

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

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SHANNON PEREZ, *et al.*,

*Plaintiffs,*

v.

STATE OF TEXAS, *et al.*,

*Defendants.*

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

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**DEFENDANTS' FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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## FINDINGS OF FACT<sup>1</sup>

### I. 2011 House Plan

#### A. Sequence of Events

1. The 82nd Legislature convened on January 11, 2011. DX-292.
2. The Texas Legislature meets every odd-numbered year for a 140 calendar-day session. Test. of Trey Martinez-Fischer, Trial Tr. 106:25-107:8, Sept. 6, 2011. Because of the Legislature's constitutional restrictions and the press of a busy calendar, if redistricting bills were not passed by the House Redistricting Committee and introduced on the House floor by April, it is unlikely that they could have been enacted during the regular session. Test. of Bonnie Bruce, Trial Tr. 1939:1-10, July 19, 2014 (noting that if a bill is not out of committee by Easter, it will likely not make it through the process).
3. The 2011 legislative session also included the two-year state budget, fifteen agency sunset laws, public school finance legislation, and five "items" which were declared emergencies pursuant to the Governor's constitutional authority to do so. Test. of Trey Martinez-Fischer, Trial Tr. 108:3-109:6, Sept. 6, 2011. The process was understandably hurried because of the volume of work, the short prescribed time, and the operating rules of the Legislature. Test. of Trey Martinez-Fischer, Trial Tr. 109:1-12, Sept. 6, 2011.
4. Pursuant to the Texas Constitution, if the Texas House and Texas Senate redistricting plans were not enacted during the regular session, they would have been delegated to the five-person Legislative Redistricting Board (LRB), consisting of the Lieutenant Governor, the Speaker of the House, the Attorney General of Texas, the Comptroller of Public Accounts, and the General Land Office Commissioner. Test. of Bonnie Bruce, Trial Tr. 1926:7-25, July 19, 2014; Test. of Marc Veasey, Trial Tr. 39:1-6, July 14, 2014; TEX. CONST. art. III, § 28.
5. The LRB must approve a redistricting map within 60 days. The LRB can pass a map with a vote of 3 members, and there are no requirements that the LRB take testimony, consider the legislative record, seek input from legislators, or otherwise engage in any formal process. Test. of Marc Veasey, Trial Tr. 39:11-40:19, July 14, 2014.
6. In 2001, the House passed a map of district boundaries for the House, but the Senate did not pass that map. As a result, the Legislative Redistricting Board drew the map, and members of both parties felt like they lost a lot of input into how their districts should have been drawn. Test. of Bonnie Bruce, Trial Tr. 1927:1-9, July 19, 2014.
7. The House Redistricting Committee was chaired by Representative Burt Solomons. Chairman Solomons testified that he relied on his staff throughout the process to provide legal opinions on redistricting and proposed maps. Test. of Burt Solomons, Trial Tr. 1030:21-1031:5, July 17, 2014.

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<sup>1</sup> Citations to the trial transcripts are notated "Test. of \_\_\_, Trial Tr. \_\_\_" with the applicable reference to the 2011 trial or the 2014 trial. Citations to trial exhibits are identified as "DX-\_\_\_," "DOJ-\_\_\_," "TLRTF-\_\_\_," or "Joint Exhibit E-\_\_\_."

8. The Redistricting Committee is a procedural committee, so timeframes for turning in minutes are shorter than for other committees. This allows information to be shared with the public more quickly. Test. of Bonnie Bruce, Trial Tr. 1922:12-16, July 19, 2014.

9. The Speaker announced Chairman Solomons as the Chair of the House Redistricting Committee on February 11, 2011. Test. of Bonnie Bruce, Trial Tr. 1928:8-12, July 19, 2014. Chairman Solomons and his Chief of Staff, Bonnie Bruce, found out that Solomons would chair the Redistricting Committee approximately 48 hours before the announcement was made. Test. of Bonnie Bruce, Trial Tr. 1925:19-23, July 19, 2014.

10. Chairman Solomons was selected because he had experience passing complex, controversial legislation during the session, and it was expected that he would be able to navigate the waters of potentially pairing his friends and colleagues. Test. of Bonnie Bruce, Trial Tr. 1925:24-1926:6, July 19, 2014.

11. When he was announced as Chairman of the House Redistricting Committee, Chairman Solomons hired staff and sought guidance and counsel from TLC attorneys with prior redistricting experience. Test. of Burt Solomons, Trial Tr. 1068:4-22, July 17, 2014. Chairman Solomons hired Ryan Downton to be the mapdrawer and attorney for the House Redistricting Committee in February 2011. Test. of Bonnie Bruce, Trial Tr. 1928:7-12, July 19, 2014.

12. Gerardo Interiano was originally hired by the Speaker's office to be the liaison with the congressional delegation; he was not hired as a map drawer. Test. of Gerardo Interiano, Trial Tr. 1572:15-23, July 18, 2014.

13. The Redistricting Committee received census data from the U.S. Census Bureau on February 17, 2011. It took a couple days for the Texas Legislative Council to load the data into RedAppl. Test. of Bonnie Bruce, Trial Tr. 1930:10-16, July 19, 2014.

14. When apportioning the districts for the House map, the Legislature only had available to it Spanish Surname Voter Registration (SSVR) data compiled by the Texas Secretary of State. The Hispanic Citizen Voting Age (HCVAP) data, which is compiled by the U.S. Census Bureau's American Community Survey (ACS), was not available until the Legislature began the process of drawing the Congressional map. *See* Joint Exhibit J-62, Dep. of Ryan Downton at 15:17-15:23, 16:24-17:7, Aug. 12, 2011 (ECF No. 420).

15. Immediately after the census data came out, the mapdrawers started by looking at county population to determine drop-in counties and how to abide by the County Line Rule and the Voting Rights Act. They started with Montgomery County outside Houston, which had the highest growth rate in the state, then assigned the number of districts to various regions of the state. Next the mapdrawers began to work on the different regions. Test. of Gerardo Interiano, Trial Tr. 59:19-60:10; 61:10-14, Aug. 11, 2014.

16. Shortly after the Census data was released, Chairman Solomons went to the floor of the House. He discussed drop-in districts, identified the eight counties that would be drop-in districts,

and asked those delegations to get together to try to come to a map for their county. Test. of Bonnie Bruce, Trial Tr. 1930:17-1931:4, July 19, 2014.

17. Chairman Solomons made frequent announcements on the House floor, he sent letters to the membership of the House, he met with members of the Redistricting Committee, and he encouraged all members to meet with the Texas Legislative Council to talk about the legal requirements for compliance with the Voting Rights Act. Test. of Bonnie Bruce, Trial Tr. 1929:14-22, July 19, 2014.

18. The initial goal was to pass all four redistricting maps—for the House of Representatives, Senate, State Board of Education, and Congress—by the end of the regular session. Test. of Bonnie Bruce, Trial Tr. 1924:21-1925:1, July 19, 2014.

19. Chairman Solomons was clear that he wanted a member-driven map that was fair and legal and met all the requirements of the Voting Rights Act and the Texas Constitution. Test. of Bonnie Bruce, Trial Tr. 1928:23-25, 1929:11-15, July 19, 2014.

20. Chairman Solomons asked every member to send in three maps: their ideal map, a realistic map, and a map they wouldn't necessarily want but could live with. Solomons believed the members knew their districts best in terms of geography, demographics, and communities of interest. Test. of Ryan Downtown, Trial Tr. 922:11-19, Sept. 9, 2011; Test. of Bonnie Bruce, Trial Tr. 1934:10-20, July 19, 2014.

21. The Texas Legislature drew H283 to achieve the following goals: (1) ensure that the process of drawing the House redistricting process was driven by House members; (2) comply with federal law; (3) comply with state law; (4) maintain compactness and contiguity; (5) keep each county in a single district except where division of population was necessary to comply with one-person, one-vote or to apportion surplus population; (6) preserve communities of interest; (7) avoid pairing incumbents where possible; and (8) where pairing was necessary, give incumbents a chance at reelection by pairing Democrats only with other Democrats and Republicans only with other Republicans. Test. of Gerardo Interiano, Trial Tr. 1427:10-14; 1499:15–1500:3, Sept. 12, 2011.

22. The redistricting plan for the Texas House of Representatives was drafted primarily by Gerardo Interiano, an attorney on Speaker Joe Straus's staff. Ryan Downton, an attorney who served as general counsel to the House Redistricting Committee, also drafted parts of the Texas House plan. Test. of Gerardo Interiano, Trial Tr. 1418:19-22, Sept. 12, 2011; Test. of David Hanna, Trial Tr. 1152:22-25, July 17, 2014; Test. of Gerardo Interiano, Trial Tr. 1575:18-25, July 18, 2014; Test. of Ryan Downton, Trial Tr. 1989:2-10, July 19, 2014.

23. In addition to the Voting Rights Act and the United States Constitution, the creation of the Texas House redistricting plan was guided by Article III § 26 of the Texas Constitution, which provides that House seats must be apportioned to counties based on the number of population in each as determined by the most recent United States Census. The Texas Constitution's limitation on dividing a county into multiple House districts is generally known as the county-line rule. To prepare for the redistricting process, Gerardo Interiano attended a March 1, 2011 presentation on the county-line rule given to the House Redistricting Committee by David Hanna of the Texas Legislative Council. DX-124.

24. Plan H283 was a “member driven” plan, meaning that the lines of particular districts were proposed by member delegations from shared geographical regions. *See* Joint Exhibit J-61, Dep. of Gerardo Interiano at 24:1-12, 52:18-53.7, 127:17-129:10, 130:3-11, 145:4-24, Aug. 2, 2011 (ECF No. 420); Joint Exhibit J-62, Dep. of Ryan Downton at 12:11-13:7, Aug. 12, 2011 (ECF No. 420); Test. of Ryan Downton, Trial Tr. 922:6-923:16, Sept. 9, 2011; Test. of Burt Solomons, Trial Tr. 1560:24-1562:10, Sept. 13, 2011.

25. When adjustments were applied to the member-drawn lines they were done in order to comply with the Texas Constitution, which requires that the Legislature equalize population and respect county boundaries wherever possible. Joint Exhibit J-61, Dep. of Gerardo Interiano at 24:1-12, 52:18-53:7, 127:17-129:10, 130:3-11, 145:4-24, Aug. 2, 2011 (ECF No. 420); Joint Exhibit J-62, Dep. of Ryan Downton at 12:11-13:7, Aug. 12, 2011 (ECF No. 420); Test. of Gerardo Interiano, Trial Tr. 1442:14-1443:22, Sept. 12, 2011; Test. of Ryan Downton, Trial Tr. 922:6-923:16, 939:2-18, Sept. 9, 2011; Test. of Burt Solomons, Trial Tr. 1560:24-1562:10, Sept. 13, 2011.

26. Adjustments to the member-drawn lines were also made, where necessary, to comply with the Voting Rights Act requirement that the State not retrogress. *See* Joint Exhibit J-61, Dep. of Gerardo Interiano at 24:1-12, 52:18-53:7, 127:17-129:10, 130:3-11, 145:4-24, Aug. 2, 2011 (ECF No. 420); Test. of Ryan Downton, Trial Tr. 939:2-18, Sept. 9, 2011.

27. Plan H283 contains one violation of the county–line rule in Henderson County, which was necessary to equalize population and thereby assure equal population under the United States Constitution. Test. of Gerardo Interiano, Trial Tr. 1423:8-1424:21, Sept. 12, 2011. To the extent that other districts in Plan H283 cross county lines, they do so to accommodate the surplus population in various counties consistent with the Texas Constitution. Test. of Gerardo Interiano, Trial Tr. 1423:8–1426:3, Sept. 12, 2011; TEX. CONST. art. III, § 26.

28. Gerardo Interiano was instructed to create a redistricting plan based on proposals from members of the Texas House. Test. of Gerardo Interiano, Trial Tr. 1573:2-1574:7, July 18, 2014. To that end, Gerardo Interiano began working with House members before the release of block–level Census data. He estimated that he spoke to at least two-thirds of House members during the redistricting process. Test. of Gerardo Interiano, Trial Tr. 1574:9-11, July 18, 2014.

29. Prior to the release of a proposed State House map, state map drawers repeatedly met with representatives from minority groups such as the Mexican American Legal Defense and Education Fund (“MALDEF”) and the Mexican American Legislative Caucus (“MALC”). Test. of Gerardo Interiano, Trial Tr. 1428:14-1429:5, 1431:7-20, 1452:23-1453:2, Sept. 12, 2011; Test. of Burt Solomons, Trial Tr. 1565:18-23, Sept. 13, 2011; Test. of Ryan Downton, Trial Tr. 904:8-905:12, Sept. 9, 2011.

30. Chairman Solomons instructed the delegations for the eight drop-in counties to get together and draw their maps. Test. of Bonnie Bruce, Trial Tr. 1935:14-19, July 19, 2014.

31. The goal for the eight drop-in counties was for the delegations of those counties to develop their own district boundaries and for the delegation’s county plan to be dropped into the statewide plan. Test. of Bonnie Bruce, Trial Tr. 1935:4-10, July 19, 2014. Members of the drop-in counties were asked to submit proposals to the committee, to work with committee staff, and to seek guidance and counsel from the TLC. Test. of Burt Solomons, Trial Tr.1071:2-9, July 17, 2014.



32. Six of the eight drop-in county delegations were able to bring the Committee an agreed-upon map. Test. of Bonnie Bruce, Trial Tr. 1935:20-21, July 19, 2014.

33. House members from Harris and Dallas counties could not agree on a countywide redistricting plan. Joint Exhibit J-61, Dep. of Gerardo Interiano at 127:17- 129:10, Aug. 2, 2011 (ECF No. 420); Test. of Ryan Downton, Trial Tr. 924:1-3, 931:16-22, Sept. 9, 2011.

34. Because the Harris County delegation was unable to reach bipartisan agreement on their drop-in map, the redistricting committee staff drew the districts instead, relying on a proposed map they received from the Harris County Republican delegation. This happened relatively late in the process. Test. of Bonnie Bruce, Trial Tr. 1983:12-1984:8, July 19, 2014.

35. Ryan Downton, General Counsel to the House Redistricting Committee, drew the district lines in Houston and Dallas. Joint Exhibit J-62, Dep. of Ryan Downton at 72:24-73:5, Aug. 31, 2011 (ECF No. 420); Test. of Ryan Downton, Trial Tr. 924:1-929:8, 930:11-939:18, Sept. 9, 2011.

36. To ensure that all four maps (House, Senate, Board of Education, and Congress) could be passed during the regular session, Bonnie Bruce devised a schedule with the House Parliamentarian and Texas Legislative Council. Test. of Bonnie Bruce, Trial Tr. 1924:21-1925:1, July 19, 2014.

37. The mapdrawers were focused on a variety of statistics as they evaluated districts: RPVA analysis, whether districts were above 50% SSVR, and others. Test. of Gerardo Interiano, Trial Tr. 35:6-10, Aug. 11, 2014.

38. The mapdrawers were particularly focused on the 50% SSVR measure because of guidance from DOJ and the Texas Legislative Council. Test. of Gerardo Interiano, Trial Tr. 35:11-17, Aug. 11, 2014; Test. of Gerardo Interiano, Trial Tr. 1600:2-7, July 18, 2014.

39. On March 1, March 15, and March 24, 2011, the House Committee on Redistricting held public hearings to solicit input from the public regarding the apportionment of the members of the Texas House of Representatives. DX-116\_00127-00130; 116\_00131-00134; 116\_00135-0140.

40. The House Redistricting Committee held two public hearings on the proposed House map. In order to provide members of the public ample opportunity to review and comment on the proposed House plan, one hearing was held during the week and one was held during the weekend. DX-260. Witnesses at the March 24, 2011 hearing included Jose Garza from MALC, Luis Figueroa of MALDEF, Gavino Hernandez from LULAC, representatives of the Texas Asian American Redistricting Initiative, and representatives of various city and county groups. DX-6; DX-116\_00139.

41. Pursuant to legislative rules every public plan, accompanying reports, and any amendments were accessible for viewing on the internet by legislative members and the public through "DistrictViewer," the Texas Legislative Council's web-based interactive application, which displays all public maps and reports on the internet. DX-145; Tex. Leg. Council, Guide to 2011 Redistricting 16 (2010), available at [http://www.tlc.state.tx.us/redist/pdf/Guide\\_to\\_2011\\_Redistricting.pdf](http://www.tlc.state.tx.us/redist/pdf/Guide_to_2011_Redistricting.pdf).

42. On April 13, 2011, Representative Burt Solomons, Chairman of the House Committee on Redistricting, introduced House Bill 150, and released for public consideration an initial plan (H113) to apportion members of the Texas House of Representatives. DX-145.

43. Before the first public plan was released, members were shown their individual districts. Occasionally members saw multiple versions of their districts, such as when the map needed to be changed due to pressures from other districts. But no one saw a statewide version of the map until the first committee plan was released. Test. of Bonnie Bruce, Trial Tr. 1942:1-10, July 19, 2014.

44. As members reviewed and approved their districts, they were asked to sign a map of their district. The map contained a statement that indicated the member would vote for passage of HB150 so long as their district was in that form. Test. of Bonnie Bruce, Trial Tr. 1942:11-21, July 19, 2014; DX-229 at 7.

45. Following the release of H113, the House Redistricting Committee held public hearings on April 15, 2011 and April 17, 2011, and a formal meeting on April 19, 2011. DX-116\_96-99; DX-116\_100-104; DX-116\_105-110; DX-10; DX-11; DX-12.

46. At the first hearing, held on April 15, 2011, Chairman Solomons introduced a committee substitute plan (H134). DX-365, April 15, 2011 House Redistricting Committee Hearing at 3:21–6:5; DX-10.

47. A representative of MALDEF, Luis Figueroa, testified at the Redistricting Committee hearing held on April 15, 2011 and presented an alternative map, Plan H115. DX-365, April 15, 2011 House Redistricting Committee Hearing at 10:6–13:10; DX-10. Committee members questioned the viability of MALDEF's alternative map in light of its repeated violations of the county–line rule. DX-365, April 15, 2011 House Redistricting Committee Hearing at 13:3–15:4; DX-10.

48. At the April 15, 2011 hearing, Representative Veronica Gonzalez and members of the public provided testimony regarding the proposed House map (Plan H134). DX-365, April 15, 2011 House Redistricting Committee Hearing at 129:7–18; DX-10.

49. The second hearing was held on Sunday, April 17, 2011. This Sunday hearing was scheduled at David Hanna's suggestion so that members of the public who could not get off work during the week could come testify. Test. of Bonnie Bruce, Trial Tr. 1944:10-17, July 19, 2014; DX-260.

50. Bonnie Bruce, who had been a senior legislative aide for approximately a decade, had never known a committee to meet on the weekend to accommodate public comment, and considered this to be an extraordinary measure. Test. of Bonnie Bruce, Trial Tr. 1945:14-1946:2, July 19, 2014.

51. At the April 17, 2011 hearing, representatives of Texas LULAC, Linda Chavez, and the Mexican American Bar Association, Celeste Villarreal, and other members of the public provided testimony regarding the proposed House map (H134). DX-116\_100-104; DX-11

52. After the two public hearings, the committee held a formal meeting on April 19, 2011, to vote on the bill. At that hearing, amendments were proposed and voted on, and the amendments that passed were rolled into a new bill called a committee substitute, Plan H153. Test. of Bonnie Bruce, Trial Tr. 1946:4-18, July 19, 2014.

53. At the April 19, 2011 hearing the House Redistricting Committee considered several amendments, including the MALDEF alternative plan (H115) and the Veasey plan (H130) before approving an amended map (H153) and sending it to the House Floor for consideration. See DX-116\_00127-00130; DX-12.

54. The Legislature increased SSVR in District 90 and District 148 at the request of MALDEF and Representative Mike Villarreal, the Vice-Chairman of the House Redistricting Committee. Test. of Ryan Downton, Trial Tr. 929:19-930:10, Sept. 9, 2011; Test. of Gerardo Interiano, Trial Tr. 1431:7-20, Sept. 12, 2011.

55. The floor debate on the House Plan was stopped for approximately three hours to address concerns of several African-American members in Harris County. During this time, the House Redistricting Committee and members of the Harris County delegation worked to make changes to the map to address the concerns of these members. All members of the Harris County delegation voted in support of the amendment that altered the House map. Test. of Trey Martinez-Fischer, Trial Tr. 159:10-16, Sept. 6, 2011; Test. of Ryan Downton, Trial Tr. 933:10-934:15, Sept. 9, 2011.

56. David Hanna sent Gerardo Interiano an e-mail on April 21, 2011, that compared SSVR metrics of Plan H153 to the benchmark and other proposed plans. Test. of David Hanna, Trial Tr. 1199:6-23, July 17, 2014; DX-328.

57. According to David Hanna's analysis in this e-mail, Plan H153 meets or exceeds the benchmark in 50-percent districts in two of the three possible benchmark indicators. David Hanna was relaying that, considering SSVR and past DOJ objections, Plan H153 was probably not retrogressive. Test. of David Hanna, Trial Tr. 1200:4-14, July 17, 2014; DX-328.

58. Both Gerardo Interiano and Ryan Downton interpreted this e-mail as a green light to take Plan H153 to the floor for debate. Test. of Gerardo Interiano, Trial Tr. 1531:24-1532:8, July 18, 2014; Test. of Ryan Downton, Trial Tr. 2139:16-24, July 19, 2014. Gerardo Interiano believed that this analysis showed the committee was taking a fair and legal map to the House floor for a vote. Test. of Gerardo Interiano, Trial Tr. 1614:3-1615:3, July 18, 2014.

59. It is common to have a calendar rule that establishes deadlines for pre-filing amendments for complex legislation, like the redistricting bill. Test. of Bonnie Bruce, Trial Tr. 1946:19-25, July 19, 2014. David Hanna drafted the first calendar rule. Test. of David Hanna, Trial Tr. 1204:1-2, July 17, 2014. The initial rule set the deadline for amendments for 5:00 p.m. the next day, April 21, 2011, to allow Leg Council staff time to provide amendment maps and reports in advance of the floor debate. Test. of David Hanna, Trial Tr. 1204:3-9, July 17, 2014; Test. of Bonnie Bruce, Trial Tr. 1947:8-13, July 19, 2014.

60. The Calendar Rule for HB150 was considered on the House floor on April 20, 2011, which was a Wednesday. Test. of David Hanna, Trial Tr. 1204:6-9, July 17, 2014. Representative Todd Hunter, Chairman of the Rules Committee, changed the rule to extend the amendments

deadline until Friday, April 22 because the initial rule's timeframe was too short. Test. of David Hanna, Trial Tr. 1204:14-16, July 17, 2014; DX-190\_00004-00005. This change required the vote of two-thirds of the members present. DX-190\_00004-00006.

61. During the calendar rule debate on the House floor, the House rejected the calendar rule for the redistricting bill. Representative Dutton, an African-American representative from Houston, introduced a substitute calendar rule that extended the deadline for pre-filing amendments to Monday, April 25, 2011. DX-190\_00013-00014. The House unanimously adopted an amendment deadline of Monday for pre-filing amendments. The House also unanimously changed the calendar for floor debate from Tuesday, April 26 to Wednesday, April 27. Test. of David Hanna, Trial Tr. 1205:2-5, July 17, 2014; Test. of Bonnie Bruce, Trial Tr. 1947:14-18, July 19, 2014; DX-190\_00020-00021.

62. David Hanna, considered both of these changes to be significant. Changes to the calendar rule don't happen very often. And he cannot remember that the House has ever changed the Calendar on the House floor. Test. of David Hanna, Trial Tr. 1205:6-11, July 17, 2014. TLC agreed to be available over Easter weekend, April 22-24, to draft amendments for the members so they could meet the Calendar Rule deadline of Monday, April 25. Test. of Bonnie Bruce, Trial Tr. 1947:14-18, July 19, 2014.

63. House Bill 150 was debated on the House floor all day on April 27, 2011 and on April 28, 2011. Test. of Bonnie Bruce, Trial Tr. 1947:22-24, July 19, 2014. During the floor debate, amendments by the following minority representatives were adopted: Menendez (DX-190\_00790); Deshotel (DX-190\_00795); Rodriguez (DX-190\_00796); Raymond (DX-190\_00800-00801); Gallego (DX-190\_00804-00805); Coleman (DX-190\_00805-00806).

## **B. Race-Neutral Redistricting Objectives**

64. The Texas House of Representatives has 150 seats. In the 82nd Texas Legislature, the Texas House contained 101 Republicans and 49 Democrats. Test. of Ryan Downton, Trial Tr. 996:4-7, Sept, 9, 2011; DX-292 at 1.

65. In 2008, voters elected 76 Republicans and 74 Democrats to the Texas House of Representatives.

66. In 2010, voters elected 99 Republicans and 51 Democrats to the Texas House of Representatives.

67. Two members of the Texas House who were elected as Democrats changed parties before the 2011 legislative session began.

68. From the outset of his appointment as Chairman of the House Redistricting Committee, Representative Burt Solomons stated that the redistricting process would be "member driven," with every incumbent legislator afforded an opportunity to be reelected. Test. of Ryan Downton, Trial Tr. 922:6-923:16, 939:2-18, Sept. 9, 2011; Test. of Gerardo Interiano, Trial Tr. 1426:23-1427:14, Sept. 12, 2011; Test. of Burt Solomons, Trial Tr. 1560:24-1562:10, Sept. 13, 2011; Test. of Burt Solomons, Trial Tr. 1069:23-1070:1, July 17, 2014.

69. The opportunity to be reelected resulted in only pairing incumbents of the same party, where population shifts required that pairing be made. This resulted in the pairing of 12 Republicans (including four in Dallas County alone) and two Democrats. Test. of Gerardo Interiano, Trial Tr. 1427:84-23, Sept. 12, 2011.

70. The House redistricting plan protects incumbents, Republican and Democrat, with limited exceptions. Overall, it is an incumbent protection plan. Test. of Jimmie Don Aycok, Trial Tr. 1743:2-4, July 18, 2014.

71. Of the fourteen incumbents paired in Plan H283, only two are Democrats. Test. of Gerardo Interiano, Trial Tr. 1427:8-23, Sept. 12, 2011.

72. Minority representatives protected their own districts and participated in drawing the maps for their own counties. The influence of Democratic representatives was limited only insofar as they did not have the ability to eliminate Republican incumbents or ensure an increase in the size of the Democratic delegation in the Texas House. *See* Test. of Ryan Downton, Trial Tr. 933:10-25, Sept. 9, 2011.

73. Democratic members of the Texas House had as much influence on the redistricting bills as would be expected—perhaps more—of a 49-member delegation in a 150-member body.

74. To the extent the district boundaries were not determined by traditional redistricting principles, Plan H283 was adopted with partisan, not racial, motives. *See, e.g.*, Test. of Burt Solomons, Trial Tr. 1555:22–1556:19, Sept. 13, 2011; Test. of Gerardo Interiano, Trial Tr. 1624:16–1625:17, July 18, 2014; Test. of Joe Farias, Trial Tr. 353:24–354:9, July 15, 2014; Test. of Joe Pickett, Trial Tr. 798:21–799:7, July 16, 2014.

### **C. Open and Fair Procedures**

75. The process for creating a House plan was a “member-driven” process. Chairman Solomons encouraged members of various county delegations where the counties contained a whole number of districts to work together as a delegation to come up with agreed to maps. Test. of Ryan Downton, Trial Tr. 922:6-923:16, 938:18-939:18, Sept. 9, 2011; Test. of Burt Solomons, Trial Tr. 1560:24-1562:10, Sept. 13, 2011.

76. Democrat and minority House members actively participated in the redistricting process. The Vice-Chairman of the Redistricting Committee, Representative Mike Villarreal, a Hispanic Democrat, drafted the Bexar County map with the help of his delegation. Test. of Gerardo Interiano, Trial Tr. 1517:4-11, July 18, 2014; Test. of Joe Farias, Trial Tr. 316:2-9, July 15, 2014. Representative Joe Pickett, a member of the Redistricting Committee and an Anglo Democrat, took the lead in drafting the El Paso County map. Test. of Joe Pickett, Trial Tr. 725:18–726:1, 731:25–732:4, July 16, 2014. Representative Eddie Rodriguez, a Hispanic Democrat, took the lead in drawing the Travis County map. *See* DX-232\_00001 (signed Travis County delegation map).

77. Chairman Solomons attempted to foster an open process. If members brought questions or concerns to the committee, his intent was to get the questions to the right people, whether that be TLC, the Office of the Attorney General, Baker Botts, or whoever had knowledge about the

issue, to find out the answer and get back to the member. Test. of Burt Solomons, Trial Tr. 1026:4-19, July 17, 2014.

78. Chairman Solomons relied heavily on his staff, the Office of the Attorney General, and TLC to provide legal opinions on redistricting and propose maps, and to advise whether the plan was in compliance with the Voting Rights Act. Test. of Burt Solomons, Trial Tr. 1030:21-1031:5, July 17, 2014.

79. During the entire legislative session, Redistricting Committee staff were in frequent contact with TLC to obtain legal guidance. Bonnie Bruce testified that she spoke to David Hanna or Jeff Archer almost daily with questions about retrogression, what was possible or not possible in the maps, hearings, public input, timing, and other matters. Test. of Bonnie Bruce, Trial Tr. 1940:13-24, July 19, 2014.

80. Bonnie Bruce sought legal advice about what benchmarks should be used to identify protected districts. She sought advice from TLC, minority groups, and interested parties who came to the redistricting committee office to discuss proposed plans. None of these people or groups provided a definitive set of benchmarks with which to analyze compliance with the Voting Rights Act. Test. of Bonnie Bruce, Trial Tr. 1974:14-1975:6, July 19, 2014.

81. Gerardo Interiano also repeatedly sought legal advice from David Hanna at TLC, in addition to counsel to the Speaker, to monitor compliance with the Voting Rights Act. Test. of Gerardo Interiano, Trial Tr. 1612:7-24, July 18, 2014.

82. Similarly, Ryan Downton also sought advice from David Hanna, as well as the Texas Attorney General's office, about whether the maps he was developing complied with the Voting Rights Act. Test. of Ryan Downton, Trial Tr. 1999:13-24, 2033:2-24, July 19, 2014.

83. The Texas Legislative Council is a statutorily created, nonpartisan agency that provides legal, administrative and technical support to the Texas Legislature. (Tex. Gov. Code § 323.001 et seq.). Its services were available to every legislator, regardless of party affiliation or seniority. Test. of Clare Dyer, Trial Tr. 226:16-24, July 14, 2014; Test. of Jimmie Don Aycock, Trial Tr. 1754:15-16, July 18, 2014.

84. RedAppl is the Texas Legislative Council's application for the redistricting process. RedAppl is an abbreviation for "Redistricting Application." Test. of Clare Dyer, Trial Tr. 227:20-25, July 14, 2011.

85. Every legislator had unlimited access to the RedAppl mapping software through terminals installed in their chambers; in addition, public access terminals were maintained at the offices of the TLC, and legislators could also permit access to any aides or outside consultants. Test. of Clare Dyer, Trial Tr. 227:22-25; 228:20-229:2; 231:7-23, July 14, 2014.

86. In addition to legislative accounts, TLC manages sponsored accounts, which are accounts belonging to non-Members such as other government agencies, members of the public, and sponsored groups such as MALDEF. Test. of Clare Dyer, Trial Tr. 231:7-15, July 14, 2014.

87. RedAppl uses population data from the U.S. Census Bureau. RedAppl also uses data collected from Texas counties such as precinct/VTD data, and Spanish surname voter registration data (“SSVR”). Test. of Clare Dyer, Trial Tr. 228:1-9, July 14, 2014. RedAppl contains election returns for races from 2002-2010. Test. of Clare Dyer, Trial Tr. 234: 4-7, July 14, 2014. RedAppl includes data to determine a total population by race, including data on Blacks, Hispanics, Blacks and Hispanics, Anglos, and others. Test. of Clare Dyer, Trial Tr. 235:2-5, July 14, 2014.

88. All members of the Texas Legislature are assigned a RedAppl account when they take office. Test. of Clare Dyer, Trial Tr. 228:20-22, July 14, 2014.

89. The House Redistricting Committee had a RedAppl account; the account abbreviation was HRC1. Test. of Clare Dyer, Trial Tr. 232:22-25, July 14, 2014; TLRTF-725\_0003.

90. Bonnie Bruce was the primary user of the Solomons RedAppl account which had the abbreviation “SOLO.” Test. of Ryan Downton, Trial Tr. 1992:15-17, July 19, 2014; TLRTF-725\_0005.

91. Ryan Downton was the primary user of the House Redistricting Committee’s RedAppl account, which had the abbreviation “HRC1.” Test. of Ryan Downton, Trial Tr. 1990:11-23, July 19, 2014.

92. Using the administrative feature of RedAppl, it is possible to prepare a plan list for a RedAppl account. The plan list shows the plans in that RedAppl account. Test. of Clare Dyer, Trial Tr. 245:10-17, July 14, 2014.

93. On a RedAppl plan list, the “created” column indicates when a plan was created or downloaded by the user. The “mod date” column indicates the last date that a plan was modified and saved by the user. Test. of Clare Dyer, Trial Tr. 248:2-10; 283:23-284:5, July 14, 2014.

94. On a RedAppl plan list, the “description” column can be changed by either the account user who sends or the user who receives that plan. Test. of Clare Dyer, Trial Tr. 246:21-25; 249:3-12, July 14, 2014.

95. A person with a RedAppl account can create a new redistricting plan from scratch, as well as receive plans from other RedAppl users. Test. of Clare Dyer, Trial Tr. 249:13-14; 283:3-11, July 14, 2014.

96. RedAppl plan lists do not indicate what plans were sent from that RedAppl account to other RedAppl accounts. The RedAppl plan lists also do not indicate whether the recipient of a plan edited the description or comments for that plan. Test. of Clare Dyer, Trial Tr. 248: 11-13; 283:12-22, July 14, 2014.

97. If a user of RedAppl is sent a plan through RedAppl, RedAppl does not require the recipient to actually open or receive that plan. It is possible that a user could have many plans in their account and never actually have opened the plans. Test. of Clare Dyer, Trial Tr. 283:3-11, July 14, 2014.

98. RedAppl plans are numbered sequentially based on the plans in each specific RedAppl account. If a user accepts a plan, that plan is then assigned a number in that user's RedAppl account. Test. of Clare Dyer, Trial Tr. 246:14-20; 248:22-249:2, July 14, 2014.

99. When a plan is created on RedAppl, that plan automatically gets a new number. Before that plan can be sent to another RedAppl user, the system requires that a comment be put in to RedAppl for that plan. The person who receives that plan can edit the comment. Test. of Clare Dyer, Trial Tr. 247:3-10; 251:9-14, July 14, 2014.

100. The evidence proved beyond question that all members of the House had an equal and fair opportunity to participate in the redistricting process. For example, the United States' expert, Dr. Arrington, acknowledged that Republicans and Democrats alike participated in the process and protected incumbents. Test. of Theodore Arrington, Trial Tr. 196:15-18, July 14, 2014.

101. Several Democratic legislators indicated that there was no House map for which they would have voted because voting for a map would potentially weaken future litigation positions. Test. of Gerardo Interiano, Trial Tr. 1481:6-19, Sept. 12, 2011; Test. of Burt Solomons, Trial Tr. 1613:21-1614:14, Sept. 13, 2011; Test. of Burt Solomons, Trial Tr. 1096:10-22, July 17, 2014.

102. Within hours of being named chair, Representative Solomons was visited by attorneys who notified him that he was named in lawsuits over redistricting. One attorney said the lawsuit would involve the County Line Rule regardless of what map the Committee drew. Test. of Bonnie Bruce, Trial Tr. 1928:18-23, July 19, 2014.

103. Representative J.M. Lozano testified that counsel for MALC informed him that it was proposing certain configurations for the region he represented solely for litigation purposes, even though Representative Lozano did not approve of a plan that would have paired his region with Nueces County. Test. of J.M. Lozano, Trial Tr. 1791:13-1793:15, July 18, 2014. Representative Lozano voted for Plan H283, but Representative Trey Martinez-Fischer, Chairman of MALC, pressured him to change his vote by threatening to fund an opponent to run against Representative Lozano. Test. of J.M. Lozano, Trial Tr. 1793:20-1795:9, July 18, 2014.

#### **D. Contemporaneous Statements – Lack of Influence of Eric Opiela During the Redistricting Process**

104. Eric Opiela served as an employee for Speaker Joe Straus's campaign during the interim before the 2011 legislative session began. Eric Opiela was not a state employee while serving as counsel for Speaker Straus's campaign. Test. of Gerardo Interiano, Trial Tr. 1478:9-18, July 18, 2014.

105. Eric Opiela served as counsel to the Texas Republican congressional delegation during the 2011 legislative session. Test. of Gerardo Interiano, Trial Tr. 1478:24-1479:13, July 18, 2014.

106. On November 17, 2010, Eric Opiela sent an email to Gerardo Interiano, counsel for Speaker Straus, describing what he described as a "useful metric" for redistricting that would identify high-registration but low-performing Hispanic precincts. DOJ-75.



107. Eric Opiela's email proposed calculating "a ratio for every census block in the state" showing (1) "CVAP/Total Population," (2) "Hispanic CVAP/Total Hispanic Population," (3) Spanish Surname RV/Hispanic CVAP," (4) "Spanish Surname RV/Total Hispanic Population," and (5) "Spanish Surname Turnout/Total Turnout." DOJ-75. Eric Opiela's e-mail suggested that these ratios could be used to create a "nudge factor" to identify census blocks that would "pull [a] district's Total Hispanic Pop and Hispanic CVAPs up to majority status, but leave the Spanish Surname RV and TO the lowest." DOJ-75.

108. Gerardo Interiano had only been on the job for about a month at the time he received the November 17, 2010 email and did not understand the type of information that Eric Opiela sought or how it could be useful. Test. of Gerardo Interiano, Trial Tr. 1482:10-1483:9, July 18, 2014; *see also* DOJ-75.

104. On December 7, 2010, Gerardo Interiano copied the data request Eric Opiela sent him and forwarded his request to the Texas Legislative Council to see if this information was available. DX-262.

105. TLC could not provide the data necessary for block-level calculations of (1) CVAP/total population, (2) HCVAP/total Hispanic population, (3) SSRV/HCVAP, or (5) Spanish-surname turnout/total turnout. DOJ-86\_0003. The information requested by Gerardo Interiano was a custom data set, which meant that the data was not available in the RedAppl mapping software system for legislative offices to use while drawing maps. Test. of Clare Dyer, Trial Tr. 293:10-15, 294:5-10, July 14, 2014.

106. TLC informed Gerardo Interiano that it did not have block-level CVAP data, Test. of Clare Dyer, Trial Tr. 290:18-291:3, July 14, 2014, and RedAppl did not have Spanish-surname voter-turnout data, Test. of Clare Dyer, Trial Tr. 265:18-24, July 14, 2014; DOJ-86\_0003-4. There is no evidence Eric Opiela ever received the data he originally requested from Gerardo Interiano.

107. The only ratio that *could have been* calculated based on data provided to Gerardo Interiano from TLC was (4) SSRV/total Hispanic population. But this data was only available for 2000 Census blocks, not the 2010 Census blocks that would be used during the 2010 redistricting process. Test. of Clare Dyer, Trial Tr. 291:4-10, July 14, 2014; DOJ-86\_0003. Gerardo Interiano never asked TLC to provide updated data once the 2010 census data was released. Test. of Clare Dyer, Trial Tr. 293:23-294:4, July 14, 2014.

108. In 2000, Texas had approximately 675,000 census blocks. In 2010, the census blocks in Texas increased to 915,000. Test. of Clare Dyer, Trial Tr. 291:13-16, July 14, 2014. Converting that data from 2000 Census blocks to 2010 Census blocks would have been complicated and extraordinarily time-consuming. In order for the data based on 2010 census blocks that TLC provided to Gerardo Interiano to be useful, an individual would have to use the block equivalency file and compare each data set block by block. That means that creating even one of Eric Opiela's five ratios would require at least 675,000 separate calculations for the 2000 Census blocks alone. Test. of Clare Dyer, Trial Tr. 302:21-25, July 14, 2014.

109. There is no evidence that Eric Opiela had any involvement in the drawing of the districts in the 2011 House plan. Test. of Gerardo Interiano, Trial Tr. 1493:23-1494:2, July 18, 2014.

Gerardo Interiano testified that he did not use the “nudge factor” calculation in drawing House District 117. Test. of Gerardo Interiano, Trial Tr. 1600:16-1602:12, July 18, 2014.

110. The “EC” notation in the Straus House RedAppl Account Log refers to Elizabeth Coburn, an intern who worked for Speaker Straus during the 2011 legislative session. Gerardo Interiano assigned Ms. Coburn the tasks of working on the configuration of the districts in Travis County, Bexar County, and House District 35. Test. of Gerardo Interiano, Trial Tr. 47:2-49:21, Aug. 11, 2014; DX-370; DX-313.

111. Even if the Legislature could have targeted high-registration but low-turnout Hispanic areas, there is no evidence that any of the mapdrawers did so. The State’s mapdrawers did not receive any communications from Eric Opiela purporting to implement the “nudge factor” approach. Test. of Ryan Downton, Trial Tr. 1671:23–1672:3, Aug. 15, 2014; Test. of Gerardo Interiano, Trial Tr. 375:5-8, Aug. 11, 2014.

112. The Legislature did not utilize Eric Opiela’s “nudge factor” analysis to draw any district.

113. Because Spanish surname turnout data was not available in RedAppl during the 2011 process, it would not have been possible for someone using the RedAppl system to create the “nudge factor” statistic hypothesized by Eric Opiela. Test. of Clare Dyer, Trial Tr. 286:25-287:5, 287:22-288:13, July 14, 2014; DX-262.

#### **E. Texas Legislature’s Efforts to Comply with the Voting Rights Act**

114. In 2011, the Texas Legislature sought to pass fair and legal maps that complied with Section 2 and Section 5 of the Voting Rights Act, the U.S. Constitution, and the Texas Constitution. Test. of Ryan Downton, Trial Tr. 2033:20-24, July 19, 2014; Test. of Ryan Downton, Trial Tr. 1763:17-21, Aug. 15, 2014; Test. of Gerardo Interiano, Trial Tr. 345:1-5, Aug. 11, 2014; Test. of Burt Solomons, Trial Tr. 1301:5-8, Aug. 14, 2014; Test. of Gerardo Interiano, Trial Tr. 1499:8-12, Sept. 12, 2011.

119. The State’s mapdrawers received legal advice from multiple sources throughout the redistricting process, including the Texas Legislative Council, Baker Botts, and the Office of the Texas Attorney General (OAG). *E.g.*, Test. of Gerardo Interiano, Trial Tr. 1531:17-20, July 18, 2014; Test. of Ryan Downton, Trial Tr. 2032:22–2033:15, July 19, 2014; Test. of Burt Solomons, Trial Tr. 1267:2-5, Aug. 14, 2014.

120. The Legislature attempted to maintain or surpass benchmark demographic levels in the House and congressional map. Test. of Ryan Downton, Trial Tr. 913:21–914:4, 932:5-13, 952:6-13, Sept. 9, 2011; Test. of Ryan Downton, Trial Tr. 1634:19–1635:2, 1642:20-25, Aug. 15, 2014; Test. of Gerardo Interiano, Trial Tr. 1443:8-12, Sept. 12, 2011; Test. of Burt Solomons, Trial Tr. 1261:16-24, Aug. 14, 2014.

121. Chairman Solomons informed members that they could seek advice from the Texas Legislative Council regarding redistricting issues, and some members received such advice. Test. of

Burt Solomons, Trial Tr. 1077:14-18, July 17, 2014; Test. of David Hanna, Trial Tr. 1152:2-5, July 17, 2014.

122. In 2001, the Department of Justice objected to the House redistricting plan drawn by the Legislative Redistricting Board on the ground that “the number of districts in which the level of Spanish surnamed registration (SSRV) is more than 50 percent decreases by two as compared to the benchmark plan.” In the same letter, the Department of Justice grounded its refusal to preclear the State’s plan on “an analysis of election returns and other factors.” DX-326 at 3; *see also* Test. of Gerardo Interiano, Trial Tr. 1538:10-17, July 18, 2014.

123. The DOJ guidance available to the Legislature in 2011 stated that election analysis was relevant to judging retrogression but did not provide instructions on how to perform election analysis. DX-326; Test. of David Hanna, Trial Tr. 1187:25-1188:16, July 17, 2014.

124. In an effort to ensure compliance with the Voting Rights Act, the Legislature considered demographic and electoral analyses of proposed redistricting plans. The Legislature did not rely exclusively on fixed demographic percentages in evaluating proposed plans for potential retrogression under Section 5. Test. of Gerardo Interiano, Trial Tr. 35:6-10, Aug. 11, 2014; Test. of Gerardo Interiano, Trial Tr. 1614:8–1615:3, 1615:10-17, July 18, 2014; Test. of Ryan Downton, Trial Tr. 1637:3-6, Aug. 15, 2014.

125. The Legislature’s demographic analysis relied on several measures, including Spanish Surname Voter Registration (SSVR), Hispanic citizen voting age population (HCVAP), and Black voting age population (BVAP). Test. of Gerardo Interiano, Trial Tr. 35:6-10, 74:15-18, Aug. 11, 2014; Test. of David Hanna, Trial Tr. 1181:21–1182:8, July 17, 2014.

126. David Hanna advised the mapdrawers that Hispanic voting age population was not a reliable indicator of election performance. Test. of Gerardo Interiano, Trial Tr. 1600:2-15, July 18, 2014; Test. of David Hanna, Trial Tr. 1167:19–1168:2, 1170:14-20, July 17, 2014; *see also* Test. of Gerardo Interiano, Trial Tr. 41:24–42:3, Aug. 11, 2014.

127. Gerardo Interiano testified that he did not utilize Hispanic voting age population based on advice he received from TLC, guidance from DOJ in its 2001 objection letter, and concerns regarding citizenship levels among Hispanics in certain parts of the State. Test. of Gerardo Interiano, Trial Tr. 1534:3-11, 1600:2-15, July 18, 2014; Test. of Gerardo Interiano, Trial Tr. 35:6-17, Aug. 11, 2014; *see also* Test. of Gerardo Interiano, Trial Tr. 1453:10-20, Sept. 12, 2011. As a result, Gerardo Interiano relied almost exclusively on SSVR data when evaluating proposed districts.

128. In an attempt to comply with the Voting Rights Act, the mapdrawers received election analyses from the Office of the Texas Attorney General on proposed House and congressional redistricting plans. The analyses reflected the electoral performance of certain proposed districts, identifying the preferred candidates of African-American and Hispanic voters in various elections. Test. of Gerardo Interiano, Trial Tr. 1615:10-17, July 18, 2014; Test. of Gerardo Interiano, Trial Tr. 34:5-14, Aug. 11, 2014; Test. of Ryan Downton, Trial Tr. 1637:3-14, Aug. 15, 2014; Test. of Burt Solomons, Trial Tr. 1016:4-13, July 17, 2014.

129. The OAG’s racially polarized voting analyses were based on ten statewide general election contests involving minority and Anglo candidates from 2002 to 2010. Test. of Gerardo

Interiano, Trial Tr. 6:6-11, Aug. 11, 2014; Test. of Ryan Downton, Trial Tr. 959:23–960:1, Sept. 9, 2011; DOJ-190.

130. The mapdrawers shared the racially polarized voting analyses with legislators and legislative staffers. Test. of Gerardo Interiano, Trial Tr. 36:11-20, Aug. 11, 2014.

131. David Hanna advised the mapdrawers that retrogression was analyzed on a statewide basis. Test. of Gerardo Interiano, Trial Tr. 77:4-9, Aug. 11, 2014; Test. of David Hanna, Trial Tr. 1157:24–1158:2, 1190:13-20, July 17, 2014.

132. In response to requests from the State's mapdrawers, David Hanna performed demographic analyses of proposed House plans, providing the mapdrawers with memoranda addressing potential retrogression issues associated with the plans. Test. of David Hanna, Trial Tr. 1157: 5-1158:2, 1163:11-13, July 17, 2014. The evidence included three memoranda from David Hanna to the mapdrawers regarding draft House redistricting plans. On April 6, 2011, David Hanna wrote a memorandum to Gerardo Interiano regarding the most recent proposed House plan. DX-122. On April 12, 2011, David Hanna wrote a memorandum about Plan H110. DX-327. And on April 20, David Hanna wrote a memorandum to Gerardo Interiano about Plan H153. DX-123.

133. David Hanna's retrogression memoranda focused on SSVR as the relevant demographic statistic in light of DOJ's 2001 letter objecting to the LRB-drawn redistricting plan for the Texas House. Test. of David Hanna, Trial Tr. 1187:21–1188:5, July 17, 2014.

134. David Hanna provided an initial retrogression memorandum on or about April 7, 2011 in which he analyzed a proposed House plan he had received from the House Redistricting Committee. Test. of David Hanna, Trial Tr. 1156:13-22, 1219:21-25, July 17, 2014; DX-122.

135. On or about April 12, 2011, David Hanna prepared a retrogression memorandum regarding Plan H110, which corresponded to HRC1 H265 in the House Redistricting Committee's RedAppl account. Test. of David Hanna, Trial Tr. 1160:3-21, July 17, 2014; Test. of Ryan Downton, Trial Tr. 2004:5–2005:21, July 19, 2014; DX-327.

136. On or about April 20, 2011, David Hanna authored a retrogression memorandum pertaining to Plan H153, the House plan adopted by the House Redistricting Committee. Test. of David Hanna, Trial Tr. 1161:13–1162:1, July 17, 2014; DX-123.

137. David Hanna did not perform election analyses in his retrogression memoranda because he was not aware of, and he had not seen any DOJ guidance regarding, which elections would need to be analyzed for Section 5 compliance purposes. Test. of David Hanna, Trial Tr. 1187:6–1188:16, July 17, 2014.

138. Changes were made to numerous House districts in light of concerns raised in David Hanna's retrogression memoranda, including Districts 77 and 78 in El Paso County, District 90 in Tarrant County, Districts 103 and 104 in Dallas County, and District 148 in Harris County. Test. of Ryan Downton, Trial Tr. 2006:15-21, 2143:21–2144:9, 2146:21-24, July 19, 2014; Test. of David Hanna, Trial Tr. 1192:14-19, 1198:19–1199:5, July 17, 2014.

139. David Hanna sent an email to Gerardo Interiano and Ryan Downton on April 21, 2011 providing comparisons between the benchmark House plan, the plan adopted by the House Redistricting Committee (Plan H153), and a proposed MALDEF plan. David Hanna noted that in 2 of 3 indicators relating to Hispanic majority districts, Plan H153 met or exceeded the benchmark plan. Test. of Ryan Downton, Trial Tr. 2138:10–2139:8, July 19, 2014; Test. of David Hanna, Trial Tr. 1200:4-14, July 17, 2014; DX-328.

140. The mapdrawers believed that Plan H153 met the appropriate demographic benchmarks, and they viewed David Hanna's April 21, 2011 email as a green light to take the House plan to the floor. Test. of Gerardo Interiano, Trial Tr. 1532:2-22, 1614:8–1615:3, July 18, 2014; Test. of Ryan Downton, Trial Tr. 2139:16-24, July 19, 2014.

141. Based on the advice of TLC, the State's mapdrawers did not believe that a proposed district was required to be drawn under the Voting Rights Act if the district did not reach 50% HCVAP. Test. of Ryan Downton, Trial Tr. 1797:21-23, Aug. 15, 2014; *see also* Test. of Burt Solomons, Trial Tr. 1322:21-24, Aug. 14, 2014.

## **F. Section 2 of the Voting Rights Act/Fourteenth Amendment Discriminatory Intent**

### **1. Bell County**

142. Bell County consists of two House districts—District 54 represented by Representative Aycock and District 55 represented by Representative Sheffield. Under the benchmark plan, District 54 included the western portion of Bell County and all of Lampasas County and Burnet County. Test. of Jimmie Don Aycock, Trial Tr. 1726:17-19, July 18, 2014; DX-340.

142. Representative Aycock was a member of the Redistricting Committee. As the senior member of the Bell County delegation, he was assigned to take the lead in drawing House Districts 54 and 55. Test. of Jimmie Don Aycock, Trial Tr. 1729:9-11, 19-21, July 18, 2014. The districts in Bell County in Plan H283 were drawn by Representative Aycock and Representative Sheffield. Test. of Jimmie Don Aycock, Trial Tr. 1730:9-15, July 18, 2014.

143. Representative Aycock's primary motivations in the redistricting process were to maintain communities of interests, create a legal map, and maintain as many Republican seats as possible. Test. of Jimmie Don Aycock, Trial Tr. 1740:25-1741:7, July 18, 2014.

144. Because Burnet County had been a strong Republican area in District 54, Representative Aycock wanted to gain Republican strength in other areas, particularly Salado, an area he knew voted heavily Republican. Test. of Jimmie Don Aycock, Trial Tr. 1726:21-24, 1730:21-1731:4, July 18, 2014. Although Representative Sheffield did not want to lose Salado, he eventually agreed to its inclusion in District 54. Test. of Jimmie Don Aycock, Trial Tr. 1730:21-1731:4, July 18, 2014.

145. The final configuration of District 54 and District 55 in Plan H283 reflects the give and take between Representative Aycock and Representative Sheffield. Test. of Jimmie Don Aycock, Trial Tr. 1775:3-6, July 18, 2014.

146. In Plan H283, District 54 includes most of Killeen, all of Harker Heights and Salado, Southwestern Bell County, and all of Lampasas County. See, e.g., DX-341. Killeen is the major urban area that is closet and most accessible to Lampasas County. Test. of Jimmie Don Aycock, Trial Tr. 1734:10-15, July 18, 2014.

147. Representative Aycock testified he believed it was beneficial for the people in Lampasas County to continue to remain in a district with Killeen and believes their interests are much more aligned with western Bell County than with Temple or Belton in eastern Bell County. Test. of Jimmie Don Aycock, Trial Tr. 1741:21-24, July 18, 2014.

148. Due to population growth, Bell County could no longer be joined with Burnet and Lampasas County in a single district as the combined population of the three counties exceeded the ideal population necessary to form a House district. Test. of Jimmie Don Aycock, Trial Tr. 1727:11-16, July 18, 2014. Further, Bell County had to be combined with a county other than Burnet County as Burnet County's population was too large to be combined with the populations in Bell and Lampasas. Test. of Jimmie Don Aycock, Trial Tr. 1727:11-20, July 18, 2014. As a result of the population growth in Burnet County, Burnet County was no longer part of District 54 in Plan H283, and District 54 contained only Lampasas County and part of Bell County. Test. of Jimmie Don Aycock, Trial Tr. 1727:7-20, July 18, 2014.

149. Representative Aycock testified he wanted to keep Lampasas County in a district with Killeen since Lampasas County and Killeen share a community of interest, Killeen is the closest major population center to Lampasas County, and the whole community of interest of Lampasas is centered around western Bell County as opposed to the transportation and manufacturing hub in Temple. Test. of Jimmie Don Aycock, Trial Tr. 1734:4-9, 13-14, July 18, 2014.

150. During the redistricting process, Representative Aycock sought to keep Lampasas County in a district with Killeen rather than Temple and Belton. Test. of Jimmie Don Aycock, Trial Tr. 1732:1-1734:9, July 18, 2014.

151. As a result of the changes to District 54 from the benchmark to Plan H283, the Hispanic population, African-American population and the Asian population increased. Test. of Jimmie Don Aycock, Trial Tr. 1731:21-25, July 18, 2014. Hispanic CVAP increased from 14.8% to 15.8%; Black CVAP increased from 20.5% to 22.2%; Asian CVAP increased from 2.1% to 2.6%; and Anglo CVAP decreased from 59.4% to 56.1%. *Compare* DX-100\_00029 *with* DX-109\_00039; Test. of Jimmie Don Aycock, Trial Tr. 1728:9-16; 1731:14-25, July 18, 2014.

152. Representative Aycock relied on his personal knowledge of the region to determine which areas would be included in District 54 and District 55. Test. of Jimmie Don Aycock, Trial Tr. 1755:12-14, July 18, 2014. When Representative Aycock needed assistance in drawing the districts, he consulted with Ryan Downton, who drew boundary lines as directed. Test. of Jimmie Don Aycock, Trial Tr. 1755:1-9, July 18, 2014.

153. Representative Aycock relied on staff and the resources of the House Redistricting Committee to review the proposed districts and ensure legal compliance. Test. of Jimmie Don Aycock, Trial Tr. 1741:8-17, July 18, 2014.

154. Representative Aycock did not support Plan H202 or similar alternative plans related to the configuration of District 54 that connected Lampasas County to Temple and Belton. Test. of Jimmie Don Aycock, Trial Tr. 1732:1-19, July 18, 2014. Representative Aycock believed this proposal and others like it disassociated Lampasas County from western Bell County, both of which shared a community of interest. Test. of Jimmie Don Aycock, Trial Tr. 1733:17-1734:9, July 18, 2014. In addition under alternative proposals the only practical way to travel from Temple to Lampasas County, communities connected under these proposals, is to drive through the southern part of Coryell County, across District 59, and into Lampasas County. Test. of Jimmie Don Aycock, Trial Tr. 1733:22-1734:9, July 18, 2014. Alternative plan H202 split the city of Harker Heights and left both Killeen and Harker Heights split in that plan. Test. of Jimmie Don Aycock, Trial Tr. 1774:1-7, July 18, 2014; Test. of Phyllis Jones, Trial Tr. 1716:8-10, July 18, 2014.

155. Representative Aycock has received support from leaders in the Asian, Hispanic and African-American community in Bell County including former Mayor Raul Villaronga and former Mayor Tim Hancock. Test. of Jimmie Don Aycock, Trial Tr. 1735:19-24, 1736:11-21, 1736:22-1737:4, July 18, 2014.

156. The African-American, Hispanic, and Asian populations in Killeen do not vote cohesively as a block. Instead, Representative Aycock has enjoyed support from a number of minority members including Black, Asian, Hispanic and Filipino populations. Test. of Jimmie Don Aycock, Trial Tr. 1771:18-1772:13, July 18, 2014.

157. Representative Aycock did not draw districts on the basis of race or with the intent to discriminate against minorities. Test. of Jimmie Don Aycock, Trial Tr. 1775:7-12, July 18, 2014.

## **2. Bexar County**

158. Bexar County was a drop-in county in which the delegation worked collectively to reach agreement on a countywide map. Test. of Burt Solomons, Trial Tr. 1074:2-17, July 17, 2014; Test. of Gerardo Interiano, Trial Tr. 1517:4-7, July 18, 2014; Test. of Trey Martinez Fischer, Trial Tr. 112:2-12, Sept. 6, 2011.

159. In 2011, the 10-member Bexar County delegation included 7 Democrats and 3 Republicans. Test. of Joe Farias, Trial Tr. 338:1-5, July 15, 2014.

160. Seven members of the Bexar County delegation had been elected from Hispanic CVAP majority districts. DX-100, Plan H100, Red-109 Report (2005-2009 ACS Survey).

161. The Bexar County redistricting process was overseen by Representative Mike Villarreal, Vice-Chairman of the House Redistricting Committee, and Representative Ruth Jones McClendon, the dean of the Bexar County delegation. Test. of Gerardo Interiano, Trial Tr. 1517:4-11, July 18, 2014; Test. of Joe Farias, Trial Tr. 315:14-316:17, July 15, 2014; Test. of John Garza, Trial Tr. 363:24-364:3, July 15, 2014. Representative Villarreal is a Hispanic Democratic member; Representative McClendon is an African-American Democratic member.

162. The delegation asked Speaker Straus to draw his district first so that they could draw their districts around his, but Speaker Straus insisted that other members draw their own districts

first and he would take the remainder as his district. Test. of Gerardo Interiano, Trial Tr. 1595:9-13, July 18, 2014.

163. At the beginning of the 2011 redistricting process, Representative Villarreal asked members of the Bexar County delegation to provide him with an ideal configuration of their districts. Test. of Gerardo Interiano, Trial Tr. 1519:2-8, July 18, 2014.

164. Representative Villarreal instructed members that their maps needed to comply with the Voting Rights Act. Test. of John Garza, Trial Tr. 364:23–365:1, July 15, 2014.

165. Representative Villarreal provided instructions to Bexar County members about how to draw their ideal districts, including three parameters: (i) maintain 10 districts in Bexar County; (ii) keep all districts within +/- 5% of the ideal district population; and (iii) do not eliminate “any minority-majority voting age districts.” DX-265; Test. of John Garza, Trial Tr. 375:24–377:2, July 15, 2014.

166. Representative Villarreal recommended that members use the 2006 Supreme Court, District 2 race to measure the political performance of their districts. DX-265.

167. Representative Villarreal subsequently incorporated the members’ preferred maps into a combined countywide map. To the extent more than one member requested a particular area, Representative Villarreal urged them to work together to resolve the conflict. Test. of Gerardo Interiano, Trial Tr. 1519:12-22, July 18, 2014; Test. of John Garza, Trial Tr. 419:7-18, July 15, 2014.

168. Members of the Bexar County delegation met on numerous occasions to try to work out an agreed countywide map. Test. of Gerardo Interiano, Trial Tr. 1517:11-13, July 18, 2014; Test. of Trey Martinez Fischer, Trial Tr. 114:16-24, Sept. 6, 2011.

169. MALC’s counsel, Jose Garza, was invited to attend the delegation’s meetings, and the delegation was provided access to Gerardo Interiano and David Hanna. Test. of Trey Martinez Fischer, Trial Tr. 72:25–73:4, Sept. 6, 2011; DX-265.

170. Gerardo Interiano attended Bexar County delegation meetings and assisted members with drawing maps on RedAppl. Test. of Gerardo Interiano, Trial Tr. 1594:1-12, July 18, 2014.

171. The Bexar County delegation had a dedicated RedAppl account. Test. of Gerardo Interiano, Trial Tr. 1594:13-15, July 18, 2014.

172. Nine of the ten members of the Bexar County delegation, including Representative Villarreal and Representative McClendon, supported the final countywide map. Test. of Gerardo Interiano, Trial Tr. 1594:25–1595:1, July 18, 2014; Test. of Bonnie Bruce, Trial Tr. 1965:22-24, July 19, 2014.

173. Only one member, Representative Joe Farias, opposed the delegation’s map. Test. of Gerardo Interiano, Trial Tr. 1595:4-6, July 18, 2014; Test. of Joe Farias, Trial Tr. 325:18–326:2, July 15, 2014.



174. Although he opposed the delegation map, Representative Farias admitted that all of the Bexar County districts, including District 117, satisfied the three goals that Representative Villarreal had set out for the delegation. Test. of Joe Farias, Trial Tr. 340:9-12, 341:1-4, July 15, 2014; *see also* Test. of John Garza, Trial Tr. 418:5-8, July 15, 2014.

175. The process by which the Bexar County delegation met and reached agreement was ideal for county delegations. Test. of Gerardo Interiano, Trial Tr. 51:25–52:9, Aug. 11, 2014.

176. During the 2011 session, District 117 was represented by Representative John Garza, a first-term Republican who had narrowly secured election in November 2010 by 1,070 votes. Test. of John Garza, Trial Tr. 362:9-11, July 15, 2014; DX-38 at 5 (Office of Secretary of State, 2010 General Election Results, Bexar County).

177. Based on the 2010 Census figures, District 117 was overpopulated by 52,723 people. Test. of John Garza, Trial Tr. 416:3-13, July 15, 2014; DX-100, Plan H100, Red-100 Report at 10.

178. At the same time, districts in central Bexar County were largely underpopulated and needed to gain population by extending beyond the City of San Antonio. Test. of John Garza, Trial Tr. 372:3-7, July 15, 2014; DX-100, Plan H100, Red-100 Report at 10 (*e.g.*, District 116 was underpopulated by 24,693 persons; District 123 was underpopulated by 35,195 persons).

179. The population variances between the Bexar County districts meant that each district would move to some degree in the 2011 map. Test. of Joe Farias, Trial Tr. 343:6-22, July 15, 2014.

180. Representative Garza believed that his district was protected under the Voting Rights Act. Test. of John Garza, Trial Tr. 415:25–416:2, July 15, 2014.

181. The goals for District 117 in the 2011 redistricting process were to provide Representative Garza with an opportunity to be reelected; create a rural, conservative district outside the City of San Antonio; and comply with the Voting Rights Act by maintaining the district's SSVR over 50%. Test. of Gerardo Interiano, Trial Tr. 1518:9-15, 1523:2-18, July 18, 2014; Test. of John Garza, Trial Tr. 399:4-13, July 15, 2014.

182. The mapdrawers determined that in order to achieve these goals, District 117 needed to include rural areas of southern Bexar County that were previously represented by Representative Farias (District 118) under the benchmark plan. Test. of Gerardo Interiano, Trial Tr. 1559:1-15, 1598:2-10, July 18, 2014.

183. Representative Garza and his staff worked with Gerardo Interiano during the redistricting process to generate proposed maps for District 117. Test. of Gerardo Interiano, Trial Tr. 1517:14-20, 1521:2–1522:23, 1523:14-18, 1596:2-11, July 18, 2014.

184. Representative Garza never indicated to Gerardo Interiano that he wanted his district to have less Hispanic population or lower-performing Hispanic precincts. Test. of Gerardo Interiano, Trial Tr. 1518:20-22, July 18, 2014.

185. While working with Representative Garza's staff, Gerardo Interiano did not utilize racial shading or receive any information from Representative Garza's staff about the racial

composition of areas being added or removed from District 117. Test. of Gerardo Interiano, Trial Tr. 1599:11-16, July 18, 2014; Test. of Gerardo Interiano, Trial Tr. 54:19–55:8, Aug. 11, 2014.

186. Representative Garza asked to have certain Republican-leaning areas included in his district, but his request was denied by Representative Villarreal because District 117's SSVR had to be maintained above 50%. Test. of Gerardo Interiano, Trial Tr. 1521:5–1522:23, July 18, 2014.

187. Given his position as a junior member and the delegation's guidelines, Representative Garza did not have much influence on how District 117 was constructed in the eventual map. Test. of John Garza, Trial Tr. 420:1-15, July 15, 2014.

188. The configuration of District 117 in the delegation map was not entirely what Representative Garza had sought for his district, but Representative Garza ultimately agreed to the map that had been approved by all but one member of the delegation. Test. of Gerardo Interiano, Trial Tr. 1521:5–1522:23, 1596:19–1597:4, July 18, 2014; Test. of John Garza, Trial Tr. 420:1-15, 422:7-13, July 15, 2014.

189. The University of Texas-San Antonio and Lackland Air Force Base were contained within District 117 in Plan H100 but were moved to other districts in Plan H283. Test. of Joe Farias, Trial Tr. 346:15-23, July 15, 2014; Test. of John Garza, Trial Tr. 421:2-4, July 15, 2014; DX-284.

190. District 117's Hispanic CVAP increased from 58.8% in the benchmark plan to 63.8% in the 2011 enacted map, while District 117's non-suspense SSVR reduced slightly from 50.8% in the benchmark to 50.1% in the 2011 enacted map. Test. of John Garza, Trial Tr. 415:13-23, 423:5-11, July 15, 2014; DX-100, Plan H100, Red-109 Report (2005-2009 ACS Survey) at 4; DX-109, Plan H283, Red-109 Report (2005-2009 ACS Survey) at 4.

191. Dr. Arrington acknowledged that Plan H283 accomplished the goal of adding rural areas to, and shedding urban neighborhoods from, District 117. Test. of Theodore Arrington, Trial Tr. 212:23–213:4, July 14, 2014.

192. The State's mapdrawers did not utilize voter turnout data or seek out precincts with low Hispanic voter turnout in the drawing of District 117 or any other district. Test. of Gerardo Interiano, Trial Tr. 1600:16–1601:8, 1601:19-24, July 18, 2014.

193. Representative Garza made no public comments indicating that he was looking for areas with low voter turnout. Test. of Joe Farias, Trial Tr. 345:11-13, July 15, 2014.

194. Representative Farias and Representative Garza never had any private conversations about low voter turnout areas. Test. of Joe Farias, Trial Tr. 345:14-17, July 15, 2014.

195. Representative Farias was not aware of the extent of Representative Garza's knowledge, if any, regarding voter turnout. Test. of Joe Farias, Trial Tr. 346:6-8, July 15, 2014.

196. Representative Villarreal never brought up voter turnout in discussions concerning the Bexar County map. Test. of Joe Farias, Trial Tr. 344:9-11, July 15, 2014.

197. Representative Farias opposed the delegation's map only because he wanted to retain certain areas of southern Bexar County, particularly the city of Somerset and the neighborhood of Whispering Winds, which were included in District 117 in the delegation's map. Test. of Joe Farias, Trial Tr. 326:3-8, July 15, 2014.

198. Representative Farias raised his concerns with Representative Garza, Speaker Straus, Representative Villarreal, Representative McClendon, and other members of the Bexar County delegation, but Representative Farias' concerns were not resolved. Test. of Joe Farias, Trial Tr. 326:12-327:4, July 15, 2014.

199. Unable to resolve his concerns through his efforts with the Bexar County delegation, Representative Farias introduced an amendment on the House floor that proposed to return Whispering Winds to District 118. Test. of Joe Farias, Trial Tr. 327:5-13, July 15, 2014; DX-190 (April 27, 2011 House Journal Supplement) at S730.

200. Chairman Solomons moved to table Representative Farias' amendment, pointing out that the Bexar County delegation had already reached agreement on a map and that Representative Farias' amendment divided communities and disrupted the natural geographic configuration of Districts 117 and 118; reduced compactness; increased the number of split precincts; and adversely impacted District 117's Republican performance. DX-190 (April 27, 2011 House Journal Supplement) at S732.

201. The amendment was tabled by a majority vote of the House. DX-190 (April 27, 2011 House Journal) at 2294-2295.

202. Representative Farias testified that his three Republican opponents were from Southern Bexar County, particularly Somerset. Test. of Joe Farias, Trial Tr. 336:15-17, 337:2-3, July 15, 2014.

203. In prior elections, Representative Farias lost to his opponents in Somerset and Whispering Winds precincts. Representative Farias believed that Representative Garza had evaluated the political advantages of adding these areas to his district. Test. of Joe Farias, Trial Tr. 336:17-337:3, July 15, 2014.

204. Representative Farias believed that the 2011 redistricting process was partisan and that partisanship, not race, motivated the voting, including the defeat of his floor amendment. Test. of Joe Farias, Trial Tr. 353:24-354:6, July 15, 2014.

### **3. Cameron County/Hidalgo County Minority Opportunity District**

205. During the 2011 redistricting process, interest groups presented demonstration plans that created a new minority opportunity district in the Rio Grande Valley by combining the surplus population from Hidalgo County and Cameron County. But none of these proposed plans adhered to the county line rule under the Texas Constitution as the combination of surplus population from those counties caused a violation of the county line rule in Nueces County. See Plan H115; Test. of David Hanna, Trial Tr. 1205:23-1206:9, July 17, 2014.

206. Creating a new district in Cameron County and Hidalgo County would have required the Legislature to violate the county-line rule in other parts of the State. The mapdrawers did not draw a new district by combining the surplus populations of Cameron County and Hidalgo County based on advice from legal counsel. This was because there was no evidence this was an instance where the Texas Constitution's county line rule should yield to the Voting Rights Acts. Test. of Gerardo Interiano, Trial Tr. 1540:1-1542:6, July 18, 2014.

207. Cameron County's citizen voting age population is approximately 78%. Joint Exhibit J-21, Red 106 Report. Hidalgo County's citizen voting age population is approximately 83%. Joint Exhibit J-21, Red 106 Report.

208. In Plan H283, the Legislature protected the incumbency of all members from both counties. Test. of Gerardo Interiano, Trial Tr. 1426:24-1427:14; 1499:15-21, Sept. 12, 2011.

209. Plaintiffs presented no evidence that racially polarized voting in Cameron County and Hidalgo County prevents Hispanic voters from electing their candidates of choice.

#### **4. Dallas County**

210. Dallas County lost two seats after the 2010 Census, which required the pairing of four Republican members. The Dallas County House districts were drawn to absorb the loss of two districts and to maintain all existing minority opportunity districts. Test. of Theodore Arrington, Trial Tr. 183:22-184:4, July 14, 2014; Test. of Ryan Downton, Trial Tr. 2014:25-2015:15, July 19, 2014.

211. The Dallas County delegation could not agree on a countywide map. Test. of Ryan Downton, Trial Tr. 2014:25-2015:15, July 19, 2014; *see* Joint Exhibit J-61, Interiano Dep. 127:17-129:10; Test. of Ryan Downton, Trial Tr. 924:1-3, Sept. 9, 2011.

212. Dallas County was a difficult area to draw because four Republican members had to be paired. Given that all of the Democratic-leaning districts within Dallas were protected by the Voting Rights Act, none of those members could be paired. Test. of Ryan Downton, Trial Tr. 2015:7-12, July 19, 2014.

213. Downton drew the district lines in Dallas County. *See* Joint Exhibit J-62, Dep. of Ryan Downton at 72:24-73:5, Aug. 31, 2011 (ECF No. 420); Test. of Ryan Downton, Trial Tr. 924:1-929:8, Sept. 9, 2011; Test. of Ryan Downton, Trial Tr. 1989:5-1989:10, July 19, 2014.

214. Chairman Branch asked Ryan Downton to help create a plan for Dallas County that would be agreeable to as many members as possible. Test. of Ryan Downton, Trial Tr. 1989:5-10, 2015:16-2016:1, July 19, 2014.

215. Chairman Branch provided Ryan Downton input in drawing his district and requested Ryan Downton to draw the other districts in Dallas County and meet with Republican and Democratic members to receive their input on these districts. Test. of Ryan Downton, Trial Tr. 2016:2-8, July 19, 2014. Ryan Downton worked on drawing the districts in Dallas County before the

release of the first public map in early to mid-April. Test. of Ryan Downton, Trial Tr. 2016:14-16, July 19, 2014.

216. Ryan Downton met with Representatives Anchia and Johnson, both Democrats, and Representatives Harper-Brown and Burkett to create the configurations of their districts in the 2011 house plan for Dallas County. Test. of Ryan Downton, Trial Tr. 2016:23-2017:7, July 19, 2014.

217. Ryan Downton worked with Representative Anchia to create a district he was satisfied with that maintained his SSVR at its benchmark level. Test. of Ryan Downton, Trial Tr. 2017:18-22, July 19, 2014.

218. Representative Anchia (District 103) and Representative Alonzo (District 104) agreed to trade some precincts. Ryan Downton testified that the precincts that were swapped were located in the downtown Dallas area, which was in the eastern and southeastern portions of District 103. Test. of Ryan Downton, Trial Tr. 2017:23-2018:1, July 19, 2014.

219. Ultimately, the Dallas County plan paired 4 Republicans—Rodney Anderson and Linda Harper-Brown in District 105, and Cindy Burkett and Joe Driver in District 113. DX-109.

220. Downton drew the boundaries of District 103 and District 104 first. Test. of Ryan Downton, Trial Tr. 2069:11-2069:13, July 19, 2014. Districts 103 and 104 were the two Hispanic opportunity districts in Dallas. In order to maintain District 103 as a Hispanic opportunity district, Ryan Downton had to increase the Hispanic population in this district, but also had to maintain the SSVR level over 50 percent in District 104. Ryan Downton could not pull concentrated Hispanic population out of District 104 and put it into District 103 because this would have dropped the SSVR in District 104. Test. of Ryan Downton, Trial Tr. 2017:14-2017:22, July 19, 2014.

221. David Hanna provided a retrogression analysis to Ryan Downton of the house districts in Dallas County on April 6, 2011. David Hanna's first memo indicated that the decline in SSVR in District 103 should be remedied and that consideration should be given to keeping District 104 over the 50 percent threshold if possible. Test. of Ryan Downton, Trial Tr. 2143:10-2144:2, July 19, 2014; DX-122.

222. Ryan Downton responded to the retrogression concerns raised by David Hanna in his memo and increased the SSVR in both Districts 104 and 103 in Plan H283. Test. of Ryan Downton, Trial Tr. 2144:3-2144:9, July 19, 2014; *see also* DX-327 (Hanna's retrogression memo dated Apr. 12, 2011); DX-123 (Hanna's retrogression memo dated Apr. 20, 2011).

223. In order to keep District 104 above 50% SSVR and maintain the benchmark SSVR level in District 103, Downton testified that he considered racial data at the block level in order to comply with the Voting Rights Act and avoid retrogression. Test. of Ryan Downton, Trial Tr. 2080:4-13, 2080:22-2081:4, 2144:23-2145:3, July 19, 2014. Downton was able to maintain the SSVR levels from the benchmark plan in District 104 in Plan H283. Test. of Theodore Arrington, Trial Tr. 201:3-22, July 14, 2014; DX-109.

224. Although Representative Anchia offered an alternative plan during the legislative session, his proposed plan was not acceptable because District 104 did not contain enough

population to maintain an SSVR majority or allow for a pairing of Representatives Linda Harper-Brown and Rodney Anderson. Test. of Ryan Downton, Trial Tr. 2076:9-18, July 19, 2014.

225. To pair Representatives Anderson and Harper-Brown, Ryan Downton was directed by one of the chairmen to extend District 105 south to pick up Representative Anderson's house. Test. of Ryan Downton, Trial Tr. 2018:2-9, July 19, 2014; Test. of John Lopez, Trial Tr. 614:2-15, July 15, 2014; DOJ-299A. Representative Harper-Brown's house is located in precinct 4626 in the northern portion of District 105, and Representative Anderson's house is located in precinct 4528 in the southern portion of District 105. Test. of Ryan Downton, Trial Tr. 2018:15-22, July 19, 2014; DX-319.

226. In pairing Representative Linda Harper-Brown and Representative Rodney Anderson in District 105, Ryan Downton split precincts in order to capture Representative Anderson's residence and avoid overpopulating District 105 and under populating District 104. There was no directive or prohibition on splitting precincts. Test. of Ryan Downton, Trial Tr. 2020:2-2020:12, 2021:3-2021:22, 2022:9-2022:19, July 19, 2014.

227. Precinct 4504 was split because of the large population in the precinct that did not need to be moved into District 105 as Ryan Downton attempted to draw a line down District 105 to Representative Rodney Anderson's house, and create a pathway up to precincts 4510, 4514, and 4516. Test. of Ryan Downton, Trial Tr. 2021:3-22, July 19, 2014. If precinct 4504 had not been split, this would have left District 104 underpopulated by 35,000. Test. of Ryan Downton, Trial Tr. 2022:9-13, July 19, 2014.

228. Ryan Downton also split precincts in Dallas County, including precincts 4515 and 4517, to comply with the Voting Rights Act to maintain SSVR levels above 50 percent in District 104. Test. of Ryan Downton, Trial Tr. 2023:15-2024:9, July 19, 2014; DX-109\_00045.

229. In order to create a pathway to Representative Rodney Anderson's house, Ryan Downton split precinct 4508. Test. of Ryan Downton, Trial Tr. 2022:14-19, July 19, 2014.

230. Although John Lopez, a former resident of Dallas County, testified as to the precincts that were split in District 104 and District 105 in Plan H283, he did not know the reason for the split precincts. Test. of John Lopez, Trial Tr. 614:19-23, July 15, 2014.

231. The minority population in Dallas County is too large to fit in one House district. Although George Korbel opined that the minority population in Dallas County had been divided too much, he did not identify a standard to determine when minority populations have been divided too much or just the right amount. Test. of George Korbel, Trial Tr. 1458:20-1459:1, July 17, 2014.

232. It was not possible to create additional SSVR-majority districts in Dallas County. Test. of Ryan Downton, Trial Tr. 2053:25-2054:8, July 19, 2014.

233. There was no other way to draw the 2011 House map in Dallas County to pair Representatives Rodney Anderson and Linda Harper-Brown, keep District 104 above 50 percent SSVR, and maintain District 103 at or as close as possible to its benchmark SSVR level. Test. of Ryan Downton, Trial Tr. 2081:5-17, July 19, 2014.

234. In order to create a third district in Dallas County similar to Representative Rafael Anchia's district, his district would have had to be left alone, the population from Representative Roberto Alonzo's district would have had to be split into two 25% SSVR districts and additional Hispanic population would need to be picked up, but areas of concentrated Hispanic population were not available. Test. of Ryan Downton, Trial Tr. 2054:9-2055:2, July 19, 2014.

235. There was no way to accomplish creating a third district similar to Representative Rafael Anchia's district and also keep Representative Roberto Alonzo's district 50 percent SSVR. Test. of Ryan Downton, Trial Tr. 2056:5-22, July 19, 2014.

236. Representative Anchia does not believe that Hispanic voters and candidates are excluded from the electoral process in Dallas County and indicated that there is no slating process for elections in Dallas County. Representative Rafael Anchia believes that the level of success for Hispanic candidates and voters in Dallas County is increasing. *See* Dep. of Rafael Anchia, at 91:6-12, 95:21-23, April 9, 2014 (ECF No. 1092-2).

237. Representative Rafael Anchia did not raise any concerns about the 2011 House plan with Ryan Downton, and he has no reason to believe that Downton intentionally discriminated against Hispanics or African-Americans in the 2011 redistricting process. *See* Dep. of Rafael Anchia, at 170:22-24, 176:5-8, April 9, 2014 (ECF No. 1092-2).

## **5. El Paso County**

238. At the start of the 2011 redistricting, El Paso County was apportioned five House districts. Test. of Joe Pickett, Trial Tr. 729:5-7, July 16, 2014.

239. In both the benchmark plan and the 2011 House plan, all five of the House districts in El Paso County had a HCVAP over 50%. Test. of Jose Rodriguez, Trial Tr. 709:8-12; 714:7-11, July 16, 2014. In both the benchmark plan and the 2011 House plan, four of the five House districts in El Paso County had a Spanish surname voter registration above 50%. Test. of Jose Rodriguez, Trial Tr. 709:13-710:1; 714:12-15, July 16, 2014.

240. Data available at the time of redistricting in 2011 showed that El Paso County's estimated Hispanic citizen voting age population was 74.74%. DX-218\_00001; Test. of Jose Rodriguez, Trial Tr. 715:25-716:14, July 16, 2014.

241. There are Hispanic Republicans in El Paso County, and there are Hispanic Republicans who reside in District 78. Test. of Jose Rodriguez, Trial Tr. 722:2-15, July 16, 2014.

242. El Paso County was a drop-in district in the 2011 House plan. Test. of Jose Rodriguez, Trial Tr. 731:17-20; 783:10-14, July 16, 2014.

243. Representative Joe Pickett was on the Redistricting Committee in 2011. He was the unofficial leader of the El Paso delegation and organized the map drawing efforts for the El Paso County districts. Test. of Joe Pickett, Trial Tr. 25:18-22; 731:25-732:4, July 16, 2014.

244. Under the benchmark plan, District 75 was overpopulated by 51,771 persons. District 76 was underpopulated by 34,992. District 77 was underpopulated by 35,070 persons.

District 78 was overpopulated by 1,148 persons, and District 79 was underpopulated by 20,465 persons. Test. of Joe Pickett, Trial Tr. 719:16-720:2, July 16, 2014; DX-100\_00017-18; DX-47. Representative Joe Pickett felt that equalizing population was more challenging than dealing with the physical factors in El Paso County. Test. of Joe Pickett, Trial Tr. 737:8-11, July 16, 2014.

245. During the 2011 session, Representative Joe Pickett and the El Paso delegation met to discuss redistricting in El Paso. Test. of Joe Pickett, Trial Tr. 783:10-14, July 16, 2014.

246. Representative Joe Pickett asked all of the members of the El Paso delegation to participate and give him their input and proposed maps. Test. of Joe Pickett, Trial Tr. 732:19-24, July 16, 2014. All five members of the county delegation had input into the map that was proposed to the House Redistricting Committee. Test. of Joe Pickett, Trial Tr. 732:19-733:1, July 16, 2014.

247. Representative Marisa Marquez had the most involvement in the process of drawing the El Paso districts. Test. of Dee Margo, Trial Tr. 820:13-22, July 16, 2014. Representative Marisa Marquez was concerned whether any of her political opponents would be in her district, District 77, or whether they would be in Representative Dee Margo's district, District 78. These political opponents included Representative Joe Moody, former El Paso mayor John Cook, and Representative Chente Quintanilla's chief of staff, Robert Grijalva. Test. of Dee Margo, Trial Tr. 820:23-821:15, July 16, 2014; Test. of Joe Pickett, Trial Tr. 788:12-789:8, July 16, 2014. Representative Marisa Marquez mentioned to Representative Joe Pickett several times that she wanted to exclude certain individuals that might run against her in the future. Test. of Joe Pickett, Trial Tr. 758:25-759:3, July 16, 2014.

248. The former mayor of El Paso, John Cook, lives in a neighborhood in El Paso called Mountain Park. Under Plan H283, John Cook's residence is in District 78. Test. of Joe Moody, Trial Tr. 879:8-20, July 16, 2014. Under Plan H283, Representative Joe Moody's residence is in District 78. Test. of Joe Moody, Trial Tr. 879:3-7, July 16, 2014.

249. Representative Chente Quintanilla, through his staff, had significant involvement in drawing the El Paso districts. Test. of Joe Pickett, Trial Tr. 756:13-21; 783:21-784:1, July 16, 2014. Reps. Naomi Gonzales and Dee Margo had comparatively little input in drawing the El Paso districts. Test. of Joe Pickett, Trial Tr. 756:22-757:2, 784:2-4, 784:8-10, July 16, 2014; Test. of Dee Margo, Trial Tr. 827:13-19, July 16, 2014.

250. Representative Joe Pickett sent three proposed plans for the configuration of the El Paso delegation to Chairman Burt Solomons' RedAppl account. Test. of Bonnie Bruce, Trial Tr. 1950:4-7, July 19, 2014; Test. of Joe Pickett, Trial Tr. 752:19-21, July 16, 2014; DX-271; DX-304.

251. The first El Paso proposal sent by Representative Joe Pickett to Chairman Burt Solomons was on March 15, 2011. Test. of Bonnie Bruce, Trial Tr. 1949:16-1950:3, July 19, 2014; DX-271; DX-304. Representative Joe Pickett later withdrew this proposal because certain members of the delegation did not approve it. Test. of Joe Pickett, Trial Tr. 785:2-786:11, 790:8-14, July 16, 2014; Test. of Bonnie Bruce, Trial Tr. 1950:10-1951:2, July 19, 2014.

252. Representative Marisa Marquez requested changes be made to the El Paso districts. Representative Joe Pickett's initial reaction was to inform Representative Marquez that it was too



late to make changes because the El Paso delegation had agreed upon a map. Test. of Joe Pickett, Trial Tr. 785:8-17, July 16, 2014.

253. Representative Marisa Marquez persisted with a request to change some of the boundaries between her district and Representative Dee Margo's district. Representative Joe Pickett informed Representative Marisa Marquez to work it out with Representative Dee Margo but not to change the other three El Paso County districts because everyone was in agreement on those three districts. Test. of Joe Pickett, Trial Tr. 785:18-786:7, July 16, 2014. Representative Marisa Marquez approached Representative Dee Margo several times and asked for changes between her district and Representative Margo's district. Test. of Dee Margo, Trial Tr. 809:12-15; 822:1-5, July 16, 2014.

254. Representative Marisa Marquez asked Representative Dee Margo if she could take on some precincts that had a high number of Hispanic surnames. Representative Margo agreed to this request from Representative Marquez. Representative Marquez made the determination as to which precincts were more Hispanic by manipulating the data on RedAppl. Dep. of Marisa Marquez, at 50:2-22, Feb. 4, 2014 (ECF No. 1092-3). Representative Marisa Marquez and Representative Dee Margo discussed making changes to District 77 and District 78 in the West and in the Northeast. Dep. of Marisa Marquez at 59:25-60:10, Feb. 4, 2014 (ECF No. 1092-3). In addition to excluding her political rivals from her district, Representative Marisa Marquez wanted to make sure that she had a strong Democratic district that would allow her to be reelected. Test. of Dee Margo, Trial Tr. 822:6-11, July 16, 2014.

255. The El Paso delegation met again in an effort to come to a consensus. Following this meeting, Representative Pickett sent two different versions of an El Paso map to Chairman Burt Solomon's RedAppl account. Test. of Joe Pickett, Trial Tr. 762:19-764:12, July 16, 2014.

256. One of the two maps sent by Representative Joe Pickett was a proposed plan he received from Representative Marisa Marquez, which is identified in his RedAppl account as "PICK H120." DX-272; DX-297; Test. of Joe Pickett, Trial Tr. 760:12-21, July 16, 2014. These plans were downloaded to Chairman Burt Solomons' account on March 21, 2011 and became "SOLO H109" and "SOLO H110." DX-271; DX-302; TLRTF-504.

257. The plan identified as "SOLO H109" (which is Plan PICK H118 in Representative Pickett's RedAppl plan list) was the first version of the county plan received from Representative Pickett on March 21, 2011, and "SOLO H110" (which is Plan PICK H120 in Representative Pickett's RedAppl plan list) was the second version of the county plan. DX-271; TLRTF-500; TLRTF-503; TLRTF-504; TLRTF-505.

258. Districts 77 and 78 are different in Plan SOLO H109 and Plan SOLO H110. Districts 75, 76, and 79 are identical in Plan SOLO H109 and Plan SOLO H110. DX-279\_00127, 279\_00137; TLRTF-504\_006; TLRTF-505\_005.

259. Bonnie Bruce, the primary user of the Solomons RedAppl account, forwarded both plans to Ryan Downton, counsel for the House Redistricting Committee, on or about the same day they were downloaded. Test. of Ryan Downton, Trial Tr. 1992:1-24, 2009:7-2010:11, July 19, 2014; Test. of Bonnie Bruce, Trial Tr. 1972:6-22, July 19, 2014.

260. Representative Joe Pickett had informed Bonnie Bruce and Ryan Downton that the delegation agreed to use the second version of the El Paso plan, which included the “antler” configuration initially proposed by Representative Marisa Marquez. Test. of Bonnie Bruce, Trial Tr. 1953:19-1954:11, July 19, 2014; Test. of Ryan Downton, Trial Tr. 1989:23-1990:1, 2010:2-11; 2104:9-12, July 19, 2014.

261. Although Bonnie Bruce sent both plans to Ryan Downton, he only downloaded the second version of the El Paso plan on March 23, 2011 because that was the version he was told to use. Test. of Ryan Downton, Trial Tr. 2009:7-2010:11, 2012:9-22, July 19, 2014; DX-270; DX-244. Plan SOLO H110 became “HRC1 H169” in the House Redistricting Committee account. DX-270; DX-244; TLRTF-506; TLRTF-505.

262. Ryan Downton included this exact configuration of El Paso County in his draft of the statewide plan. As Ryan Downton prepared the full statewide plan, he included the configuration for El Paso County districts that existed in Plan PICK H120/Plan SOLO H110. Test. of Ryan Downton, Trial Tr. 1994:5-1996:16, July 19, 2014; DX-271; DX-302; DX-347; DX-209.

263. The House Redistricting Committee presented this version of District 78, based on the draft plan entitled “HRC1 H215,” to Representative Dee Margo on April 5, 2011. DX-209; Test. of Ryan Downton, Trial Tr. 1995:17-1996:24, July 19, 2014.

264. The configuration of the El Paso County districts in Plan HRC1 H215 is identical to the configuration of the El Paso County districts in Plan PICK H120. DX-279\_00002; DX-279\_00089; DX-209; DX-349. Plan HRC1 H215 was a full state map that Ryan Downton was putting together. Test. of Ryan Downton, Trial Tr. 1997:19-1998:2, July 19, 2014.

265. Representative Dee Margo signed a copy of Plan HRC1 H215. Test. of Dee Margo, Trial Tr. 823:11-824:2, July 16, 2014; DX-209.

266. Representative Joe Pickett was aware that the districts had to comply with the Voting Rights Act, and he made sure that an analysis was performed to ensure that they did. Test. of Joe Pickett, Trial Tr. 798:10-19, July 16, 2014.

267. On April 6, 2011, Ryan Downton sent a draft of the statewide plan to David Hanna and asked him to run a retrogression analysis. Test. of Ryan Downton, Trial Tr. 1999:13-2000:17, July 19, 2014; DX-325.

268. On or around April 7, 2011, David Hanna identified a possible retrogression risk in El Paso and recommended increasing the Total SSVR in District 78. Test. of Ryan Downton, Trial Tr. 2000:18-2001:18, July 19, 2014; Test. of David Hanna, Trial Tr. 1191:6-1192:3, July 17, 2014; DX-122. David Hanna used the Total SSVR, rather than the non-suspense SSVR, when he analyzed districts in his memos. Test. of David Hanna, Trial Tr. 1212:9-1213:3, July 17, 2014.

269. After receiving David Hanna’s comments, Ryan Downton informed Representative Joe Pickett that changes were needed to the El Paso map to raise the SSVR level of District 78. Test. of Ryan Downton, Trial Tr. 2001:19-24; 2122:12-18, July 19, 2014.

270. Based on David Hanna's comments, Ryan Downton made changes to the boundary line between District 78 and District 77—which included splitting 14 precincts out of the 41 precincts in District 78—to increase the SSVR percentage in District 78 as suggested by David Hanna. Test. of Ryan Downton, Trial Tr. 2011:18-2012:3; 2013:6-11, July 19, 2014.

271. David Hanna did not advise against splitting precincts as there is no policy against splitting precinct boundaries. Test. of David Hanna, Trial Tr. 1158:19-20, July 17, 2014. Instead, David Hanna testified at trial that the easiest way to raise the SSVR in District 78 would be to split a few precincts. Test. of David Hanna, Trial Tr. 1159:2-8, July 17, 2014.

272. By splitting 14 precincts along the border between District 77 and District 78, Ryan Downton was able to increase the Total SSVR from 45.8% to 46.8% in District 78. Test. of Ryan Downton, 2006:15-21, 2117:14-22, July 19, 2014; DX-367. Ryan Downton testified that he considered racial data at the block level while splitting these precincts in order to comply with the Voting Rights Act and avoid retrogression. Test. of Ryan Downton, Trial Tr. 2013:6-14, July 19, 2014.

273. The changes made to raise the Total SSVR of District 78 are reflected in “HRC1 H258” in Ryan Downton's RedAppl account. Test. of Ryan Downton, Trial Tr. 2011:14-2012:3, July 19, 2014; DX-270; DX-366.

274. In addition to raising the Total SSVR in District 78, Ryan Downton's changes did not worsen the population deviation in El Paso. He kept the El Paso districts' population deviation percentages identical to the population deviations in the plan proposed by Representative Marisa Marquez (Plan PICK H120). DX-279\_000077; DX-109\_00141.

275. After making the changes to the El Paso map, Ryan Downton met with Representative Joe Pickett to go over the changes. Representative Pickett gave his final agreement to the map that Ryan Downton presented to Representative Joe Pickett. Test. of Ryan Downton, Trial Tr. 2122:12-2123:2, 2123:21-23, July 19, 2014.

276. The changes to the configuration of Districts 77 and 78 appeared in Plan H110, a pre-public plan, created on April 12, 2011. DX-317;<sup>2</sup> DX-368; Test. of Ryan Downton, Trial Tr. 2004:5-2005:3, July 19, 2014.

277. On or about April 12, 2011, David Hanna performed a second retrogression analysis of the El Paso districts. Test. of David Hanna, Trial Tr. 1192:4-7, July 17, 2014; DX-327.

278. Based on the modifications Downton made to District 78, Hanna withdrew his retrogression concerns and no longer identified this district as a possible retrogression risk. Test. of David Hanna, Trial Tr. 1192:8-19, July 17, 2014; DX-327. As a result, the House Redistricting Committee included this version for the El Paso districts in Plan H113, Chairman Solomons' first public plan. DX-112\_00001; DX-112\_00030. The configuration for the El Paso districts never changed after Downton made the adjustments to District 78 to comply with the Voting Rights Act.

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<sup>2</sup> The United States has raised a hearsay objection to this exhibit to the extent it is used to prove the truth of the matter asserted.

*See* DX-123; DX-109\_00011; DX-109\_00045; Test. of Ryan Downton, Trial Tr. 2006:22-2007:22, July 19, 2014.

279. The entire El Paso delegation signed a paper copy of an agreed upon map for the El Paso County districts. Representative Joe Pickett no longer has physical possession of that paper copy and he does not know where the paper copy of the agreed upon map is. Test. of Joe Pickett, Trial Tr. 772:10-773:20, July 16, 2014.

280. An effect of the changes to District 78 was that precinct 23 was removed from District 78. Precinct 23 included Representative Dee Margo's district office, many of his financial supporters, and his mother-in-law's residence. Test. of Dee Margo, Trial Tr. 824:3-16, July 16, 2014; DX-320; DX-321.

281. Representative Dee Margo did not agree with removing precinct 23 from District 78. He felt that removing precinct 23 from District 78 had a detrimental impact. Test. of Dee Margo, Trial Tr. 833:1-15, July 16, 2014.

282. Chairman Burt Solomons thought the El Paso delegation was in agreement on the configuration of the El Paso districts. He was unaware of any ongoing dispute about the districts, and was unaware of any amendments that tried to correct any district in El Paso. Test. of Burt Solomons, Trial Tr. 1101:7-21, July 17, 2014.

283. At no time did any member of the El Paso delegation express a desire to discriminate against Hispanics, African-Americans, or any other minority. Test. of Joe Pickett, Trial Tr. 798:20-25, July 16, 2014; Test. of Dee Margo, Trial Tr. 827:20-22, July 16, 2014. Representatives Joe Pickett and Dee Margo testified that they would not have tolerated it if a member of the El Paso delegation discriminated against Hispanics, African-Americans, or any other minority. Test. of Joe Pickett, Trial Tr. 799:1-2, July 16, 2014; Test. of Dee Margo, Trial Tr. 827:23-24, July 16, 2014.

284. Representative Marisa Marquez was not concerned about split precincts between District 77 and District 78. Dep. of Marisa Marquez, at 57:25-58:4, Feb. 4, 2014 (ECF No. 1092-3). Representative Marisa Marquez does not believe that Hispanics were moved from other districts into District 77 in order to concentrate Hispanics into District 77. Dep. of Marisa Marquez, at 37:25-38:4; 42:16-21, Feb. 4, 2014 (ECF No. 1092-3).

285. In the final 2011 House plan, the "snout" of the "anteater" on the eastern portion of District 78 is shaped in part due to precinct boundaries. Test. of Dee Margo, Trial Tr. 826:5-10, July 16, 2014; DX-321. Representative Marisa Marquez does not remember any of her colleagues being concerned about the "antlers" in District 77. Dep. of Marisa Marquez, at 65:13-66:46, Feb. 4, 2014 (ECF No. 1092-3). Representative Marisa Marquez is unaware of any resident of District 78 who claimed they were denied representation because they lived in Representative Margo's district. Dep. of Marisa Marquez, at 68:25-69:6, Feb. 4, 2014 (ECF No. 1092-3).

286. Two of the witnesses who testified about El Paso, Senator Jose Rodriguez and Representative Joe Moody, had no involvement in the creation of the El Paso County districts. Test. of Jose Rodriguez, Trial Tr. 697:19-21; 707:19-22, July 16, 2014; Test. of Joe Moody, Trial Tr. 882:6-16, July 16, 2014. Representative Joe Moody was not a member of the Legislature during the 2011 legislative session. Test. of Joe Moody, Trial Tr. 838:4-10, 882:3-15, July 16, 2014.

287. Representative Joe Moody is unaware of any guideline in the Texas Legislative Council's redistricting publication, or any law in Texas, that prohibits precinct splits between districts. Test. of Joe Moody, Trial Tr. 883:8-15, July 16, 2014.

288. Although the TLRTF attempted to show that the SSVR in District 78 could be improved in a way other than splitting precincts, the demonstration was done using 2012 precinct data which was not available to the mapdrawers during the 2011 legislative session. Test. of Ryan Downton, Trial Tr. 2110:10-2111:11, July 19, 2014.

## **6. Fort Bend County**

289. Under the benchmark House plan, Fort Bend County was represented by two Republicans (Charlie Howard (District 26) and John Zerwas (District 28)), and one Democrat (Ron Reynolds (District 27)). Test. of Gerardo Interiano, Trial Tr. 1603:19-1604:5, July 18, 2014.

290. All the members of the Fort Bend County delegation agreed to the configuration of their districts in Plan H283. Test. of Gerardo Interiano, Trial Tr. 1608: 9-12, July 18, 2014; DX-229 at 51, 98, 120.

291. Fort Bend was one of the more challenging counties for the mapdrawers because the districts could impact anywhere from two to four counties, which would then have an impact across the remainder of the statewide map. Test. of Gerardo Interiano, Trial Tr. 1603:15-18, July 18, 2014.

292. The location of the incumbents' homes in Fort Bend County presented a challenge when drawing the configuration of the districts in Fort Bend County. Test. of Gerardo Interiano, Trial Tr. 1604:9-15, July 18, 2014.

293. Creating a district for Representative Reynolds was challenging because he lived in a densely Republican area, and he wanted the community he lived in to stay together. Additionally, the map drawers did not want to place Representative Reynolds in the new District 85 because that would have hindered Representative Reynolds' reelection chances. Test. of Gerardo Interiano, Trial Tr. 1605:10-1606:24, July 18, 2014.

294. Another challenge in Fort Bend County was ensuring that the Fort Bend County districts had similar populations. Test. of Gerardo Interiano, Trial Tr. 1605:21-1606:10, July 18, 2014.

295. The population in rural counties surrounding Fort Bend County affected how the Fort Bend County districts could be drawn. Test. of Gerardo Interiano, Trial Tr. 1606:5-10, July 18, 2014.

296. Representative Howard and Representative Zerwas agreed they were going to keep their districts equally Republican; balancing the Republican strength of Districts 26 and 28 in Fort Bend County was an additional challenge. Test. of Gerardo Interiano, Trial Tr. 1606:25-1607:11, 1607:19-1608:8, July 18, 2014.

297. The boundaries of District 26 were defined, in part, by precinct boundaries, and natural features. Test. of Gerardo Interiano, Trial Tr. 1606:25-1607:18, July 18, 2014.

298. On the floor of the Texas House of Representatives, Representative Charles Howard indicated that all three members of the Fort Bend County Delegation worked together and agreed to the configuration of districts in Fort Bend County. DX-190\_00694.

299. Dr. Brischetto did not have data on the actual voters that participated in elections in Fort Bend County. Instead, he used “predictor variables” to predict how racial and ethnic groups vote. Test. of Robert Brischetto, Trial Tr. 954:3-955:2, July 16, 2014.

300. When performing his analysis of primary elections in Fort Bend County, the only variable that Dr. Brischetto considered was race. Dr. Brischetto did not conduct a multivariate analysis for the primary elections in Fort Bend County. Test. of Robert Brischetto, Trial Tr. 978:11-979:2, July 16, 2014; Test. of John Alford, Trial Tr. 1866:10-15, July 19, 2014.

301. Representative Senfronia Thompson, who gave limited testimony about Fort Bend County, was not aware that the members of the Fort Bend County delegation had drawn and approved their districts. Test. of Senfronia Thompson, Trial Tr. 1283:12-23, July 17, 2014.

302. There is a substantial Asian-American population in Fort Bend County. Test. of George Korbelt, Trial Tr. 1454:20-25, July 17, 2014.

303. George Korbelt’s demonstration plan for Fort Bend County, Plan H361, does not create any additional districts in which a single group comprises the majority of the CVAP. Test. of George Korbelt, Trial Tr. 1455:8-13, July 17, 2014.

304. George Korbelt’s analysis of Fort Bend County under Plan H283 did not provide information about factors such as rivers, city boundaries, roads, or political data that might account for district boundaries. Test. of George Korbelt, Trial Tr. 1455:14-21, July 17, 2014.

305. Based on his analysis of the experts’ reports in this case, Dr. Alford did not find evidence of cohesion among Asian-American, Black, and Hispanic voters in primary elections in Fort Bend County. Test. of John Alford, Trial Tr. 1866:16-20, July 19, 2014.

306. Asian-American, Black, and Hispanic voters in Fort Bend County do not vote cohesively in Democratic primaries. Test. of John Alford, Trial Tr. 1866:21-1867:7, July 19, 2014.

307. There is neither political cohesion nor electoral voter cohesion amongst Asian-Americans, Blacks, and Hispanics in Fort Bend County. Test. of John Alford, Trial Tr. 1867:8-18, July 19, 2014.

## **7. Harris County**

308. In Plan H100, there were 25 districts in Harris County, represented by 13 Republicans and 12 Democrats. DX-100\_00027.

309. Based on the 2010 Census figures, dividing Harris County's population, 4,092,459, by the ideal House district population size, 167,637, yielded approximately 24.41 State House districts. Test. of Gerardo Interiano, Trial Tr. 1419:22-1420:6, Sept. 12, 2011; Test. of Ryan Downton, Trial Tr. 930:11-19, Sept. 9, 2011; Test. of Scott Hochberg, Trial Tr. 1666:11-14, July 18, 2014; DX-221\_00001.

310. In 2001, when Harris County was entitled to 24.46 House districts, the House adopted a redistricting plan that allocated 24 districts to Harris County. Test. of Garnet Coleman, Trial Tr. 1328:1-3, July 17, 2014; DX-127\_00002.

311. The 24-member plan adopted by the House in 2001 was supported by Representative Garnet Coleman, Representative Jessica Farrar, Representative Scott Hochberg, Representative Senfronia Thompson, and Representative Sylvester Turner. DX-127\_00002.

312. In 2001, the Legislative Redistricting Board apportioned 25 House districts to Harris County. Test. of Garnet Coleman, Trial Tr. 1326:23-1327:1, July 17, 2014.

313. During the 2011 redistricting process, the Legislature relied on the 2010 U.S. Census data to determine the appropriate number of House districts it should apportion to Harris County. Test. of Gerardo Interiano, Trial Tr. 1419:22-1420:6, Sept. 12, 2011; Test. of Ryan Downton, Trial Tr. 930:11-19, Sept. 9, 2011.

314. After the 2010 Census figures were released in February 2011, David Hanna provided legal advice to Gerardo Interiano regarding the number of House districts to be allocated to Harris County. Test. of David Hanna, Trial Tr. 1201:25-1202:23, July 17, 2014; DX-135.

315. David Hanna advised that Harris County should receive 24 House districts because the "as nearly as may be" language of the Texas Constitution's county line rule "means something, and one number only." David Hanna also advised that "putting the wrong number in Harris County is a catastrophic error if you guess wrong" because it would require Harris County and most of the rural areas of the State to be redrawn. Test. of David Hanna, Trial Tr. 1202:14-23, July 17, 2014; DX-135.

316. Applying the county line rule, and consistent with David Hanna's assessment, Chairman Solomons determined that Harris County would be allocated 24 House districts in 2011. Test. of Burt Solomons, Trial Tr. 1012:24-1013:2, July 17, 2014; Test. of Burt Solomons, Trial Tr. 1567:7-1568:19, Sept. 13, 2011; Test. of Ryan Downton, Trial Tr. 930:14-931:7, Sept. 9, 2011.

317. Chairman Solomons believed that apportioning 25 House districts to Harris County would have provided Harris County with an additional representative to the disadvantage of other areas of the State. Test. of Burt Solomons, Trial Tr. 1568:6-19, Sept. 13, 2011.

318. After Chairman Solomons made his determination regarding the number of Harris County districts, he notified the Harris County delegation of his decision. Test. of Bonnie Bruce, Trial Tr. 1986:11-14, July 19, 2014.

319. At the beginning of the 2011 redistricting process, Representative Wayne Smith and Representative Senfronia Thompson worked together on a 25-member map for Harris County.

Test. of Senfronia Thompson, Trial Tr. 1241:10–1242:3, 1266:3-5, July 17, 2014; Test. of Gerardo Interiano, Trial Tr. 1611:4-7, July 18, 2014.

320. Republican and Democratic members of the Harris County delegation attempted to reach agreement on a countywide map but they were unable to do so. Test. of Senfronia Thompson, Trial Tr. 1242:4-7, July 17, 2014; Test. of Ryan Downton, Trial Tr. 931:16–932:4, Sept. 9, 2011.

321. The 25-member map on which Representative Smith and Representative Thompson were working did not have consensus among delegation members and was not adopted as the Harris County map. Test. of Senfronia Thompson, Trial Tr. 1268:14-17, July 17, 2014; Test. of Hubert Vo, Trial Tr. 1375:19-23, July 17, 2014.

322. Although Representative Smith drafted proposals for Harris County during the 2011 redistricting process, the plaintiffs provided no evidence that any of Representative Smith's proposals were incorporated into the version adopted by the Legislature in Plan H283.

323. The Harris County map that was dropped into the statewide map submitted to the House Redistricting Committee was based on a 24-member plan provided by Representative Beverly Woolley that had the agreement of the Harris County Republican delegation. Test. of Gerardo Interiano, Trial Tr. 1609:7-14, July 18, 2014.

324. Ryan Downton reviewed the Harris County Republican delegation's proposed map and made changes to ensure compliance with the Voting Rights Act. In particular, Downton attempted to keep the SSVR and BVAP in minority opportunity districts similar to their benchmark levels. These changes were incorporated into initial statewide House plan released by Chairman Solomons, Plan H113. Test. of Ryan Downton, Trial Tr. 931:16–932:13, Sept. 9, 2011; *see also* Joint Exhibit J-62, Dep. of Ryan Downton, at 99:22–100:6, Aug. 31, 2011 (ECF No. 420).

325. Under Plan H113, District 148 contained 42.4% HCVAP, 39.4% non-suspense SSVR, and 38.6% total SSVR. DX-112\_00032 (Red 109 report).

326. Following the release of Plan H113, Luis Figueroa of MALDEF testified at the House Redistricting Committee hearing on April 15, 2011 that the Hispanic population needed to be increased in District 148. DX-595 (April 15, 2011 House Redistricting Committee Hearing Transcript) at 32:1-12, 34:9-13; Jessica Farrar Dep., at 46:14-47:4, 47:13-48:16, March 4, 2014 (ECF No. 1092-2).

327. Based on requests of MALDEF and Representative Villarreal, the mapdrawers increased District 148's SSVR and HCVAP in the proposed House plan. Test. of Ryan Downton, Trial Tr. 932:14-933:1, Sept. 9, 2011; Test. of Ryan Downton, Trial Tr. 2049:11-21, 2141:12-23, July 19, 2014; Test. of Gerardo Interiano, Trial Tr. 1431:7-20, Sept. 12, 2011.

328. The increase in District 148's SSVR was also consistent with recommendations made by David Hanna, who had analyzed District 148 and suggested that the district's SSVR be increased to avoid possible retrogression issues. Test. of David Hanna, Trial Tr. 1198:3-14, 1198:22–1199:5,



July 17, 2014; *compare* DX-327 (Hanna's April 12, 2011 retrogression memo), *with* DX-123 (Hanna's April 20, 2011 retrogression memo).

329. In Plan H283, District 148 contains 51.4% HCVAP, 50.0% non-suspense SSVR, and 49.1% total SSVR, compared to 42.1% HCVAP, 40.0% non-suspense SSVR, and 39.4% total SSVR under Plan H100. *Compare* DX-100\_00036, Plan H100, Red-109 Report *with* DX-109\_00046, Plan H283, Red-109 Report.

330. The floor debate on the statewide House plan was stopped for approximately three hours to address concerns of several African-American members in Harris County. During this time, the House Redistricting Committee, Speaker Straus' staff, and Democratic and Republican members of the Harris County delegation worked collectively to make changes to the map to address the concerns of these members. Test. of Gerardo Interiano, Trial Tr. 1608:20–1609:6, July 18, 2014; Test. of Gerardo Interiano, Trial Tr. 1430:17–1431:6, Sept. 12, 2011; Test. of Ryan Downton, Trial Tr. 933:10–934:10, 935:19–937:18, Sept. 9, 2011.

331. The House adopted several floor amendments that altered the Harris County map, including changes proposed by Representative Garnet Coleman, Representative Senfronia Thompson, and Representative Alma Allen that were approved by the Harris County delegation. Test. of Gerardo Interiano, Trial Tr. 1608:22–1609:6, 1610:9-13, July 18, 2014; Test. of Garnet Coleman, Trial Tr. 1336:2-6, July 17, 2014; Test. of Gerardo Interiano, Trial Tr. 1475:16–1476:10, Sept. 12, 2011.

332. Representative Thompson acknowledged that she was generally satisfied with her district after her requested changes were incorporated into the House map. Test. of Senfronia Thompson, Trial Tr. 1275:1-4, July 17, 2014.

333. Of the 24 Harris County districts in Plan H283, 4 districts contain an HCVAP or SSVR majority. DX-109\_00046, Plan H283, Red 109 Report.

334. Even if the Legislature was required to have drawn 25 Harris County districts in 2011, Plaintiffs' demonstration plans do not create any additional HCVAP or SSVR majority districts in a 25-member Harris County map compared to Plan H283. *E.g.*, Joint Exhibit J-23, Plan H115, Red-100 Report, Red-109 Report; Joint Exhibit J-26, Plan H205, Red-100 Report, Red-109 Report; Joint Exhibit J-27, Plan H214, Red-100 Report, Red-109 Report; Joint Exhibit J-37, Plan H292, Red-100 Report, Red-109 Report (2005-2009 ACS Survey).

335. Because the Legislature apportioned Harris County 24 seats instead of 25 seats, the elimination of a district necessitated the pairing of two Democratic incumbents—Representatives Scott Hochberg (District 137) and Hubert Vo (District 149)—in Harris County. DX-190 (April 27, 2011 House Journal Supplement) at S724-S726 (Solomons).

336. Under Plan H100, District 137 had 25.6% HCVAP, 13.7% Anglo VAP, 14.6% BVAP, and 13% Other VAP. DX-100\_00021, Plan H100, Red-202 Report; DX-100\_00036, Plan H100, Red-119 Report.

337. Under Plan H100, District 149 had 19.0% HCVAP, 26.6% Anglo VAP, 22.9% BVAP, and 21.1% Other VAP. DX-100\_00021, Plan H100, Red-202 Report; DX-100\_00036, Plan H100, Red-119 Report.

338. In the benchmark House plan, no one minority group represented a majority of District 137's citizen voting age population. The district contained 35.5% Anglo CVAP, 26.4% BCVAP, 25.6% HCVAP, and 11.6% Asian CVAP. DX-100\_00032, Plan H100, Red-106 Report; Test. of Hubert Vo, Trial Tr. 1379:2-9, July 17, 2014.

339. In the benchmark House plan, no one minority group represented a majority of District 149's citizen voting age population. The district contained 37.6% Anglo CVAP, 26.1% BCVAP, 19.0% HCVAP, and 16.2% Asian CVAP. DX-100\_00032, Plan H100, Red-106 Report; Test. of Hubert Vo, Trial Tr. 1378:23–1379:1, July 17, 2014.

340. TLC provided advice about the potential pairing of Representative Hochberg and Representative Vo. *E.g.*, DX-122; Test. of David Hanna, Trial Tr. 1192:20–1194:18, July 17, 2014.

341. David Hanna advised that the pairing of Representative Hochberg and Representative Vo did not create any retrogression problems because District 137 was not a performing Hispanic opportunity district, and it would require a “novel retrogression theory” to extend Voting Rights Act protection to District 149 because no single racial or ethnic group comprised more than a quarter of the district's voting age population. DX-122; Test. of David Hanna, Trial Tr. 1193:4–1194:18, July 17, 2014.

342. David Hanna testified at trial that he did not believe District 149 was a protected district under the benchmark plan. Test. of David Hanna, Trial Tr. 1158:8-9, July 17, 2014.

343. Based on the advice of TLC, the mapdrawers determined that District 149 was not a protected district and that it was permissible to pair Representative Hochberg and Representative Vo in the same district. Test. of Ryan Downton, Trial Tr. 2051:15-21, 2142:22–2143:7, July 19, 2014; Test. of Gerardo Interiano, Trial Tr. 1482:13-21, Sept. 12, 2011.

344. The pairing of Representative Hochberg and Representative Vo was the only pairing in Plan H283 that involved a Democratic House member. DX-109, Plan H283, Red-350 Report; Test. of Gerardo Interiano, Trial Tr. 1427:15-23, Sept. 12, 2011.

345. In Plan H283, District 137 contains 28.9% BCVAP, 26.8% Anglo CVAP, 26.3% HCVAP, and 17.1% Asian CVAP. DX-109\_00042, Plan H283, Red-106 Report.

346. In Plan H100, Asian-American communities in Southwest Houston were spread across numerous House districts, including District 131, District 133, District 137, and District 149. Test. of Hubert Vo, Trial Tr. 1376:13–1377:19, July 17, 2014; DX-332.

347. There were four House districts that encompassed the Alief area in Southwest Houston under Plan H100: District 131, District 133, District 137, and District 149. Test. of Hubert Vo, Trial Tr. 1377:24–1378:4, July 17, 2014.

348. In Plan H283, Asian-American communities in Southwest Houston were located in multiple districts similar to Plan H100. Test. of Hubert Vo, Trial Tr. 1380:11-22, July 17, 2014.

349. Representative Vo did not believe that Plan H283 intentionally fragmented the Asian-American community. Test. of Hubert Vo, Trial Tr. 1381:17-21, 1381:25-1382:8, July 17, 2014; *see also* Dep. of Rogene Calvert, at 89:2-18, May 30, 2014 (ECF No. 1092-2).

350. In Southwest Houston, there is no cohesive coalition of multi-ethnic voters; instead, the extent to which members of various ethnic or racial minority groups form a voting coalition depends on numerous factors, including the candidates and the relevant issues involved in an election. Dep. of Rogene Calvert, at 127:12-129:8, 131:20-133:8, May 30, 2014 (ECF No. 1092-2).

## **8. Hidalgo County**

351. Representative Aaron Pena served on the House Redistricting Committee in 2011. Test. of Aaron Pena, Trial Tr. 85:13-15, Aug. 11, 2014. He was elected to represent House District 40 under the benchmark plan. District 40 ultimately became District 41 in Plan H283. Test. of Aaron Pena, Trial Tr. 88:8-13, Aug. 11, 2014.

352. In December 2010, Representative Pena switched political parties and became a member of the Republican Party. At the time he switched political parties, Representative Pena was the only Republican member in Hidalgo County and the only Republican member from the Rio Grande Valley delegation. Test. of Aaron Pena, Trial Tr. 121:22-122:11, Aug. 11, 2014; DX-100\_00025.

353. The Rio Grande Valley delegation was headed by the senior member, Representative Oliveira from Brownsville. Representative Pena met with the delegation once, and they were hostile to the idea that there was a Republican in the Valley. Test. of Aaron Pena, Trial Tr. 124:25-125:11, Aug. 11, 2014.

354. Ryan Downton, Representative Ryan Guillen, and Gerardo Interiano worked on Representative Pena's district. Test. of Aaron Pena, Trial Tr. 89:18-91:9, Aug. 11, 2014.

355. Representative Pena and Representative Guillen are very good friends, and have worked closely together on a number of issues over the years. Test. of Aaron Pena, Trial Tr. 117:22-118:16, Aug. 11, 2014. Representative Pena and Representative Guillen's districts are adjacent, with Representative Guillen serving as the Starr County representative. Working together, the two were able to help get approval for a new fine arts center, a new medical school, a wellness center, and parks. The two accomplished incredible things for the Valley during the 2011 session. Test. of Aaron Pena, Trial Tr. 118:24-119:13, Aug. 11, 2014.

356. During a meeting early in the 2011 session, Representative Pena explained to his colleagues his objective during the redistricting process was to create a competitive district in the Valley where alternative views could be expressed. Test. of Aaron Pena, Trial Tr. 123:6-18, Aug. 11, 2014.

357. When Representative Pena first met Ryan Downton, Representative Pena articulated the following goals: (1) he did not want members to be paired; (2) he wanted his colleagues to have

safe districts; and (3) he wanted a district centered in the McAllen-Edinburg area to be maximized for the Republican vote. Test. of Aaron Pena, Trial Tr. 127:1-19, Aug. 11, 2014.

358. During the 2011 legislative session while the Legislature undertook the task of redistricting the Texas House districts, Representative Pena had not decided whether to run for reelection. Test. of Aaron Pena, Trial Tr. 103:16-104:8, Aug. 11, 2014.

359. Representative Pena and Representative Guillen discussed the configuration of District 41 during the 2011 session. They started with the general principles Representative Pena had articulated to Ryan Downton. Representative Guillen drew maps for Hidalgo County. Test. of Aaron Pena, Trial Tr. 128:6-14, Aug. 11, 2014. Representative Pena and Representative Guillen discussed areas that would be advantageous to Representative Pena should he decide to run for reelection. Test. of Aaron Pena, Trial Tr. 129:13-16, Aug. 11, 2014.

360. Representative Pena was not familiar with the RedAppl mapping software system used by the Legislature to redraw districts. Representative Pena relied on Representative Guillen to assist him in creating proposals for Hidalgo County to present to the House Redistricting Committee. Representative Guillen was an experienced user of the RedAppl mapping software. Test. of Aaron Pena, Trial Tr. 126:2-5, 128:3-5, Aug. 11, 2014.

361. Representative Pena's RedAppl account only contained three maps. Two of them are described as "Received from Guillen," the third is described as "Received from Fischer." Test. of Aaron Pena, Trial Tr. 129:20-130:11, Aug. 11, 2014; DX-371.

362. Representative Guillen's RedAppl account, in contrast, contains more than 25 maps during the 2011 legislative session, and several contain descriptions indicating that they relate to District 40, Pena's district. Test. of Aaron Pena, Trial Tr. 130:17-21, Aug. 11, 2014; DX-372.

363. Representatives Pena and Guillen asked Gerardo Interiano to help them create a Republican district that would give Representative Pena the best chance at being reelected. Test. of Gerardo Interiano, Trial Tr. 41:8-15, Aug. 11, 2014. Race was never a consideration during the drawing of District 41 as the area is 97% or more Hispanic. Test. of Aaron Pena, Trial Tr. 124:3-15, Aug. 11, 2014.

364. Gerardo Interiano drew the initial boundaries of District 41 at the direction of Representative Pena and Representative Guillen. Test. of Gerardo Interiano, Trial Tr. 1501:1-4; 1503:18-25, July 18, 2014; Test. of Gerardo Interiano, Trial Tr. 38:4-7, Aug. 11, 2014. The district was drawn with the goal of maximizing a Republican's chance of getting reelected, and that was done by including what Representative Pena called "persuadables," which he defined as conservatives who are not necessarily Republicans. Test. of Aaron Pena, Trial Tr. 104:2-8, Aug. 11, 2014. Ryan Downton was not involved in the initial drawing of District 41. Test. of Ryan Downton, Trial Tr. 2025:7-12, July 19, 2014.

365. Gerardo Interiano drew the initial version of District 41, using partisan shading at the precinct level, to include areas in Hidalgo County that favored Attorney General Greg Abbott in his 2010 election. Test. of Gerardo Interiano, Trial Tr. 1504:13-15; 1579:12-1580:2, July 18, 2014; Test. of Gerardo Interiano, Trial Tr. 38:8-12, Aug. 11, 2014. Gerardo Interiano selected the most

Republican precincts and added them to the district he was drawing for Representative Pena. Test. of Gerardo Interiano, Trial Tr. 1581:10-15, July 18, 2014.

366. Dr. Arrington (DOJ's expert) admitted that the boundaries of District 41 were consistent with areas of greater support for General Abbott, Test. of Theodore Arrington, Trial Tr. 191:20-192:5, July 14, 2014, and he conceded that he has no knowledge of the area, Test. of Theodore Arrington, Trial Tr. 192:7-196:4, July 14, 2014.

367. Gerardo Interiano also relied on population statistics while drawing the initial version of District 41 to ensure that the district had the appropriate number of people, roughly between 160,000 and 175,000. Test. of Gerardo Interiano, Trial Tr. 1580:6-15, July 18, 2014. Political shading for the 2010 Abbott race and total population were the only features used by Gerardo Interiano to create the district for Representative Pena. Test. of Gerardo Interiano, Trial Tr. 1580:23-1581:2, July 18, 2014.

368. Representative Pena and Representative Guillen were present while Interiano was selecting precincts to include in District 41. At this point, the primary goal was to include the strongest Republican leaning areas in the district. Test. of Gerardo Interiano, Trial Tr. 1581:21-1582:7, July 18, 2014. While working with Interiano to draw the district, neither Pena nor Guillen provided racial demographic information to Interiano. Test. of Gerardo Interiano, Trial Tr. 1592:17-25, July 18, 2014.

369. The initial configuration of Representative Pena's district is found in Plan H113, the first plan unveiled by Chairman Solomons. Test. of Gerardo Interiano, Trial Tr. 1582:8-16, July 18, 2014. In Plan H113, the district represented by Representative Pena is labeled as District 40. Test. of Gerardo Interiano, Trial Tr. 38:20-25, Aug. 11, 2014; DX-334.

370. Interiano did not look at, or otherwise utilize, racial data when he drew the initial configuration of Representative Pena's district. Test. of Gerardo Interiano, Trial Tr. 38:17-19, 40:19-24, Aug. 11, 2014.

371. Representative Pena was elected from District 40, and Representative Gonzales was elected from District 41. The mapdrawers tried to keep each member in their original district number to avoid having to spend additional money on campaign signs. As the districts evolved, most of the area from former District 41 was moved to District 40, and vice versa. David Hanna raised a concern about potential retrogression issues since the demographics between the districts changed so dramatically. The mapdrawers eventually flipped the district numbers to align more closely with the original territory from the districts. Test. of Ryan Downton, Trial Tr. 2034:6-2035:9, July 19, 2014; DX-327.

372. The map in Representative Guillen's RedAppl account labeled GUIL H119 and dated March 29, 2011 is the same as the version of the map Representative Pena signed on April 5, 2011. Test. of Aaron Pena, Trial Tr. 135:2-136:6, Aug. 11, 2014. The map Representative Pena signed off on is the same as the configuration that appears in Plan H113. DX-334.

373. District 40 in Plan H113 contained four split precincts/voter tabulation districts. Test. of Gerardo Interiano, Trial Tr. 1506:13-1508:4, July 18, 2014. Interiano made the precinct cuts found in Plan H113 at the direction of either Representative Guillen or Representative Pena. Test.

of Gerardo Interiano, Trial Tr. 1584:14-16, July 18, 2014; Test. of Gerardo Interiano, Trial Tr. 39:7-22, Aug. 11, 2014. Gerardo Interiano was not knowledgeable of Hidalgo County's geography. Test. of Gerardo Interiano, Trial Tr. 44:4-10, Aug. 11, 2014.

374. Precinct 28 was split in order to exclude Precinct 9 from the boundary of District 40 in Plan H113 because it was not a strong Republican-leaning precinct. Test. of Gerardo Interiano, Trial Tr. 1506:22-1507:9, July 18, 2014. Precinct 14 was split in Plan H113 to include Representative Pena's home and the "persuadables" in the area near his childhood home. Test. of Aaron Pena, Trial Tr. 146:19-147:7, Aug. 11, 2014; Test. of Gerardo Interiano, Trial Tr. 1507:17-22, July 18, 2014; DX-295. Precinct 62 was split in Plan H113 to include Representative Gonzalez's home in her district. Similarly, Precinct 124 was split to create a pathway connecting Representative Gonzalez's home and her district. Test. of Aaron Pena, Trial Tr. 147:12-25, Aug. 11, 2014; Test. of Gerardo Interiano, Trial Tr. 1507:10-16, July 18, 2014; DX-295.

375. After April 5, 2011, Representative Guillen continued to work on District 41 and discuss the district with Representative Pena. Test. of Aaron Pena, Trial Tr. 136:7-20, Aug. 11, 2014. Their goal was to create a district that allowed conservatives in the area to have the opportunity to work with someone in the community who shared their ideals. Test. of Aaron Pena, Trial Tr. 136:21-137:6, Aug. 11, 2014.

376. Representative Pena told Ryan Downton there were tweaks he wanted to make to the map, so they met in Ryan Downton's office in front of the computer. Ryan Downton had a big screen TV in his office so members could see the map while working with him. Test. of Ryan Downton, Trial Tr. 2027:3-16, July 19, 2014.

377. Changes were made to Representative Pena's district after he signed the map, and he agreed with all of the changes that were made. Test. of Aaron Pena, Trial Tr. 110:7-11, Aug. 11, 2014. The precinct cuts made between H113 and H283 were made at the direction of either Representative Guillen or Representative Pena while working with Ryan Downton. Test. of Gerardo Interiano, Trial Tr. 39:23-40:6, Aug. 11, 2014.

378. Representative Guillen and Ryan Downton made changes to the boundaries of District 41 and split thirteen additional precincts. Representative Guillen was looking for "persuadables," which are people who would be willing to cast a vote for either party and would also describe themselves as a conservative. Test. of Aaron Pena, Trial Tr. 110:12-111:8, Aug. 11, 2014. In order to achieve this goal, Representative Guillen used a database of voting histories from the Democratic Party to identify these "persuadables." Test. of Aaron Pena, Trial Tr. 111:9-17, Aug. 11, 2014.

379. During the progression of the configuration of Representative Pena's district from Plan H113 to Plan H283, Representative Guillen and Representative Pena discussed voting patterns, but never race. Test. of Aaron Pena, Trial Tr. 111:18-20, 123:19-22, Aug. 11, 2014. At no time did Representative Pena or Representative Guillen attempt to split or separate Hispanics, nor did they ever try to discriminate on the basis of race. Test. of Aaron Pena, Trial Tr. 137:7-12, Aug. 11, 2014.

380. Representative Pena and Representative Guillen relied on their knowledge of the area to identify voters in particular areas who were more likely to support Representative Pena. Specifically, they looked for voters who would support Representative Pena because they grew up in

the same neighborhood as him. Test. of Aaron Pena, Trial Tr. 139:6-13, Aug. 11, 2014. Outside his neighborhood, Representative Pena and Representative Guillen assumed that people who pay heavy property taxes are more likely to be conservative. Test. of Aaron Pena, Trial Tr. 139:14-22, Aug. 11, 2014.

381. Representative Guillen's plan GUIL H127, dated April 14, 2011, has boundaries for District 41 that are substantially identical to H283, except for the northern and northeastern portions of the district. Test. of Aaron Pena, Trial Tr. 141:13-25, 144:16-24, Aug. 11, 2014; DX-375.

382. Precincts 47, 48, and 95 were split in Plan H283 in order to create a straight line and to follow South Benson Road. Test. of Gerardo Interiano, Trial Tr. 44:22-45:16, Aug. 11, 2014. The area to the west of the line between Precincts 47 and 48 is called Sharyland, and it is an affluent area. Test. of Aaron Pena, Trial Tr. 150:14-151:6, Aug. 11, 2014; DX-295; DX-670.

383. Precinct 88 was split in Plan H283 in order to follow the boundary line of the City of Alton. Test. of Aaron Pena, Trial Tr. 100:2-101:6, 153:4-14, Aug. 11, 2014; DX-295; DX-670.

384. Precinct 105 was split in Plan H283 at the direction of Representative Guillen. Representative Guillen wanted to include a neighborhood called the Vineyards in District 41 because he was interested in purchasing a home. Test. of Aaron Pena, Trial Tr. 145:3-22, Aug. 11, 2014; DX-375; DX-295.

385. Precinct 52 was split in Plan H283 to exclude the northern part of the precinct because that area was less Republican than the rest of the precinct. Test. of Gerardo Interiano, Trial Tr. 1583:14-1584:1, July 18, 2014; DX-295; DX-335.

386. Precinct 35 was split in Plan H283 to follow Jackson Road, the boundary between the City of McAllen and the city of Pharr. Test. of Aaron Pena, Trial Tr. 148:1-15, Aug. 11, 2014; DX-295; DX-670.

387. Precincts 6 and 25 were split in Plan H283 because the areas have a cultural division and socioeconomic differences. There is a flood plain in the area that divides the communities. Test. of Aaron Pena, Trial Tr. 149:4-25, Aug. 11, 2014; DX-295; DX-670.

388. The north/south division between Precinct 8 and Precinct 6 was drawn to follow Jackson Road as well as to recognize socioeconomic differences between people to the east and those to the west. Test. of Aaron Pena, Trial Tr. 150:8-13, Aug. 11, 2014; DX-295; DX-670.

389. Precinct 103 was split in Plan H283 in order to include Representative Munoz's district office into his district. Test. of Aaron Pena, Trial Tr. 152:23-153:2, Aug. 11, 2014; DX-295; DX-670.

390. The split of Precinct 63 in Plan H283 follows Conway Road. See Test. of Jaime Longoria, Trial Tr. 531:2-5, July 15, 2014; DX-670.

391. At no time did Representative Pena suspect anyone involved—Ryan Guillen, Ryan Downton, Gerardo Interiano, or anyone else—of intentional discrimination. Test. of Aaron Pena, Trial Tr. 153:15-154:25, Aug. 11, 2014.

392. A shaded map of District 41 in Plan H283 shows several areas of concentrated Anglo population that were not included in District 41. DX-296; Test. of Theodore Arrington, Trial Tr. 186:25-189:10, July 14, 2014.

393. The plaintiffs' witnesses provided no evidence that anyone divided precincts in District 41 on the basis of race.

394. The United States' witness Jaime Longoria admitted that precincts might be split for any number of reasons, Test. of Jaime Longoria, Trial Tr. 531:9-13, July 15, 2014, and he acknowledged that many of the precinct splits in District 41 followed roads, Test. of Jaime Longoria, Trial Tr. 530:23-531:8, 531:14-19 (Precincts 63, 47, 48, and 95), 538:9-17 (Precincts 6 and 25), July 15, 2014.

395. Moreover, Jaime Longoria had no personal knowledge about the creation of District 41 or the reason behind any part of its boundary. Test. of Jaime Longoria, Trial Tr. 535:25-536:3, July 15, 2014.

396. Jaime Longoria did not speak to any legislator or legislative staffer who was involved in drawing the district, Test. of Jaime Longoria, Trial Tr. 526:22-527:4, July 15, 2014, and he had no personal knowledge why any precinct in District 41 was split, Test. of Jaime Longoria, Trial Tr. 528:17-20, 529:1-5, 529:22-25, 530:5-8, 533:11-14, 538:18-22, July 15, 2014.

## **9. Nueces County**

397. Based on its 2000 Census population, Nueces County was entitled to 2.26 House seats; thus, in the benchmark plan, Nueces County contained two whole districts and a portion of a third, which joined surplus population with San Patricio, Aransas, and Calhoun County. DX-212; DX-100; Test. of Abel Herrero, Trial Tr. 657:8-22, July 15, 2014.

398. Based on its 2010 Census population, Nueces County was entitled to 2.029 House seats. Test. of Gerardo Interiano, Trial Tr. 1429:12-21, Sept. 12, 2011; Test. of Abel Herrero, Trial Tr. 657:23-658:7, July 15, 2014; DX-212; DX-214.

399. David Hanna advised that the Texas Constitution required that only two districts be apportioned to Nueces County. Test. of David Hanna, Trial Tr. 1185:16-22, July 17, 2014; DX-192. David Hanna further advised that failure to comply with the Texas Constitution's whole-county rule would have exposed the entire plan to a challenge in state court. Test. of David Hanna, Trial Tr. 1201:15-22, July 17, 2014.

400. David Hanna testified that even with the loss of a district in Nueces County due to population shifts, the Legislature could offset this district by creating a new Hispanic opportunity district in a different part of the state. Test. of David Hanna, Trial Tr. 1190:3-20, July 17, 2014. David Hanna's concerns with Nueces County were strictly related to Section 5 compliance. Test. of David Hanna, Trial Tr. 1191:3-5, July 17, 2014.



401. Plan H283 apportioned two House districts in Nueces County, which is one less than the benchmark plan. *See* Joint Exhibit J-21, Red 100 Report; Joint Exhibit J-9, Red 100 Report.

402. Because Nueces County's level of Spanish-surnamed registered voters was just under 50%, it was not possible to create two SSVR-majority districts without removing a portion of the Nueces County's population and violating the whole-county rule. . Test. of David Hanna, Trial Tr. 1186:6-12, July 17, 2014; Test. of Ryan Downton, Trial Tr. 2037:23-2038:5, July 19, 2014; Test. of Theodore Arrington, Trial Tr. 199:14-17, July 14, 2014.

403. Plaintiffs contend that the Legislature's failure to include part of a third district in Nueces County violates the Voting Rights Act; however, Ryan Downton testified that Nueces County raised concerns under the Voting Rights Act regardless of whether it had 2 or 3 districts. Test. of Ryan Downton, Trial Tr. 2095:25-2096:14, July 19, 2014.

404. Ultimately, the Legislature elected to ensure that one of the two Nueces County House districts would be a strong Hispanic opportunity district. Test. of Gerardo Interiano, Trial Tr. 1498:6-23, Sept. 12, 2011. As a result of the 2011 redistricting, the Nueces County delegation went from three Republicans to one Republican and one Democrat in 2012. Test. of Abel Herrero, Trial Tr. 660:10-12, 661:11-15, July 15, 2014.

405. No proposed plan submitted to the Legislature created two Nueces County districts in which Hispanic voters could elect the candidate of their choice without removing part of Nueces County's population in violation of the county-line rule. Test. of Gerardo Interiano, Trial Tr. 1449:15-23, Sept. 12, 2011.

406. Nueces County's total SSVR percentage was 49.5%. *See* Test. of Gerardo Interiano, Trial Tr. 1449:19-23, Sept. 12, 2011. Creating two SSVR-majority districts within Nueces County was therefore impossible. *Id.*; Test. of Gerardo Interiano, Trial Tr. 1452:10-14, 1498:14-18, Sept. 12, 2011.

407. To create a third Hispanic district, proposed demonstration Plan H201 split Nueces County three ways, *see* Test. of Gerardo Interiano, Trial Tr. 1466:4-1468:5, Sept. 12, 2011, removing 6% of Nueces County's population (roughly 75% of which is Anglo) into a district with six smaller counties and forcing violations of the county-line rule all the way to Galveston County.

## 10. Lubbock County

408. The Plaintiffs' only witness for Lubbock County testified that he had no personal knowledge of: voting related discrimination in Lubbock County; exclusion of Hispanic candidates from running for office; or discrimination against Hispanics in education, employment, or health. Test. of Bubba Sedeno, Trial Tr. 490:14-17, 490:18-22, 490:23-491:2, July 15, 2014.

409. Hispanic and African-Americans in Lubbock County have been elected to serve on the school board, on city councils, and in the courts. Lubbock County Commissioner Bubba Sedeno testified that there is no shortage of "good, viable Latino candidates in the area." *See* Test. of Bubba Sedeno, Trial Tr. 488:8-489:12, July 15, 2014.

410. Plan H283 was drawn with an eye towards partisanship and maximizing the party's ability to stay in power, as well as an intent to protect incumbents. Test. of Bubba Sedeno, Trial Tr. 491:3-14, July 15, 2014.

411. The Lubbock County districts in plan H283 do not violate the county-line rule. DX-109\_00018; DX-109.

412. In contrast, Plan H329 splits Lubbock County into three separate districts, containing two county line splits. Test. of Bubba Sedeno, Trial Tr. 493:2-15, July 15, 2014; MALC-100.

413. MALC Plan H329 was not made public during the 2011 legislative session; it was made public on June 19, 2013. Test. of Bubba Sedeno, Trial Tr. 495:23-496:6, July 15, 2014; MALC-100.

414. According to data available to the Legislature in 2011, Plan H329's District 88 had 47.2% HCVAP and 46.3% SSVR. Test. of Bubba Sedeno, Trial Tr. 496:20-497:2, July 15, 2014; DX-322.

415. MALC presented no evidence about the SSVR in Plan H329's proposed District 88 or whether the district would perform for the Hispanic candidate of choice.

416. Even relying on the 2008-2012 ACS data (which was not available to the Texas Legislature during the 2011 session), the total HCVAP in Lubbock County is only 26.39%. DX-181\_00005.

## **11. McLennan County**

417. Commissioner Gibson, who testified about McLennan County, is not familiar with the 2011 House plan. Test. of Lester Gibson, Trial Tr. 1846:17-1847:1, July 18, 2014.

418. Commissioner Gibson had not looked at any figures showing whether there was vote dilution in McLennan County. Test. of Lester Gibson, Trial Tr. 1839:14-18, July 18, 2014.

419. Commissioner Gibson could not identify an election where the minority candidate of choice in McLennan County lost an election, due to the white vote, since segregation ended. Test. of Lester Gibson, Trial Tr. 1842:2-13, July 18, 2014.

420. Commissioner Gibson is not aware of any legislator's purpose in voting for or against the 2011 House plan. Test. of Lester Gibson, Trial Tr. 1847:9-12, July 18, 2014.

## **12. Midland/Ector Counties**

421. Representative Craddick represents Midland County. Test. of Luis Sanchez, Trial Tr. 456:20-25, July 15, 2014.

422. Midland County and Ector County are in separate districts in both Plan H100 and Plan H283. Test. of George Korbel, Trial Tr. 1455:22-1456:3, July 17, 2014.

423. Midland County Commissioner, Luis Sanchez, has met with Representative Craddick to discuss water issues, roads, and colonias in Midland County. Test. of Luis Sanchez, Trial Tr. 467:10-19 July 15, 2014. Representative Craddick was responsive to Midland County Commissioner Sanchez when they met. Test. of Luis Sanchez, Trial Tr. 467:20-22, July 15, 2014.

424. Midland County Commissioner Sanchez testified that Midland Hispanic citizens have an equal opportunity to participate in the political process. Test. of Luis Sanchez, Trial Tr. 468:17-22, July 15, 2014.

425. In Midland and Ector Counties, Hispanic voters have the ability to elect candidates at the local and county level. Test. of George Korbel, Trial Tr. 1456:20-1457:4, July 17, 2014.

426. The local and county representatives in Midland and Ector Counties fairly represent their communities. Test. of George Korbel, Trial Tr. 1457:5-1458:8, July 17, 2014.

427. In identifying the minority-preferred candidate in Midland County, Dr. Brischetto assumed that the minority-preferred candidate was the Democratic candidate. Test. of Robert Brischetto, Trial Tr. 967:8-20, July 16, 2014.

428. Plan H360, an alternative plan that attempts to create a minority opportunity district in Midland and Ector Counties, violates the Whole County Line rule. MALC-91.

429. Plan H360 attempts to create a *Gingles I* demonstration district—District 81—by using 2008-2012 CVAP figures. MALC-93. During the 2011 legislative session, this data available was not available to the Texas Legislature.

430. Plan H329, an alternative plan that attempts to create a minority opportunity district in Midland and Ector Counties, violates the Whole County Line rule. MALC-94.

431. Plan H329 attempts to create a *Gingles I* demonstration district—District 81—by using 2008-2012 CVAP figures. MALC-96. During the 2011 legislative session, this data available was not available to the Texas Legislature.

432. Plaintiffs presented no evidence demonstrating that the proposed districts for Midland and Ector Counties would elect the Hispanic candidate of choice.

### **13. Tarrant County**

433. Representative Charlie Geren took the lead in drawing the Tarrant County House map. Test. of Gerardo Interiano, Trial Tr. 1561:20-23, July 18, 2014; Test. of Ryan Downton, Trial Tr. 2097:9-11, July 19, 2014.

434. Ryan Downton also worked on the Tarrant County map. Test. of Ryan Downton, Trial Tr. 1989:5-9, July 19, 2014.

435. All members of the Tarrant County delegation came to a consensus and agreed on a map for Tarrant County. Test. of Marc Veasey, Trial Tr. 13:13-16; 14:2-8, July 14, 2014; Test. of Ryan Downton, Trial Tr. 2098:3-7, July 19, 2014.

436. In the proposal from the Tarrant County delegation, the SSVR for District 90 was lower than the SSVR for District 90 under the benchmark plan. Test. of Ryan Downton, Trial Tr. 2098:19-2099:16, July 19, 2014.

437. The proposed map from the Tarrant County delegation was included in the statewide substitute that was released on April 13, 2011. Test. of Ryan Downton, Trial Tr. 2099:3-16, July 19, 2014.

438. On April 15, 2011, Luis Figueroa testified at a public hearing on behalf of MALDEF. At that hearing, Mr. Figueroa indicated that MALDEF was concerned about the SSVR of District 90. Test. of Marc Veasey, Trial Tr. 30:8-31:6, July 14, 2014; Test. of Ryan Downton, Trial Tr. 929:23-930:5, Sept. 9, 2011; DX-116\_00099; DX-595 at 32.

439. David Hanna indicated that there was potentially retrogression in District 90 in the map proposed by the Tarrant County delegation. DX-327; Test. of Ryan Downton, Trial Tr. 2145:17-2146:6, July 19, 2014.

440. Gerardo Interiano asked Representative Charlie Geren to modify the Tarrant County delegation's proposed map to raise the SSVR of House District 90 to over 50%. Test. of Gerardo Interiano, Trial Tr. 1562:7-10, July 18, 2014.

441. The Tarrant County delegation's proposed map for Tarrant County was subsequently modified by Ryan Downton in order to raise the total SSVR of District 90 to over 50%. Test. of Ryan Downton, Trial Tr. 2100:21-24, July 19, 2014.

442. The changes made to the Tarrant County delegation's map were made at the request of MALDEF. DX-190\_632; Test. of Marc Veasey, Trial Tr. 32:4-9, 33:1-3, July 14, 2014; Test. of Ryan Downton, Trial Tr. 929:23-930:5, Sept. 9, 2011.

443. After District 90 was modified, David Hanna no longer had concerns about retrogression in District 90. Test. of Ryan Downton, Trial Tr. 2146:7-20, July 19, 2014; DX-123.

444. After District 90 was modified to raise the total SSVR to over 50%, Representative Burnam and Representative Veasey no longer supported the Tarrant County map. Test. of Ryan Downton, Trial Tr. 2101:12-15, July 19, 2014; Test. of Ryan Downton, Trial Tr. 930:6-10, Sept. 9, 2011.

### **G. Alleged Overpopulation of Minority Districts**

445. Experts for the United States and the plaintiffs opined that population deviations in Plan H283 provided evidence of racially discriminatory intent because they demonstrated a pattern of systematically overpopulating minority districts. *See, e.g.*, Joint Expert Exhibit E-2, Kousser

Report 66-67, 106; Test. of Theodore Arrington, Trial Tr. 148:23–149:15, 149:20-25, July 14, 2014; *see also* Test. of Morgan Kousser, Trial Tr. 249:19-22, Sept. 6, 2011.

446. Dr. Kousser contended that population deviations in H283 reflected partisan and ethnic bias and could not be explained by the county line rule. Joint Expert Exhibit E-2, Kousser Report 64-68; Test. of Morgan Kousser, Trial Tr. 235:22–237:3, Sept. 6, 2011.

447. The plaintiffs' expert analyses of Plan H283 dismiss the underpopulation of Hispanic districts in El Paso County as the result of the county-wide population deficit (El Paso was entitled to 4.78 House districts). *See, e.g.*, Joint Expert Exhibit E-2, Kousser Report 64; Test. of Morgan Kousser, Trial Tr. 234:14–235:11, Sept. 6, 2011. These analyses also fail to account for the fact that many overpopulated Hispanic districts were located in drop-in counties, such as Bexar County and Harris County, where the populations were insufficient to warrant an additional House district but enough to require the average district size to exceed the statewide ideal population. DX-221\_00001 (Bexar County entitled to 10.23 ideally populated districts; Harris County entitled to 24.41 ideally populated districts).

448. Dr. Kousser did not consider whether incumbency protection played any role in Plan H283's population deviations. Test. of Morgan Kousser, Trial Tr. 272:21-23, Sept. 6, 2011.

449. Dr. Arrington admitted that there is no systematic overpopulation of minority districts in Plan H283 if the county line rule is taken into account. Test. of Theodore Arrington, Trial Tr. 182:10-13, July 14, 2014.

450. Among the six minority opportunity districts in Dallas County in Plan H283, three were overpopulated and three were underpopulated. DX-109\_00035 (District 103, District 104, and District 109 were overpopulated; District 100, District 110, and District 111 were underpopulated); *see also* Test. of Theodore Arrington, Trial Tr. 183:17-21, July 14, 2014.

451. Dr. Arrington's analysis of Plan H283's population deviations in Dallas County omitted District 100, the most underpopulated minority opportunity district in Dallas County. Dr. Arrington acknowledged that this omission fundamentally altered the results of his population deviation analysis. Test. of Theodore Arrington, Trial Tr. 184:5–185:15, July 14, 2014.

452. Dr. Alford testified that there was no discernible pattern of overpopulating minority districts or underpopulating Anglo majority districts in Plan H283. Test. of John Alford, Trial Tr. 1880:13-17, 1882:9-13, 1883:10-14, 1884:20-24, 1885:22–1886:1, July 19, 2014.

453. The fact that population deviations in Plan H283 did not cluster around zero deviation indicated a desire for balancing population equality against other redistricting interests; it did not reflect an intentional, systematic pattern of overpopulating and underpopulating certain districts. Test. of John Alford, Trial Tr. 1890:8-21, July 19, 2014; *see also* DX-167\_00001-00003 (graphs reflecting population deviations among minority districts in Plan H283).

454. In Plan H283, the 52 districts in which non-Anglos represent the majority of the district's CVAP are on average 232 persons above the overall ideal district size for the state. The 98 districts in which Anglos comprise a majority of the district's CVAP are on average 124 persons below the statewide ideal district size. SSVR-majority districts are on average 242 persons below the

statewide ideal district size, and districts with less than 50% SSVR are on average 63 persons above the statewide ideal. DX-168\_00023-00024, Table 7 (March 14, 2014 Report of Dr. John Alford); Test. of John Alford, Trial Tr. 1869:17–1871:24, July 19, 2014; *see also* DX-168\_00058-00060 (Graphs A, B, and C attached to March 14, 2014 Report of Dr. John Alford).

455. When Plan H283's population deviations are calculated based on a county ideal district size for multi-district counties (and using the appropriate general ideal population for the remaining districts), the districts in which non-Anglos represent the majority of the district's CVAP are on average 172 persons under the county ideal district size; Anglo CVAP-majority districts are on average 91 persons above the county ideal. Utilizing the same standard, SSVR-majority districts are on average 80 persons above the county ideal, and districts with less than 50% SSVR are on average 21 persons below the county ideal. DX-168\_00024-00025, Table 7 (March 14, 2014 Report of Dr. John Alford); Test. of John Alford, Trial Tr. 1871:25–1874:22, July 19, 2014; *see also* DX-168\_00061-00062 (Graphs D and E attached to March 14, 2014 Report of Dr. John Alford).

456. Focusing only on districts in drop-in counties (Bexar, Dallas, Denton, El Paso, Harris, Nueces, Tarrant, and Travis), the districts in Plan H283 in which non-Anglos comprise the majority of the district's CVAP are on average 149 persons under the county ideal district size; Anglo CVAP-majority districts are on average 141 persons above the county ideal. SSVR-majority districts are on average 626 persons under the county ideal, and districts with less than 50% SSVR are on average 209 persons above the county ideal. DX-168\_00025, Table 8 (March 14, 2014 Report of Dr. John Alford); Test. of John Alford, Trial Tr. 1874:23–1876:25, July 19, 2014.

457. The evidence does not show a pattern of systematically underpopulating Anglo-majority districts, nor does it show a pattern of systematically overpopulating Hispanic-majority or African-American-majority districts.

#### **H. Split Precincts/VTDs**

458. The Texas Legislature had no general policy regarding split precincts. Test. of Ryan Downton, Trial Tr. 2020:13-2021:2, July 19, 2014; Test. of Gerardo Interiano, Trial Tr. 1592:4-7, July 18, 2014; Test. of Theodore Arrington, Trial Tr. 179:24-180:3, July 14, 2014; DX-128.

459. Members often requested precinct splits to benefit their constituents by providing clearer boundaries between districts. Test. of Ryan Downton, Trial Tr. 2023:7-10, July 19, 2014; Test. of Gerardo Interiano, Trial Tr. 1585:15-19, July 18, 2014; Test. of Theodore Arrington, Trial Tr. 177:11-13, July 14, 2014. The drafters of the Texas House redistricting plan split VTDs to accommodate the requests of Republican and Democratic members. Test. of Ryan Downton, Trial Tr. 2023:1-6, July 19, 2014; Test. of Gerardo Interiano, Trial Tr. 1584:14-16, July 18, 2014.

460. Racial data is not the only data that RedAppl provides at the block level. Clare Dyer testified (and demonstrated) that RedAppl allows a user to display political information—specifically, the percentage of votes won by a candidate in a particular election—in a statistics bar on the RedAppl screen. When the user displays election results, any change to the district boundaries will change the election results shown. This is true even if the district is altered by splitting a precinct: the results for the blocks included in the district will be factored into the total election performance indicator in the statistics bar. Test. of Clare Dyer, Trial Tr. 279:3-25, July 14, 2014.

461. As Clare Dyer testified at trial, “election data is allocated down to the block level, so that when people split VTDs, you can still get election results for the district.” Test. of Clare Dyer, Trial Tr. 265:25-266:2, July 14, 2014.

462. Plaintiffs’ allegations that political data are not available at the block level and that racial data are the only data available at the block level in RedAppl are factually inaccurate.

463. In addition to political performance, precincts may be split for a number of race-neutral reasons, such as (1) following city boundaries, (2) including financial supporters, (3) following roads, (4) incorporating airports and government buildings, (5) including a member’s home, (6) complying with the Texas Election Code, and (7) complying with the Voting Rights Act. Test. of Theodore Arrington, Trial Tr. 177:7–178:23, July 14, 2014.

464. Splitting precincts is consistent with Texas law, which expressly provides for changes to precincts in redistricting. *See* Tex. Elec. Code § 42.032. And the Texas Legislative Council’s guidance on redistricting, *State and Federal Redistricting Law in Texas* (Exhibit DX-128), likewise does not prohibit or even caution against splitting VTDs. Test. of David Hanna, Trial Tr. 1203:2-7, July 17, 2014; Test. of Theodore Arrington, Trial Tr. 179:3-180:3, July 14, 2014. Nor did TLC advise the House Redistricting Committee or individual map drawers not to split precincts. Test. of Ryan Downton, Trial Tr. 2020:25-2021:2, July 19, 2014.

465. The House Redistricting Committee did not have a policy against splitting precincts in 2011. Test. of Gerardo Interiano, Trial Tr. 1592:4-7, July 18, 2014. The Committee asked individual members to maintain whole precincts in their proposed districts so the Committee could assemble all districts into a statewide proposal without having to reconcile inconsistent precincts. Test. of Ryan Downton, Trial Tr. 2020:6-24, July 19, 2014.

466. Dr. Arrington acknowledged that VTDs split for a non-racial purpose would still show up as racial VTD splits in the “z-score” analysis in his expert report. Test. of Theodore Arrington, Trial Tr. 438:23-439:1, Aug. 12, 2014. Dr. Arrington admitted that he did not control for race-neutral reasons for split VTDs in the Texas redistricting maps. Test. of Theodore Arrington, Trial Tr. 439:17-440:24, Aug. 12, 2014. Moreover, Dr. Arrington’s analysis of VTD splits could not distinguish between permissible and impermissible uses of race.

467. Although he acknowledged that the Plaintiffs’ proposed maps could have a statistically significant “z-score,” Dr. Arrington admitted that he did not calculate a “z-score” for any of the Plaintiffs’ proposed maps. Test. of Theodore Arrington, Trial Tr. 441:1-8, Aug. 12, 2014.

468. To the extent it is based on split VTDs, Dr. Arrington’s opinion about discriminatory purpose is not supported by the record or by a reliable analysis.

## **II. 2011 Congressional Plan**

### **A. General Findings**

#### **1. Sequence of Events**

469. Public hearings on redistricting prior to the 2011 legislative session were held from approximately June 2010 to December 2010 by the House Redistricting Committee, the House Judiciary and Civil Jurisprudence Committee, and the Senate Redistricting Committee. Test. of Todd Hunter, Trial Tr. 1064:2-7, 1066:18-24, Aug. 14, 2014; Test. of Dawnna Dukes, Trial Tr. 903:22-904:1, Aug. 13, 2014; DX-217; DX-658; DX-3; DX-116; DX-117; DX-217; DX-658; DOJ-340. The hearings were held in the following locations: Abilene, Amarillo, Arlington, Austin, Beaumont, Corpus Christi, Dallas, Edinburg, El Paso, Houston, Laredo, Lubbock, McAllen, Marshall, Midland, San Antonio, and Richardson. DX-3; DX-217; DX-574-602; DX-658-660.

470. One purpose of the hearings prior to the 2011 session was to let the public, legislators, and members of Congress know that redistricting would occur in 2011. These hearings were intended to make the public and legislators aware of the different areas of the State, give people an opportunity to share their thoughts with the committee, and educate and inform people about redistricting. Test. of Todd Hunter, Trial Tr. 1065:3-14, Aug. 14, 2014.

471. Members of the public were allowed to participate and speak at Redistricting Committee hearings. Test. of Todd Hunter, Trial Tr. 1065:15-17, Aug. 14, 2014.

472. Redistricting Committee hearings were generally well attended. Among the attendees were Republican and Democrat legislators, local officials, and members of Congress. Test. of Todd Hunter, Trial Tr. 1066:13-25, Aug. 14, 2014.

473. The Texas State Demographer testified at some Redistricting Committee hearings. Test. of Todd Hunter, Trial Tr. 1066:10-12, Aug. 14, 2014.

474. Translation services were offered at the Redistricting Committee hearings. Test. of Todd Hunter, Trial Tr. 1067:13-17, Aug. 14, 2014.

475. The House Redistricting Committee hearings were recorded. The recordings are available to members of the public and can be found on the website for the Texas House of Representatives. Test. of Todd Hunter, Trial Tr. 1067:24-25, 1068:19-21, 1071:2-6, Aug. 14, 2014.

476. It would have been difficult for the Legislature to conduct field hearings during the regular session because of all the other priorities that the Legislature had during the regular session. Test. of David Hanna, Trial Tr. 1556:7-12, Aug. 15, 2014.

477. The 2011 general session started on the second Tuesday of January and lasted 140 days. Test. of Todd Hunter, Trial Tr. 1085:13-1085:18, Aug. 14, 2014.

478. There were several factors that impacted the amount of time that legislators could expend on redistricting during the 2011 general session. The Texas Constitution required that the legislator not take up general business in the first 60 days of the general session. Budget issues and sunset bills also demanded the attention of legislators during the 2011 general session. Test. of Todd Hunter, Trial Tr. 1085:22-1086:4, Aug. 14, 2014.

479. The time frame to consider redistricting during the 2011 general session was compressed because the U.S. Census data was released in February of 2011. Test. of Todd Hunter, Trial Tr. 1087:3-6, Aug. 14, 2014.



480. During the general session, Chairman Solomons' primary concern was the redistricting map for the House; he turned his attention to the congressional redistricting plan after the House map was finished. Test. of Burt Solomons, Trial Tr. 1263:20-25, 1279:1-13, Aug. 14, 2014.

481. Chairman Solomons was not paying attention to congressional plans he received during the last few months of the regular session because he was focused on the House redistricting plan. Test. of Burt Solomons, Trial Tr. 1275:11-1276:5, 1325:10-25, Aug. 14, 2014.

482. Chairman Solomons did not think that there was enough time to pass a congressional redistricting map during the 2011 regular session. Test. of Burt Solomons, Trial Tr. 1271:5-9, 1279:10-13, Aug. 14, 2014.

483. No congressional plan was introduced during the regular session in 2011 because the legislature was focused on the House plan. The focus was initially on the House plan in order to avoid having the House configuration determined by the Legislative Redistricting Board, as it would have been if a House plan did not pass in the regular session. Test. of Gerardo Interiano, Trial Tr. 341:7-19, Aug. 11, 2014.

484. Chairman Solomons did not remember when he saw a proposed map from the congressional delegation. Test. of Burt Solomons, Trial Tr. 1279:14-1280:2, Aug. 14, 2014.

485. On April 28, 2011, on the floor of the House, Representative Veasey stated that he read a news article that Congressman Smith had delivered Chairman Solomons a map. Representative Veasey then asked Chairman Solomons when he planned on unveiling the congressional delegation's proposed map. Chairman Solomons responded by indicating that he had not yet seen the map, that he had been dealing with the House map, and when finished with the House map he would start paying attention to the congressional map at that point. Chairman Solomons testified that he had not even looked at a congressional map. DX-190\_00833; Test. of Burt Solomons, Trial Tr. 1279:14-1280:2, Aug. 14, 2014.

486. At the time of the exchange between Representative Veasey and Chairman Solomons on April 28, 2011, the House did not have a congressional statewide plan drafted. Test. of Burt Solomons, Trial Tr. 1319:8-22, Aug. 14, 2014.

487. By default, plans are private and non-public when created in a user's RedAppl account. A user must take affirmative steps to make their plans public. Test. of Clare Dyer, Trial Tr. 243:19-244:10, July 14, 2014.

488. Users can share plans with other users without making the plans public. Test. of Clare Dyer, Trial Tr. 244:11-19, July 14, 2014.

489. The original division of labor for redistricting was to have Chairman Seliger and his staff draft the congressional plan. Test. of Burt Solomons, Trial Tr. 1316:25-1317:3, Aug. 11, 2014.

490. During the regular session, Doug Davis was working on the congressional map. Test. of Ryan Downton, Trial Tr. 1596:15-23, Aug. 15, 2014.

491. At the start of the 2011 general session, Ryan Downton's initial directive was to finish the Texas House map, then worry about the congressional map. However, he eventually became the principal drafter of the congressional map. Test. of Ryan Downton, Trial Tr. 1591:6-15, Aug. 15, 2014; Test. of Gerardo Interiano, Trial Tr. 340:3-10, Aug. 11, 2014.

492. Towards the end of the regular session, Chairman Seliger and Chairman Solomons decided that the House would take over the responsibility of drafting the congressional plan. Ryan Downton was instructed to work with Doug Davis to come up with a congressional plan. Doug Davis and Ryan Downton met to compare where they were in the process. Doug Davis thought that Ryan Downton was further along on the congressional plan and that they should focus on Ryan Downton's map. Test. of Burt Solomons, Trial Tr. 1326:15-1327:12, Aug. 14, 2014; Test. of Ryan Downton, Trial Tr. 1596:2-23, Aug. 15, 2014.

493. Ryan Downton was asked to review all the plans received, take ideas from them and create a composite map to start the process. He received maps from the Republican congressional delegation, MALDEF, Representative Veasey, GRIT, the Governor's office, Congressman Barton, and several others. Test. of Ryan Downton, Trial Tr. 1591:23-1592:9, 1595:18-21, Aug. 15, 2014.

494. Ryan Downton did not share a draft of the proposed map he received from the Republican congressional delegation because it was his practice not to disclose private plans he received during session from third-parties who chose not to make their plans public. Test. of Ryan Downton, Trial Tr. 1601:9-25, Aug. 15, 2014.

495. While Ryan Downton was finalizing Plan C125, which was the first public plan released by the House and Senate Redistricting Committees, he did not share a draft version of this plan with any member of the Texas Legislature. *See* Test. of Ryan Downton, Trial Tr. 1596:2-1597:12, Aug. 15, 2014.

496. Ryan Downton had primary access to the House Redistricting Committee's RedAppl account; Bonnie Bruce had primary access to Chairman Solomons' RedAppl account. Test. of Burt Solomons, Trial Tr. 1260:25-1261:4, Aug. 14, 2014.

497. Gerardo Interiano had a minimal role in drawing the 2011 congressional plan; his involvement in drafting the congressional plan was generally limited to assisting in zeroing out the population in the congressional districts. Test. of Gerardo Interiano, Trial Tr. 296:21-297:20, Aug. 11, 2014.

498. A special session lasting 30 days was called in 2011 to address congressional redistricting. Test. of Kel Seliger, Trial Tr. 274:21-275:3, Aug. 11, 2014.

499. The procedures for congressional redistricting in 2011 were not substantially different from procedures for prior redistricting cycles, and the process did not seem unusually fast. Test. of Todd Hunter, Trial Tr. 1088:10-14, Aug. 14, 2014; Test. of David Hanna, Trial Tr. 1554:19-24, 1557:9-12, Aug. 15, 2014.

500. Prior to the start of the special session, there was no draft congressional plan that was made public. Test. of Ryan Downton, Trial Tr. 1597:7-12, Aug. 15, 2014.

501. On May 31, 2011, Chairman Seliger and Chairman Solomons released their first public congressional plan, Plan C125. Test. of Burt Solomons, Trial Tr. 1327:22-1328:4, Aug. 14, 2014; DX-548; DX-649.

502. During the 2011 special session there was a House calendar rule enacted which applied to the congressional redistricting plan. The enacted calendar rule specified that amendments had to be filed by Monday, June 13, 2011. No member of the Texas House voted against this calendar rule. DX-663; Test. of Todd Hunter, Trial Tr. 1083:22-1084:22, Aug. 14, 2014.

503. The purpose of a calendar rule during a special session is to set deadlines and ensure that legislators can accomplish their work in the allotted time. Test. of Todd Hunter, Trial Tr. 1084:6-1084:10, Aug. 14, 2014.

504. The calendar rule for the congressional redistricting plan did not prevent any member of the Texas House from amending a timely filed amendment. Test. of Todd Hunter, Trial Tr. 1084:23-1085:3, Aug. 14, 2014.

505. When changes were made to the redistricting plans, Chairman Seliger asked whether the changes were legal. Chairman Seliger stated that if he had any reason to believe that a proposal for the congressional plan or any amendment was intended to discriminate, he would not have let that come to the floor. Test. of Kel Seliger, Trial Tr. 285:17-286:5, Aug. 11, 2014.

506. After the congressional plan came back to the House after the Senate passed the plan, the House Redistricting Committee held a formal meeting on the proposed plan. The second hearing was held even though House parliamentary procedures did not require a second public hearing on the proposed map. Test. of Burt Solomons, Trial Tr. 1333:8-1334:3, Aug. 14, 2014; DX-116.

507. On the floor of the Senate, Senator Lucio thanked Chairman Seliger for being open, kind, and wanting to work with Senator Lucio. Senator Lucio also stated that Chairman Seliger was accessible and willing to answer questions. DX-605.1, at A-27; Test. of Kel Seliger, Trial Tr. 279:7-280:1, Aug. 11, 2014.

508. SB 4, the bill for the congressional redistricting plan, was signed in the Senate on June 22, 2011 and signed in the House on June 24, 2011. DX-455.

509. The congressional map was passed with six days to spare in the special session. Test. of David Hanna, Trial Tr. 1562:4-6, Aug. 15, 2014.

## **2. Race-Neutral Redistricting Objectives**

510. When drafting the new congressional plan, the map drawers looked at possibilities for expanding minority representation. Test. of Ryan Downton, Trial Tr. 906:13-23, 907:1-12, Sept. 9, 2011.

511. Compliance with the Voting Rights Acts was an important goal in creating the congressional plan. Joint Exhibit J-58, Dep. of Doug Davis at 12:22-13:12, Aug. 9, 2011 (ECF No. 420); Joint Exhibit J-62, Dep. of Ryan Downton at 31:6-16, Aug. 12, 2011 (ECF No. 420).

512. The Legislature incorporated specific requests from Democratic members of the Texas House and Senate into the congressional plan. DX-419.

513. While the Legislature was mindful that it could not retrogress and deliberately eschewed choices that might result in retrogression, it also attempted, wherever possible, to increase the likelihood that incumbents would be reelected. Consequently, where the Legislature was able to provide the incumbent with an opportunity to be reelected without retrogressing or violating any other law, it did so. Joint Exhibit J-58, Dep. of Doug Davis at 53:25-54:18, 65:3-12, 134:19-25, Aug. 9, 2011 (ECF No. 420); Joint Exhibit J-60, Dep. of Burt Solomons at 106:17-107:25, Aug. 31, 2011 (ECF No. 420).

514. The Senate did not want to create additional Democratic congressional districts unless it was required to do so under the Voting Rights Act. Test. of Kel Seliger, Trial Tr. 277:13-17, Aug. 11, 2014; Test. of Ryan Downton, Trial Tr. 1809:10-23, 1810:11-19, Aug. 15, 2014.

515. Chairman Seliger considered proposed minority districts where no single demographic group was a majority of the citizen voting age population as proposals to create districts that would likely elect a Democrat. None of these proposed districts were considered to be legally required by the Voting Rights Act. Test. of Kel Seliger, Trial Tr. 277:7-17, Aug. 11, 2014.

516. Congressman Smith sent Chairman Solomons different plans to consider, but Congressman Smith did not personally deliver maps to Chairman Solomons. Test. of Burt Solomons, Trial Tr. 1273:21-1274:21, 1278:10-15, 1295:7-13, Aug. 14, 2014.

517. The Texas congressional delegation goals for the congressional plan were not shared by the House leadership. Chairman Solomons did not think it was possible to pass a map that created two Democratic districts and two Republican districts. Test. of Gerardo Interiano, Trial Tr. 348:5-17, 350:13-19, Aug. 11, 2014; DX-573.

518. Due to the partisan make-up of the House, Chairman Solomons did not believe he could pass a congressional plan that included new coalition districts that were not required under the Voting Rights Act. Chairman Solomons did not have the votes to pass a congressional map unless three of the four new districts were Republican-leaning districts. Test. of Burt Solomons, Trial Tr. 1322:25-1324:11, Aug. 14, 2014; Test. of Ryan Downton, Trial Tr. 1599:17-1600:10, Aug. 15, 2014.

519. The congressional delegation's proposed map was not put into a draft plan for consideration by the House because it would have created two Democratic seats and two Republican seats, and there were insufficient votes to pass any plan that did not have three new Republican districts. Test. of Ryan Downton, Trial Tr. 1604:3-9, Aug. 15, 2014.

520. The Senate Select Committee on Redistricting considered a proposal from the Texas Latino Redistricting Task Force that created an additional Hispanic opportunity district in Bexar County. Test. of Kel Seliger, Trial Tr. 275:15-276:5, Aug. 11, 2014.

521. The Senate Select Committee on Redistricting determined that the additional Hispanic opportunity district in Bexar County, as proposed by the Texas Latino Redistricting Task Force, was legally required. Plan C185 created a district based on the general concept of this proposal from the Texas Latino Redistricting Task Force. Test. of Kel Seliger, Trial Tr. 276:6-12, Aug. 11, 2014.

522. The Senate Select Committee on Redistricting considered proposals that would have created an additional Hispanic or minority opportunity district in the Dallas-Fort Worth region. These proposals were not incorporated into the enacted congressional plan because the proposed minority opportunity district in the Dallas-Fort Worth region did not have 50% or more of one minority group comprising the district's citizen voting age population. Test. of Kel Seliger, Trial Tr. 276:13-277:6, Aug. 11, 2014.

### **3. Open and Fair Procedures**

523. In 2010, Representative Todd Hunter was the Chairman of the House Judiciary and Civil Jurisprudence Committee. In 2011 Representative Todd Hunter was the chairman of the Calendars Committee and a member of the House Redistricting Committee. Test of Todd Hunter, Trial Tr. 1061:23-1062:9, 1064:2-18, Aug. 14, 2014.

524. In September of 2010, Representative Hunter, Lisa Kaufman and Tom Phillips went to Washington, D.C. to meet with members of Congress to discuss redistricting. Representative Hunter met with Lamar Smith, Henry Cuellar, Charlie Gonzalez, Lloyd Doggett, Ron Paul, Sheila Jackson Lee and others. Test of Todd Hunter, Trial Tr. 1079:1-1080:1, Aug. 14, 2014.

525. In his meetings with members of Congress, Representative Hunter informed them that they could contact him directly if they had questions about redistricting. Congressman Lamar Smith, Congressman Cuellar, and possibly some of the West Texas Congressmen contacted Representative Hunter about redistricting. Test of Todd Hunter, Trial Tr. 1080:7-21, Aug. 14, 2014.

526. Senator Kel Seliger was the Chairman of the Senate Select Committee on Redistricting in 2011. Test. of Kel Seliger, Trial Tr. 274:10-12, Aug. 11, 2014.

527. Chairman Seliger and Senator Mario Gallegos went to Washington, D.C. to meet with members of the Texas congressional delegation regarding redistricting. Chairman Seliger met with the Republican members of Congress, and Senator Gallegos met with the Democratic members. Members of Congress were informed that Chairman Seliger would meet with any of them. Test. of Kel Seliger, Trial Tr. 253:22-254:8, 274:13-20, Aug. 11, 2014.

528. Other than his own congressional representative, Chairman Seliger did not affirmatively reach out to any member of Congress to ask for input into the congressional plan. Test. of Kel Seliger, Trial Tr. 278:4-21, Aug. 11, 2014.

529. Chairman Solomons searched for input from members of Congress on the congressional redistricting plan. Test. of Burt Solomons, Trial Tr. 1262:8-10, Aug. 14, 2014.

530. In the 2011 session, Chairman Solomons discussed redistricting with Congresswoman Sheila Jackson Lee. During these discussions, Congresswoman Jackson Lee did not communicate any specific requests related to her district. Test. of Burt Solomons, Trial Tr. 1320:14-1321:12, Aug. 14, 2014.

531. Chairman Solomons discussed the congressional plan with Congressmen Lamar Smith, Michael McCaul, Randy Neugebauer, Pete Olson, Gene Green, Sheila Jackson Lee, Kenny Marchant, Kevin Brady, Henry Cuellar, Joe Barton, and John Culberson. Test. of Burt Solomons, Trial Tr. 1313:13-1314:12, Aug. 14, 2014.

532. Chairman Solomons stopped taking calls from Congressman Barton about redistricting after Congressman Barton filed a lawsuit related to the House plan. Test. of Burt Solomons, Trial Tr. 1297:13-21, Aug. 14, 2014.

533. The House Redistricting Committee had the resources of the Texas Legislative Council, staff of Speaker Straus, and former Texas Supreme Court Chief Justice Tom Phillips. Test. of Todd Hunter, Trial Tr. 1062:20-1063:3, Aug. 14, 2014.

534. RedAppl training was offered by the Texas Legislative Council. Test. of Todd Hunter, Trial Tr. 1063:17-19, Aug. 14, 2014.

535. During the congressional phase of the redistricting process, the Office of the Attorney General of Texas provided the House Redistricting Committee with information. Test. of Burt Solomons, Trial Tr. 1265:10-24, Aug. 14, 2014.

536. Chairman Solomons did not recall personally sharing with anyone racially polarized voting analyses that he received from the Texas Attorney General's office. Test. of Burt Solomons, Trial Tr. 1325:1-7, Aug. 14, 2014.

537. Chairman Seliger hired Doug Davis to be the committee director for the 2011 Senate Select Committee on Redistricting. No member of the Senate objected to the hiring of Doug Davis. Test. of Kel Seliger, Trial Tr. 280:5-15, Aug. 11, 2014.

538. The Senate Select Committee on Redistricting hired David Guinn, Michael Morrison, and Bob Heath as outside counsel to advise the committee. Test. of Kel Seliger, Trial Tr. 280:16-21, Aug. 11, 2014.

539. Legal counsel for the Senate Select Committee on Redistricting consulted with the committee members to review proposed districts and proposed plans for compliance with the Voting Rights Act. Test. of Kel Seliger, Trial Tr. 278:25-279:6, Aug. 11, 2014.

540. Chairman Seliger had in-depth discussions with committee staff about the details of the maps to ensure compliance with the Voting Rights Act. Test. of Kel Seliger, Trial Tr. 292:13-25; 293:14-25, Aug. 11, 2014.

541. Chairman Solomons relied on his staff to analyze proposed amendments. Chairman Solomons' staff worked with the Texas Legislative Council to analyze proposed amendments. Test. of Burt Solomons, Trial Tr. 1283:8-11, 1285:12-16, Aug. 14, 2014.

542. David Hanna from the Texas Legislative Council provided legal advice to the staff and members of the Texas Legislature regarding the congressional plan. Test. of David Hanna, Trial Tr. 1507:10-13, Aug. 15, 2014.

#### 4. Population Growth: 2000-2010

543. 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, which increased by approximately 700,000—roughly one-quarter of the amount of total Hispanic population growth. Test. of John Alford, Trial Tr. 1822:11-13, Aug. 16, 2014; TLRTF-631\_0001.

544. 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. Test. of John Alford, Trial Tr. 1819:23-1820:5, Aug. 16, 2014.

545. 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* DX-230; DX-231; Test. of John Alford, Trial Tr. 1823:18-1829:10, Aug. 16, 2014. 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. DX-439; Test. of John Alford, Trial Tr. 1832:6-18, Aug. 16, 2014.

546. 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. DX-439; Test. of John Alford, Trial Tr. 1832:15-1833:2, Aug. 16, 2014.

547. Only District 29, already considered a Hispanic opportunity district, became an HCVAP-majority district over the decade, increasing from approximately 46.8% to 59% HCVAP. DX-439; Test. of John Alford, Trial Tr. 1832:21-24, Aug. 16, 2014.

548. 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. ROD-913; Test. of John Alford, Trial Tr. 1834:11-1836:15, Aug. 16, 2014.

549. 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. Although Texas saw substantial Hispanic population growth between 2000 and 2010, that

growth did not materially alter the concentration of Hispanic voting-age citizens necessary to create effective Hispanic opportunity districts. *See* DX-230; DX-231.

550. After years of trying, none of the plaintiffs have offered a congressional redistricting plan with more than eight geographically compact HCVAP-majority districts.

551. Although MALC claims that Plan C188 creates nine Hispanic CVAP-majority districts, District 10 in Plan C188 creates is virtually identical to the district the Supreme Court struck down in *LULAC v. Perry*. The same is true for Plan C262's District 28 offered by the Perez Plaintiffs as it attempts to create a district that connects northern Travis County to Webb County. *See, e.g.*, Order at 51 (March 19, 2012) (ECF No. 691) ("In Plans C188 and C211, a proposed district stretches from south Hidalgo County all the way to north Travis County. The Supreme Court has ruled that a nearly identical (and arguably more compact) district in the same location was 'noncompact for § 2 purposes.' *LULAC*, 548 U.S. at 435.>").

552. The plaintiffs' inability to draw additional HCVAP-majority districts shows that in spite of 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.

## **B. Section 2 of the Voting Rights Act/Fourteenth Amendment Discriminatory Intent**

### **5. Congressional District 23**

553. In the 2010 congressional election for District 23, Congressman Ciro Rodriguez, a Democrat, lost the election and only received 44.4% of the vote. Joint Expert Exhibit E-17, Alford Report at 4-5.

554. Based on 2010 election data, District 23 was shifting Republican with Bill White receiving 47.4%, Linda Chavez-Thompson receiving 41.7%, and Hector Uribe receiving 43.6% of the vote in the district. Joint Expert Exhibit E-17, Alford Report at 4.

555. The State had two goals for District 23 in the redistricting process: (i) maintain or increase benchmark HCVAP and SSVR figures to comply with the Voting Rights Act; and (ii) provide the incumbent, Congressman Francisco "Quico" Canseco, with the best chance of reelection. Test. of Ryan Downton, Trial Tr. 1634:19–1635:2, Aug. 15, 2014.

556. The mapdrawers did not view these dual goals for District 23 as mutually exclusive. Test. of Ryan Downton, Trial Tr. 1635:3-8, Aug. 15, 2014.

557. District 23's total Hispanic population increased from 66.4% in Plan C100 to 67.8% in Plan C185. *Compare* DX-400.2, Plan C100, Red-100 Report, *with* DX-401.2, Plan C185, Red-100 Report.

558. District 23's HVAP increased from 62.8% in Plan C100 to 63.8% in Plan C185. *Compare* DX-400.2, Plan C100, Red-100 Report, *with* DX-401.2, Plan C185, Red-100 Report.



559. District 23's HCVAP increased from 58.4% in Plan C100 to 58.5% in Plan C185. *Compare* DX-400.6, Plan C100, Red-109 Report, *with* DX-401.6, Plan C185, Red-109 Report.

560. District 23's non-suspense SSVR increased from 52.6% in Plan C100 to 54.8% in Plan C185, and its total SSVR increased from 52.0% in Plan C100 to 54.1% in Plan C185. *Compare* DX-400.6, Plan C100, Red-109 Report, *with* DX-401.6, Plan C185, Red-109 Report.

561. Under the configuration of District 23 struck down in *LULAC v. Perry*, the district's HCVAP had been reduced from 57.5% to 46%, while SSVR had dropped from 55.3% to 44%. *Session v. Perry*, 298 F. Supp. 2d 451, 496 (E.D. Tex. 2004), *rev'd sub nom. LULAC v. Perry*, 548 U.S. 399 (2006).

562. District 23 consistently has been, and remains today, a highly competitive district. Test. of John Alford, Trial Tr. 1851:16-18, Aug. 16, 2014; Test. of Francisco Canseco, Trial Tr. 580:6-14, Aug. 12, 2014.

563. Election analyses provided to the State's mapdrawers in 2011 for purposes of Section 5 compliance established that District 23 did not consistently perform for Democratic candidates (preferred by the majority of Hispanic voters in District 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 elections under Plan C185. Test. of Ryan Downton, Trial Tr. 1637:9-1638:8, 1640:7-10, Aug. 15, 2014.

564. In 2011, there were differing views about whether District 23 was a performing district under Section 5; the mapdrawers did not receive any definitive legal opinion on this issue. Test. of Ryan Downton, Trial Tr. 1637:9-1638:16, 1640:11-15, Aug. 15, 2014; *see also* Test. of David Hanna, Trial Tr. 1548:24-1549:1, 1564:15-20, Aug. 15, 2014.

565. The mapdrawers believed that District 23 was a Hispanic opportunity district under both the benchmark plan and Plan C185 because the district exceeded 50% Hispanic CVAP. Test. of Ryan Downton, Trial Tr. 1635:9-1636:1, 1697:6-10, Aug. 15, 2014; Test. of Ryan Downton, Trial Tr. 966:6-12, Sept. 9, 2011.

566. District 23 leaned slightly more Republican in Plan C185 than it had in Plan C100, 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. Test. of John Alford, Trial Tr. 1851:14-1852:11, Aug. 16, 2014.

567. The Legislature increased the performance of Republican candidates in statewide exogenous elections under Plan C185. Test. of John Alford, Trial Tr. 1858:24-1859:3, Aug. 16, 2014; DX-430, Table 6 to Alford's Supplemental Report, District Election Analysis Results for District 23 in Plans C100, C185 and C235.

568. The only available evidence regarding the possible outcome of an endogenous election in District 23 suggests that Pete Gallego would have defeated incumbent Congressman Canseco if the 2012 election were conducted under Plan C185. Test. of John Alford, Trial Tr. 1855:8-13, Aug. 16, 2014; DX-428, Table 4 to Alford's Supplemental Report, Estimated 2012 Election under Plan C185.

569. In Plan C185, District 23 provided the opportunity for cohesive Hispanic voters to elect their candidate of choice. Test. of John Alford, Trial Tr. 1849:16-20, 1859:22-25, Aug. 16, 2014.

570. The State's mapdrawers received proposed congressional plans from numerous sources in 2011, including the Texas Republican congressional delegation, which was represented by Eric Opiela. Test. of Ryan Downton, Trial Tr. 1591:23-1592:5, Aug. 15, 2014.

571. Eric Opiela provided many suggestions in 2011 regarding the configuration of District 23. Test. of Ryan Downton, Trial Tr. 1645:6-12, Aug. 15, 2014.

572. The configuration of District 23 underwent numerous changes during the course of the 2011 redistricting process. *Compare, e.g.*, DX-548.1, Plan C125, *with* DX-559.1, Plan C149, *and* DX-401.1, Plan C185.

573. In the initial congressional plan released by Chairmen Burt Solomons and Kel Seliger on May 31, 2011 (Plan C125), District 20 contained 57.0% HCVAP and 49.5% non-suspense SSVR; District 23 contained 59.2% HCVAP and 53.2% non-suspense SSVR; District 35 contained 52.8% HCVAP and 46.0% non-suspense SSVR. DX-548.6, Plan C125, Red-119 Report.

574. In El Paso County, Plan C125 featured a protrusion from District 23 into District 16, consistent with a proposed map from the Texas Republican congressional delegation. Test. of Ryan Downton, Trial Tr. 1640:24-1641:2, Aug. 15, 2014.

575. Maverick County was wholly contained within District 28 in Plan C125. Test. of Ryan Downton, Trial Tr. 1641:5-8, Aug. 15, 2014.

576. In Plan C125, District 20's HCVAP and SSVR levels were well below the benchmark figures because of the ripple effect caused by the creation of District 35, a new HCVAP-majority district that extended from Bexar to Travis County. Test. of Ryan Downton, Trial Tr. 1642:16-1643:7, Aug. 15, 2014.

577. In order to create District 35, the Legislature took population from District 20. To make up for the loss of population in District 20, population was captured from District 23 and District 28. Test. of Ryan Downton, Trial Tr. 1642:20-1643:2, Aug. 15, 2014; Joint Exhibit J-62, Dep. of Ryan Downton, at 33:21-35:13, 86:3-87:2, 89:2-22, Aug. 12, 2011 (ECF No. 420).

578. The creation of another new HCVAP-majority district, District 34, also impacted the drawing of districts in South Texas and Central Texas. Test. of Ryan Downton, Trial Tr. 1642:9-1643:7, Aug. 15, 2014.

579. Following the release of Plan C125, Representative Jose Menendez testified at a June 2, 2011 House Redistricting Committee hearing and requested changes to the configuration of District 20. Test. of Ryan Downton, Trial Tr. 1643:12-18, Aug. 15, 2014; DX-601 at 23-34.

580. Representative Menendez pointed to the decrease in Hispanic voters in District 20 under the proposed plan and testified that large portions of the Edgewood and West Side

communities in San Antonio had been removed from District 20. DX-601 at 25:7-18; Test. of Ryan Downton, Trial Tr. 918:11-17, Sept. 9, 2011.

581. Representative Menendez asked the House Redistricting Committee to “maintain the integrity of the 20th Congressional District as much as possible when creating additional districts and making changes to the existing districts in Bexar County.” DX-601 at 26:3-7.

582. Accommodating Representative Menendez’s requested changes required the mapdrawers to alter the boundaries of District 20, District 23, and District 35. Test. of Ryan Downton, Trial Tr. 1643:12-22, 1664:16–1665:25, Aug. 15, 2014; Test. of Ryan Downton, Trial Tr. 918:11-17, 918:23–921:12, 985:1-15, Sept. 9, 2011.

583. In the changes to Bexar County following the release of Plan C125, the mapdrawers attempted to balance the goals of having District 35’s HCVAP over 50% and maintaining District 20 and District 23 at or near benchmark demographic levels. Test. of Ryan Downton, Trial Tr. 1643:12-22, 1665:9–1666:3, Aug. 15, 2014; Test. of Ryan Downton, Trial Tr. 917:24-921:12, Sept. 9, 2011.

584. Following the release of Plan C125, Representative Joe Pickett expressed concerns about the configuration of El Paso County in the plan and requested changes to the boundary lines of District 23 and District 16 on behalf of Congressman Silvestre Reyes. Test. of Ryan Downton, Trial Tr. 1643:23-25, Aug. 15, 2014; Test. of Ryan Downton, Trial Tr. 920:14-25, Sept. 9, 2011.

585. Representative Pickett prepared an amendment to address his concerns regarding El Paso County but he eventually withdrew the amendment before it was offered in the House Redistricting Committee. Test. of Ryan Downton, Trial Tr. 1643:25–1644:3, Aug. 15, 2014; Test. of Ryan Downton, Trial Tr. 920:21-25, Sept. 9, 2011.

586. In the congressional redistricting plan adopted by the House Redistricting Committee, Plan C149, District 20 contained 60.0% HCVAP and 52.8% non-suspense SSVR; District 23 contained 58.9% HCVAP and 53.0% non-suspense SSVR; District 35 contained 50.2% HCVAP and 42.8% non-suspense SSVR. DX-559.7, Plan C149, Red-119 Report.

587. Plan C149 made changes to Bexar County which included increasing District 20’s HCVAP to 60%. Test. of Ryan Downton, Trial Tr. 1647:8-23, Aug. 15, 2014; DX-559.7, Plan C149, Red-119 Report.

588. Plan C149 retained a similar configuration of El Paso County as Plan C125, with a protrusion from District 23 into District 16. Test. of Ryan Downton, Trial Tr. 1647:24–1648:6, Aug. 15, 2014; *Compare* DX-548.1, Plan C125, *with* DX-559.1, Plan C149.

589. Maverick County remained entirely contained within District 28 in Plan C149. DX-559.1.

590. Following the House Redistricting Committee’s adoption of Plan C149, the mapdrawers continued drafting proposed congressional plans that impacted District 23 and other neighboring districts. Test. of Ryan Downton, Trial Tr. 1649:22–1650:10, Aug. 15, 2014.

591. In order to ensure that District 23 remained at benchmark population levels after some of its population was moved to District 20, it needed to draw population from Hispanic areas. Test. of Ryan Downton, Trial Tr. 917:24-921:12, Sept. 9, 2011.

592. There was not sufficient Hispanic population that could be added to District 23 from El Paso County or Bexar County without adversely impacting neighboring districts. Test. of Ryan Downton, Trial Tr. 1665:13–1666:1, Aug. 15, 2014.

593. Thus, the mapdrawers determined that District 23 needed to move south to include a portion of either Webb County or Maverick County. Test. of Ryan Downton, Trial Tr. 1666:1-4, Aug. 15, 2014; Test. of Ryan Downton, Trial Tr. 921:7-18, Sept. 9, 2011.

594. The mapdrawers viewed Webb County as the only county in the State that could not be split in the 2011 map, in light of *LULAC v. Perry*. Test. of Ryan Downton, Trial Tr. 1666:4-10, Aug. 15, 2014.

595. The mapdrawers recognized that Maverick County theoretically could be placed wholly within District 23, but they did not believe this change was legally required, and it would have negatively affected Republican performance in District 23. Test. of Ryan Downton, Trial Tr. 1666:11-18, Aug. 15, 2014.

596. The mapdrawers made the political decision to add to District 23 only that portion of Maverick County that was necessary for compliance with the Voting Rights Act. Test. of Ryan Downton, Trial Tr. 1666:16-18, Aug. 15, 2014.

597. On June 13, one day before the House floor debate on the congressional redistricting plan, Eric Opiela sent Ryan Downton and Gerardo Interiano a proposed map that was uploaded to Speaker Straus' RedAppl account as STRJ C116. Test. of Gerardo Interiano, Trial Tr. 313:22–314:4, Aug. 11, 2014; DX-628 (“Optimized Friday’s Plan”).

598. STRJ C116 included changes to El Paso and Bexar Counties, along with the splitting of Maverick and Atascosa Counties. Test. of Ryan Downton, Trial Tr. 1656:11–1659:15, Aug. 15, 2014; DX-541.1 (statewide map for STRJ C116).

599. In Plan STRJ C116, La Salle County was contained entirely within District 23. *See* DX-541.1 (statewide map for STRJ C116).

600. In STRJ C116, District 20 contained 65.3% HCVAP and 58.8% non-suspense SSVR; District 23 contained 56.8% HCVAP and 53.6% non-suspense SSVR; District 35 contained 51.8% HCVAP and 45.2% non-suspense SSVR. DX-541.6, STRJ C116, Red-119 Report.

601. At this point in the drafting process, Ryan Downton felt that he had received enough suggestions from Eric Opiela and thus he was more concerned with finalizing a plan that could be adopted in the House than he was with satisfying Eric Opiela and his clients. While finalizing the plan, Ryan Downton received input from Gerardo Interiano, but Ryan Downton did not work with Eric Opiela. Test. of Ryan Downton, Trial Tr. 1690:6-23, Aug. 15, 2014.

602. Ryan Downton ultimately drafted a floor amendment that borrowed the concept of splitting Maverick and Atascosa Counties from STRJ C116, but Ryan Downton revised Eric Opiela's configurations of these counties and did not end up incorporating much of Eric Opiela's proposal into the floor amendment. Test. of Ryan Downton, Trial Tr. 1660:14-25, 1726:15-1727:1, Aug. 15, 2014; DX-674 (overlay maps comparing STRJ C116 and Plan C170 in Atascosa, Bexar, El Paso, and Maverick Counties).

603. Chairman Solomons subsequently offered the floor amendment as Plan C170, which created a smoother boundary line between District 16 and District 23 in El Paso County; changed the configuration of district boundaries in Bexar County; and split Maverick, Atascosa, and La Salle Counties between District 23 and District 28. Test. of Ryan Downton, Trial Tr. 1662:3-1664:4, Aug. 15, 2014; DX-567.1 (statewide map for Plan C170).

604. Plan C170 also made changes to Guadalupe County to accommodate a request from Representative John Kuempel. Test. of Ryan Downton, Trial Tr. 1663:10-14, Aug. 15, 2014; *see also* Test. of Ryan Downton, Trial Tr. 919:14-20, Sept. 9, 2011.

605. Plan C170 included more than 10,000 additional Maverick County residents in C District D 23 as compared to STRJ C116. Test. of Ryan Downton, Trial Tr. 1664:5-10, Aug. 15, 2014; *compare* DX-541.2, Plan STRJ C116, Red-100 Report (17,360 residents from Maverick County in District 23), *with* DX-567.2, Plan STRJ C170, Red-100 Report (27,719 residents from Maverick County in District 23).

606. Plan C170's changes to El Paso County were consistent with the changes that had originally been suggested by Representative Pickett and were intended to address concerns about a possible gerrymandering challenge. Test. of Ryan Downton, Trial Tr. 1644:9-17, Aug. 15, 2014; Test. of Ryan Downton, Trial Tr. 921:1-6, Sept. 9, 2011; Joint Exhibit J-62, Dep. of Ryan Downton, at 37:20-38:23, 99:12-100:21, Aug. 12, 2011 (ECF No. 420).

607. The configuration of El Paso County in Plan C170 differed not only from STRJ C116 but also from other proposals that had been put forth by Eric Opiela. Test. of Ryan Downton, Trial Tr. 1649:1-21, 1652:25-1653:12, 1657:11-17, Aug. 15, 2014; *compare, e.g.,* DX-567.1, *with* DX-523.1 (map of HRC1 C180), *and* DX-634, *and* DX-637.

608. In Plan C170, District 20 contained 62.9% HCVAP and 56.3% non-suspense SSVR; District 23 contained 58.5% HCVAP and 54.8% non-suspense SSVR; District 35 contained 51.9% HCVAP and 45.0% non-suspense SSVR. DX-567.7, Plan C170, Red-119 Report.

609. Plan C170 was adopted by a majority of the House, including Representative Eric Johnson, Representative Joe Pickett, and Representative Mike Villarreal. DX-603.3 at 393-394.

610. Representative Villarreal, the Vice-Chairman of the House Redistricting Committee and a member of the Bexar County delegation, described Plan C170 as an improvement to District 23 and thanked Chairman Solomons for offering it. Test. of Burt Solomons, Trial Tr. 1339:14-25, 1353:20-25, Aug. 14, 2014; DX-603.1 at S2.

611. Eric Opiela was dissatisfied with Chairman Solomons' floor amendment and was upset that the mapdrawers had not adopted his proposals. Eric Opiela complained to Gerardo

Interiano and Congressman Lamar Smith that his ideas were not reflected in the final congressional plan. Test. of Ryan Downton, Trial Tr. 1653:13-21, 1666:19-22, Aug. 15, 2014; Test. of Gerardo Interiano, Trial Tr. 368:8-10, 374:13-17, Aug. 11, 2014; *see also, e.g.*, DX-631 (“okay . . . this has to stop”); DX-632 (“Why do this to me?”); Test. of Theodore Arrington, Trial Tr. 449:13–450:6, Aug. 12, 2014.

612. District 23’s Republican performance was lower in Plan C170 than STRJ C116 – 52.5% McCain 2008 under STRJ C116, compared to 51.6% in Plan C170. DX-692.

613. A difference of one point in Republican performance is significant for a competitive district like District 23. Test. of Ryan Downton, Trial Tr. 1669:6-16, Aug. 15, 2014.

614. District 23’s HCVAP and SSVR levels were higher in Plan C170 (58.5% HCVAP, 54.8% non-suspense SSVR) than STRJ C116 (56.8% HCVAP, 53.6% non-suspense SSVR). DX-677 (Hispanic Citizen Voting Age Population and Non-Suspense Spanish Surname Voter Registration for Districts 20, 23, and 35 Under Selected Congressional Plans).

615. Following the adoption of Plan C170, the configuration of District 23 remained unchanged in Plan C185, except for minor technical corrections. Test. of District Downton, Trial Tr. 1692:15–1693:2, Aug. 15, 2014.

616. In the enacted map, certain counties north and east of the Pecos River were included in their entirety in District 23, including Loving, Ward, Winkler, Crane, Upton, Reagan, Schleicher, Crockett, and Sutton Counties. DX-401.1 (statewide map for Plan C185). These configurations were consistent with proposed plans that Ryan Downton had drafted throughout the process. Test. of Ryan Downton, Trial Tr. 1688:8-19, Aug. 15, 2014; *see, e.g.*, TLRTF-586-1 (statewide map for HRC1 C103, created on April 5, 2011).

617. With the exception of Schleicher County, the counties north and east of the Pecos River that were placed in District 23 in Plan C185 had been located in District 23 in certain historical maps. Test. of Henry Flores, Trial Tr. 558:20-559:4-15, Aug. 12, 2014; *see, e.g.*, DX-654 (statewide congressional map for 2002 elections); DX-653 (statewide congressional map for 1996 special and general elections and 1998-2000 elections); DX-652 (statewide congressional map for 1992-1994 elections and 1996 primary elections).

618. The West Texas counties added to District 23 in Plan C185 share common interests with the district’s border areas. Test. of Francisco Canseco, Trial Tr. 584:18–585:20, Aug. 12, 2014.

619. Near the end of the redistricting process, there were discussions about Representative Aaron Pena offering a West Texas-based amendment to the congressional plan; but Chairman Solomons and Representative Pena agreed that the amendment would not be offered after election analyses reflected that the amendment would hurt Republican performance in District 23. Test. of Ryan Downton, Trial Tr. 1670:14–1671:22, Aug. 15, 2014; Test. of Burt Solomons, Trial Tr. 1379:8–1380:6, Aug. 14, 2014; DX-685.

620. The mapdrawers rejected numerous suggestions from Eric Opiela, including proposals to add the City of Odessa to District 23, Test. of Ryan Downton, Trial Tr. 1646:23–1647:7, Aug. 15, 2014; create jagged boundaries between District 23 and District 16 in El Paso

County, Test. of Ryan Downton, Trial Tr. 1649:1-5, 13-21, Aug. 15, 2014; Test. of Gerardo Interiano, Trial Tr. 358:23–359:7, Aug. 11, 2014; and take District 20 outside of Bexar County, Test. of Ryan Downton, Trial Tr. 1656:18–1657:4, Aug. 15, 2014; Test. of Gerardo Interiano, Trial Tr. 363:6-21, Aug. 11, 2014.

621. Eric Opiela and the Republican congressional delegation believed it was more important to maintain benchmark demographic levels in District 20 than to ensure an HCVAP majority in District 35; the Legislature believed it was more important to create District 35 as an HCVAP-majority district. Test. of Gerardo Interiano, Trial Tr. 362:3–363:5, 371:18-23, Aug. 11, 2014; Test. of Ryan Downton, Trial Tr. 1646:8-22, 1691:19-22, Aug. 15, 2014; Test. of Ryan Downton, Trial Tr. 918:6-17, 918:23–919:13, Sept. 9, 2011.

622. Eric Opiela was concerned with the HCVAP levels in District 20, not District 23, and he was willing to reduce HCVAP in District 23 to increase Republican performance. Test. of Ryan Downton, Trial Tr. 1646:8-22, Aug. 15, 2014; DX-677; DX-692.

623. In his “useful metric” e-mail from November 2010, Eric 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.” DOJ-75.

624. The data required to calculate Eric Opiela’s proposed metric were unavailable. DX-262.

625. Plan C185 narrowed the spread between District 23’s non-suspense SSVR and HCVAP levels from 5.8% in Plan C100 to 3.7% in Plan C185. DX-677 (Hispanic Citizen Voting Age Population and Non-Suspense Spanish Surname Voter Registration for Districts 20, 23, and 35 Under Selected Congressional Plans).

626. The State’s mapdrawers did not receive any communications from Eric Opiela purporting to implement the “nudge factor” approach. Test. of Ryan Downton, Trial Tr. 1671:23–1672:3, Aug. 15, 2014; Test. of Gerardo Interiano, Trial Tr. 375:5-8, Aug. 11, 2014; *see also* Test. of Richard Murray, Trial Tr. 1426:14-18, Aug. 15, 2014.

627. Eric Opiela never indicated that he had sought to include low-turnout Hispanics in District 23 in any of his proposed congressional maps. Test. of Gerardo Interiano, Trial Tr. 375:9-13, Aug. 11, 2014.

628. The mapdrawers did not rely on voter turnout data in drafting District 23 or any other district. Test. of Ryan Downton, Trial Tr. 956:11–957:7, 1005:17-24, Sept. 9, 2011.

629. Spanish Surname voter turnout data was not available to mapdrawers utilizing RedAppl in 2011. Test. of Clare Dyer, Trial Tr. 784:19–785:10, Aug. 13, 2014; *see also* Test. of Lisa Handley, Trial Tr. 622:20–623:21, Aug. 12, 2014.

630. Dr. Henry Flores’s turnout analysis was based exclusively on data from the 2010 general election, a low turnout election that was not utilized by the congressional mapdrawers. Test.

of Henry Flores, Trial Tr. 548:7-13, Aug. 12, 2014; DX-661 (Texas Secretary of State, Turnout and Voter Registration Figures, 1970-Current).

631. Dr. Flores did not consider the 2008 presidential election, which the mapdrawers used to measure partisan performance when drawing the congressional plan. Test. of Henry Flores, Trial Tr. 549:17-20, Aug. 12, 2014; Test. of Ryan Downton, Trial Tr. 1611:2-12, 1668:18-23, Aug. 15, 2014.

632. Dr. Flores acknowledged that Hispanic turnout in District 23 actually increased in Bexar County under Plan C185 compared to the benchmark plan. Test. of Henry Flores, Trial Tr. 555:13-17, Aug. 12, 2014.

633. Dr. Flores did not consider whether political considerations played a role in the creation of District 23 or whether Eric Opiela was happy with the outcome. Test. of Henry Flores, Trial Tr. 541:16-20, 542:1-4, 550:5-7, Aug. 12, 2014.

634. 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 District 23 in Plan C185 is a mere 0.4%. Test. of John Alford, Trial Tr. 1861:15-22, 1862:18-23, Aug. 16, 2014; DX-431 (Table A to Alford's Supplemental Report, Areas Moved In/Out of Congressional District 23 in Plan C185).

635. Dr. Alford concluded that with regard to the configuration of Bexar County in Plan C185, the State had not systematically removed high-Hispanic turnout VTDs from District 23 in exchange for adding low Hispanic turnout VTDs. Test. of John Alford, Trial Tr. 1862:18-23, Aug. 16, 2014.

636. Dr. Handley's analysis demonstrates that to the extent voter participation in District 23 would have been reduced in C185 as compared to C100, the decrease in participation would have been less significant in heavily Hispanic precincts (defined by Dr. Handley as precincts with greater than 65% Hispanic voting-age population) than in all precincts combined. Test. of Lisa Handley, Trial Tr. 634:2-637:21, Aug. 12, 2014; DX-676 (Rebuttal to Dr. Alford's Supplemental Expert Report), Table 5 at p. 8.

637. In Plan C185, the precincts moved into District 23 had higher levels of Republican performance than precincts were moved out, thus satisfying the State's goal of improving Congressman Canseco's reelection chances. Test. of Theodore Arrington, Trial Tr. 451:1-8, Aug. 12, 2014.

## **6. Dallas/Fort Worth**

638. Population growth indicated that a new congressional district would be located in the Dallas/Fort Worth region. 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. Test. of Gerardo Interiano, Trial Tr. 380:15-382:8, Aug. 11, 2014.



639. The Legislature attempted to draw a congressional district in the Dallas/Fort Worth region in which Latino voters could elect the candidate of their choice, but could not get the HCVAP levels over 50% and create a district that was a reasonably compact. Joint Exhibit J-62, Dep. of Ryan Downton, at 67:15-69:10, 126:12-128:6, Aug. 12, 2011 (ECF No. 420); Test. of Ryan Downton, Trial Tr. 1598:10-21, Aug. 15, 2014.

640. Ryan Downton reviewed several proposals for a Hispanic opportunity congressional district in the Dallas/Fort Worth region, but none of the demonstration plans proposed to create a compact district where a single demographic group was a majority of the citizen voting age population. The proposed plans included a MALDEF plan, the Republican congressional delegation plan, two plans from the Governor's office, and a plan from Congressman Joe Barton. Test. of Ryan Downton, Trial Tr. 1592:12-1593:6, 1594:11-22, 1602:7-1603:17, 1604:16-1605:3, 1605:20-1606:1, Aug. 15, 2014; DX-546.1 (Plan C192, MALDEF proposed plan); DX-573.2-3 (Texas Republican congressional delegation proposed plan and demographic statistics).

641. The Texas 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. Test. of Ryan Downton, Trial Tr. 1797:10-23, Aug. 15, 2014; *see also* DX-573.1.

642. The Texas Republican congressional delegation's proposed Dallas/Fort Worth Democratic-leaning district (District 33) contained only 34% SSVR, which meant that it was not a district required to be drawn under the Voting Rights Act. Test. of Gerardo Interiano, Trial Tr. 350:25-351:25, Aug. 11, 2014; *see also* DX-573.2.

643. Chairman Solomons instructed Ryan Downton to see where new minority opportunity districts needed to be drawn in the state based on population growth. Test. of Ryan Downton, Trial Tr. 1599:17-22, Aug. 15, 2014. Based on the demonstration plans he received, Ryan Downton attempted to draw a HCVAP-majority district in the Dallas/Fort Worth region, but he was unsuccessful in his attempts. Test. of Ryan Downton, Trial Tr. 1598:10-21, Aug. 15, 2014. The 50% HCVAP threshold was important to the mapdrawers and the chairmen of the Redistricting Committees 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. Test. of Ryan Downton, Trial Tr. 1598:22-1599:2, Aug. 15, 2014. Once Downton determined that such a district could not be drawn with population from both counties, it was effectively determined that three of the new congressional districts would be Republican and one would be Democratic. Test. of Ryan Downton, Trial Tr. 1600:4-10, Aug. 15, 2014.

644. The Legislature viewed the creation of coalition districts as Democratic districts and they did not have a goal of creating additional Democratic congressional districts unless it was required to do so under the Voting Rights Act. Test. of Kel Seliger, Trial Tr. 277:7-17, Aug. 11, 2014. Ryan Downton testified that if a district was not majority-HCVAP and therefore not a district required to be drawn under the Voting Rights Acts, he understood that House leadership and Republican members would not support the creation of a district that was likely to elect a Democrat. Test. of Ryan Downton, Trial Tr. 1600:11-20, Aug. 15, 2014.

645. Expert testimony has established that it is not possible to draw an HCVAP-majority district within Tarrant County or Dallas County. Test. of George Korbel, Trial Tr. 1236:21-1238:17, Aug. 14, 2014.

646. Based on the 2008-2012 ACS, there were 2,379,215 individuals living in Dallas County and only 277,395 were estimated to be Hispanic voting age citizens. Based on the 2008-2012 ACS, there were 1,814,665 individuals living Tarrant County and only 176,280 were estimated to be Hispanic voting age citizens. *See* DX-181.

647. During the legislative process, individuals and interest groups attempted to draw a new majority-minority district in the Dallas/Fort Worth region. Indeed, MALDEF presented a proposed demonstration plan with a HCVAP-majority district in the Dallas/Fort Worth region, but its irregular shape would have likely raised a *Shaw* challenge. *See, e.g.*, Joint Exhibit J-6, Plan C190. David Hanna testified that the demonstration plan MALDEF submitted to create an additional majority Hispanic district in Dallas/Fort Worth had a lot of arms and tentacles so he attempted to draw a district himself that would be more compact and realized that it could not be done. Test. of David Hanna, Trial Tr. 1576:19-1577:3, Aug. 15, 2014.

648. Although Dr. Arrington criticized the Legislature for failing to create additional minority opportunity districts in the Dallas/Fort Worth region, he conceded that he did not conduct a statewide analysis in every county to see how much the HCVAP increased during this time period. Test. of Theodore Arrington, Trial Tr. 451:19-25, 453:2-21, Aug. 12, 2014.

649. Partisan performance then became the dominant factor in the Dallas/Fort Worth 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. Test. of Ryan Downton, Trial Tr. 1606:7-22, Aug. 15, 2014.

650. The configuration of benchmark District 26 contained a majority of Denton County and also had an extension up to the northern edge of Cooke County an extension down into Tarrant County. Test. of Ryan Downton, Trial Tr. 1607:7-1608:9, Aug. 15, 2014; DX-400.1, Plan C100. The configuration of District 26 that was enacted by the Texas Legislature in Plan C185 eliminated the northern extension and maintained the southern extension in Tarrant County. *Compare* DX-400.1, Plan C100 *with* DX-401.1, Plan C185.

651. The House and Senate Redistricting Committee released the first public congressional plan, Plan C125, on May 31, 2011. DX-572.

652. Ryan Downton began working on a draft of the congressional plan on or about May 3, 2011. The first draft of the congressional plan appears in the House Redistricting RedAppl account as “Congressional Ryan Merge 5/3.” DX-508.

653. Ryan Downton created Plan HRC1 C130 on May 20, 2011 and continued to make modifications to this plan until May 23, 2011. Test. of Ryan Downton, Trial Tr. 1608:23-1609:7, Aug. 15, 2014. As Ryan Downton worked on the congressional districts in the Dallas/Fort Worth region, he only had population data and political performance in his statistics tool bar on the RedAppl system. When he drew the districts in the Dallas/Fort Worth region in Plan HRC1 C130,

Ryan Downton used the McCain-Obama race to measure the political performance of a proposed district. The reason he chose this political race was because this was the contest most of the Republican congressmen indicated they were interested in. Test. of Ryan Downton, Trial Tr. 1611:2-16, 1613:2-5, Aug. 15, 2014.

654. Ryan Downton tried to keep Districts 24, 26, 12, 33, 25, and 6 balanced between 55% and 60% McCain (in the 2008 presidential election). Test. of Ryan Downton, Trial Tr. 1626:15-22, Aug. 15, 2014. He explained that if the McCain results varied between districts, members complained because they felt like someone else was getting a stronger district. Test. of Ryan Downton, Trial Tr. 1612:17-1613:1, Aug. 15, 2014. In the 2011 enacted map, the McCain 2008 numbers for these districts are 56.6% in District 6, 55% in District 12, 58.4% in District 24, 56.1% in District 25, 60.4% in District 26, and 57.4% in District 33. DX-691 at 9, 25, 48, 51, 53, 67.

655. Ryan Downton initially drew District 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. Test. of Ryan Downton, Trial Tr. 1612:7-1613:1, 1607:24-1608:9, Aug. 15, 2014; DX-709.

656. Ryan Downton created Plan HRC1 C131 on May 23, 2011 and continued to make modifications to this draft plan until May 24, 2011. Test. of Ryan Downton, Trial Tr. 1613:6-17, Aug. 15, 2014; DX-508; DX-710. In Plan HRC1 C131, Ryan Downton modified the configuration of District 26 by moving the southern protrusion in Tarrant County further west. *See* DX-710. Ryan Downton made these changes after learning from Rep. Charlie Geren that Congresswoman Kay Granger wanted the city of Richland Hills to be part of District 12. Test. of Ryan Downton, Trial Tr. 1613:21-1614:8, 1614:19-21, Aug. 16, 2014. He drew the boundaries of District 12 along the city lines of Haltom City, Richland Hills, West Lake, and Keller. Test. of Ryan Downton, Trial Tr. 1614:22-1615:2, Aug. 15, 2014.

657. 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. Test. of Ryan Downton, Trial Tr. 1615:7-15, Aug. 15, 2014. To create the conduit up into North Richland Hills and the surrounding area, Ryan Downton had to move part of the Democratic area from District 26 into District 12 and then needed to pick up additional Democrats for District 26. Test. of Ryan Downton, Trial Tr. 1617:2-5, Aug. 15, 2014; DX-710. Downton also added an airport into District 12 at Granger's request. Test. of Ryan Downton, Trial Tr. 1622:23-1623:16, Aug. 15, 2014. At the time Ryan Downton made changes to the configuration of Districts 12 and 26 in Plan HRC1 C131, he only relied on partisan election performance statistics. Test. of Ryan Downton, Trial Tr. 1611:2-1612:6, 1616:12-17, 1617:10-14, Aug. 15, 2014.

658. Between May 25 and May 28, Gerardo Interiano informed Ryan 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. Test. of Ryan Downton, Trial Tr. 1618:6-23, Aug. 15, 2014.

659. 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. Test. of David Hanna, Trial Tr. 1546:14-1547:4, Aug. 15, 2014.

660. Ryan 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 he was not familiar with Fort Worth. Test. of Ryan Downton, Trial Tr. 1618:24-1620:1, Aug. 15, 2014. Using this feature, Ryan Downton was able to determine that he had inadvertently split the African-American population into different districts as a result of drawing the first version of the plan relying solely on election statistics. Test. of Ryan Downton, Trial Tr. 1618:24-1620:1, Aug. 15, 2014.

661. Ryan Downton only used the racial shading feature in RedAppl at the precinct level to ensure compliance with the Voting Rights Act and to adhere to the traditional redistricting principle of keeping communities of interest together. Test. of Ryan Downton, Trial Tr. 1621:24-1622:17, Sept. 15, 2014. The changes Ryan Downton made to Plan HRC1 C131 are reflected in Plan HRC1 C136, which ultimately became the first public plan released by the Redistricting Committees known as Plan C125. Test. of Ryan Downton, Trial Tr. 1620:7-1621:16; DX-508; DX-548.

662. Ryan Downton addressed the concerns raised by Gerardo Interiano in Plan C125 by including the areas of concentrated African-American population in Fort Worth in District 12. Additionally, Ryan Downton included the north Fort Worth Hispanic community and the south Fort Worth Hispanic community in District 26. Test. of Ryan Downton, Trial Tr. 1621:17-1622:13, Aug. 15, 2014; DX-548; DX-512.

663. The Senate Redistricting Committee released Plan C130 on June 6, 2011, which was the statewide Senate Committee substitute. DX-549. In Plan C130, a minor change was made to Districts 12 and 26 based on a request from Congresswoman Granger that the Fort Worth Alliance Airport be included in her district. Ryan Downton did not use any shading features to make these changes. Test. of Ryan Downton. Test. of Ryan Downton, Trial Tr. 1622:18-1623:16, Aug. 15, 2014; DX-549.

664. In the next version of the congressional plan, Plan C149, Downton captured more of the Trinity River Project in District 12. Test. of Ryan Downton, Trial Tr. 1623:17-1624:8, Aug. 15, 2014 (discussing Plan C149 on RedAppl); DX-559. 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. Test. of Ryan Downton, Trial Tr. 1623:22-1624:16, Aug. 15, 2014; DX-715; DX-559.

665. Plan C149 also put the Como area into District 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, DX-566, moved Como from District 26 and joined it with the Fort Worth African-American community in District 12, which Downton understood to be at Representative Veasey's request. Test. of Ryan Downton, Trial Tr. 1625:1-12, 1629:7-21, Aug. 15, 2014; DX-559.

666. As Ryan Downton was drawing Plan C149, he was not using partisan shading, but had the statistics bar on that showed the McCain percentages when he made changes to the districts so he could maintain the Republican nature of each of the districts in Tarrant County. District 12 dropped from 58% to 55.6%, and District 26 was almost 60%. Ryan Downton could not take any more of the Democratic population and put it into District 12 because it would have negatively

impacted the Republican performance. Test. of Ryan Downton, Trial Tr. 1624:21-25, 1626:2-14, Aug. 15, 2014 (discussing Plan C149 on RedApp); DX-559.

667. Ryan Downton worked with Chairman Geren on Plan C169, which was an amendment to Plan C149 that took the Como area out of District 26 and put it into District 12 to unite the black community. Representative Marc Veasey had requested that these communities be put together. Test. of Ryan Downton, Trial Tr. 1629:7-21 1714:2-5, Aug. 15, 2014; DX-566. Other changes in Plan C169 included carving out more of the Trinity River Project from District 26 and placing this in District 12, and adjusting the boundaries of Districts 26 and 12 to include Congressman Michael Burgess and Congresswoman Granger's district offices that had been drawn out. Test. of Ryan Downton, Trial Tr. 1629:24-1630:5, Aug. 15, 2014; DX-566.

668. The changes to District 26 and District 12 in Plan C169 are the same as in Plan C185, the enacted plan. Test. of Ryan Downton, Trial Tr. 1630:6-15, Aug. 15, 2014; DX-566.

669. Dr. Arrington testified that he is aware that the configuration of District 26 and District 12 is the result of a consideration of the location of the Trinity River Project in which Congresswoman Kay Granger in District 12 was seeking federal funding. Test. of Theodore Arrington, Trial Tr. 458:5-11, Aug. 12, 2014 (discussing DX-401, Plan C185).

670. Downton testified that any precinct splits made in the Dallas/Fort Worth area in the Congressional plan were done to comply with one-person, one-vote, ensure that the entire Trinity River Vision Authority was included in Congresswoman Granger's district, and to include district offices in the appropriate districts. Test. of Ryan Downton, Trial Tr. 1631:5-24, 1715:2-15, 1718:5-24, 1719:4-13, 1720:4-1721:1, 1723:8-25, Aug. 15, 2014.

671. Ryan Downton testified that every iteration of the map he drew required him to zero out the population, which amounted in multiple split precincts. There is no evidence that Ryan Downton split any precincts with the intent to discriminate against any minority voters in North Texas. Test. of Ryan Downton, Trial Tr. 1632:5-14, Aug. 15, 2014.

672. Precinct 4138 was split to zero out the population. Ryan Downton zeroed out the northwest portion of Fort Worth and down in the Como area. Test. of Ryan Downton, Trial Tr. 1718:5-18, Aug. 15, 2014 (discussing TLRTF Exhibit 1153).

673. In zeroing out the population, Ryan Downton would go around the borders of the districts and look for blocks of the size he needed to reach zero. Tarrant County was one of the areas of the map that Ryan Downton worked on more regularly and changed so there are more split precincts. Test. of Ryan Downton, Trial Tr. 1718:18-24, Aug. 15, 2014.

674. In TLRTF Exhibit 1154, Ryan Downton testified that the block on the map to the left of number 4051 was in District 26 and that he had to pull out the three census blocks that touched the Trinity River. Test. of Ryan Downton, Trial Tr. 1719:14-19, Aug. 15, 2014 (discussing TLRTF Exhibit 1154).

## 7. Congressional District 27

675. The Legislature's goals with respect to District 27 were to create a Republican-leaning congressional district anchored in Nueces County and to create a separate congressional district anchored in Cameron County. Test. of Ryan Downton, Trial Tr. 1021:21-1022:14, Sept. 9, 2011; Test. of Ryan Downton, Trial Tr. 1632:21-1633:4, Aug. 15, 2014.

676. Ryan Downton was responsible for drawing District 27 in Plan C185. Test. of Ryan Downton, Trial Tr. 1632:18-20, Aug. 15, 2014. One of his goals when drawing District 27 was to increase Congressman Farenthold's chance of being reelected. Test. of Ryan Downton, Trial Tr. 1632:21-1633:4.

677. 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. Test. of Ryan Downton, Trial Tr. 1594:11-18, 1634:5-11, 1762:15-22, Aug. 15, 2014.

678. 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, and from reviewing the reports from the interim hearings. Test. of Todd Hunter, Trial Tr. 1118:11-25, Aug. 14, 2014; Test. of Ryan Downton, Trial Tr. 1785:18-21, 1633:9-18, 1725:16-20, 1761:18-1762:2, Aug. 15, 2014.

679. The configuration of District 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. Test. of Todd Hunter, Trial Tr. 1073:7-1075:19, Aug. 14, 2014; DX-574.

680. Among the citizens advocating the separation of Nueces and Cameron Counties was former Democratic State Representative and MALC Chairman Hugo Berlanga, who testified that the ports of Brownsville and Corpus Christi should each be represented by a single congressman. Test. of Todd Hunter, Trial Tr. 1075:20-1076:8, Aug. 14, 2014; DX-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. Test. of Ryan Downton, Trial Tr. 1022:15-18, Sept. 9, 2011; Test. of Todd Hunter, Trial Tr. 1076:17-1077:4, Aug. 14, 2014; Test. of Theodore Arrington, Trial Tr. 444:23-445:6, Aug. 12, 2014; DX-607 (Jan. 9, 2011 email containing article about Cameron County); *see* Dep. of Rene Oliveira, at 63:6-10, 63:24-25, March 26, 2014 (ECF No. 1092-3).

681. Representative Todd Hunter communicated his opinion to the Redistricting Committee that Nueces County should be in a congressional district going north. Test. of Todd Hunter, Trial Tr. 1118:11-25, Aug. 14, 2014. Ryan Downton received directives from Representative Todd Hunter on how to draw Nueces County. Test. of Todd Hunter, Trial Tr. 1118:11-25, Aug. 14, 2014; Test. of Ryan Downton, Trial Tr. 1785:18-21, Aug. 15, 2014.

682. Nueces County has been joined with counties to the north of Nueces County in past configurations. Test. of Todd Hunter, Trial Tr. 1078:14-16, Aug. 14, 2014.

683. 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, he did not know that Nueces County and Cameron County have separate media markets, he was not aware that Nueces County and Cameron County were home to competing ports; and he was not aware that representatives from South Texas had requested that Cameron County anchor its own congressional district. Test. of Theodore Arrington, Trial Tr. 465:3-7, 466:14-467:3, Aug. 12, 2014; *see also* DX-574 at 24.

684. Representative Dawnna Dukes was aware that citizens from Nueces County and Cameron County wanted Nueces County and Cameron County to have their own congressional districts. Test. of Dawnna Dukes, Trial Tr. 917:2-11, Aug. 13, 2014.

685. Dr. Flores did not have an opinion on whether race was the predominant factor guiding mapdrawers in the configuration of District 27. Test. of Henry Flores, Trial Tr. 543:8-16, Aug. 12, 2014.

686. Due to the population of Nueces County, under Plan C185, Nueces County will have a say in who is elected to Congressional District 27. Test. of Todd Hunter, Trial Tr. 1077:14-1078:10, Aug. 14, 2014; DX-401.2.

## **8. Congressional Districts 25 and 35**

687. 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, and reducing the reelection prospects of the Democratic incumbent, Congressman Doggett. Test. of Ryan Downton, Trial Tr. 1597:20-1598:5, 1779:7-10, 1785:4-10, Aug. 15, 2014.

688. Under Plan C100, District 25 is not a majority-minority district because there is not a single minority group within the district that comprises a majority of the citizen voting age population. Test. of Stephen Ansolabehere, Trial Tr. 968:8-14, Aug. 13, 2014. Under Plan C100, District 25 was an Anglo-majority district with 63.1% Anglo CVAP. DX-400.3, Plan C100, Red 106 Report.

689. District 35 was created based on a proposal by the Mexican American Legal Defense and Education Fund in public Plan C122. Joint Exhibit J-62, Dep. of Ryan Downton, at 114:17-24, Aug. 12, 2011 (ECF No. 420); Test. of Ryan Downton, Trial Tr. 915:17-921:18, Sept. 9, 2011.

690. Population growth in central Texas justified the creation of a new congressional district in C185, such as District 35. *See* Test. of Ryan Downton, Trial Tr. 915:16-921:18, Sept. 9, 2011.

691. The Texas Legislature concluded that the Hispanic population in Texas was sufficiently large and geographically compact to create a majority HCVAP district in central Texas. Plan C185 VTD's at least 50% Hispanic or Latin American. DX-44

692. For the most part, Hispanic population growth in Texas over the last decade was most intense in the southernmost region of the State and along the I-35 corridor between San Antonio and Austin. Otherwise, the growth was spread widely throughout the State. DX-44; DX-43; *see also* Test. of John Alford, Trial Tr. 1829:12-1838:14, Aug. 16, 2014; Test. of Stephen Ansolabehere, Trial Tr. 964:16-965:11, Aug. 13, 2014.

693. The new districts in Plan C185 are located in East Texas (District 36), North Texas (District 33), South Texas (District 34), and Central Texas (District 35). *See* Joint Exhibit J-8, Dist. Pop. Analysis with County Subtotals.

694. District 35 contains 58.3% HVAP, 51.9% HCVAP, and 43.8% SSVR. DX-2, Hispanic Pop. Profile Plan C185.

695. In order to create District 35, the Legislature took population from District 20. To make up for the loss of population in District 20, population was captured from District 23 and District 28. Joint Exhibit J-62, Dep. Ryan Downton, at 33:21-35:13, 86:3-87:2, 89:2-22, Aug. 12, 2011 (ECF No. 420).

696. District 35 is expected to allow Hispanic voters to elect their candidate of choice. *See* Joint Expert Exhibit E-17, Alford Report at 5; Joint Exhibit J-43, Dep. of John Alford, at 140:14-25, Sept. 2, 2011 (ECF No. 420).

697. District 35 tracks interstate 35 in an attempt to keep Guadalupe County as whole as possible, at the request of Representative Kuempel. *See* Test. of Ryan Downton, Trial Tr. 915:17-921:18, Sept. 9, 2011.

698. Southeast Austin and Southside and Westside of San Antonio are major urban areas sharing common interests, which weighs in favor of combining these communities of interest in one congressional district as District 35 in plan C185 does. Test. of Sen. Joe Bernal, Trial Tr. 557:7-559:3, Sept. 7, 2011.

699. It is not unusual for Austin and San Antonio to be combined in the same congressional district. Test. of Ryan Downton, Trial Tr. 943:7-944:16, Sept. 9, 2011. San Antonio and Williamson County were combined in Congressional District 21 for the 1996 special and general elections, the 1998 general election, the 2000 general election, the court-ordered map that was used for the 2002 election, and the legislatively drawn map used for the 2004 elections and the 2006 primaries. TLRTF-305; TLRTF-306.

700. Certain areas in Travis and Bexar Counties were included within District 35 in order to keep Latino communities of interest together. Joint Exhibit J-62, Dep. of Ryan Downton, at 114-25-116:7, 118:13-119:4, 121:22-25, Aug. 12, 2011 (ECF No. 420).

701. When drafting the new congressional plan, the map drawers looked at possibilities for expanding minority representation. Test. of Ryan Downton, Trial Tr. 906:13-23, 907:1-12, Sept. 9, 2011.



702. Compliance with the Voting Rights Acts was an important goal in creating the congressional plan. Joint Exhibit J-58, Dep. of Doug Davis, at 12:22-13:12, Aug. 9, 2011 (ECF No. 420); Joint Exhibit J-62, Dep. of Ryan Downton, at 31:6-16, Aug. 12, 2011 (ECF No. 420).

703. Austin and San Antonio are not very different. The two cities are only 60 miles apart; have similar interests, music, and culture; and residents frequently have familial connections to the other city. Test. of Gonzalo Barrientos, Trial Tr. 1160:13-1161:4, Aug. 14, 2014.

704. There are more similarities between San Antonio and Austin than differences. Test. of Celeste Villarreal, Trial Tr. 1134:8-9, Aug. 14, 2014.

705. Celeste Villarreal testified that the configuration of District 35, which includes both Travis and Bexar counties, perfectly represents her. Test. of Celeste Villarreal, Trial Tr. 1133:24-1134:10, Aug. 14, 2014.

706. District 35 has the following compactness scores: (1) perimeter to area score of 18.4; (2) area to rubber band score of 2.7; and (3) area to smallest circle score of 10.5. Joint Expert Exhibit E-18, Report of Todd Giberson, at 6-7.

707. District 35 is not the least compact district among the many demonstration districts proposed by the Plaintiffs. District 35 is only slightly less compact than other districts in Plan C185. Joint Exhibit J-8, Plan C185, Red 315 Report Compactness Analysis; *see generally* Joint Expert Exhibit E-18, Report of Todd Giberson.

708. The Legislature considered many factors other than race in drawing District 35. Test. of Ryan Downton, Trial Tr. 915:17-921:18, Sept. 9, 2011.

709. Governor Perry's office wanted the Redistricting Committee to create Republican districts in Travis County, and specifically indicated that Lloyd Doggett should be in a Republican district. Test. of Ryan Downton, Trial Tr. 1785:4-11, Aug. 15, 2014.

710. Ryan Downton primarily used partisan shading when drawing Travis County. Travis County borders several Republican districts. Travis County has a large Anglo Democrat population. Downton attempted to divide Travis County's Anglo Democrats among the Republican districts for the partisan purposes of electing Republicans from those districts. Test. of Ryan Downton, Trial Tr. 1674:11-21, Aug. 15, 2014.

711. Ryan Downton was attempting to create a Section 2 district under the Voting Rights Act when he drew District 35. Accordingly, he turned on racial shading for Travis County to find concentrated Hispanic populations so he could draw them in to reach the 50% benchmark necessary to create such a district. He thought this was necessary to comply with Section 2. Test. of Ryan Downton, Trial Tr. 1674:25-8, Aug. 15, 2014.

712. Travis County is heavily Democratic. Test. of Dawna Dukes, Trial Tr. 918:6-8, Aug. 13, 2014.

713. The so-called tri-ethnic coalition in Austin began in the late 1960s and early 1970s as a progressive movement. The tri-ethnic coalition in Travis County is made up of people who share similar political views. The term tri-ethnic coalition is really just a term for the way people in Travis County vote. Test. of Eddie Rodriguez, Trial Tr. 818:17-22, 861:3-6, 862:3-6, Aug. 13, 2014.

714. The tri-ethnic coalition generally votes for Democrats. Test. of Dawnna Dukes, Trial Tr. 918:17-19, Aug. 13, 2014. The tri-ethnic coalition has never supported a Republican candidate. Test. of Eddie Rodriguez, Trial Tr. 864:16-18, Aug. 13, 2014. The coalition includes organizations and clubs such as the South Austin Democrats, Central Austin Democrats, Progressive Democrats, Capital Area Democrats, Black Austin Democrats, Tejano Democrats, and University Democrats. Test. of Eddie Rodriguez, Trial Tr. 861:11-16, Aug. 13, 2014; Test. of Dawnna Dukes, Trial Tr. 918:13-16, Aug. 13, 2014.

715. To determine whether the tri-ethnic coalition is supporting a specific candidate, one would have to look at the votes of Hispanic, African-American, and Anglo voters to see who they end up supporting. Test. of Eddie Rodriguez, Trial Tr. 864:19-865:4, Aug. 13, 2014.

716. While the coalition may split at the primary election level, the coalition will usually come together to support whoever is running in the general election. Test. of Eddie Rodriguez, Trial Tr. 862:10-12; 863:18-22, Aug. 13, 2014.

717. In 2006 in Travis County, Eric Sheppard, an African-American, ran against Latina Elena Diaz for County Court at Law in the Democratic primary. The race was very close, with Sheppard winning 50.41% to 49.59%. Test. of Dawnna Dukes, Trial Tr. 920:3-17, Aug. 13, 2014; DX-410 at 5. Representative Rodriguez testified that this was an example of the tri-ethnic coalition being evenly split amongst the candidates. Test. of Eddie Rodriguez, Trial Tr. 824:17-825:25, Aug. 13, 2014.

718. African-American and Hispanic voters do not vote consistently for the same candidates in primary elections. *See* Joint Expert Exhibit E-17, Alford Report at 18, Table 1; Joint Expert Exhibit E-17, Alford Rebuttal Report at Table 1; Joint Expert Exhibit E-7, Engstrom Rebuttal Report at 24-25, Tables 1-8.

719. African-Americans tend to support the same candidates as Hispanic voters in general elections. Joint Expert Exhibit E-4, Murray Report at 20; Joint Expert Exhibit E-7, Engstrom Rebuttal Report at 24-25, Tables 1-8.

720. African-American voters do not tend to support the same candidates as Hispanic voters in Democratic primaries. *See* Joint Expert Exhibit E-17, Alford Report at 18; Joint Expert Exhibit E-17 Alford Rebuttal Report at Table 1; Joint Expert Exhibit E-7, Engstrom Rebuttal Report at 24-25, Tables 1-8.

721. Hispanics and African-Americans do not vote cohesively in Democratic primaries. Test. of Morgan Kousser, Trial Tr. 265:15-18, Sept. 6, 2011; Test. of Richard Engstrom, Trial Tr. 489:18-22, Aug. 12, 2014; Joint Expert Exhibit E-17, Alford Report at 18; Joint Expert Exhibit E-

17, Alford Rebuttal Report at Table 1; Joint Expert Exhibit E-7, Engstrom Rebuttal Report at 24-25, Tables 1-8.

722. In the 2008 Democratic Presidential primary contest, African-American voters strongly favored President Obama at 84%, while both Latino voters (34% for Obama) and Anglo voters (43% for Obama) favored Hillary Clinton. Joint Expert Exhibit E-17, Alford Rebuttal Report at Table 1.

723. In Travis County, Hispanics vote cohesively at a rate below 70% in primary elections. Joint Expert Exhibit E-7, Engstrom Rebuttal Report at Table 8.

724. In Travis County, the average Anglo support for Hispanic candidates in primary elections is at 45%, which is slightly above the statewide average of 43%, but below the 49% support in Bexar County. Joint Expert Exhibit E-7, Engstrom Rebuttal Report at Tables 1-8.

725. In Travis County, African-American support for Hispanic candidates in primary elections is at 30%, which is the lowest in any of the counties and is well below the statewide average of 40%. Joint Expert Exhibit E-7, Engstrom Rebuttal Report at Tables 1-8.

726. The opinions and conclusions Dr .Engstrom reached in 2011 did not change with his analysis in 2013 and 2014. Test. of Richard Engstrom, Trial Tr. 490:15-21, Aug. 12, 2014. If the Hispanic candidate of choice were defeated in a primary election, then Hispanic voters could not elect their candidate of choice in the general election, even if they happen to be on the winning side in that general election because their candidate of choice has already been filtered out of the competition. Test. of Richard Engstrom, Trial Tr. 491:24-492:6, Aug. 12, 2014.

727. To test cohesion among minority groups in a particular region, one would analyze primary elections. Test. of Stephen Ansolabehere, Trial Tr. 970:15-21, Aug. 13, 2014.

728. Dr. Ansolabehere examined whether or not the minority candidate could emerge from the primary election within Travis County, but he did no analysis of the other seven counties that comprise benchmark district 25. Test. of Stephen Ansolabehere, Trial Tr. 972:17-973:4, Aug. 13, 2014. Of the 43 elections analyzed, Dr. Ansolabehere found only 14 elections in which whites, blacks, and Hispanics within Travis County all supported the winning candidate in a primary contest. Test. of Stephen Ansolabehere, Trial Tr. 973:5-9, Aug. 13, 2014.

729. Hispanics alone were only able to emerge with a winning candidate from the primary in three of the 43 elections analyzed. Test. of Stephen Ansolabehere, Trial Tr. 973:10-23, Aug. 13, 2014.

730. Dr. Ansolabehere did not analyze which of the 43 elections were racially contested, meaning a contest between a minority candidate and a nonminority candidate. Test. of Stephen Ansolabehere, Trial Tr. 974:12-16, Aug. 13, 2014. Two-thirds of the 43 elections Dr. Ansolabehere analyzed did not have a Hispanic candidate. Test. of Stephen Ansolabehere, Trial Tr. 1005:5-9, Aug. 13, 2014. Some of the elections are not countywide elections; some are single precinct elections within Travis County. Test. of Stephen Ansolabehere, Trial Tr. 974:21-975:1, Aug. 13, 2014. Single

precinct races are not the best indicators of voting preferences in Travis County as a whole. Test. of Stephen Ansolabehere, Trial Tr. 975:7-11, Aug. 13, 2014.

731. Dr. Ansolabehere's multivariate regression analysis of the 2006 County Court at Law Judge race between Mr. Shepperd and Ms. Diaz shows that Hispanic support for Ms. Diaz within Travis County has a coefficient of 78.9%, which shows high support. African-American support for Ms. Diaz is low with a coefficient of negative 41.6%. Test. of Stephen Ansolabehere, Trial Tr. 977:16-979:6, Aug. 13, 2014. Similarly, Mr. Shepperd's support from Hispanics was low, around 21%, while African-American support for Mr. Shepperd was nearly unanimous at 100%. African-Americans favored Mr. Shepperd at a much higher level than Ms. Diaz. Test. of Stephen Ansolabehere, Trial Tr. 979:7-20, Aug. 13, 2014. Mr. Shepperd won the primary, and Hispanics were not successful in having their preferred candidate emerge from the primary election. Test. of Stephen Ansolabehere, Trial Tr. 979:24-980:5, Aug. 13, 2014.

732. The Shepperd-Diaz race is an example of where Hispanics and African-Americans in Travis County do not vote cohesively for the same candidate in a primary contest. Test. of Stephen Ansolabehere, Trial Tr. 980:6-13, Aug. 13, 2014.

733. Dr. Ansolabehere found that Hispanics supported Congressman Doggett in the 2012 primary in the new District 35 at a rate of 53%, which is a lower rate of support than he received from African-Americans and Anglos in the district. Test. of Stephen Ansolabehere, Trial Tr. 983:11-19, Aug. 13, 2014.

734. In the 2012 primary, Congressman Doggett ran against two Hispanic candidates; the analysis would have been impacted if Congressman Doggett had faced a single Hispanic candidate. Test. of Stephen Ansolabehere, Trial Tr. 983:20-984:3, Aug. 13, 2014.

735. Dr. Ansolabehere did not analyze the legislative record, testimony from legislative witnesses about motivations for dividing Travis County, or whether a Hispanic district was required to be drawn in this area. Test. of Stephen Ansolabehere, Trial Tr. 986:25-987:12, Aug. 13, 2014.

736. Dr. Ansolabehere did not offer an opinion about whether race was the predominant factor in drawing District 35, nor did he offer an opinion that individuals drawing the map had a racial purpose in drawing District 35. Test. of Stephen Ansolabehere, Trial Tr. 987:13-20, Aug. 13, 2014.

737. Dr. Ansolabehere's analysis indicates that the greater the percentage of Hispanic VAP in a precinct, the greater the chance that precinct was included in District 35; the higher percent Anglo VAP, the lower the likelihood that precinct was included in District 35. Test. of Stephen Ansolabehere, Trial Tr. 988:11-989:1, Aug. 13, 2014.

738. It is possible that the State could have been seeking to include Hispanic precincts in order to meet certain population benchmarks, but Dr. Ansolabehere's analysis does not show the reason for the inclusion or exclusion of a VTD. Test. of Stephen Ansolabehere, Trial Tr. 988:20-989:15, Aug. 13, 2014.

739. District 35 in Plan C235, which is identical to District 35 in Plan C185, is a Hispanic majority district that offered an opportunity for minority voters to nominate and elect their candidate of choice. Test. of Stephen Ansolabehere, Trial Tr. 993:3-9, Aug. 13, 2014.

740. Dr. Ansolabehere used a single-regression analysis, not a double-regression analysis, meaning that it doesn't take into account different turnout rates; the analysis assumes that if African-Americans are 25% of the voting age population, their turnout is also 25%. Test. of Stephen Ansolabehere, Trial Tr. 1006:9-1007:9, Aug. 13, 2014.

## 9. Harris County

741. The Legislature explored whether it was possible to create an additional Hispanic opportunity district in Harris County, but it could not do so without retrogressing in other protected districts. Joint Exhibit J-62, Dep. of Ryan Downton, at 73:1-14, Aug. 12, 2011 (ECF No. 420).

742. Under the 2000 Census, the total countywide HCVAP for Harris County is approximately 19.0%, and according to the 2008-2012 ACS Survey it is approximately 25.0%. Test. of John Alford, Trial Tr. 1825:11-14, 1828:22-1829:1, Aug. 16, 2014; DX-230; DX-231.

743. Dr. Murray has not attempted to draw a second Hispanic opportunity district in Harris County. In his Aug. 2011 report, he recommends a plan prepared by the NAACP, plan C193, which contains only two districts in Harris County and is not a statewide map. Test. of Richard Murray, Trial Tr. 1429:16-1430:25, Aug. 15, 2014.

744. Demonstration plan C193, Texas NAACP Congressional Plan, does not create a Hispanic opportunity district in Harris County. District 9 has 18.0% HCVAP, 49.4% BCVAP, and 22.5% ACVAP. District 18 has 18.6% HCVAP, 49.3% BCVAP, and 28.1% ACVAP. DX-571.3, Plan C193, Red-116.

745. Demonstration Plan C194, the Texas NAACP Harris County Area Congressional Plan, contains only four districts in the Harris County region. Test. of Richard Murray, Trial Tr. 1431:13-22, Aug. 15, 2014.

746. Dr. Murray has not performed any analysis of District 29 in Plan C194 to determine whether it is an additional Hispanic opportunity district in Harris County. Test. of Richard Murray, Trial Tr. 1432:15-18, Aug. 15, 2014.

747. In Plan C185, District 29 has a 56.3% HCVAP, a 51.6% SSVR, and a 53.0% non-suspense voter registration. Test. of Richard Murray, Trial Tr. 1433:10-17, 1434:3-5, Aug. 14, 2014; DX-401.6.

748. In demonstration Plan C194, District 29 has a 29.9% non-suspense voter registration, and District 36 has a 33.3% non-suspense voter registration. Test. of Richard Murray, Trial Tr. 1435:24-1436:2, 1436:21-24, Aug. 14, 2014.

749. It is not possible to draw two HCVAP majority districts in Harris County. Test. of George Korbel, Trial Tr. 1238:22-25, Aug. 14, 2014.

## 10. Congressional District 6

750. In Plan C100, a majority of v 6's total population was contained within Tarrant County. The district also included portions of Limestone County and Trinity County, along with Ellis, Freestone, Houston, Leon, and Navarro Counties in their entirety. DX-400.1 (statewide map for Plan C100); DX-400.2, Plan C100, Red-100 Report.

751. In Plan C100, District 6's total population was 54.5% Anglos, 22.9% Hispanics, and 17.6% African-Americans. DX-400.2, Plan C100, Red-100 Report.

752. In Plan C100, District 6's total voting age population was 59.2% Anglos, 19.4% Hispanics, and 16.2% African-Americans. DX-400.2, Plan C100, Red-100 Report.

753. In Plan C100, District 6's total citizen voting age population was 68.1% Anglos, 15.7% African-Americans, and 11.7% Hispanics. DX-400.3, Plan C100, Red-106 Report (2005-2009 ACS Survey).

754. In Plan C100, District 6 contained 9.4% non-suspense SSVR and 9.4% total SSVR. DX-400.6, Plan C100, Red-109 Report (2005-2009 ACS Survey).

755. In Plan C185, District 6 included portions of Dallas and Tarrant County, along with Ellis and Navarro Counties in their entirety. DX-401.1 (statewide map for Plan C185); DX-401.2, Plan C185, Red-100 Report.

756. A majority of District 6's total population, 358,632 persons, resided in Dallas County; 149,610 persons resided in Ellis County; 142,511 persons resided in Tarrant County; and 47,735 persons resided in Navarro County. DX-401.2, Plan C185, Red-100 Report.

757. In Plan C185, District 6's total population was 44.2% Hispanics, 39.5% Anglos, and 12.8% African-Americans. DX-401.2, Plan C185, Red-100 Report.

758. In Plan C185, District 6's total voting age population was 44.4% Anglos, 39.6% Hispanics, and 12.3% African-Americans. DX-401.2, Plan C185, Red-100 Report.

759. In Plan C185, District 6's total citizen voting age population was 57.7% Anglos, 25.3% Hispanics, and 13.3% African-Americans. DX-401.3, Plan C185, Red-106 Report (2005-2009 ACS Survey).

760. In Plan C185, District 6 contained 20.4% non-suspense SSVR and 20.1% total SSVR. DX-401.6, Plan C185, Red-109 Report (2005-2009 ACS Survey).

761. The total population of Tarrant County grew 25.09% from 2000 to 2010 and Dallas County grew at a rate of 6.73%; Ellis County grew 34.35% during this same time period. DX-213.

762. As of 2011, Dallas County contained 19.17% HCVAP, Ellis County contained 14.19% HCVAP, Tarrant County contained 13.99% HCVAP, and Navarro County contained 9.10% HCVAP. DX-51.

763. In Plan C185, District 6 is 56.6% McCain in the 2008 presidential election. DX-691 at 9.

### **11. Congressional District 30**

764. District 30 is contained entirely within Dallas County in both the benchmark plan and Plan C185. DX-400.1 (statewide map for Plan C100); DX-401.1 (statewide map for Plan C185).

765. In Plan C100, District 30's total population was 42.4% African-Americans, 39.7% Hispanics, and 16.7% Anglos. DX-400.2, Plan C100, Red-100 Report.

766. In Plan C100, District 30's total voting age population was 42.5% African-Americans, 34.7% Hispanics, and 21.1% Anglos. DX-400.2, Plan C100, Re100 Report.

767. In Plan C100, District 30's total citizen voting age population was 49.8% African-Americans, 27.7% Anglos, and 19.8% Hispanics. DX-400.3, Plan C100, Red-106 Report (2005-2009 ACS Survey).

768. In Plan C185, District 30's total population was 45.6% African-Americans, 40.3% Hispanics, and 13.2% Anglos. DX-401.2, Plan C185, Red-100 Report.

769. In Plan C185, District 30's total voting age population was 46.5% African-Americans, 35.6% Hispanics, and 16.6% Anglos. DX-401.2, Plan C185, Red-100 Report

770. In Plan C185, District 30's total citizen voting age population was 53.1% African-Americans, 24.1% Anglos, and 20.6% Hispanics. DX-401.3, Plan C185, Red-106 Report (2005-2009 ACS Survey).

771. 80.7% of District 30's total population in Plan C185 was located in District 30 in Plan C100. DX-403, Plan Overlap Analysis Between C100 and C185.

772. There is no evidence that African-Americans were packed in District 30 in Plan C185 because the voting age population and citizen voting age population are largely the same as under Plan C100. *See* DX-400, Plan C100, Red-100 Report, Red-106 Report; DX-401, Plan C185, Red-100 Report, Red-106 Report.

### **12. Economic Engines**

773. Different people may have differing views about whether something qualifies as an economic engine. Test. of Eddie Bernice Johnson, Trial Tr. 711:4-7, Aug. 12, 2014.

774. The RedAppl mapping software used by the mapdrawers does not identify the location of economic engines in member's districts. Test. of Clare Dyer, Trial Tr. 782:11-23, Aug. 13, 2014; Test. of Ryan Downton, Trial Tr. 1675:9-24, Aug. 15, 2014.

775. Unless a member of Congress alerted the mapdrawers that he or she wanted a particular location in their district, the mapdrawers would not have known what the member wanted. Test. of Ryan Downton, Trial Tr. 1675:16-24, Aug. 15, 2014.

776. In some instances, members of Congress requested that points of interest to be added to their districts. However, the mapdrawers did not actively seek to remove such locations from any members' districts. Test. of Ryan Downton, Trial Tr. 1676:14-22, Aug. 15, 2014.

777. The removal of economic engines under Plan C185 was not limited to districts represented by African-American members. Indeed, Anglo members of Congress also lost economic engines under Plan C185. Test. of Eddie Bernice Johnson, Trial Tr. 715:3-5, Aug. 12, 2014.

778. The Dallas Cowboys' football stadium (AT&T Stadium) and the Texas Rangers' ballpark (Globe Life Park in Arlington) are located in Congressman Joe Barton's district, District 6, in Plan C100 and in the new District 33 in Plan C185. Test. of Eddie Bernice Johnson, Trial Tr. 715:16–716:11, Aug. 12, 2014; Ex. DX-447.

779. Texas Instruments' corporate headquarters are located in Congressman Sam Johnson's district, District 3, in Plan C100 and in Congressman Pete Sessions' district, District 32, in Plan C185. Test. of Eddie Bernice Johnson, Trial Tr. 717:2–718:5, Aug. 12, 2014; DX-448.2; DX-448.3.

780. ExxonMobil's corporate headquarters are located in Congressman Pete Sessions' district, District 32, in Plan C100; the headquarters are located in Congressman Kenny Marchant's district, District 24, in Plan C185. Test. of Eddie Bernice Johnson, Trial Tr. 718:6-17, Aug. 12, 2014; DX-500.2; DX-500.3.

781. In Plan C100, the University of Dallas is located in Congressman Pete Sessions' district, District 32; in Plan C185, it is located in Congressman Kenny Marchant's district, District 24. Test. of Eddie Bernice Johnson, Trial Tr. 718:18–719:2, Aug. 12, 2014; DX-499.2; DX-499.3.

782. Texas Wesleyan University is located in Congressman Michael Burgess's district, District 26, in Plan C100 and in Congresswoman Kay Granger's district, District 12, in Plan C185. DX-442.

783. BNSF Railway's corporate headquarters are located in Congresswoman Kay Granger's district, District 12, in Plan C100; the headquarters are located in Congressman Michael Burgess's district, District 26, in Plan C185. DX-487.2; DX-487.3.

784. In Plan C100, Dallas Baptist University is located in Congressman Kenny Marchant's district, District 24; in Plan C185, it is located in Congressman Joe Barton's district, District 6. DX-498.2; DX-498.3.

785. William P. Hobby Airport is located in Congressman Pete Olson's district, District 22, in Plan C100 and in Congressman Gene Green's district, District 29, in Plan C185. Test. of Richard Murray, Trial Tr. 1453:17–1455:12, Aug. 15, 2014; DX-481.

786. Some of the economic engines that Anglo members of Congress lost in Plan C185 were moved to districts represented by African-American members. *E.g.*, Test. of Richard Murray, Trial Tr. 1457:4-6, 1459:3-13, Aug. 15, 2014.



787. In Plan C100, the Texas Medical Center area in Houston is located in three districts: District 7, represented by Congressman John Culberson; District 9, represented by Congressman Al Green; and District 18, represented by Congresswoman Sheila Jackson Lee. In Plan C185, this area is located only within District 9 and District 18. Test. of Richard Murray, Trial Tr. 1444:15–1446:1, Aug. 15, 2014; DX-470.

788. Rice University is located in Congressman John Culberson's district, District 7, in Plan C100 and in Congresswoman Sheila Jackson Lee's district, District 18, in Plan C185. Test. of Richard Murray, Trial Tr. 1455:13-1457:8, Aug. 15, 2014; DX-475.

789. In Plan C100, portions of the MD Anderson Cancer Center are located in Congressman John Culberson's district, District 7; Congressman Al Green's district, District 9; and Congresswoman Sheila Jackson Lee's district, District 18. In Plan C185, the center is contained only within District 9 and District 18; District 7 no longer contains a part of the center. Test. of Richard Murray, Trial Tr. 1455:18-19, 1457:15–1459:16, Aug. 15, 2014; DX-477.

790. In Plan C100, Baylor College of Medicine is located in Congressman John Culberson's district, District 7; in Plan C185, it is located in Congresswoman Sheila Jackson Lee's district, District 18. DX-469.

791. Memorial Hermann-Texas Medical Center is located in Congressman John Culberson's district, District 7, in Plan C100; it is located in Congresswoman Sheila Jackson Lee's district, District 18, in Plan C185. DX-470.

792. In Plan C185, African-American members of Congress retained certain economic engines that were located in their districts in Plan C100. *E.g.*, Test. of Eddie Bernice Johnson, Trial Tr. 713:10–714:1, Aug. 12, 2014.

793. Parkland Hospital is located in Congresswoman Eddie Bernice Johnson's district, District 30, in Plan C100 and Plan C185. Test. of Eddie Bernice Johnson, Trial Tr. 713:10-12, Aug. 12, 2014.

794. University of Texas Southwestern Medical Center is located in Congresswoman Eddie Bernice Johnson's district, District 30, in Plan C100 and Plan C185. Test. of Eddie Bernice Johnson, Trial Tr. 713:13-15, Aug. 12, 2014; DX-445.

795. The Margaret Hunt Hill Bridge, which Congresswoman Johnson considers an economic engine, is located in District 30 in Plan C100 and Plan C185. Test. of Eddie Bernice Johnson, Trial Tr. 713:16–714:1, Aug. 12, 2014; DX-446.

796. Texas Southern University and the University of Houston are located in Congresswoman Sheila Jackson Lee's district, District 18, in Plan C100 and Plan C185. Test. of Richard Murray, Trial Tr. 1453:3-6, Aug. 15, 2014; DX-474.

797. In Plan C185, Congressman Al Green retains portions of the Texas Medical Center area that were located in his district (District 9) under Plan C100, including the Michael E. DeBakey VA Medical Center. DX-470.

798. Houston Baptist University, the Astrodome, and Reliant Park are located in Congressman Al Green's district, District 9, in Plan C100 and in Congresswoman Sheila Jackson Lee's district, District 18, in Plan C185. DX-501.2; DX-501.3 (Houston Baptist University); DX-470 (Reliant Park and Astrodome).

799. The Third Ward-MacGregor area in Houston is located in Congresswoman Sheila Jackson Lee's district, District 18, in Plan C100; the area is located in Congresswoman Jackson Lee's district and Congressman Al Green's district, District 9, in Plan C185. Test. of Richard Murray, Trial Tr. 1448:17–1453:2, Aug. 15, 2014; DX-474.

800. The downtown Houston area is located in Congresswoman Sheila Jackson Lee's district, District 18, in Plan C100, and in Congressman Gene Green's district, District 29, in Plan C185. Test. of Richard Murray, Trial Tr. 1447:8–1448:16, Aug. 15, 2014; DX-473.

### **13. District Offices**

801. Dr. Richard Murray testified without qualification that only the three African-American congresspersons lost their district offices. Test. of Richard Murray, Trial Tr. 1462:8-19, 1467:10-17, 1476:6-9, Aug. 15, 2014.

802. Dr. Murray acknowledged during his Aug. 2014 testimony that other members of Congress lost district offices in Plan C185. Test. of Richard Murray, Trial Tr. 1468:17-19, 1469:21-22, 1471:6-11, 1474:4-6, 1476:3-5, Aug. 15, 2014.

803. Congressman John Culberson's district office at 10000 Memorial Drive, Suite 620, Houston, TX 77024 is located in District 7 under Plan C100 and in District 2 under Plan C185. Test. of Richard Murray, Trial Tr. 1467:18–1468:19, Aug. 15, 2014; DX-491.1; DX-491.2.

804. Congressman Joe Barton (District 6) lost two district offices from his district in Plan C185: an office located at 6001 W. Ronald Reagan Memorial Highway, Arlington, TX 76017, and an office located at 303 North 6th Street, Crockett, TX 75835. Test. of Richard Murray, Trial Tr. 1474:7–1476:5, Aug. 15, 2014; DX-493.1; DX-493.2; DX-493.3; DX-493.4.

805. Congressman Michael McCaul (District 10) lost two district offices from his district in Plan C185: an office located at 5929 Balcones Drive, Suite 305, Austin, TX 78731, and an office located at 1550 Foxlake Drive, Suite 120, Houston, TX 77084. Test. of Richard Murray, Trial Tr. 1471:16–1474:6, Aug. 15, 2014; DX-492.1; DX-492.2; DX-492.3; DX-492.4.

806. Congressman Kevin Brady's district office at 420 Green Avenue, Orange, TX 77630 is located in District 8 under Plan C100 and in District 36 under Plan C185. Test. of Richard Murray, Trial Tr. 1470:3–1471:15, Aug. 15, 2014; DX-490.1; DX-490.2.

807. Congressman Lamar Smith's district office at 3536 Bee Cave Road, Suite 212, Austin, TX 78746 is located in District 21 under Plan C100 and in District 25 under Plan C185. Test. of Richard Murray, Trial Tr. 1468:20–1469:22, Aug. 15, 2014; DX-489.1; DX-489.2.

808. Congressmen Ted Poe (District 2), Ron Paul (District 14), Ruben Hinojosa (District 15), Bill Flores (District 17), Charles Gonzalez (District 20), Francisco Canseco (District 23), Lloyd Doggett (District 25), Blake Farenthold (District 27), Henry Cuellar (District 28), and Gene Green (District 29) lost one or more district offices from their respective districts in Plan C185. DX-716.

809. Congresswoman Sheila Jackson Lee (District 18) lost only one of her four district offices in 2011; her other three district offices remained in District 18 under Plan C185. Test. of Richard Murray, Trial Tr. 1466:6–1467:6, Aug. 15, 2014; DX-479.

810. Ryan Downton testified that he did not intentionally remove congressional district offices from any members' districts. Test. of Ryan Downton, Trial Tr. 1676:9-13, Aug. 15, 2014.

811. District offices were not identified in RedAppl. Unless the mapdrawers were alerted to the removal of a member's district office in the proposed congressional plan, the mapdrawers would not have known that the office had been placed in a different district. Test. of Ryan Downton, Trial Tr. 1675:25–1676:8, Aug. 15, 2014; Test. of Ryan Downton, Trial Tr. 1020:23–1021:2, Sept. 9, 2011; Test. of Burt Solomons, Trial Tr. 1581:4-22, Sept. 13, 2011; *see also* Test. of Clare Dyer, Trial Tr. 772:24–773:11, Aug. 13, 2014.

812. To the extent the mapdrawers received, and could accommodate, a member's request to have a district office included in his or her district, that change were incorporated into the map. *E.g.*, Test. of Ryan Downton, Trial Tr. 1629:25–1630:5, Aug. 15, 2014.

813. Ryan Downton recalled communicating with Congressman Al Green or Congressman Gene Green regarding the removal of one of these members' district offices; the request was considered but it was determined that it could not be accommodated because it would have required significant changes to the map in light of where the office was located. Test. of Ryan Downton, Trial Tr. 1019:12–1020:8, Sept. 9, 2011.

814. Following the public release of the initial congressional plan, neither Congresswoman Eddie Bernice Johnson nor Congresswoman Sheila Jackson Lee notified the mapdrawers that their district offices were removed from their districts in the plan. Test. of Ryan Downton, Trial Tr. 1019:15-18, 1020:11-19, Sept. 9, 2011; Test. of Eddie Bernice Johnson, Trial Tr. 705:15-25, Aug. 12, 2014; Test. of Burt Solomons, Trial Tr. 1376:25–1377:5, Aug. 14, 2014. On June 2, 2011, Congresswoman Sheila Jackson Lee issued a statement regarding the proposed congressional plan, C125, but the statement did not mention the loss of her district office or the removal of any economic engines or landmarks. *See* PX-608.

#### **14. Congresswoman Eddie Bernice Johnson's Home**

815. On January 11, 2011, Clare Dyer of the Texas Legislative Council sent a memorandum to certain elected officials, including members of the Texas congressional delegation, with the subject "Incumbent Locations for Redistricting Project." DX-503 at 1; Test. of Clare Dyer, Trial Tr. 764:23–765:13, Aug. 13, 2014.

816. Clare Dyer's January 11, 2011 memorandum informed members of Congress that TLC was "finalizing the map database that will be used for redistricting" and that consistent with the 1991 and 2001 redistricting cycles, TLC planned to "include the census block location of the

residence of each member of . . . the 112th Congress elected from Texas . . . in the database to enable legislators to consider the effect of any proposed district boundary changes on incumbent representatives.” DX-503 at 1.

817. Clare Dyer indicated that TLC had obtained most members’ home addresses from contest application forms that members had filed with the Texas Secretary of State. DX-503 at 1.

818. In her correspondence, Clare Dyer provided each member of Congress with a map that shaded the census block for the address that TLC had identified as the member’s residence. Clare Dyer instructed members that unless they notified TLC that their residence or census block location in the map was incorrect and provided different information, TLC would input the identified location into the redistricting database. DX-503 at 1; *see also* Test. of Clare Dyer, Trial Tr. 770:8-10, 773:20–774:4, Aug. 13, 2014.

819. TLC obtained information regarding Congresswoman Johnson’s residence from the Dallas Central Appraisal District and an online address search engine. Test. of Clare Dyer, Trial Tr. 778:5-14, Aug. 13, 2014; DX-504.

820. In the map that Clare Dyer sent to Congresswoman Eddie Bernice Johnson’s office, Congresswoman Johnson’s residence is accurate but it is placed in the wrong census block. Test. of Eddie Bernice Johnson, Trial Tr. 723:12–724:15, Aug. 12, 2014; Test. of Clare Dyer, Trial Tr. 778:23–779:21, Aug. 13, 2014; DX-504 at 3.

821. The erroneous census block location in Clare Dyer’s letter to Congresswoman Johnson was attributable to TLC’s use of 2009 Census blocks rather than 2010 census blocks. TLC did not realize the mistake until the course of this litigation. Test. of Clare Dyer, Trial Tr. 779:14-21, 780:6–781:4, Aug. 13, 2014.

822. Congresswoman Johnson did not respond to Clare Dyer’s memorandum. Thus, TLC entered into RedAppl the census block identified in the map provided to Congresswoman Johnson. Test. of Clare Dyer, Trial Tr. 767:3-5, 781:17-23, Aug. 13, 2014.

823. The census block identified in RedAppl as containing Congresswoman Johnson’s residence is located in District 30 in Plan C185. Test. of Clare Dyer, Trial Tr. 781:24–782:1, Aug. 13, 2014; Test. of Eddie Bernice Johnson, Trial Tr. 725:12–726:21, Aug. 12, 2014; Test. of Richard Murray, Trial Tr. 1461:25–1462:7, Aug. 15, 2014.

824. RedAppl does not provide the physical address where a member resides. Thus, an individual mapping in RedAppl would not have known the census block for Congresswoman Johnson was incorrect and instead would have thought they were including Congresswoman Johnson’s home in her district. Test. of Clare Dyer, Trial Tr. 781:10–782:10, Aug. 13, 2014.

### **III. General Findings**

#### **A. Voting Patterns in Texas**

825. Race and partisan preference correlate strongly in Texas. Test. of John Alford, Trial Tr. 1858:19-1859:2, July 19, 2014; Test. of Theodore Arrington, Trial Tr. 170:1-5, July 14, 2014.

826. Voting patterns in Texas general elections are determined by party preference rather than the race of candidates. Test. of John Alford, Trial Tr. 1858:19-1859:10, July 19, 2014; Joint Exhibit E-17, Alford Expert Report at 16, Alford Rebuttal Report at Table 1; Joint Exhibit E-7, Engstrom Rebuttal Report at Tables. 1-8.

827. Hispanic voting patterns—specifically, Hispanic voters’ general preference for Democratic candidates—do not vary when a Hispanic Republican runs against an Anglo Democrat. Test. of John Alford, Trial Tr. 1858:19-1859:10, July 19, 2014; Joint Exhibit E-7, Engstrom Rebuttal Report at 24-25, Tables 1-8.

828. Anglo voting patterns—specifically, Anglo voters’ general preference for Republican candidates—do not vary when a Hispanic or African-American Republican runs against an Anglo Democrat. Test. of John Alford, Trial Tr. 1859:4-10, July 19, 2014; DX-2, Plan H100, Racially Polarized Voting Analysis. The preference of African-American voters to vote for Democratic candidates in the general election is the same whether the Democratic candidate is African-American, Hispanic, or neither. Joint Exhibit E-17, Alford Rebuttal Report at Table 1.

829. African-American and Hispanic voters in Texas generally do not prefer the same candidates in primary elections. *See* Test. of John Alford, Trial Tr. 1859:11-1860:2, July 19, 2014; *see also* Joint Exhibit E-17, Alford Expert Report at 18, Alford Rebuttal Report at Table 1; Joint Exhibit E-7, Engstrom Rebuttal Report at 24-25, Tables 1-8; Test. of Morgan Kousser, Trial Tr. 265:15–18, Sept. 6, 2011.

830. In Travis County, Hispanics vote cohesively at a rate below 70% in primary elections. Joint Exhibit E-7, Engstrom Rebuttal Report at Table 8. In Travis County, African-American support for Hispanic candidates is at 30%, which is the lowest in any of the counties and is well below the statewide average of 40%. *Id.*

831. The term “coalition district” is commonly used to describe a district in which multiple minority groups combine to form a majority of voters. Test. of Theodore Arrington, Trial Tr. 135:14-19, July 14, 2014; Test. of Al Green, Trial Tr. 1369:8-10, Sept. 12, 2011. Because African-American and Hispanic voters in Texas generally favor Democratic candidates, so-called “coalition districts” will almost certainly be Democratic-leaning districts. Test. of John Alford, Trial Tr. 1922:5-10, Aug. 16, 2014; Test. of Theodore Arrington, Trial Tr. 174:5-7, July 14, 2014; DX-2 (RPVA for H283); DX-168.

832. In a so-called “coalition” district, any group that does not control the outcome of the relevant primary election does not elect its candidate of choice in the general election, only its second-choice candidate. Test. of John Alford, Trial Tr. 1922:5-10, Aug. 16, 2014; Test. of John Alford, Trial Tr. 1859:16-1860:2, July 19, 2014; DX-168.

833. Because African–American and Hispanic voters in Texas generally favor Democratic candidates, it is very difficult to disaggregate an intention to affect Democrats from an intention to affect minority voters. *See* Test. of Theodore Arrington, Trial Tr. 169:25-170:5, July 14, 2014.

834. Districts that contain both Hispanic and African-American voters can create “tension” among the Hispanic and African-American populations. Test. of Al Green, Trial Tr.

1365:5-14, 1367:2-1368:10, Sept. 12, 2011; Test. of Eddie Bernice Johnson, Trial Tr. 1290:16-20, Sept. 12, 2011.

835. Anglo voters in Texas tend to vote for the Hispanic candidate of choice at a rate of 20% to 30%. Joint Exhibit E-17, Alford Rebuttal Report at Table 1.

836. Elections in Texas are not polarized on the basis of the race of the candidate. Joint Exhibit E-17, Alford Rebuttal Report at Table 1.

837. Counties in Texas that are majority Hispanic or majority African-American elect Hispanic and African-American candidates to the majority of elected county offices. See DX-28.

838. Large fluctuations in Hispanic turnout on presidential and non-presidential election years are inconsistent with the theory that Hispanic voter turnout hinges on the lingering effects of past discrimination. Joint Exhibit E-7, Engstrom Rebuttal Report at 26; Joint Exhibit J-1, Red 106 Report, Red 202 Report.

## **B. Opportunities for Minority Input During the Process**

839. Minority-preferred Democrats played an active role in drawing their own districts or those of their delegation. For instance, Hispanic Democrat Mike Villarreal was the Vice-Chairman of the redistricting committee. He took the lead in drawing the Bexar County districts, and his plan won the support of 9 of the County's 10 representatives, including 6 minority-preferred incumbents. Test. of Burt Solomons, Trial Tr. 1074:2-17, July 17, 2014; Test. of Gerardo Interiano, Trial Tr. 1517:4-11, 1595:4-6, 1594:25-1595:1, July 18, 2014; Test. of Trey Martinez Fischer, Trial Tr. 112:2-12, Sept. 6, 2011; Test. of Joe Farias, Trial Tr. 315:14-316:17, 325:18-326:2, July 15, 2014; Test. of John Garza, Trial Tr. 363:24-364:3, July 15, 2014; Test. of Bonnie Bruce, Trial Tr. 1965:22-24, July 19, 2014.

840. Democrats also took the lead in drawing maps in El Paso County. All members from El Paso—four Democrats and a lone Republican—agreed with their district configurations. Test. of Joe Pickett, Trial Tr. 732:19-733:1, 733:15-20, July 16, 2014.

841. The Travis County delegation plan was drawn and approved by 5 Democrats, including 2 minority members. DX-159 (Signed Travis County Delegation Map); Test. of Ryan Downton, Trial Tr. 2088:17-18, July 19, 2014.

842. Representative Guillen, a Hispanic Democrat, drew his own district (District 31) and voted for the entire map. Test. of Gerardo Interiano, Trial Tr. 1501:1-4, July 18, 2014; DX-190\_00873.

843. Representative Lozano, a Hispanic Democrat during the 2011 legislative session, had input into the configuration of his district in Plan H283. Lozano testified that he had an opportunity to contribute and participate in shaping his district but only because the House leadership wanted his input—MALC and the Democratic caucus leadership did not. Test. of J.M. Lozano, Trial Tr. 1790:22-1791:6, July 18, 2014. Lozano also testified that was able to personally advocate for his district with Chairman Solomons by asking whether he was going to be paired with Nueces County. Test. of J.M. Lozano, Trial Tr. 1818:16-23, July 18, 2014.

844. Representative Anchia, a Hispanic Democrat, worked with Ryan Downton to ensure that his district, District 103, maintained its benchmark SSVR levels and that District 104 did not retrogress. Test. of Ryan Downton, Trial Tr. 2017:18-22, July 19, 2014. Ryan Downton met with Representatives Anchia and Johnson, both Democrats, and Representatives Harper-Brown and Burkett to create the configurations of their districts in the 2011 House plan for Dallas County. Test. of Ryan Downton, Trial Tr. 2016:23-2017:7, July 19, 2014.

845. Representatives Lucio and Oliviera, both Hispanic Democrats, drew their own districts in Cameron County in the House plan. Test. of Gerardo Interiano, 1426:10-19 (Sept. 12, 2011).

846. Representative Richard Pena Raymond, a Hispanic Democrat, redrew his district in Webb County (District 42) and got two amendments passed on the floor. See DX-190\_00832.

847. The Legislature increased SSVR in District 90 and District 148 at the request of MALDEF and Representative Mike Villarreal, the Vice-Chairman of the House Redistricting Committee. Test. of Ryan Downton, Trial Tr. 929:19-930:10, Sept. 9, 2011; Test. of Gerardo Interiano, Trial Tr. 1431:7-20, Sept. 12, 2011.

848. Following the release of Plan H113, Luis Figueroa of MALDEF testified at the House Redistricting Committee's April 15, 2011 hearing, and requested that the Hispanic population needed to be increased in District 148. DX-595 (April 15, 2011 House Redistricting Committee Hearing Transcript) at 32:1-12, 34:9-13; Dep. of Jessica Farrar at 46:14-47:4, 47:13-48:16, March 4, 2014 (ECF No. 1092-2).

849. Rep. Burnam stated on the floor of the Texas House that the SSVR in District 90 was increased by removing the African-American community. See DX-190\_00685-689.

850. The floor debate on the House Plan was stopped for approximately three hours to address concerns of several African-American members in Harris County. During this time, the House Redistricting Committee and members of the Harris County delegation worked to make changes to the map to address the concerns of these members. An amendment offered by Representative Coleman that altered the House map was adopted unanimously by the House, without objection from any members of the Harris County delegation, as were amendments offered by Representative Senfronia Thompson and Representative Alma Allen. Test. of Trey Martinez-Fischer, Trial Tr. 159:10-16, Sept. 6, 2011; Test. of Ryan Downton, Trial Tr. 933:10-934:15, Sept. 9, 2011; Test. of Gerardo Interiano, Trial Tr. 1608:22-1609:6, 1610:9-13, July 18, 2014; Test. of Garnet Coleman, Trial Tr. 1336:2-6, July 17, 2014; Test. of Gerardo Interiano, Trial Tr. 1475:16-1476:10, Sept. 12, 2011; DX-190\_00805-806, 190\_00872.

851. Representative Alma Allen (African-American Democrat) inadvertently omitted her district office from her district, but got an amendment that put her district office put back in her district (District 131). Test. of Ryan Downton, 937:3-18, Sept. 9, 2011; DX-190\_00834.

852. The Senate Select Committee on Redistricting determined that the additional Hispanic opportunity district in Bexar County, as proposed by the Texas Latino Redistricting Task Force, was legally required. Plan C185 created a district based on the general concept of this

proposal from the Texas Latino Redistricting Task Force. Test. of Kel Seliger, Trial Tr. 276:6-12, Aug. 11, 2014.

853. Representatives Menendez and Villarreal (Hispanic Democrats) requested changes to District 35 to make it a more Bexar-County based district. Representative Menendez (Hispanic Democrat) asked for increased SSVR and certain landmarks in District 20, and these changes were made. Test. of Ryan Downton, Trial Tr. 1643:14-18, Aug. 15, 2014; DX-601 (June 2, 2011 House Redistricting Committee Hearing Transcript) at 23-34. Vice Chairman Villarreal specifically praised committee leadership for making these significant changes. Test. of Burt Solomons, Trial Tr. 1339:14-25, 1353:20-25, Aug. 14, 2014; DX-603.1 (June 14, 2011 House Journal Supplement) at S2.

854. Senators Eddie Lucio and Representative Rene Oliveira (Hispanic Democrats) requested that District 34 be anchored in Cameron County in order to secure an additional congressional seat based in the Rio Grande Valley. Test. of Ryan Downton, Trial Tr. 1022:15-18, Sept. 9, 2011; Test. of Todd Hunter, Trial Tr. 1076:17-1077:4, Aug. 14, 2014; Test. of Theodore Arrington, Trial Tr. 444:23-445:6, Aug. 12, 2014; DX-607 (Jan. 9, 2011 email containing article about Cameron County); Dep. of Rene Oliveira, at 63:6-10, 63:24-25, March 26, 2014 (ECF No. 1092-3).

### **C. Totality of the Circumstances**

855. There is no evidence that Hispanic and African-American voters lack equal access to the political process.

856. Out of 36 congressional districts, Plan C185 creates 8 reasonably compact Hispanic opportunity districts with at least 50% Hispanic citizen voting age population – roughly 22% of the total. Joint Exhibit J-8, Red 106 Report. Given that Hispanics make up 24.7% of Texas' citizen voting age population, Plan C185 achieves roughly proportional representation. See DX-2.

857. Plan C185 creates 3 African-American congressional districts with at least 37% black voting age population – roughly 8% of the total. Joint Exhibit J-8, Red 202 Report. Given that African-Americans make up 11.4% of the population in Texas, Plan C185 achieves roughly proportional representation. See Defendants' Answer to NAACP's Amended Complaint ¶ 16 (ECF No. 194).

858. In Texas, minority group members are elected to office in statewide as well as local and county contests. DX-28 (showing, for example, that the majority of county-wide elected officials in El Paso County are Hispanic); DX-65 (showing that both the Texas House and Senate have become more diverse racially and ethnically; percentage of Hispanics in the Texas House is at 20.7% and percentage of African-Americans rose to 12%; membership in the Texas Senate is 22.6% for Hispanics and 6.5% for African-Americans).

859. Texas sent 8 Hispanics and 3 African-Americans to represent it in the United States House of Representatives under the benchmark congressional plan.

860. Plaintiffs have failed to demonstrate that racially polarized voting in any Texas county is legally significant.



861. In the 2010 statewide election, Texas elected 17 African-Americans (two of whom were Republican) and 31 Hispanics to the Texas House, adding 6 Hispanic Republicans where there had been zero before. See DX\_000149-151, Plan H283, Red-350 Report.

862. There is no evidence that the State used voting practices or procedures that intended to enhance the opportunity for discrimination against the minority group. Instead, Plaintiffs' evidence only consisted of anecdotal accounts of discrimination by non-State actors or local officials. See, e.g., Joint Expert Exhibit E-12, Expert Report of Dr. Orville Vernon Burton at 60–63 (describing various instances of alleged voter suppression but conceding that they “were not officially sanctioned”).

863. Plaintiffs offered scant evidence, at best, of overt or subtle racial appeals in political campaigns. For instance, the NAACP Plaintiffs were able to direct this Court to one instance, in a Tarrant County state House campaign, where a candidate's facial characteristics were allegedly altered. Test. of Terrysa Guerra, Trial Tr. 1148:21-1149:10, Sept. 10, 2011. Yet, Plaintiffs failed to prove that such evidence constituted any evidence of racial undertones in the election process given that the very image they claimed was “race-based” was the same image displayed on the candidate's website. Test. of Terrysa Guerra, Trial Tr. 1153:11-1154:9, Sept. 10, 2011; DX-66. Moreover, none of the facial characteristics that were allegedly altered suggest that they are based on race. See, e.g., Declaration of Chris Turner ¶¶ 16-20 (Doc. 317.1).

864. There is no evidence that minority group members bear the effects of past discrimination in areas such as education, employment and health, which hinder their ability to participate effectively in the political process. Although Plaintiffs offered testimony showing that Hispanics have lower economic and educational attainment in comparison to non-minorities, they failed to show that these factors cause lower voting and participation in the political system. See, e.g., Test. of Jorge Chapa, Trial Tr. at 190:14-191:15, 192:1-5, Sept. 6, 2011; Test. of Andres Tijerina, Trial Tr. 597:4-6, Sept. 7, 2011. Further, Plaintiffs' experts testified that the discrimination against Hispanics that may have existed in the past, is not prevalent today. See Test. of Andres Tijerina, Trial Tr. 602:8-22, Sept. 7, 2011.

## CONCLUSIONS OF LAW

### **I. Section 2 of the Voting Rights Act**

1. Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, was intended to “effectuate the Fifteenth Amendment's guarantee that no citizen's right to vote shall be denied or abridged . . . on account of race, color, or previous condition of servitude.” *Voinovich v. Quilter*, 507 U.S. 146, 152 (1993) (citation omitted, emphasis added).

2. In order to show a section 2 violation, at a minimum, Plaintiffs must show that: (1) the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority group is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate. *Grome*, 507 U.S. 25, 40 (1993); *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986) (plurality). If these requirements are met, plaintiffs must then prove that under the “totality of the circumstances,” they do not possess the same opportunities to participate in the political process enjoyed by other

voters. *Id.*; see also *Bartlett v. Strickland*, 129 S.Ct. 1231, 1243(2009) (“In a § 2 case, only when a party has established the *Gingles* requirements does a court proceed to analyze whether the violation has occurred based on the totality of the circumstances.”).

3. A plaintiff claiming dilution in a single-member districting scheme must now show “the possibility of creating more *than the existing number of reasonably compact districts* with a sufficiently large population to elect candidates of its choice.” *Johnson v. De Grandy*, 512 U.S. 997, 1012-13 (1994).

4. Race-based redistricting under section 2 is “a remedial device[] . . . aptly described as the ‘politics of the second best.’” *De Grandy*, 512 U.S. at 1020 (citation omitted). Thus it is reserved for a serious, race-based harm. *Shaw v. Hunt*, 517 U.S. 899, 909 (1996) (*Shaw II*).

5. The Supreme Court has instructed that “the ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race,” *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994).

6. To prove their section 2 claims under even the *Gingles* plurality, Plaintiffs must first prove both the ability to draw an additional compact district in which a minority population could form a majority capable of controlling the result of the election and the existence of racially polarized voting. *Shaw II*, 517 U.S. at 916 n.8.

7. To satisfy *Gingles*, any proposed district must contain a majority of voting-age citizens. *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997); see also *Session v. Perry*, 298 F. Supp. 2d 451, 494 n.133 (E.D. Tex. 2004) (“This circuit, along with every other circuit to consider the question, has concluded that the relevant voting population for Latinos is citizen voting age population.”), *rev’d on other grounds sub nom. LULAC v. Perry*, 548 U.S. 399, 429 (2006) (commenting that using CVAP to determine Latino electoral opportunity “fits the language of § 2 because only eligible voters affect a group’s opportunity to elect candidates”).

8. A proposed *Gingles* district must be reasonably compact. *Vera*, 517 U.S. at 979.

9. Nothing in the text of section 2 can be read to compel protection of minority-supported coalitions defined solely by a common political party affiliation. See *Perry v. Perez*, 132 S. Ct. 934, 944 (2012) (per curiam) (“If the District Court did set out to create a minority coalition district, rather than drawing a district that simply reflected population growth, it had no basis for doing so.”); *Bartlett*, 129 S. Ct. at 1243 (2009) (“Nothing in section 2 grants special protection to a minority group’s right to form political coalitions.”).

10. To prove racially polarized voting under *Gingles*’ second and third preconditions, the Plaintiffs must produce more than statistics showing that different racial and ethnic groups tend to support different candidates. See *LULAC v. Clements*, 999 F.2d 831, 850 (5th Cir. 1993) (en banc).

11. To prove legally significant racially polarized voting, plaintiffs must prove that voting patterns are caused by race, not other factors such as party preference. *LULAC v. Clements*, 999 F.2d 831, 850 (5th Cir. 1993) (en banc) (“Unless the tendency among minorities and whites to support

different candidates, and the accompanying losses by minority groups at the polls, are somehow tied to race, . . . plaintiffs’ attempt to establish legally significant white bloc voting, and thus their vote dilution claim under § 2, must fail.”); *see also* *Uno v. City of Holyoke*, 72 F.3d 973 (1st Cir. 1995); *Nipper v. Smith*, 39 F.3d 1394 (11th Cir. 1994) (en banc).

12. The polarization cited in *LULAC v. Perry* to justify the *only* instance where the Court relied upon section 2 to overturn a single-member district was, as the Court described it, “severe: 92% of Latinos voted against [the Republican incumbent] . . . while 88% of non-Latinos voted for him.” 548 U.S. at 427.

13. Plaintiffs have not proven the existence of legally significant racially polarized voting. The evidence shows that voting patterns in Texas general elections are caused by party preference, not race.

#### A. Texas House of Representatives

14. Under Article III, § 26 of the Texas Constitution, electoral districts for the Texas House of Representatives must contain whole counties whenever possible. TEX. CONST. art. III, § 26. Where a county’s population is too great to form a single district but not great enough to form multiple districts wholly within the county, the “surplus” must be assigned to a single contiguous district. TEX. CONST. art. III, § 26 (“[F]or any surplus of population it may be joined in a Representative District with any other contiguous county or counties.”). Thus the county line rule permits counties to be divided between two districts, but only when necessary to comply with the Equal Protection Clause’s one-person, one-vote mandate. *See Smith v. Craddick*, 471 S.W.2d 375, 378 (Tex. 1971); *cf. Clements v. Valles*, 620 S.W.2d 112, 114 (Tex. 1981) (“[The] state constitution requires that a county constitute a separate district if the population of the county is slightly under or over the ideal population but within constitutional limits of variation.”).

15. The Texas county-line rule plainly qualifies as a traditional districting principle. *See, e.g., LULAC v. Perry*, 548 U.S. 399, 463 n.5 (2006) (observing that “traditional redistricting criteria” include “compactness” and “preserving county lines”).

16. Traditional redistricting principles cannot be subordinated to race without running afoul of the Fourteenth Amendment. *E.g., Hunt v. Cromartie*, 526 U.S. 541, 547 (1999) (explaining that “an impermissible racial motive” exists if “the legislature subordinated traditional race-neutral districting principles . . . to racial considerations”) (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)).

17. Plaintiffs have not proven that the Legislature’s failure to create an additional Latino opportunity district in Nueces County violates section 2. Plaintiffs offered no justification for their violations of the county-line rule other than the creation of an additional Latino-controlled district in Nueces, nor did they offer any evidence that the totality of circumstances in Nueces County could justify the creation of a remedial race-based district.

18. Creating a new district in Hidalgo and Cameron would have required the Legislature to violate the county-line rule in other parts of the State. Plaintiffs did not prove that racially polarized voting in Hidalgo and Cameron counties prevented Latino voters from electing their candidates of

choice, nor did they offer any evidence that the totality of circumstances required the State to create a remedial race-based district.

19. Plaintiffs have not proven vote dilution in El Paso in District 78 because there is no evidence that the configuration of District 78 in Plan H283 deprives any Latino voter in El Paso County of an equal opportunity to participate in the political process or elect candidates of their choice. Even if Plaintiffs could satisfy all three *Gingles* preconditions (which they cannot), they have failed to prove that the totality of the circumstances requires the State to restructure District 78 to unseat the incumbent.

20. Even if the Texas Constitution required the Legislature to draw 25 Harris County districts, Plaintiffs have not demonstrated that the addition of another district in Harris County would have resulted in an additional minority opportunity district.

21. Plaintiffs have not identified any additional African-American opportunity districts that could have been drawn in the House plan.

### **B. Texas Congressional Plan**

22. Plaintiffs have not demonstrated an ability to draw an additional, constitutionally permissible Latino or African-American opportunity congressional districts. As a result, Plaintiffs have failed to satisfy the first *Gingles* precondition.

23. Plaintiffs' proposed demonstration districts either fail to meet the 50% citizen voting age threshold or fail to meet minimum standards of reasonable compactness such that they would survive a *Shaw* claim.

24. The Voting Rights Act does not require the State or this Court to compensate for low Latino turnout. *See Salas v. Sw. Tex. Jr. Coll. Dist.*, 964 F.2d 1542, 1556 (5th Cir. 1992) (“Obviously, a protected class is not entitled to § 2 relief merely because it turns out in a lower percentage than whites to vote.”). For rates of turnout to be significant under section 2, the plaintiff must prove that low turnout is caused by official discrimination. *See id.* There is no evidence whatsoever that the varying levels of turnout in Congressional District 23 are caused by past official discrimination.

25. Congressional District 27 was drawn to serve legitimate redistricting principles. The reconfiguration of District 27 does not deprive any voter of an equal opportunity to participate in the political process.

### **A. Totality of the Circumstances**

26. Even if Plaintiffs could establish the three *Gingles* threshold factors, they cannot prove that under the totality of circumstances, Latino and African-American voters “have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice.” 42 U.S.C. § 1973(b).

27. A relevant consideration is whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant

area. *De Grandy*, 512 U.S. at 1000. Proportionality is examined on a statewide basis. *LULAC v. Perry*, 505 U.S. 399, 437 (2006).

28. The number of Latino- and African-American-opportunity districts in Plans C185 and H283 is roughly proportional the Latino citizen voting age population and the African-American citizen voting age population in Texas.

29. Plaintiffs have not met their burden of demonstrating voting in elections throughout the State is racially polarized. Plaintiffs did not prove that the State used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group. Plaintiffs failed to demonstrate that minority group members bear the effects of past discrimination in areas such as education, employment and health, which hinder their ability to participate effectively in the political process.

## II. Fourteenth Amendment Claims

### A. Intentional Vote Dilution

30. “[I]n order for the Equal Protection Clause to be violated, ‘the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose.’” *Rogers v. Lodge*, 458 U.S. 613, 617 (1982) (quoting *Washington v. Davis*, 426 U.S. 229, 240 (1976)); *see also Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979) (“[E]ven if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose.” (citing *Davis*, 426 U.S. 229; *Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252 (1977))).

31. To prove their claims of unconstitutional vote dilution, Plaintiffs must prove that (1) the Legislature enacted the challenged redistricting plans for a racially discriminatory purpose and (2) the plans had or will have a discriminatory effect. *E.g.*, *Backus v. South Carolina*, 857 F. Supp. 2d 553, 567 (D.S.C.) (“Viable vote dilution claims require proof that the districting scheme has a discriminatory effect and the legislature acted with a discriminatory purpose.”), *aff’d*, 133 S. Ct. 156 (2012); *cf. Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 337 (2000) (“At the time *Beer* was decided, it had not been established that discriminatory purpose as well as discriminatory effect was necessary for a constitutional violation, compare *White v. Regester*, 412 U.S. 755, 765-766 . . . (1973), with *Washington v. Davis*, 426 U.S. 229, 238-245 . . . (1976).”); *see also LULAC v. NE Ind. Sch. Dist.*, 903 F. Supp. 1071, 1093 (W.D. Tex. 1995) (“To prevail on their claim under the Fourteenth Amendment, plaintiffs must show: (1) intentional discrimination; and (2) a resultant discriminatory effect.”).

#### 1. Discriminatory Purpose

32. A law does not violate the Equal Protection Clause “simply because it may affect a greater proportion of one race than another,” *Rogers*, 458 U.S. at 618; it must be enacted for the specific purpose of disadvantaging individuals because of their membership in a minority group.

33. “Discriminatory purpose” . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action, at least in part “because of,” not merely “in spite of,” its adverse effects upon an identifiable

group. *Feeney*, 442 U.S. at 279 (citation and footnote omitted) (rejecting a claim of intentional gender-based discrimination under the Equal Protection Clause against a statutory hiring preference for veterans, over 98% of whom were male and only 1.8% of whom were female at the time of the complaint).

34. To establish a Fourteenth Amendment violation, Plaintiffs must prove that the Legislature acted because of race and not because of some other permissible factor.

## 2. Discriminatory Effect

35. Discriminatory purpose alone cannot establish a constitutional violation. *See Palmer v. Thompson*, 403 U.S. 217, 224 (1971) (“[N]o case in this Court has held that a legislative act may violate equal protection solely because of the motivations of the men who voted for it.”); *United States v. O’Brien*, 391 U.S. 367, 383 (1968) (citing the “familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive”).

36. A statute does not “deny to any person . . . the equal protection of the laws” if it has no effect on any person. *See* U.S. CONST. amend. XIV, § 1; *cf. id.* amend. I (“Congress shall make no law . . . .”); *id.* art. I, § 10, cl. 1 (“No State shall . . . pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.”).

37. Proof of discriminatory effect is necessary to prove a Fourteenth Amendment vote-dilution claim. *See, e.g., Shaw*, 509 U.S. at 641 (“[T]he Court held that [multimember or at-large] schemes violate the Fourteenth Amendment when they are adopted with a discriminatory purpose and have the effect of diluting minority voting strength.” (citing *Rogers*, 458 U.S. at 616–17; *Regester*, 412 U.S. at 765–66)).

## 3. Causation

38. A Fourteenth Amendment violation occurs only if racial discrimination is a cause-in-fact of the Legislature’s action. If the alleged racially discriminatory purpose was not necessary to the challenged legislative act, there has been no constitutional violation. *Arlington Heights*, 429 U.S. at 270 n.21 (citing *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977)); *see also Hartman v. Moore*, 547 U.S. 250, 260 (2006) (“[A]ction colored by some degree of bad motive does not amount to a constitutional tort if that action would have been taken anyway.”); *Texas v. Lesage*, 528 U.S. 18, 21 (1999) (per curiam) (“[W]here a plaintiff challenges a discrete governmental decision as being based on an impermissible criterion and it is undisputed that the government would have made the same decision regardless, there is no cognizable injury warranting relief under § 1983.”).

39. Under *Arlington Heights* and *Mt. Healthy*, if a plaintiff can prove that racial discrimination was “a ‘substantial’ or ‘motivating’ factor behind enactment of the law, the burden shifts to the law’s defenders to demonstrate that the law would have been enacted without this factor.” *Hunter v. Underwood*, 471 U.S. 222, 231 (1985) (holding that a statute denying the franchise to persons convicted of a “crime involving moral turpitude” violated the Equal Protection Clause where the State effectively conceded “both that discrimination against blacks was a motivating factor for the provision and that [it] would not have been adopted . . . in the absence of the racially discriminatory motivation”).

40. The evidence of an overriding partisan purpose in the creation and enactment of Plan C185 and Plan H283, together with the lack of evidence that any member of the Legislature acted for the purpose of diluting minority voting strength, establishes that racial discrimination was not necessary to the enactment of either plan. Racial discrimination was not a cause-in-fact of the creation or enactment of Plan C185 or Plan H283.

### **B. Unconstitutional Racial Classification**

41. In *Shaw v. Reno*, the Supreme Court held that a plaintiff can challenge “a reapportionment statute . . . by alleging that the legislation, though race-neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification.” 509 U.S. at 649.

42. The plaintiff’s burden is a “demanding one.” *Miller v. Johnson*, 515 U.S. 900, 928 (1995) (O’Connor, concurring). Strict scrutiny is not triggered by “the mere presence of race in the mix of decision making factors.” *Chen v. City of Houston*, 206 F.3d 502, 514 (5th Cir. 2000). “To invoke strict scrutiny, a plaintiff must show that the State has relied on race in substantial disregard of customary and traditional districting practices.” *Id.* at 506 (citing *Miller*, 515 U.S. at 928). To prevail on a *Shaw* claim, the plaintiff must prove that race was “the ‘predominant factor’ motivating the legislature’s districting decision.” *Hunt v. Cromartie*, 526 U.S. 541, 547 (1999).

### **C. Courts Must Exercise Caution in Determining That A Legislature Engaged in Intentional Vote Dilution or Made Unconstitutional Racial Classifications.**

43. The Constitution permits legislatures to draw district boundaries for a partisan purpose, even when those lines happen to diminish the electoral prospects of the party preferred by minority voters:

If the State’s goal is otherwise constitutional political gerrymandering, it is free to use . . . political data [such as] precinct general election voting patterns, . . . precinct primary voting patterns, . . . and legislators’ experience . . . to achieve that goal regardless of its awareness of its racial implications and regardless of the fact that it does so in the context of a majority-minority district.

*Bush v. Vera*, 517 U.S. 952, 968 (1996); *see also id.* at 1029 (Stevens, J., dissenting) (“While egregious political gerrymandering may not be particularly praiseworthy, . . . it may nonetheless provide the race-neutral explanation necessary for a State to avoid strict scrutiny . . .”).

44. Redistricting is an inherently partisan process; it involves the exercise of political judgment, and it has an inevitable political impact. *See, e.g., Miller*, 515 U.S. at 915–16 (“The courts, in assessing the sufficiency of a challenge to a districting plan, must be sensitive to the complex interplay of forces that enter a legislature’s redistricting calculus.”); *White v. Weiser*, 412 U.S. 783, 795–96 (1973) (“[R]eapportionment is a complicated process. Districting inevitably has sharp political impact and inevitably political decisions must be made by those charged with the task.”); *cf. Perry v. Perez*, 132 S. Ct. 934, 941 (2012) (per curiam) (“[E]xperience has shown the difficulty of defining neutral legal

principles in this area, for redistricting ordinarily involves criteria and standards that have been weighed and evaluated by the elected branches in the exercise of their political judgment.”).

45. Discriminatory purpose under the Fourteenth Amendment contemplates discrimination on the basis of race—not race neutral criteria such as political affiliation. *See Hunt v. Cromartie*, 526 U.S. 541, 551 (1999). Even if race and political affiliation overlap, redistricting on the basis of political affiliation will not equate to discriminatory purpose. *See id.*

46. The difficulty of distinguishing racial awareness from racial motivation, “together with the sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments, requires courts to exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race.” *Miller*, 515 U.S. at 916.

47. Because the difficulty of separating political and racial motivation increases when race overlaps with political preference, “[c]aution is especially appropriate . . . where the State has articulated a legitimate political explanation for its districting decision, and the voting population is one in which race and political affiliation are highly correlated.” *Easley v. Cromartie*, 532 U.S. 234, 242 (2001).

48. The evidence demonstrates that traditional redistricting principles, political considerations, and the legislature’s good faith understanding of its legal obligations dictated the creation of Plans C185 and H283.

49. The evidence is not sufficient to prove that the Texas Legislature adopted Plan H283 or Plan C185 “because of, . . . [their] adverse effects” on any racial or ethnic minority group. *Feeney*, 442 U.S. at 279.

#### **D. Texas House Plan**

50. The Legislature’s consistent, race-neutral application of the County Line Rule does not support claims of intentional vote dilution. There is no evidence that the County Line Rule was applied in an inconsistent or discriminatory manner.

51. The Legislature’s intent to comply with the Texas Constitution is not evidence of a racially discriminatory purpose. Nor did the County Line Rule have a discriminatory impact on minority voters.

52. There is nothing inherently impermissible about splitting precincts, and Texas law “expressly allows” the procedure. *Perez*, 132 S.Ct. at 944 (citing TEX. ELEC. CODE § 42.032).

53. Texas split precincts only for permissible reasons, among them: member requests for particular geographies, maintaining communities of interest, complying with the one-person-one-vote rule, and avoiding retrogression under section 5 of the Voting Rights Act.

54. House District 54 in Plan H283 was drawn for race-neutral reasons and without a racially discriminatory purpose.



55. Plan H283 did not have the effect of diluting any group's voting strength in Bell County. The evidence shows that it is not possible to create a single House district in or including the county in which African-American, Asian-American, or Latino voters make up a majority of the citizen voting age population.

56. House District 117 in Plan H283 was drawn for race-neutral reasons and without a racially discriminatory purpose.

57. The statement allegedly made by Representative John Garza does not support the conclusion that HD 117 or Plan H283 were drawn or enacted with a racially discriminatory purpose. *See United States v. O'Brien*, 391 U.S. 367, 384 (1968); *Florida v. United States*, 885 F. Supp. 2d 299, 354 (D.D.C. 2012) (per curiam) ("The purpose of a single legislator is normally too slim a reed upon which to rest a determination regarding the legislature as a whole.")

58. House District 117 in Plan H283 did not have and will not have a discriminatory effect on any voter. The district was never used to conduct an election, and it has now been repealed by the Legislature.

59. House districts in Dallas County were not drawn for a racially discriminatory purpose in Plan H283. To the extent mapdrawers relied on racial data, they did so only to the extent reasonably necessary to avoid retrogression.

60. House districts in Dallas County did not have a discriminatory effect on any voter as drawn in Plan H283. The evidence shows that it is not possible to create an additional House district in the county in which African-American or Latino voters make up the majority of citizen voting age population.

61. House District 78 was not drawn for a racially discriminatory purpose in Plan H283. To the extent mapdrawers relied on racial data, they did so only to the extent reasonably necessary to avoid retrogression.

62. House District 78 in Plan H283 did not have and will not have a discriminatory effect on any voter. The district was never used to conduct an election, and it has now been repealed by the Legislature.

63. House districts in Fort Bend County in Plan H283 were drawn for race-neutral reasons and without a racially discriminatory purpose.

64. House districts in Fort Bend County did not have a discriminatory effect on any voter as drawn in Plan H283. The evidence shows that it is not possible to create an additional House district in the county in which African-American or Latino voters make up the majority of citizen voting age population.

65. The Legislature applied the County Line Rule consistently with past practice in Harris County.

66. The elimination of HD 149 from Harris County did not result from a racially discriminatory purpose

67. The elimination of HD 149 from Harris County did not dilute the voting strength of any group or voter. The district was never used to conduct an election; Plan H283 has now been repealed by the Legislature; and HD 149 has been restored to Harris County.

68. House District 41 in Plan H283 was drawn for race-neutral reasons and without a racially discriminatory purpose.

69. House District 41 in Plan H283 did not have and will not have a discriminatory effect on any voter. The district was never used to conduct an election, and it has now been repealed by the Legislature.

70. There is no evidence that Lubbock County House districts in Plan H283 were drawn with a racially discriminatory purpose or that they diluted the voting strength of any group or voter.

71. There is no evidence that McLennan County House districts in Plan H283 were drawn with a racially discriminatory purpose or that they diluted the voting strength of any group or voter.

72. There is no evidence that House districts in Midland and Ector County in Plan H283 were drawn with a racially discriminatory purpose or that they diluted the voting strength of any group or voter.

73. Plaintiffs have not proven that Nueces County House districts in Plan H283 were drawn with a racially discriminatory purpose or that they diluted the voting strength of any group or voter.

74. There is no evidence that House districts in Tarrant County in Plan H283 were drawn with a racially discriminatory purpose or that they diluted the voting strength of any group or voter.

75. Plaintiffs have not proven that the Legislature's decision not to create a new House district using the surplus population of Hidalgo and Cameron County resulted from a racially discriminatory purpose.

76. Plaintiffs have not proven that the Legislature's decision not to create a new House district using the surplus population of Hidalgo and Cameron County diluted Latino voting strength or the voting strength of any voter. Under Plan H283, every district drawn wholly or partially in Hidalgo and Cameron County would have been a Latino opportunity district.

77. Plaintiffs have not proven that the Legislature's decision not to create a new House district using the surplus population of Hidalgo and Cameron County has had or will have a discriminatory effect because Plan H283 was never used to conduct an election, and the configuration of districts in Hidalgo and Cameron County has been altered by the Legislature.

### **E. Texas Congressional Plan**

78. Texas adopted the Congressional Plan with the lawful aim of protecting incumbents.

79. Texas is not required to draw new coalition districts. The alleged failure to create Democratic coalition districts cannot support Plaintiffs' intentional-vote-dilution claims because the absence of a coalition district does not dilute any group's voting strength.

80. The alleged removal of district offices, homes, and "economic engines" from congressional districts represented by African-American members of Congress does not support Plaintiffs' allegation of a racially discriminatory purpose. There is no evidence that African-American members of Congress were deliberately targeted, nor does the evidence support the allegation that only African-American members of Congress had offices and "economic engines" removed from their districts.

81. The alleged removal of district offices, homes, and "economic engines" from congressional districts represented by African-American members of Congress does not support Plaintiffs' claim of intentional vote dilution. The alleged removal of offices, businesses, and other landmarks from a congressional district has no effect on the ability of voters to elect their preferred candidates of choice.

82. The Legislature's alleged failure to reflect population growth in Plan C185 does not support Plaintiffs' claims of intentional racial discrimination. There is no legal duty to create a statewide congressional districting plan that reflects the racial distribution of intercensal population growth.

83. Plaintiffs have failed to prove an injury resulting from the Legislature's alleged failure to reflect population growth in Plan C185. No demonstration plan has created an additional reasonably compact congressional district with a Latino or African-American citizen voting age population majority.

84. Texas drew District 23 with the legitimate goal of protecting a Republican incumbent.

85. To the extent the Legislature considered race in the creation of CD 23, it did so only to maintain the benchmark SSVR and HCVAP levels, which was "reasonably necessary" to comply with the Voting Rights Act. *Vera*, 517 U.S. at 977-78.

86. Plaintiffs have not proven that the Legislature created or enacted CD 23 with a racially discriminatory purpose.

87. Congressional District 23 in Plan C185 did not have and will not have a discriminatory effect on any voter. The district was never used to conduct an election, and it has now been repealed by the Legislature.

88. Plaintiffs have not proven their claim that District 25 was created or enacted for a racially discriminatory purpose.

89. Plaintiffs have not proven that the alteration of District 25 had the effect of diluting the voting strength of any group or voter. In the benchmark plan, CD 25 was an Anglo CVAP-majority district best characterized as a so-called “crossover district.” Elimination or failure to create a crossover district does not dilute any person’s vote.

90. Elimination of a crossover district does not violate the Fourteenth Amendment unless the district is eliminated for the purpose of injuring racial- or language-minority voters. There is no evidence that the Legislature’s decision to alter CD 25 from its benchmark configuration was motivated, even in part, by a desire to harm African-American or Latino voters.

91. Plaintiffs have not proven that CD 27 in Plan C185 was created or enacted for the purpose of diluting Hispanic voting strength in Nueces County. The evidence shows that the district was created for the purpose of incumbent protection and, based on testimony from members of the public, to ensure that Nueces County and Cameron County each formed the anchor or seat of separate congressional districts.

92. Plaintiffs have not proven that CD 27 in Plan C185 has had the effect of diluting Hispanic voting strength in Hispanic County. Hispanic voters make up a near-majority of citizen voting age population in CD 27, and there is no evidence that the configuration of CD 27, alone or in combination with other factors, has the effect of canceling out Hispanic votes in the district.

93. Plaintiffs have not proven their claims that congressional districts in Dallas and Tarrant County under Plan C185 were enacted for the purpose of diluting minority voting strength.

94. Plaintiffs have not proven that the Legislature subordinated other redistricting principles to race in the creation or enactment of CD 12, CD 26, or any other congressional district in Dallas and Tarrant County under Plan C185. To the extent race was a factor in the creation of any district, the evidence does not show that it predominated over other considerations such as partisanship or maintaining political balance among the region’s congressional districts.

95. Plaintiffs have not proven that the configuration of congressional districts in Dallas and Tarrant County under Plan C185 resulted in vote dilution. The evidence shows that it is not possible to create an additional district in Dallas and/or Tarrant County in which African-American or Latino voters make up a majority of the citizen voting age population.

96. Plaintiffs have not proven that CD 12, CD 26, or CD 33, as configured in Plan C185, had the effect of diluting the voting strength of African-American or Latino voters in Tarrant County. There is no evidence that it is possible to create a congressional district in Tarrant County in which African-American or Latino voters make up a majority of the citizen voting age population.

97. Plaintiffs have not proven that CD 12, CD 26, or CD 33, as configured in Plan C185, had or will have the effect of diluting the voting strength of African-American or Latino voters in Tarrant County. The districts were never used to conduct an election, and they have been repealed by the Legislature.

### III. Fourteenth Amendment: One Person, One Vote

98. In a state legislative redistricting plan, a total deviation of less than 10% from strictly equal population is considered to be de minimis and consistent with the Constitution. *See, e.g., Brown v. Thomson*, 462 U.S. 835, 842-43 (1983) (“Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations.”).

99. “[F]or deviations below 10%, the state is entitled to a presumption that the apportionment plan was the result of an ‘honest and good faith effort to construct districts . . . as nearly of equal population as is practicable.’” *Daly v. Hunt*, 93 F.3d 1212, 1220 (4th Cir. 1996) (quoting *Reynolds v. Sims*, 377 U.S. 533, 577 (1964)).

100. Plan H283 is entitled to a presumption of good faith and compliance with the Equal Protection Clause because the total deviation does not exceed ten percent.

101. *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga.), *aff’d*, 542 U.S. 947 (2004), did not overturn the presumption of good faith accorded to state legislative districting plans with a total deviation below 10%.

102. To prevail on a one-person-one-vote claim under the Fourteenth Amendment, a plaintiff must prove “that the deviation in the plan results *solely* from the promotion of an unconstitutional or irrational state policy.” *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 365 (S.D.N.Y.), *aff’d*, 543 U.S. 997 (2004).

103. The record reveals no pattern of systematically overpopulating Democratic districts, nor does it indicate systematic overpopulation of either African-American or Hispanic opportunity districts.

104. Unlike the plans at issue in *Larios*, Plan H283 applies the policy of protecting incumbents in a consistent and neutral way to benefit Democrats and Republicans. Incumbent pairings in Plan H283 did not favor Republicans, of whom 8 (approximately 8%) were paired, nor did they disfavor Democrats, of whom only 2 (approximately 4%) were paired.

105. Plaintiffs have identified no policy or pattern of overpopulating certain districts to favor members of one party or residents of certain regions.

106. Population deviations in Plan H283 did not dilute voting strength in minority opportunity districts or in Democratic districts. The average number of eligible voters in Democratic-leaning districts is lower than the average number of eligible voters in Republican-leaning districts. *See Rodriguez v. Pataki*, 308 F. Supp. 2d at 369-70.

107. *Larios* does not provide authority for a one-person-one-vote claim directed at a single county.

108. Even if Plaintiffs could state a one-person-one-vote claim against districts in a single county, they cannot prevail on their claim with respect to Hidalgo County. Under Plan H283, HD 41 had the lowest population of the five House districts wholly or partially in Hidalgo County; however, HD 41 had the highest CVAP of all five Hidalgo County House districts, and its VAP would have ranked third out of five.

109. The deviation in total district population among the Hidalgo County districts would not have diluted the voting strength of residents of districts other than HD 41.

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