor” was happy with the outcome (he wasn’t), Tr. 541:16-20, 542:1-4 (Flores). Moreover, not even the 2010 data support Dr. Flores’s conclusion. Using Dr. Flores’s data and turnout measure (Spanish surname turnout/SSVR), Dr. Alford determined that the difference in turnout between the Bexar County precincts moved in and out of CD 23 in Plan C185 is a mere 0.4%. Tr. 1861:15-22, 1862:18-23 (Alford); Ex. D-431. Dr. Handley’s analysis demonstrates that to the extent voter participation in CD 23 would have been reduced in C185 as compared to C100, the decrease in participation would have been less significant in heavily Hispanic precincts than in all precincts combined. Tr. 634:2–637:21 (Handley); Ex. D-676. The evidence shows, contrary to the plaintiffs’ allegation, that there was no systematic exchange of high-turnout precincts for low-turnout precincts in CD 23.

The evidence also proves that whatever Mr. Opiela expected to achieve with the so-called “nudge factor” did not occur in CD 23 (or any other district) in Plan C185. In his “useful metric” e-mail from November 2010, Mr. Opiela describes “a ‘nudge factor’ by which one can analyze which census blocks . . . help pull the district’s Total Hispanic Pop and Hispanic CVAPs up to majority status, but leave the Spanish Surname RV and TO the lowest.” *E.g.*, U.S. Ex. 75. But rather than increasing Hispanic population and CVAP while minimizing SSVR and Hispanic turnout—the mechanism imagined by Mr. Opiela—Plan C185 narrowed the spread between CD 23’s non-suspense SSVR and HCVAP levels from 5.8% under Plan C100 to 3.7% under Plan C185. Ex. D-677. Even if Opiela had succeeded in creating his “useful metric,” the evidence shows that the Legislature did not use it to create CD 23.

IV. Dallas/Fort Worth

Population growth indicated that a new congressional district would be located in the Dallas/Fort Worth region. The primary questions were whether it was possible to create a Hispanic citizen-voting-age-majority district in Tarrant and/or Dallas County and, if not, whether the creation of a Democratic-leaning district was legally required or politically feasible. Because Chairman Solomons did not believe that he had the votes to pass a plan that created two new Democratic districts, he did not want to propose such a plan unless it would be required by the Voting Rights Act. Tr. 380:15-382:8 (Interiano).

Ryan Downton reviewed several proposals for a Hispanic opportunity congressional district in D/FW, but none had an HCVAP majority. The proposed plans included a MALDEF plan, Tr. 1592:12-1593:6 (Downton); the Republican congressional delegation plan, Tr. 1594:11-22 (Downton); two plans from the Governor’s office, Tr. 1602:7-1603:17, 1604:16-1605:3 (Downton); and a plan from Congressman Joe Barton (which was potentially subject to legal challenge on other grounds), Tr. 1605:20-1606:1 (Downton). The Republican congressional delegation’s plan proposed two new Republican districts and two new Democratic districts. Downton and Chairman Solomons consulted with lawyers from

TLC, who advised a proposed district would not be a required draw if it did not reach 50% HCVAP. Tr. 1797:10-23 (Downton). The congressional delegation's proposed D/FW Democratic-leaning district (CD 33) contained only 34% SSVR, which meant that it was not required by the Voting Rights Act. Tr. 350:25-351:25 (Interiano).

Ryan Downton modified the proposed D/FW districts to see if he could get them above 50% HCVAP, but he could not. Tr. 1598:10-21 (Downton). The 50% HCVAP threshold was important because if such a district could have been drawn, it likely would have been required under the Voting Rights Act, while a district without an HCVAP majority would not. Tr. 1598:22-1599:2 (Downton). Expert testimony has established that it is not possible to draw an HCVAP-majority district within Tarrant County or Dallas County. Tr. 1236:21-1238:17 (Korbel). Downton determined that such a district could not be drawn with population from both counties. At that point, it was effectively determined that three of the new congressional districts would be Republican and one would be Democratic. Tr. 1600:4-10 (Downton).

Partisan performance then became the dominant factor in the D/FW congressional districts. Downton created a new district in North Texas to reflect significant population growth in the region, particularly outside Dallas and Tarrant County. With the new district, he had to balance the percentage of Republicans in each district to be more balanced across all the districts. Tr. 1606:7-22 (Downton). He tried to keep Districts 24, 26, 12, 33, 35, and 6 balanced between 55% and 60% McCain (in the 2008 presidential election). Tr. 1626:15-22 (Downton). He explained that if the McCain results varied between districts, Congressmen complained because they felt like someone else was getting a stronger district. Tr. 1612:17-1613:1 (Downton).

Downton initially drew CD 26, including its southern extension into Tarrant County, to balance the strong Republican nature of Denton County and to prevent the other Tarrant County districts from being too Democratic. Tr. 1607:24-1608:9 (Downton). After Plan C125 was released, Rep. Charlie Geren advised Downton that Kay Granger (his

Congressperson) wanted North Richland Hills in her district. Downton moved the southern extension of CD 26 west to accommodate this request. Tr. 1613:24-1614:11. (Downton). He drew the boundaries of CD 12 along the city lines of Haltom City, Richland Hills, West Lake, and Keller. Tr. 1614:22-1615:2 (Downton). Congresswoman Granger also requested the Trinity River Vision Project, but only part of it was included in her district under Downton's plan HRC1 C130. Tr. 1615:7-15 (Downton). Downton also added an airport into CD 12 at Granger's request. Tr. 1622:23-1623:16 (Downton). At this point in the process, Downton was using McCain shading and total population data, Tr. 1611:2-1612:6, 1616:12-17 (Downton); he did not use racial shading, Tr. 1617:10-14 (Downton).

Between May 25 and May 28, Gerardo Interiano informed Downton that he had split up the African-American population in Fort Worth and asked him to fix it because they were trying to keep communities of interest together. Tr. 1618:6-23 (Downton). David Hanna had advised the mapdrawers that it would be better to keep Hispanic communities together and to keep black communities together, but he did not advise whether or not black and Hispanic communities should be kept combined in a single district. Tr. 1546:14-1547:4 (Hanna). Downton checked to see whether African-American and Hispanic communities had been divided in Tarrant County using RedAppl's racial shading feature—the only means available since Downton was not familiar with Fort Worth. Tr. 1618:24-1620:1 (Downton). In Plan C125, areas of more concentrated black population were joined in CD 12, Tr. 1621:20-1622:4 (Downton), and Hispanic communities were joined in CD 26, Tr. 1622:5-9 (Downton).

In the next version of the congressional plan, C149, Downton captured more of the Trinity River Project in CD 12. He also learned through a blog that he had split Hispanic communities in Fort Worth; in response, he used racial shading to identify and reunite them. Tr. 1623:22-1624:16 (Downton); also Ex. D-715. Plan C149 also put the Como area into CD 26 because Representative Veasey had requested that it be included in a Hispanic opportunity district in the Texas House plan. The Geren amendment, Plan C169, Ex. D-

566, moved Como from CD 26 and joined it with the Fort Worth African-American community in CD 12, which Downton understood to be at Representative Veasey's request. Tr. 1625:1-12, 1629:7-2 (Downton).

V. Congressional Districts 25 and 35

The Legislature's reconfiguration of Congressional District 25 resulted from two goals: creating a new Hispanic opportunity district to reflect concentrated population growth in Central Texas, Tr. 1597:20-1598:5, 1779:7-10 (Downton); and reducing the reelection prospects of the Democratic incumbent, Congressman Doggett, Tr. 1785:4-14 (Downton). The resulting reconfiguration of congressional districts in Travis County did not have the purpose or effect of harming minority voters. By creating CD 35 as a new Hispanic CVAP-majority district linking Travis and Bexar Counties, the Legislature provided Hispanic voters in Travis County with the opportunity to elect their candidate of choice. To the extent this reduced the ability of certain Travis County voters to elect a Democratic member of Congress, that harm fell on Anglo and minority voters alike. Senate Committee counsel Bob Heath advised that the Travis County configuration was constitutional. Tr. 282:8-19 (Seliger); Ex. D-602 at 124. There is no evidence that the Legislature reconfigured CD 25 for the purpose of harming Black or Hispanic voters in Travis County.

VI. Congressional District 27

The Legislature's goals with respect to CD 27 were to create a Republican-leaning congressional district anchored in Nueces County and to create a separate congressional district anchored in Cameron County. Tr. 1632:21-1633:4 (Downton). Ryan Downton was responsible for drawing CD 27 in Plan C185. Tr. 1632:18-20 (Downton). The concept for anchoring Nueces County with counties to the north came from the Republican congressional delegation's proposed map, comments made at the 2010 interim hearings, and conversations Downton had with legislators from Nueces County and Cameron County. Tr. 1594:11-18, 1634:5-11, 1762:15-22 (Downton). Downton learned about comments made at interim hearings by speaking with Chairman Hunter, who advised Downton and the

Redistricting Committee on the configuration of Nueces County, Tr. 1118:11-25 (Hunter); Tr. 1785:18-21 (Downton), and from reviewing the reports from the interim hearings, Tr. 1633:9-18, 1725:16-20, 1761:18-1762:2 (Downton).

The configuration of CD 27 in Plan C185 is consistent with requests by members of the public and South Texas legislators that Nueces County and Cameron County be placed in different congressional districts. At the 2010 interim hearing in Corpus Christi, numerous citizens testified that due to competing economic interests, and the connection between Nueces County and communities to the north of Corpus Christi, they would prefer to have Nueces County and Cameron County in separate congressional districts. Tr. 1073:7-1075:19 (Hunter); Ex. D-574. Among the citizens advocating the separation of Nueces and Cameron Counties was former Democratic State Representative and MALC Chairman Hugo Burlanga, who testified that the ports of Brownsville and Corpus Christi should each be represented by a single congressman. Tr. 1075:20-1076:8 (Hunter); Ex. D-574 at 25. Senator Eddie Lucio, Jr., and Representative Rene Oliveira supported the separation of Nueces and Cameron Counties as a means of securing an additional congressional seat based in the Rio Grande Valley. Tr. 1076:17-1077:4 (Hunter).

The plaintiffs presented no evidence that the Legislature created CD 27 for the purpose of discriminating against Hispanic voters in Nueces County. The United States' expert testimony on the subject amounted to uninformed speculation. Dr. Arrington did not review the transcript from the interim hearing held in Corpus Christi; he did not consider the public testimony in favor of putting Nueces County and Cameron County in separate congressional districts, Tr. 465:3-7 (Arrington); he did not know that Nueces County and Cameron County have separate media markets, Tr. 466:18-24 (Arrington); *see also* Ex. D-574 at 24; he was not aware that Nueces County and Cameron County were home to competing ports, Tr. 466:14-17 (Arrington); and he was not aware that representatives from South Texas had requested that Cameron County anchor its own congressional district, Tr. 466:18-467:3 (Arrington).

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