

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

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

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MEXICAN AMERICAN	§	
LEGISLATIVE CAUCUS, TEXAS	§	
HOUSE OF REPRESENTATIVES,	§	
Plaintiffs,	§	CIVIL ACTION NO.
v.	§	SA-11-CA-361-OLG-JES-XR
	§	[Consolidated Case]
STATE OF TEXAS, et al.,	§	
Defendants.	§	

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TEXAS LATINO REDISTRICTING	§	
TASK FORCE, et al.,	§	
Plaintiffs,	§	CIVIL ACTION NO.
v.	§	SA-11-CA-490-OLG-JES-XR
	§	[Consolidated Case]
RICK PERRY,	§	
Defendant.	§	

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MARGARITA V. QUESADA, et al.,	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO.
	§	SA-11-CA-592-OLG-JES-XR
RICK PERRY, et al.,	§	[Consolidated Case]
Defendants.	§	

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

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**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
BY LULAC, QUESADA, AND RODRIGUEZ PLAINTIFFS**

The LULAC plaintiffs, the Quesada plaintiffs, and the Rodriguez plaintiffs submit these proposed findings of fact and conclusions of law, drawn from evidence presented in connection with the 2011 trial (September 6-16, 2011), the interim plan hearing of October 31, 2011, and the 2014 congressional trial (August 11-16 & 29, 2014), as well as certain stipulations in the Joint Pre-trial Order of Aug. 31, 2011, ¶¶ 27-41 (Doc. 277) and the Stipulation (Doc. 958) at 3-4.

These proposed findings and conclusions are intended to complement the joint post-trial brief filed by this joint set of plaintiffs contemporaneously with this filing. The post-trial brief contains more extensive, detailed citations to the evidentiary record than is covered by the proposed findings included there. The ones listed here are the more essential ones necessary to reach the proposed legal conclusions. To the extent any proposed findings of fact are omitted from this document, the joint plaintiffs urge the Court to incorporate the more detailed proposed findings in the post-trial brief which this filing accompanies.

## FINDINGS OF FACT

### A. BASIC BACKGROUND: CENSUS RELEASE, STATEWIDE POPULATION GROWTH, PLAN C185 ENACTMENT

1. The regular session of the 82<sup>nd</sup> Texas Legislature convened on January 10, 2011. Joint Pretrial Order, Aug. 31, 2011 (Doc. 277), Part E, Stipulation 66 (hereinafter, in the form P-T Stip. \_\_\_).
2. When the 82<sup>nd</sup> Legislature convened, Texas had 32 congressional districts (all single-member), operating under Plan C100, which had been ordered into effect in August 2006 by a three-judge court in the United States District Court of the Eastern District of Texas. P-T Stips. 52, 103-106.
3. Between the 2000 official decennial census and the 2010 census, Texas's population had grown from 20,851,820 to 25,145,561, an increase of 4,293,741. P-T Stips. 73-74. Shortly before the 82<sup>nd</sup> Legislature convened, the apportionment of congressional seats resulting from the 2010 census occurred, and Texas was apportioned four additional congressional seats, bringing the number of Texas congressional seats to 36 with the ideal population size for each district being 698,488. P-T Stips. 69, 77, 107-108. The U.S. Census Bureau released population data to be used for redrawing Texas's 36 congressional districts in mid-February, 2011. P-T Stips. 71-72.
4. The 2010 census reflects that no single ethnic or racial group constitutes a majority of Texas's population; it is the only state in that "no-majority-population" situation. P-T Stips. 75-76. 45.3% of the state's population is Anglo; 37% is Latino; and 11.8% is African-American.<sup>1</sup> P-T Stips. 79-80, 83. In the 2000-2010 decade, Texas's Latino population increased 41.8%, to 9,460,921 and accounting for 65% of the state's population growth over the decade. P-T Stips. 81-82. If the

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<sup>1</sup> "Anglo" refers to white non-Hispanics in census parlance. In this filing and the accompanying post-trial brief, references to Anglo and White persons are used interchangeably. The same goes for Hispanic/Latino and African-American/Black. The terms used vary from report to report and witness to witness, and those variances will occur here, too.

overall Texas population had grown at the same rate as its Anglo population, the state would not have gained four additional seats. State Answer to Rodriguez Plaintiffs' Second Amended Complaint (Doc. 912) ¶ 9 (last sent.). If the minority community in Texas had grown at the same rate as the Anglo community did in the decade leading up to the 2010 reapportionment, Texas likely would have actually lost a seat in Congress. Tr. 8/14/14 at 1208 (G. Korbel); Rod. Exh. 907 (S. Ansolabehere Rep. at 11)

5. During the 82<sup>nd</sup> Legislature, Senator Kel Seliger chaired the Senate Select Committee on Redistricting, and Representative Burt Solomons chaired the House Redistricting Committee. Trial Transcript of Aug. 11, 2014, at 219 (hereinafter transcript citations are in the form, "Tr. 8/11/14 at 219 (K. Seliger);" Tr. 8/14/14 at 1062 (T. Hunter). Neither had any previous experience with redistricting. Tr. 8/11/14 at 262 (K. Seliger); Tr. 8/14/14 at 1263 (B. Solomons) ("never done this before"). Neither did the principal mapdrawer, Mr. Downton who had no work experience in either redistricting or demographics. Exh. J-42 (Downton Depo. at 10-11) (personal "self-study" was all he'd done).

6. The 82<sup>nd</sup> regular session adjourned on May 30, 2011, without enactment of a congressional redistricting plan for Texas's 36 districts and without there having been either a proposed plan published or a hearing held. P-T Stip. 97; Tr. 8/11/14 at 230, 256 (K. Seliger); Tr. 8/14/14 at 1346 (B. Solomons) (June 2, 2011, was the only opportunity for public comment in House). The Governor called the legislature into a 30-day special session starting that same day and added congressional redistricting to the call the next day, May 31, 2011. P-T Stips. 109-111. The Senate and House Committee chairs jointly released a public congressional plan, Plan C125, on the after-

noon of May 31, 2011, which was the first public congressional plan. Tr. 8/11/14 at 256 (K. Seliger).

7. Toward the end of the regular session, the House assumed primary responsibility for the congressional plan. Tr. 8/15/15 at 1596 (R. Downton). Chairman Solomons largely turned the job over to his staff, mainly the principal congressional mapdrawer, Ryan Downton. Tr. 8/15/14 at 1591 (R. Downton); Tr. 8/11/14 at 327 (G. Interiano). Solomons relied on Downton and two other staff members to tell him what was legally re-quired in the mapdrawing and passively assumed that the product they gave him was legal. Tr. 8/14/14 at 1301-02, 1305 (B. Solomons). Staff drafted his talking points for floor debate on maps, and he uncritically accepted and used those drafts. Id. at 1283, 1285 (B. Solomons).

8. Chairman Solomons did lay down some basic rules for Downton to follow in his mapdrawing. And early in the process, Downton himself adopted certain basic concepts about the coming congressional map. A key instruction from Solomons was that three out of the four new congressional districts apportioned to Texas had to be Republican districts. Tr. 8/15/14 at 1599-1600, 1769 (R. Downton); Tr. 8/11/14 at 350 (G. Interiano). Solomons would not allow any proposal to get past him to the committee or House floor if it didn't not satisfy his up-front directive on the 3-1 split. Tr. 8/11/14 at 382 (G. Interiano).

9. If a district was not legally "required," then it couldn't be made part of a proposed plan. Id. at 1600 (R. Downton). Senator Seliger also did not want to create any additional Democratic districts unless legally required to do so by the Voting Rights Act. Id. at 277 (K. Seliger). Chairman Solomons took the view that, if he was told a particular proposal for a district was not legally required, then "we really couldn't" incorporate the proposal into the map. Tr. 8/14/14 at 1301-02.

He simply assumed that what he was given by staff was legal. Id. at 1305 (B. Solomons). He wouldn't propose anything to the House that was not "required," and he relied on Downton to tell him what was "required." Id. at 1323 (B. Solomons).

10. Chairman Solomons directed at the beginning of the mapdrawing process that Nueces County definitely would be in a northward-lying district. Id. at 1773 (R. Downton).

11. In early May, Downton decided that a new district, CD35, would be drawn and that it would be the one "new" opportunity district he would draw. Tr. 8/15/14 at 1604 (R. Downton). He knew that the CD35 location was not the only place a new Latino opportunity district could be located. Tr. 8/15/14 at 1773-74 (R. Downton).

12. The Senate redistricting committee voted Plan C125 out of committee on June 3, 2011, and the Senate passed it (as C151, with some modest variations) on June 6, 2011. P-T Stips. 113-114. The House redistricting committee amended Plan C125 and voted a congressional map, Plan C149, out of committee on June 9, 2011. P-T Stip. 115. The House of Representatives passed a congressional plan, Plan C185, on June 15, 2011. P-T Stip. 117. The Senate concurred in the House amendments and passed Plan C185 on June 20, 2011. P-T Stip. 118. The bill, known as Senate Bill 4 or Plan C185, was signed by the Governor on July 18, 2011. P-T Stip. 102, 119-120. The next day, the state sought preclearance of Plan C185 under Section 5 of the Voting Rights Act by filing a lawsuit in the United States District Court for the District of Columbia. Tr. 8/13/14 at 768 (C. Dyer).

**B. BASIC BACKGROUND: CHALLENGES TO PLAN C185'S LEGAL VALIDITY**

13. Challenges to Plan C185, based on the Fourteenth and Fifteenth Amendments and Sections 2 and 5 of the Voting Rights Act were filed in this Court. Among the challengers are those listed here in Findings of Fact 9-32.

14. Eddie Rodriguez is an Hispanic registered voter, resides at 2235 East 6th Street, Austin, Texas 78702, in current CD 25 and Plan C185's CD 35. P-T Stip. 27.

15. Milton Gerard Washington is an African-American registered voter and resides at 11500 Oak Trail, Austin, Texas 78753, in current CD 10 and Plan C185's CD 10. P-T Stip. 28.

16. Bruce Elfant is an Anglo registered voter and resides at 4522 Avenue F, Austin, Texas 78751, in current CD 25 and Plan C185's CD 10. P-T Stip. 29.

17. Balakumar Pandian is an Asian-American registered voter and resides at 2001 East 21st Street, Austin, Texas 78722, in current CD 25 and Plan C185's CD 25. P-T Stip. 30.

18. Alex Serna and Sandra Serna are Hispanic registered voters and reside at 5448 La Estancia, El Paso, Texas 79932, in current CD 16 and Plan C185's CD 16. P-T Stip. 31.

19. Betty F. Lopez is an Hispanic registered voter and resides at 305 S. Nueces Street, San Antonio, Texas 78207, in current CD 20 and Plan C185's CD 35. P-T Stip. 32.

20. David Gonzalez is an Hispanic registered voter and resides at 618 Cobble Drive, San Antonio, Texas 78216, in current CD 21 and Plan C185's CD 20. P-T Stip. 33.

21. Beatrice Saloma is an Hispani registered voter c and resides at 277 West Wildwood Drive, San Antonio, Texas 78212, in current CD 20 and Plan C185's CD 20. P-T Stip. 34.

22. Lionor Sorola-Pohlman is an Hispanic registered voter and resides at 2314 Tannehill Drive, Houston, Texas 77008, in current CD 18 and Plan C185's CD 2. P-T Stip. 35.

23. Eliza Alvarado is an Hispanic registered voter and resides at 1306 W. Kiwi, #4, Pharr, Texas 78577, in current CD 15 and Plan C185's CD 15. P-T Stip. 36.

24. Juanita Valdez-Cox is an Hispanic registered voter and resides at 302 N. Valley View, Donna, Texas 78537, in current CD 15 and Plan C185's CD 34. P-T Stip. 37.

25. Josie Martinez is an Hispanic registered voter and resides at 317 East Drew Street, Fort Worth, Texas 76110, in current CD 12 and Plan C185's CD 26. P-T Stip. 38.

26. Nina Jo Baker is an African-American registered voter and resides at 1002 East 2nd Street, Fort Worth, Texas 76102, in current CD 12 and Plan C185's CD 26. P-T Stip. 39.

27. Travis County, a political subdivision of the State of Texas under Article I, Section 1, of the Texas Constitution, is charged by the Texas Legislature with principal local responsibility for the conduct of elections, including elections for congressional office. *See, e.g.*, Tex. Elec. Code, ch. 31, subch. B & ch. 32, subch. A. Under Section 42.001(a) of the Election Code, the County's Commissioners Court is responsible for establishing election precincts within its territory and, in redistricting years, is directed in Section 42.032 of the Election Code to complete the process by October 1, 2011. P-T Stip. 40.

28. The City of Austin, a political subdivision of the State of Texas, is a home rule municipality under Article XI, Section 5, of the Texas Constitution, with full power of local self-government under Texas Local Government Code § 51.072(a), and is authorized by Article I, § 3, of its charter to take such actions as its governing body deems necessary to advance the interests of its residents. P-T Stip. 41.



29. Romeo Munoz is a Hispanic citizen and a registered voter whose address is 4157 Astoria, Irving, Texas 75062. He resides in current District 24 and under the State's Plan would reside in proposed District 24. P-T Stip. 42.

30. Marc Veasey is an African-American citizen and a registered voter whose address is 8224 Longfellow Lane, Fort Worth, TX 76120. He resides in current District 26 and under the State's Plan would reside in proposed District 12. Defendant VEASEY is also the duly elected representative of District 95 in the Texas State House of Representatives. P-T Stip. 43.

31. Jane Hamilton is an African-American citizen and a registered voter whose address is 1111 South Akard St., Unit 310, Dallas, TX 75215. Plaintiff HAMILTON resides in current District 30 and under the State's Plan would reside in proposed District 30. P-T Stip. 44.

32. Lyman King is an African-American citizen and a registered voter whose address is 2600 Piazza Court #5, Grand Prairie, TX 75054. Plaintiff KING resides in current District 24 and under the State's Plan would reside in proposed District 6. P-T Stip. 45.

33. John Jenkins is an African-American citizen and a registered voter whose address is 6723 Smallwood, Arlington, Texas 76001. Plaintiff JENKINS resides in current District 6 and under the State's Plan would reside in proposed District 33. P-T Stip. 46.

34. Kathleen Maria Shaw is an African-American citizen and registered voter whose address is 812 Parkside Drive, Cedar Hill, TX 75104-3144. She resides in the current 24th Congressional District and under the State's Plan would reside in Congressional District 30. P-T Stip. 47.

35. Debbie Allen is an African-American citizen and a registered voter whose address is 1514 Pleasantville Drive, Houston, TX 77029. She resides in the current Congressional District 18 and under the State's Plan would reside in proposed District 18. P-T Stip. 48.

36. Jamaal R. Smith is an African-American citizen and a registered voter whose address is Windriver Park Townhomes, 3901 Woodchase Drive Unit 36, Houston, Texas 77042. He resides in the current Congressional District 9 and under the State's Plan would reside in proposed District 9. P-T Stip. 49.

37. Sandra Puente is an Hispanic citizen and a registered voter whose address is 608 Wainwright Street, Houston, TX 77022. She resides in the current Congressional District 29 and under the State's Plan would reside in proposed District 29. P-T Stip. 50.

**C. Plan C185's allocation to Anglos compared to minorities, and racially polarized voting**

38. Despite the fact that Anglos are only a plurality of the state's population, they are an outright majority of the population in 20 of the 36 districts in Plan C185, plus a plurality in three more. Rod. Exh. 907 (S. Ansolabehere Rep. at 20). Despite the fact that Latinos and African-Americans outnumber Anglos in the state, Anglos are the majority or a plurality of the population in 64% of the congressional districts. *Id.* The level of different treatment of minorities and Anglos in Texas's congressional plan is starkly presented in this statistic: 88% of Anglo adults live in districts where most people are of the same racial group as they are. Although voting age Latinos and African-Americans are nearly as numerous as Anglos of voting age—8.4 million versus 9.1 million—over half of them live in districts where Anglos are the majority. *Id.* at 24-25.

39. Racially polarized voting is pervasive in Texas and constitutes the fundamental reason that race matters in redistricting. Tr. 8/12/14 at 594 (L. Handley); Joint Exhibit 15 (Ansolabehere 2011 Rep. at 37); Tr. 9/10/11 at 1115-16 (S. Ansolabehere). The state has conceded this fact. Tr. 8/26/14 at 2168-69.

**D. Travis County, benchmark CD25, and new CD35**

40. Twelve Texas counties have enough population to form at least half the population of an ideally-populated district. Rod. Exh. 927. All of them except Travis County. Id. Even though it has enough population to have one and a half congressional districts fit within it, Tr. 9/10/11 at 1137 (S. Ansolabehere), it does not anchor one district. Rod. Exh. 927; Tr. 8/13/14 at 881 (D. Dukes).

41. The voting age population of Travis County is 55.2% Anglo, 29.3% Hispanic, and 7.8% Black. The voting age population for the City of Austin is 53.6% Anglo, 30.6% Hispanic, and 7.5% Black.

See <http://txsdc.utsa.edu/Resources/Decennial/2010/Redistrict/pl94-171/profiles/county/table3.txt>. (county);

<http://txsdc.utsa.edu/Resources/Decennial/2010/Redistrict/pl94-171/profiles/wholeplace/table4.txt>. Plan C185 (city).

42. Travis County is divided into five congressional districts. Austin is divided into six congressional districts, with 23.8% being the highest percentage of its population in any one of those districts. Rod. Exh. 941 (Red-135 Rep. at 2).

43. Benchmark CD25 was a crossover district. The state conceded after the 2011 trial round that it was a crossover district. See Doc. 457 at 19 & n.9. Since 2000, minority candidates—both Latino and African-American—have been elected forty-one times to public positions in county- and city-wide elections in Travis County and Austin. Rod. Exh. 901; Tr. 9/10/11 at 1188-90 (D. Butts). There has long existed a tri-ethnic coalition in Travis County and Austin, composed of Latinos, African-Americans, and a crossover group of Anglo voters. Id. at 1189-191; see also Tr. 8/14/14 at 1161-65 (G. Barrientos); Exh. J-54 at 18-20 (E. Rodriguez Depo.); Tr. 9/10/11 at 1185-1187, 1206 (S. Biscoe). It is most dominant in the Democratic primary. Tr. 9/13/14 at 818 (E. Rodriguez). It operates in general elections and primaries. Tr. 9/13/14 at 877-880 (D. Dukes).

44. The pattern of racially polarized voting is different than the rest of Texas. “Travis County, where whites show a high rate of cross-over voting, is a notable exception to this pattern of racial polarization.” Joint Exh. 15 (see Doc. 341) Ansolabehere 2011 Rep. at 7; see also *id.* at 33 (“Travis County breaks the pattern observed elsewhere in the state”); Tr. 9/10/11 at 1120-21 (S. Ansolabehere) (Travis County an exception to rest of state in the level of Anglo crossover voting, concluding that, in Travis County, “[v]ery low level of block voting by whites and a fairly high number of crossover voting,” so that “whites in Travis County appear to . . . vote for the same candidates preferred by black and Hispanic” voters at significant levels). He concludes that “[w]hites do not appear to vote as a cohesive bloc in opposition to minorities in this county.” *Id.* at 34. The Anglo crossover vote in Travis County is in the 47%-52% range. *Id.* at 55 (Table 5). This compares to the predicted statewide crossover Anglo vote as being only about 28%. *Id.* The “lowest level of Anglo cohesion in the state” is in Travis County. Tr. 8/13/14 at 943 (S. Ansolabehere). That translates into a 40-45 percent crossover vote of Anglos to vote for minority preferred candidates. *Id.* Other experts agree. Joint Exhibit 3 (Lichtman Rep. at 8, Table 2). Dr. Engstrom reported an Anglo crossover rate for Travis County in a range from 41.3% to 49.89%, significantly higher crossover than in the other counties he analyzed. Joint Exhibit 7 (Engstrom Rep. at 35-36). Dr. Kousser characterized Plan C185’s treatment of 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.” Joint Exhibit 2 (Kousser Rep. at 129). Dr. Murray found that “a sizeable part of Travis County shares” the pattern in which Anglo voters crossover in significant numbers to support the same candidates supported by minority voters. Joint Exhibit 4 (Murray Rep. at 21).

Dr. Alford saw the distribution of Anglo votes in Travis County to be “unique.” Exh. J-43 at 271 (J. Alford Depo.). In Travis County, “Anglo crossover is substantially higher than it is in the other counties in Texas.” Tr. 9/14/11 at 1787 (J. Alford). Anglo crossover in those other counties is in the high 20s. Id. at 1786 (J. Alford).

45. Plan C185 used race to divide Travis County and benchmark CD25. Rod. Exh. 921; Tr. 8/13/14 at 881 (D. Dukes); Tr. 8/13/14 at 1032, 1034 (J. Travillion). Most Latinos in Travis County are distributed across districts in which they are the minority—even while 91% of Anglos in the county are in districts that are majority Anglo. Joint Exhibit 15 (Ansolabehere 2011 Rep. at 26). The divisions of both Travis County and the benchmark CD25 crossover district and concluded that those divisions more closely track racial lines than other lines. Rod. Exh. 912 at 7. Racial indicators are statistically significantly correlated with inclusion of VTDs in specific CDs. Id. at 39. Race is a stronger predictor than party vote of which VTDs are put in which CDs. Id.; Tr. 9/13/14 at 947-50 (S. Ansolabehere). C185’s mapdrawer said that he used race to divide the Anglos in the county. Tr. 9/15/14 at 1674 (R. Downton (“Anglo Democrats needed to be divided” among the districts)). Id.

46. There is no evidence that the Democratic primary serves to filter out, or screen, minority-preferred candidates from reaching the general election in Travis County. African-Americans and Latinos in Travis County show a high rate of cohesion because in most primary elections large majorities of the two groups vote for the same candidate, and candidates preferred by minority voters won 75% of the time in Travis primaries. Rod. Exh. 914 at 24-25. No one group dominates the primary process, and power is shared equally and in such a way that the racial groups succeed in nominating their preferred candidates 75 percent of the time. Id. The primary

election process in Travis County and under old CD25 did not prevent minority-preferred candidates from reaching the general election contests.

47. CD35 was a swap, an intended “offset” to the Legislature’s weakening of CD23 to render it less likely to elect the candidate of choice of Latino voters. Tr. 9/14/11 at 1840 (J. Alford); id. at 1875.

48. CD35 is not reasonably compact; it is the least compact district in the C185 plan by each of three technical compactness measures. Joint Exh. 18 (T. Giberson Rep.) at App. “Compactness Measures” for Plan C185; see also Rod. Exh. 943; Tr. 8/14/14 at 1214 (G. Korbel); Exh. J-43 at 43 (J. Alford Depo.).

#### **E. Nueces County**

49. Because of the Voting Rights Act, Nueces County had been oriented southward in a congressional district for a third of a century. Tr. 8/14/14 at 1212 (G. Korbel). It was in benchmark CD27, which had been 69.2% Latino VAP during the 2000-2010 decade. Rod. Exh. 929, 6th page. Its Latino CVAP was 63.8% (using 2005-2009 ACS tabulation) or 65.9% (using 2008-2012 ACS tabulation). Rod. Exh. 930. It was a Latino opportunity district. Tr. 8/11/14 at 229 (K. Seliger)

50. When Congressman Farenthold was elected from CD27 in 2010, efforts began to protect him by trying to find Anglo voters for a congressional district. U.S. Exh. 690. Chairman Solomons and Downton adopted a northward strategy; Solomons instructed that Nueces County would be oriented northward. Tr. 8/15/14 at 1773 (R. Downton). Moving Nueces County northward meant eliminating one of the available alternatives for creating a new Latino opportunity district. Id. at 1774 (R. Downton).

51. More than 206,000 Latinos live in Nueces County, constituting 60.6% of its population, Rod. Exh. 938, 6th page. Nueces County is 55.87% Latino CVAP; total Latino CVAP in the county is estimated to be 133,370. State Exh. 177 (Alford Rep. at App., 14th page). Anglo voters in Nueces County maintain high White cohesion. Tr. 8/13/11 at 943 (S. Ansolabehere). Only about 10%-15% of Nueces Anglos vote for the Latino-preferred candidate. Id.

52. Plan C185, by putting Nueces northward, makes it the only county in the district with more than 50% Latino VAP. Rod. Exh. 938, 6th page. Nueces County Latinos have gone from being in a district with about 65% Latino CVAP to being in a district that has dropped to 43.0 Latino CVAP. Rod. Exh. 939, 3rd page (2008-2012 ACS survey). This single shift from one district to another greatly reduced the opportunity of the sizable Hispanic population in Nueces County to elect candidates of their choice. Joint Exhibit 15 (Ansolabehere 2011 Rep. at 27). CD27 switches from a minority opportunity district to White district. Rod. Exh. 907 at 33 (Ansolabehere Rep.).

#### **F. South Texas envelope**

53. Plan C185—with its stranding of Nueces County Latinos and dismantlement of the existing Travis-based crossover district—creates only five Latino opportunity districts entirely in the South Texas envelope, plus one (CD35) partially in the envelope and partially out. Rod. Exh. 907 (Ansolabehere Rep. at 33). They are CDs 15, 16, 20, 28, 34, and 35. Id. With four fewer total districts in the map as a whole and with a smaller Latino population, benchmark Plan C100 already included six Latino opportunity districts in the envelope, plus one opportunity district (crossover CD25) outside the envelope in the Travis area partially covered by C185's CD35. The Latino districts were CDs 15, 16, 20, 23, 27, and 28. Id.

54. Numerous demonstration maps establish that an additional Latino opportunity district could have been created in the South Texas envelope without destroying benchmark CD25, if Nueces County was not sent northward but instead maintained in its southward orientation. See, e.g., Plans C220, 205, 164, 218, 123, and 166. Another demonstration map demonstrates that this could have resulted in two additional Latino opportunity districts if the envelope were expanded to reach Latino populations in Ector and Midland Counties. See Plan C262.

55. In the C100 Latino districts in South Texas envelope as a whole, there was sufficient Latino CVAP growth to create another majority Latino CVAP district entirely within it. Rod. Exh. 913 (Ansolabehere Rep. at 8); Tr. 8/13/14 at 938 (S. Ansolabehere). In contrast, the C100 district with the least decline in Anglo CVAP (relative to CVAP) was crossover CD25. Rod. Exh. 913 (Ansolabehere Rep. at 7 & 14 (Table 3)); Tr. 8/13/14 at 938 (S. Ansolabehere). Total CVAP increased faster in C100's CDs 15, 16, 20, 23, 27, and 28—all in the South Texas envelope—than in the rest of Texas. Rod. Exh. 913 (Ansolabehere Rep. at 9); Tr. 8/13/14 at 939 (S. Ansolabehere). “Hispanics account for almost all the growth in the CVAP in the districts in the envelope.” Id.

#### **G. Dallas and Tarrant Counties**

56. Dallas and Tarrant Counties in North Texas are adjacent to one another and, combined, contain approximately the same land area as Harris County. Tr. 8/16/14 at 1920 (J. Alford). The combined total population of Dallas and Tarrant roughly equals Harris County's total population. See TLC website: [http://www.tlc.state.tx.us/redist/pdf/census\\_2010/2010\\_Co\\_Pop.pdf](http://www.tlc.state.tx.us/redist/pdf/census_2010/2010_Co_Pop.pdf). See U.S. Census website:



<http://www.census.gov/2010census/popmap/ipmtext.php?fl=48>. The combined African-American and Latino population of Dallas and Tarrant is nearly the same as in Harris. Under Plan C100, there were three districts in Harris County where Texas minorities could elect their candidate of choice: CDs 9 (Cong. A. Green); 18 (Cong. S. Jackson-Lee); and 29 (Cong. G. Green). But in Dallas and Tarrant together, only one such minority opportunity district existed—CD30 (Cong. E. B. Johnson)—while seven districts controlled by Anglo voters in the region were either wholly within, or contained significant population within, the two counties.

57. Latino and African-American populations in Dallas and Tarrant grew significantly while, by contrast, the Anglo population actually shrank in raw numbers. African-American population in the two counties grew by 179,319, to 834,517; Latino population, by 440,898, to 1,388,917. Together, the population of these two minorities in the two counties increased 605,455 in the decade leading up to 2010. Anglo population decreased by 156,742. Quesada Exh. 297 at 3-4.

58. Latinos are the single largest racial or ethnic group in Dallas County, yet none of the nearly one million Latino residents of the county was assigned to a congressional district in which Latinos were a majority or even plurality of either total or voting age population. Joint Exhibit 15 (Ansolabehere 2011 Rep. at 22). Forty-two percent of African-Americans in Dallas County were assigned to districts in which they are a minority. *Id.* In contrast, over 90% of the Anglos in Dallas County are in congressional districts in which they are the majority. *Id.* at 23. Unlike Dallas County, Tarrant County is—marginally—majority Anglo. *Id.* at 24 (Tarrant, 52% Anglo). None of the three-quarters of a million African-Americans and Latinos in Tarrant County was assigned in Plan C185 to a district in which they are either a plurality or a majority. *Id.*

59. The evidence is replete with requests from leading Texas Republican figures to create a new minority opportunity district in the Dallas/Tarrant area. The leader of the Texas congressional delegation, Congressman Smith, also requested a new minority opportunity district in the DFW area, providing a map describing specific contours for the new district. See State Exh. 573; Tr. 8/11/14 at 243-44 (K. Seliger); Tr. 8/14/14 at 1272-75 (B. Solomons); Tr. 8/15/14 at 1594 (R. Downton). Congressman Smith began pushing the idea in early April 2011 and was still pursuing it in mid-May. Tr. 8/11/14 at 305-06 (G. Interiano). It never made it past the tight inner circle of Chairman Solomons and his staff. Id. at 382 (G. Interiano) (Solomons did not even hold hearing on Smith proposal). The Chairman even went so far to actively hide the existence of the Smith map. He made a public misrepresentation on the floor of the House to then-Representative Veasey, claiming that he had never seen Congressman Smith's proposal even though he had. Tr. 8/14/14 at 1277-78, 1309 (B. Solomons). The Governor—also Republican—tried, too, for a new minority opportunity district in Dallas and Tarrant Counties. His office sent Chairman Solomons a map proposal in early May, containing a new DFW-area opportunity district. Tr. 8/14/14 at 1304, 1365 (B. Solomons); Tr. 8/15/14 at 1602, 1760 (R. Downton). The Governor's proposal suffered the same fate as the Smith proposal; Solomons and Downton didn't allow it to go anywhere. Id. at 1603 (R. Downton) (not presented to House because not, in his view, "mandatory draw"). Creating a new minority opportunity district in Dallas and Tarrant could actually help Republican incumbents. It would relieve them from threats that they perceived coming from the accelerating minority population in their districts. Tr. 8/14/14 at 1363 (B. Solomons); Tr. 8/15/14 at 1703 (R. Downton). Chairman Solomons knew this. Tr. 8/14/14 at 1363.

60. African-American and Latino members of the Legislature spoke out against the plan and offered alternative redistricting plans that more accurately reflected the size and growth of the Latino and African-American populations, a number of which created two new congressional districts (in addition to CD30) that provided minority voters with an effective ability to elect a candidate of choice. These included Plan C121 proposed by Representative Veasey, Plan C149 proposed by Senator West, and Plan C188 proposed by Representative René Oliveira. State leaders blocked all alternative plans and allowed no significant amendments during the process leading to passage of C185. See, e.g., Tr. 8/13/14 at 899-900 (D. Dukes).

62. Legislative leaders chose to ignore this broad range of requests and, instead, fracture the minority populations of Dallas and Tarrant Counties. In CDs 24 and 32, for example, legislative leaders carefully carved out the neighborhoods with the most minority growth and attached them to Anglo-controlled CD6. In Dallas County, heavily Latino North Oak Cliff and parts of South Irving were removed from Cong. Sessions' CD32 and moved into Anglo-controlled CD6. Also, heavily Latino and African-American neighborhoods in Grand Prairie and South Irving were removed from Cong. Marchant's CD24 and put in CD6. Thus, all these minority communities of interest have been stranded in districts controlled by Anglo voters. Mr. Downton acknowledged in his testimony that he split precincts along racial and ethnic lines in this region. Tr. 8/15/14 at 1715-16 (R. Downton).

63. In Tarrant County, legislative leaders separated the Latino neighborhoods in Fort Worth from nearby African-American neighborhoods by drawing the bizarrely shaped "Lightning Bolt" protrusion into Tarrant County from Anglo-controlled, Denton County-based CD26. Chairman Solomons—who had never stated any interest in having a minority opportunity district in the

DFW area and who ultimately instructed that there not be one, Tr. 8/15/14 at 1786, 1772 (R. Downton)—professed to being uninformed about why the Lightning Bolt looked the way it did as it shot through Tarrant County. Tr. 8/14/14 at 1306 (B. Solomons). But his mapdrawer carefully used racial shading at both the block and precinct level, *id.* at 1710. Mr. Downton shifted and narrowed the existing Tarrant County portion of CD26 from east to west to carefully pick up the most Latino portions of CD12 (including the north side) and then down in a winding, twisting fashion to pick up the south side of Fort Worth and other growing Latino neighborhoods. CD12 was then looped underneath and around the Lightning Bolt to add African-American neighborhoods in southeast Fort Worth into CD12. Both Latino and African-American neighborhoods were also fractured in the Tarrant County region. Quesada Exhs. 26, 34, 73, 294, and 340 (demonstrating fracturing by CDs 12 and 26). Downton was fully aware of the racial concentrations in the DFW area as he drew the congressional map, stating that he resisted widening the Lightning Bolt of CD26 because that would have required taking in more African-American population. Tr. 8/15/14 at 1789 -1790 (R. Downton)

64. At first, the state explained this bizarre configuration by claiming a need to retain the Trinity Vision development project in CD12. Tr. 8/11/14 at 212 (opening statement). The story shifted, however, after plaintiffs offered proof that the Trinity Vision project was already squarely within CD12, and the need for the jagged twists and turns with respect to CDs 12 and 26 could have been avoided by simply not shifting CD26 westward. See Quesada Exhs. 114, 115. The state then switched explanations for the Lightning Bolt, claiming a need to wrap around it with CD12 because of a desire to include the city of North Richland Hills in CD12. Tr. 8/15/14 at 1614, 1709 (R. Downton). But that city could have been easily added to CD12 without creating the Lightning

Bolt or by moving it westward in Tarrant County to avoid fracturing minority population. Quesada Exh. 340. Downton also testified that he used Latino shading when drawing the Lightning Bolt, which explains why Latino population in Tarrant County has been deliberately separated. He also testified that he intentionally assigned African-American neighborhoods to CD12 on the basis of race (and the only way he would have known these areas were African-American is by resorting to racial shading when drawing the boundaries).

65. Beyond the state's fracturing of the traditional core minority neighborhoods in Tarrant County by drawing CDs 12 and 26, state leaders configured CD33 under Plan C185 to fracture other Tarrant County neighborhoods that have concentrations of African-American and Latino population. Under plan C185, CD33 is an Anglo-controlled district anchored in Parker County west of Tarrant. Quesada Exhs. 294 (at 4) and 340. The district protrudes eastward into Tarrant County from Parker County and absorbs the growing African-American neighborhoods in southwest Fort Worth (Meadow Creek), and then extends narrowly eastward across the county to absorb growing African-American and Latino neighborhoods in Arlington. Quesada Exhs. 73, 294 (at 4), and 340.

#### **H. Intentional racial discrimination**

66. The Court finds as a fact that Plan C185 is infected with intentional racial discrimination. Applying the *Arlington Heights* factors, it finds that Plan C185 use race as a basis for invidiously discriminating against Latinos and African-Americans in Dallas and Tarrant Counties. It purposely advantaged Anglo voters and, as part of this, diluted and diminished the voting and representational power of minorities, both Latino and African-American. The Court further finds as fact that Plan C185 purposely discriminated against Latinos in Nueces County by stranding more

than 200,000 of them in a district where the Legislature intended that the Anglo vote would dominate over the Latino vote and render the Latino vote meaningless. It accomplished this objective by purposely finding Anglo population to swamp Latino population. The Court further finds that Plan C185 purposely used race to divide the populations of Travis County and eliminate a preexisting viable crossover district, benchmark CD25. By using race as the tool to destroy benchmark CD25, Plan C185 designedly reduced the voting and representational power of minorities, both Latino and African-American, in Travis County and in the main part of benchmark CD25 that is centered in the county.

#### CONCLUSIONS OF LAW

1. Plan C185 violates the Equal Protection Clause of the Fourteenth Amendment because it invidiously discriminates against both Latinos and African-Americans on the basis of race. It does this map-wide because it is permeated with the invidious use of race as a classification. The state has demonstrated no compelling reason for its use of race this way in Plan C185. Among the areas in which this impermissible use of race is established is:

- a. The Dallas-Fort Worth area (Dallas and Tarrant Counties), where Latinos and African-Americans were divided impermissibly among numerous Anglo-dominated districts;
- b. Nueces County, where Latinos were purposely stranded in an Angl-dominated district on the basis of race and for the purpose of providing Anglo voters, and the candidate of choice of those Anglo voters, political advantages in terms of congressional elections;
- c. CD23, where the Legislature purposely applied a strategy of undermining the electoral and representational power of Latinos to ensure Anglo voters, and the candidate of choice of those Anglo voters, regained an electoral advantage; and

d. Travis County, where a preexisting crossover district, CD25, had provided minority voters, both Latino and African-American, the opportunity to elect, with support from a critical mass of crossover Anglo voters, the candidate of their choice in congressional elections. Plan C185 purposely destroyed this crossover CD25 using race as the predominant basis for its destruction.

2. Plan C185 violates Section 2 of the Voting Rights Act by its destruction of benchmark CD23 as a Latino opportunity district, a destruction with no offset in the creation of new CD35, which was also used to help eliminate the constitutionally protected crossover CD25.

3. Plan C185 violates Section 2 of the Voting Rights Act by not creating at least one new Latino opportunity district, without unconstitutionally eliminating a preexisting crossover district, in the area generally referred to in this litigation as the South Texas envelope of counties.

4. A declaratory judgment is rendered that Plan C185 is legally invalid for the reasons given in Conclusions of Law Nos. 1-3; however, this is not a final judgment because of Conclusion of Law No. 5.

5. The Court will undertake further consideration of what remedies, including remedies under Section 3(c) of the Voting Rights Act, might be appropriate for the legal violations found here.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of October, 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  
Renea Hicks