

# *Perez v. Perry*

## Closing Argument 2011 Congressional Plan C185

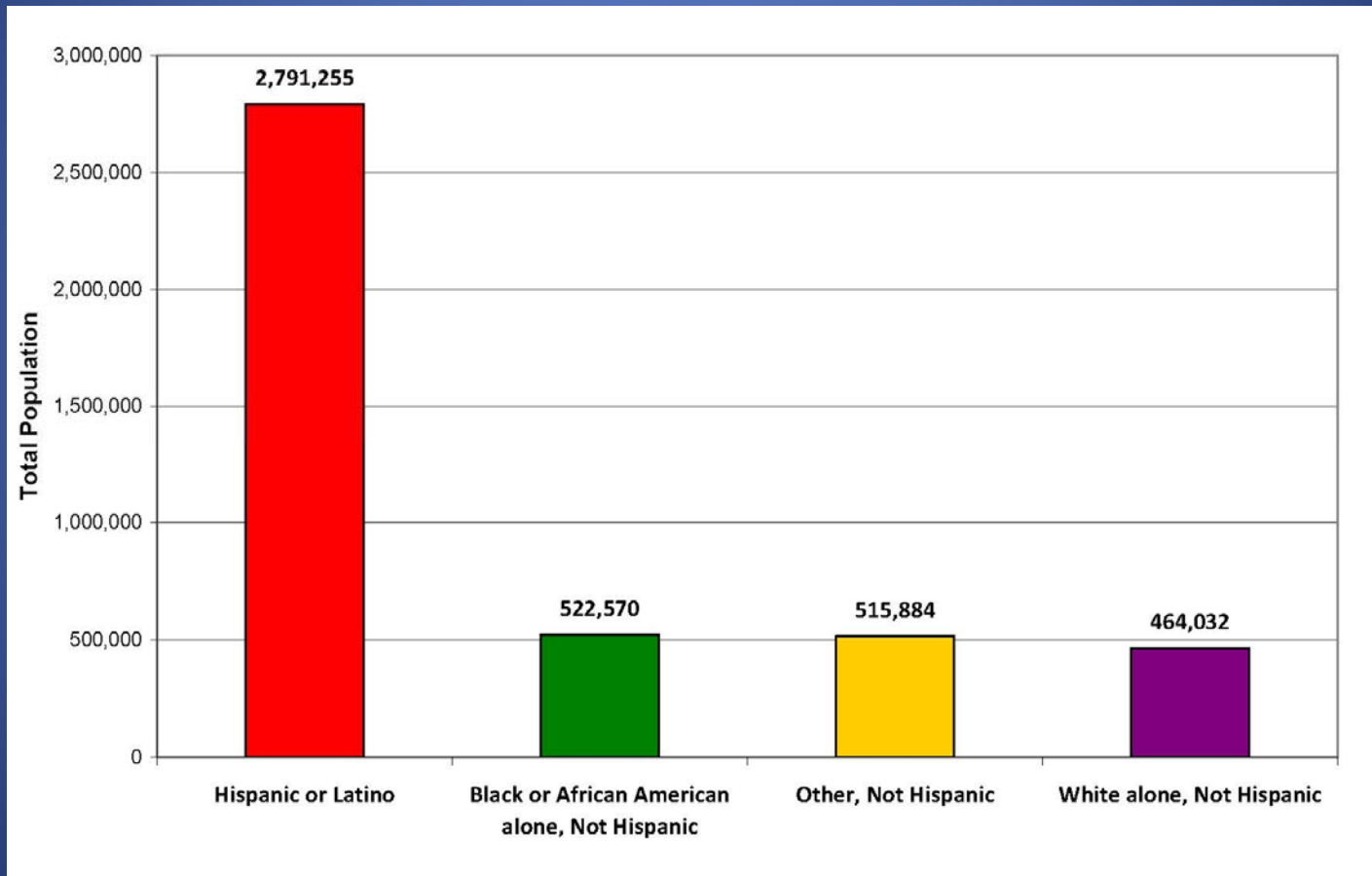
### Texas Latino Redistricting Task Force

August 26, 2014

# Task Force Claims

- Vote Dilution (effects standard of §2)
- Intentional Vote Dilution (§ 2 and 14<sup>th</sup> Amendment)
- Predominant Use of Race/Racial Gerrymandering (14<sup>th</sup> Amendment)

# Total Population: Texas Gains 4 Congressional Seats (PL 629)

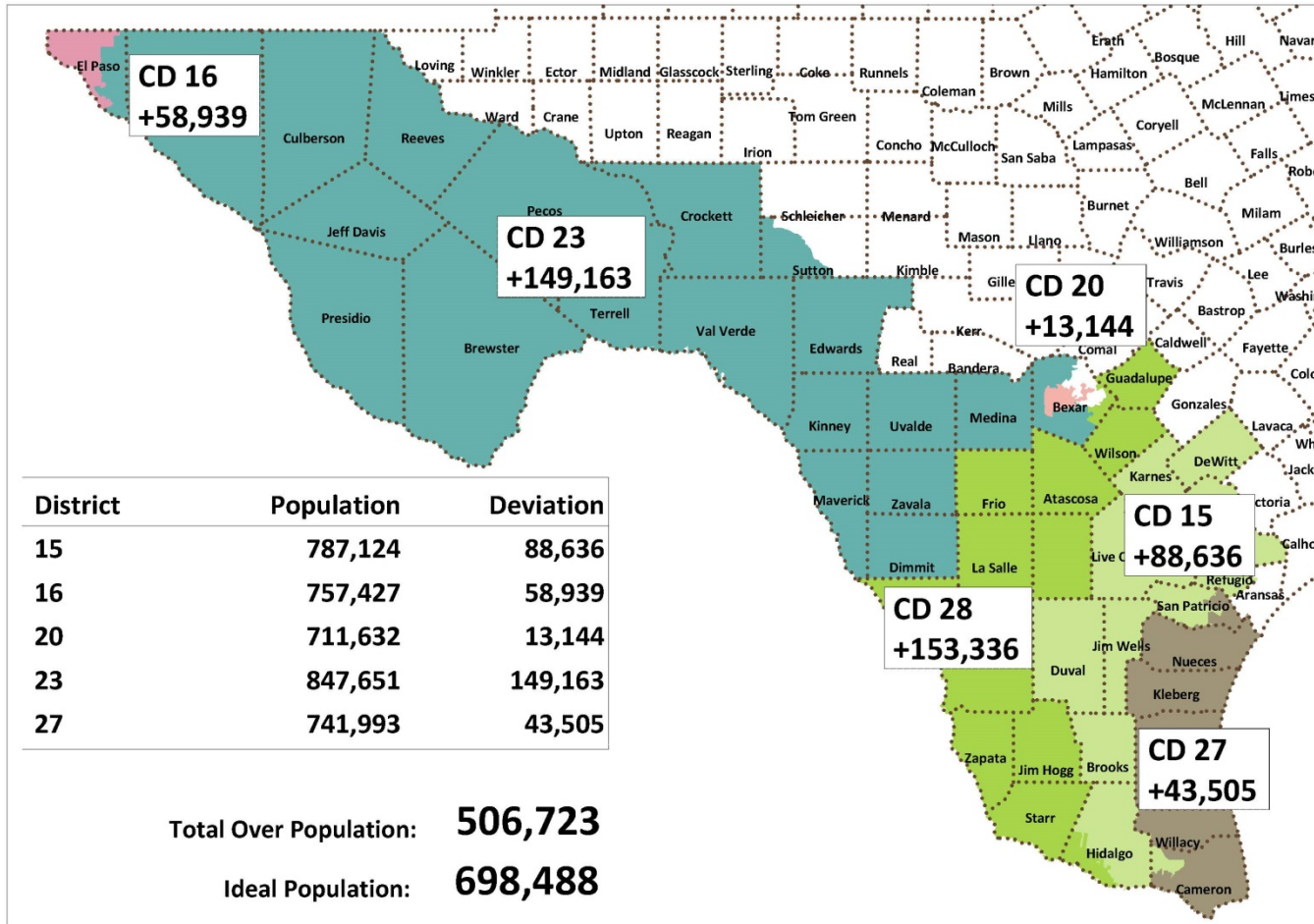


# Population Growth and its role in Texas redistricting

- Latino total population growth drove apportionment of four new seats to Texas
- Latino total population growth affects location of districts
  - New district in South Texas region
  - Harris County and DFW maintain current number of districts

# C100 Congressional Benchmark with Population Deviations

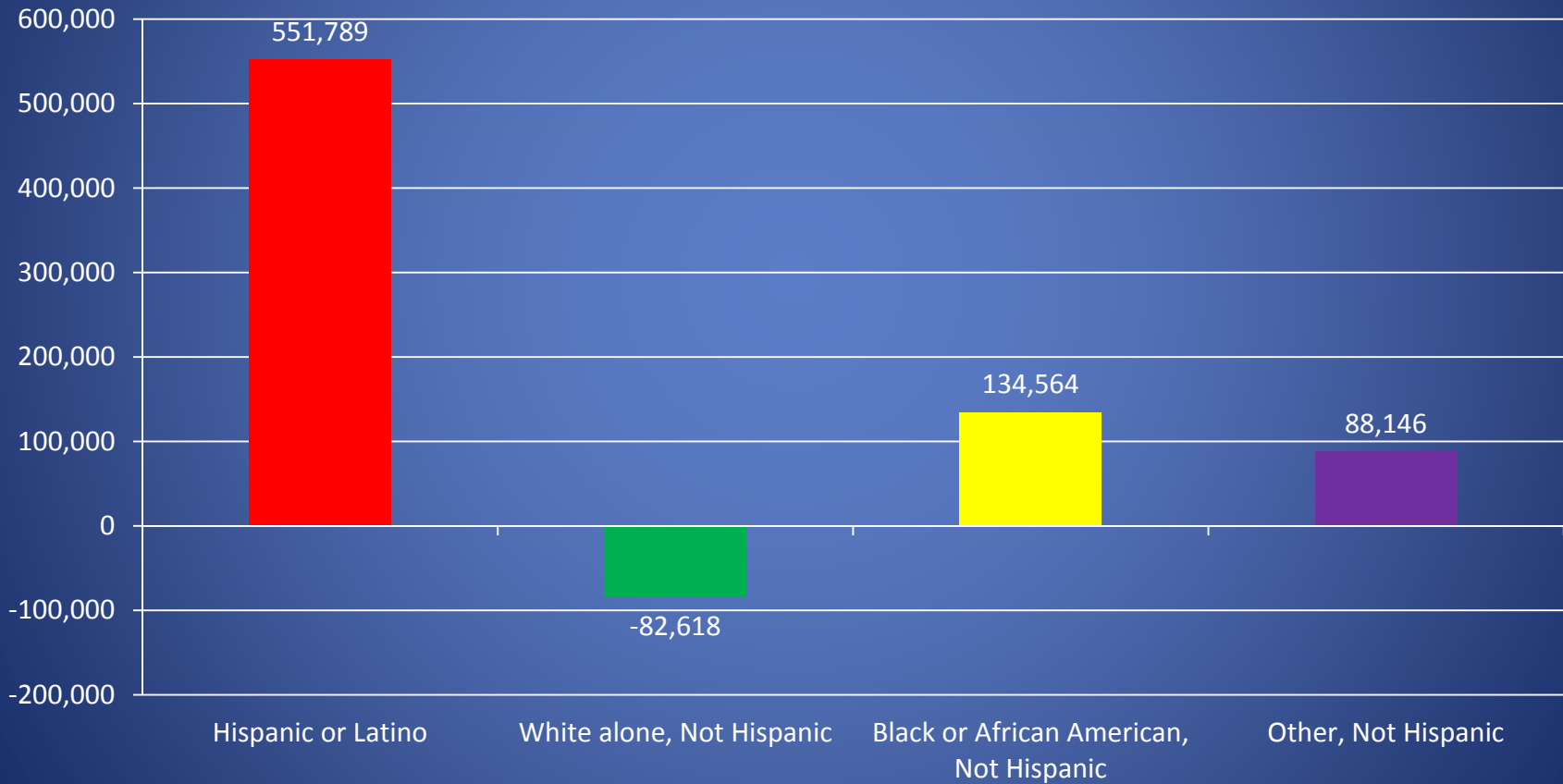
C100 South Texas Congressional Districts: Population Deviations



Data Source: Texas Legislative Council 2011. C100 Block Equivalency File (<ftp://ftp.gis1.tlc.state.tx.us/DistrictViewer/Congress/>).

# Harris County Total Population Change (2000-2010)

Change in Total Population (2000-2010)

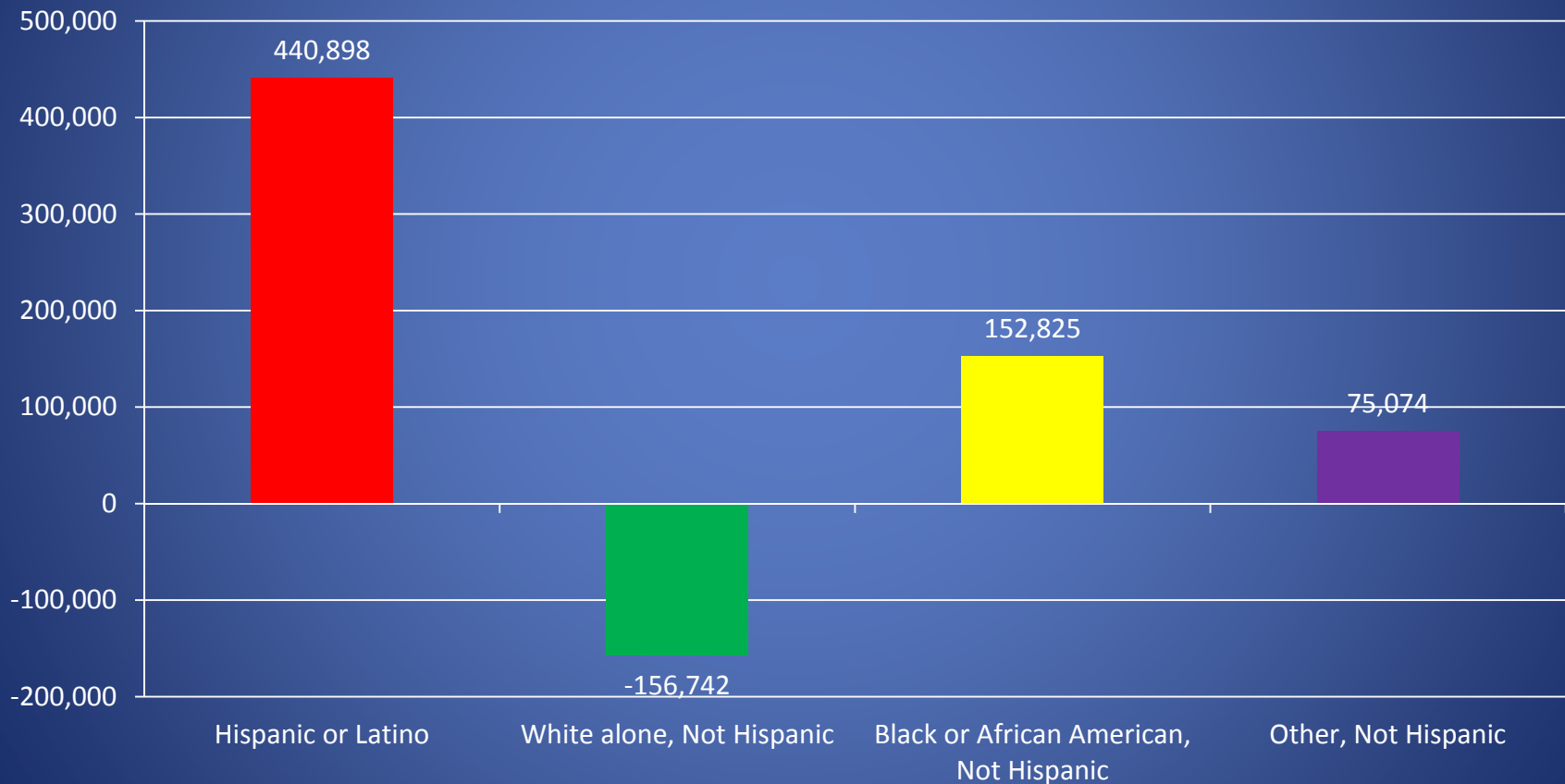


Data Sources: Census 2000 Redistricting Data (Public Law 94-171) Summary File PL002 Table; 2010 Census Redistricting Data (Public Law 94-171) Summary File P2 Table

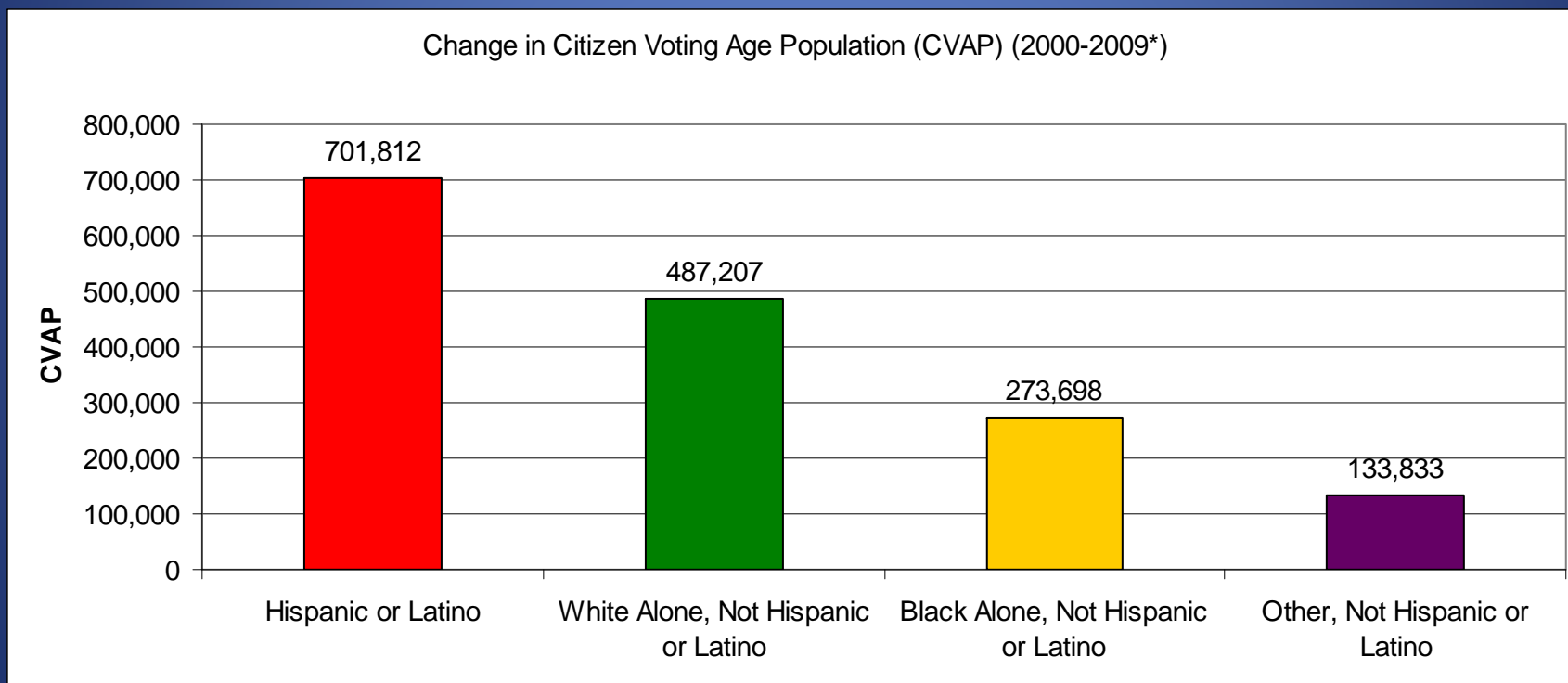


# Dallas and Tarrant Counties Total Population Change (2000-2010)

Change in Total Population (2000-2010)



# CVAP: Whether a redistricting plan contains required §2 districts





# Latino CVAP Growth

- New HCVAP majority district in South-Central Texas (CD35)
- Harris County CD29 grows to HCVAP majority status
- Dallas-Ft. Worth has sufficient HCVAP to comprise the majority of a congressional district (C190)

## Section 2: Gingles Preconditions

1. Minority population is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. Minority voters are politically cohesive; and
3. In the absence of special circumstances, bloc voting by the White majority usually defeats the minority's preferred candidate.

*Gingles*, 478 U.S. at 50-51

# South Texas

- Latinos are sufficiently numerous and compact to form the HCVAP majority of seven districts in South and West Texas.
- Voting is racially polarized and the Senate Factors are present in this region.
- CD23 in C185 is not a district that offers the opportunity to elect the Latino candidate of choice.

# CD 23 in C185 is not an Opportunity District

- In re-aggregated racially contested elections, CD23 elects the Latino-preferred candidate in only one of ten elections.
- Dr. Flores concluded that Latino voter turnout is 2% lower and non-Latino voter turnout is 2% higher than the benchmark.
- Dr. Alford does not consider CD23 an effective Latino district (2011 Tr. 1839:3-7)

# CD 23 in C185 is not an Opportunity District

JUDGE GARCIA: All right. Go ahead.

2 JOHN ALFORD: So I don't think that the 23rd is any  
3 more likely to perform than it was. I think it is probably  
4 less likely to perform than it was, and so I certainly  
5 wouldn't count and don't -- in all of this discussion, I  
6 haven't counted the 23rd as an effective minority district in  
7 the newly adopted plan, but it does remain a majority  
8 district.

(2011 Tr. at 1839)

5 A. I -- I don't count 23 as one of the seven performing  
6 districts when I evaluate C-185.

(2011 Tr. at 1878)

# Discriminatory Purpose

- Direct Evidence
- Circumstantial Evidence
  - Discriminatory Impact
  - Historical Background
  - Sequence of Events
  - Procedural and Substantive Departures



# At the Beginning

- Redistricters knew Congressman Canseco was not the Latino candidate of choice
  - Downton (2011 Tr. 966:3-5)
  - Interiano (Aug. 2014 Tr. 308:25-309:13)
- Concern that Mr. Canseco would be unseated in the 2012 General Election
  - Seliger (Aug. 2014 Tr. 224:21-225:2)
  - Interiano (Aug. 2014 Tr. 343:10-344:2)

## Direct Evidence: the “Nudge Factor”

- Email outlines a method to give the appearance of a Hispanic majority district but the district would not be capable of electing the Hispanic candidate of choice
  - PL617; Dyer (July 2014 Tr. 273:23-274:7)
- Mr. Interiano worked to secure data requested by Mr. Opiela
- RedAppl can achieve the same result
  - Dyer (July 2014 Tr. 295:16-296:10)

# Involvement of Eric Opiela

- Mr. Opiela regularly came and met with the Senate Redistricting Committee Director
  - Seliger (Aug. 2014 Tr. 237:5-12)
- On the House side, Mr. Opiela's maps appear early and throughout the process in Mr. Downton's RedAppl account
  - Downton (Aug. 2014 Tr. 1677:5-1680:10; 1683:18-1685:7)
- Final changes to CD23 came from Mr. Opiela
  - Downton (Aug. 2014 Tr. 1690:24-1691:10)

# Congressional Redistricting Shifts from Senate to House

- Senator Seliger testified that the Senate redistricters could not maintain CD23 as an opportunity district and strengthen the district for Mr. Canseco. Seliger (Aug. 2014 Tr. 222:19-224:2)
- House Redistricters took over the drafting of CD23. Seliger (Aug. 2014 Tr. 224:3-11)
- The lead Senate redistricter, Doug Davis, continued to express concerns
  - Interiano (Aug. 2014 Tr. 325:12-327:9)
  - Archer (Aug. 2014 Tr. 644:15-23)

## Direct Evidence, cont.

- As they worked to keep the SSVR over 50%, redistricters used the OAG10 to measure Latino electoral strength in CD23.
- Interiano: OAG 10 reflected victories for Hispanic preferred candidates (Aug. 2014 Tr. 7:6-8:1)
- Downton: “Have it over 59% HCVAP, but still at 1/10.” (PL659)
- Hanna: “It is clear to me they were looking at this.” (Aug. 2014 Tr. 1514:4-15)

## Direct Evidence, cont.

- Mr. Downton turned on the REDAPPL shading for election results and SSVR while crafting CD23. Downton (2011 Tr. 954:4-8)
- Mr. Downton worked precinct-by-precinct, with the dual goals of strengthening the district for Mr. Canseco and increasing the SSVR. Downton (2011 Tr. 955:7-11)
- Mr. Downton was aware he might have been selecting low-turnout Latino precincts. Downton (2011 Tr. 956:4-957:2)



# Maverick County Split

- Redistricters took half of Maverick County into CD23 to raise the Latino demographic numbers over 50%.
- Redistricters made the “political decision” to leave the remainder of Maverick County out of CD23 because Maverick County whole would “make it difficult for Congressman Canseco to get reelected.”
  - Downton (Aug. 2014 Tr. 1666:4-18)

## Maverick County Split, cont.

Q. . . .Taking in all of Maverick County and then shedding out parts of Atascosa back into 28 could have potentially increased the voting strength of Hispanics in 23, but it would have negatively affected Mr. Canseco's chance at being reelected?

A. Yes.

Downton (Aug 2014 Tr. 1694:15-21)

## Déjà vu in CD23

- Dr. Alford testified:
- Compared to 2003, “we feel like we are all having déjà vu[.]” (2011 Tr. 1929:18-21.)
- CD23 was modified to avoid the election of a Latino candidate of choice: Bonilla in 2003 and Canseco in 2011 (2011 Tr. 1820:14-1821:11; 1880:15-1881:3-7; 1927:16-1928:3)
- CD 23 in 2003 split Webb County and the City of Laredo, and in 2011 CD23 split the city of Eagle Pass and Maverick County. (2011 Tr. 1881:23-1882:2)

## Déjà vu, cont.

Dr. Alford: “If I [were] advising the legislature on drawing the 23rd, I would not have done what was done to the 23rd.” (2011 Tr. 1838 9:21.)

“[M]y first advice to the legislature would be just -- you know, in simple -- with a slight memory of history, do as little as possible to the 23rd as you can. It really has been a difficult -- it was a difficult district for the Court to draw. It was a difficult district for the legislature to draw. But, basically, enough is enough, right? Don't make this hard on yourself. . . Don't mess with the 23rd. That would be my first rule for drawing the districts. (2011 Tr. 1840:8-22.)

## *LULAC v. Perry*, 548 U.S. 399, 440 (2006)

- “In essence the State took away the Latinos' opportunity because Latinos were about to exercise it. This bears the mark of intentional discrimination that could give rise to an equal protection violation.”

# Race as the Means to the End

- Redistricters knew Latino voters were poised to elect their candidate of choice
- Redistricters made race the heart of their mapping exercise
  - Relied on SSVR shading to create a numerical majority
  - Relied on Latino electoral analysis to reduce Latino voters' ability to elect their candidate of choice
- Result was a CD23 that would elect 1/10

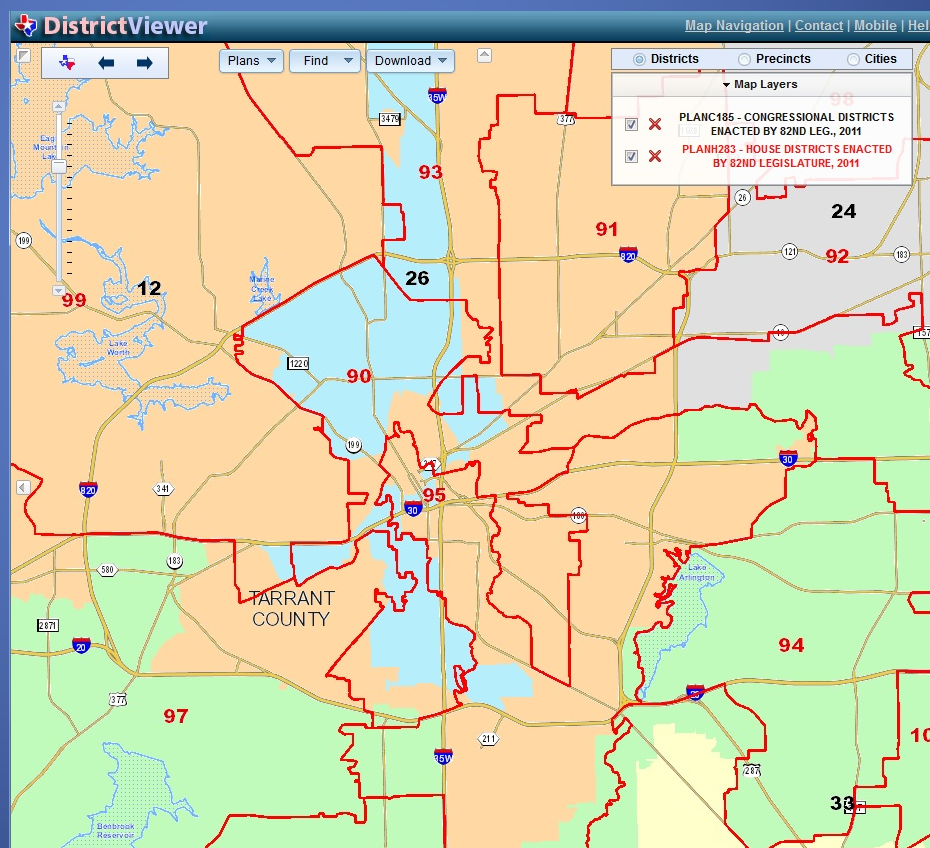


# Race Based Redistricting in DFW

- Mr. Downton testified he was unfamiliar with the communities of interest in Tarrant County. (Aug. 2014 Tr. 1710:9-13)
- Mr. Downton relied exclusively on racial shading to assign voters to CD26 and CD12. (Aug. 2014 Tr. 1710:14-20)
- Mr. Downton used race to divide African Americans into CD12 (PL 1145 - 1159)
- Mr. Downton used race in Dallas County. (2014 Tr. 1719:20-1724:16)

# Lightning Bolt and HD90

- Ryan Downton testified he did not overlay HD90 in H283



## Unconstitutional Race-based Redistricting

“When the State assigns voters on the basis of race, it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, ‘think alike, share the same political interests, and will prefer the same candidates at the polls.’”

*Miller v. Johnson*, 515 U.S. 900, 911-12 (1995)

## Leadership's Claims of Non-involvement are not Credible

- Sen. Seliger testified that while working on CD23, he:
    - Looked at voting patterns and ethnicity;
    - Tried incorporating different counties to see how the district could be changed;
    - Considered splitting Webb County then rejected the idea based on the *LULAC v Perry* decision;
    - Knew that pulling CD23 closer to the border would allow Latino voters to determine the outcome  
(Aug. 2014 Tr. 225:3-12; 227:5-20)
- Then abandons the effort to the House

# Leadership Claims of Non-involvement are not credible

- Chairman Solomons Claims he:
  - Relied on staff assurances of legality
  - Didn't keep track of where his staff was getting ideas
  - Didn't stay in touch with the congressional delegation; didn't review their map for weeks
  - Didn't follow up on CD23 changes in performance
  - Didn't follow up on "lightning bolt" in his county
  - Said Senate was in charge but House drew the map



Thank You