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

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

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

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

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

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

SUPPLEMENTAL BRIEF OF QUESADA PLAINTIFFS ON IMPACT OF SUPREME COURT'S *ALABAMA* DECISION

The Margarita Quesada Plaintiffs (hereafter, "Quesada Plaintiffs or "Plaintiffs") respectfully submit this supplemental brief in response to this Court's Order of March 25, 2015 (Doc. 1301). In that Order, this three-judge Court directed the Plaintiffs to "identify[ ] the districts for which they are asserting *Shaw*/racial gerrymandering claims and discuss how the Supreme Court's recent opinion in *Alabama Legislative Black Caucus v. Alabama* affects those claims[.]" Plaintiffs were also instructed to "notify the Court whether they believe the Supreme Court's opinion has any effect on any other claims in this litigation" and whether "further factual development might be needed" in this case as a result of the Alabama decision.[1]

ARGUMENT

The Supreme Court's decision in *Alabama Legislative Black Caucus v. Alabama* (hereafter, "Alabama case" or "Alabama redistricting case") does impact one of the claims that the Quesada Plaintiffs have made in this case. In their challenge to the 2011 congressional redistricting plan (C185), the Quesada Plaintiffs identified certain districts as unconstitutional racial gerrymanders. *See* Quesada Plaintiffs' First Amended Complaint at Count 3, ¶62, alleging

[1] The Quesada Plaintiffs, who are challenging only the State's congressional redistricting plan, do not believe that further factual development or further evidentiary hearings are needed with respect to the redistricting plan enacted in 2011 (C185).

that certain districts in the State's congressional plan were "racial gerrymanders, drawn with excessive and unjustified use of race and racial data." The evidence developed in this case (at the 2011 and 2014 trials) show that the following districts are unconstitutional racial gerrymanders: Districts 6, 12, 23, 26, 27, 30, and 33.

To understand how the Alabama decision impacts this case, it is important to review what claims were made in that case, and what the decision of the Supreme Court said with respect to those claims.

The Alabama Case

The Alabama case was a challenge to state legislative districts drawn by the Alabama Legislature after the 2010 census. The plan drawn by the Alabama Legislature contained the same number of majority-minority Senate districts and one additional majority-minority House district compared to the benchmark plan. Alabama legislative leaders instructed their map-drawer not only to maintain at least the same number of majority-minority districts in the Senate and House plans, but also to maintain at least the same percentage of African-American voters in each majority-minority district. Alabama officials claimed that their plan was drawn in this manner to avoid violating the retrogression principle under Section 5 of the Voting Rights Act.

Because the population declined particularly precipitously in majority-black districts in Alabama between 2000 and 2010, the majority-African-American districts were the most underpopulated of all the districts, meaning that many voters had to be shifted into these districts to comply with the equipopulation (one-person, one-vote) requirements of the Fourteenth Amendment. The result of the instructions to maintain the same number of majority-minority

districts and to maintain the same percentages of African American voters led to the assignment of many more African Americans into these majority-minority districts. [2]

Black voters, legislators and groups in Alabama filed suit challenging the post-2010 redistricting plan, alleging that the plan diluted minority strength under Section 2 of the Voting Rights Act, and that the plan was an unconstitutional racial and political gerrymander. Following a bench trial, "the District Court held (2 to 1) that the Caucus and the Conference had failed to prove their racial gerrymandering claims." *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. ___, Nos. 13-895 & 13-1138, slip op. at 4 (2015) [hereinafter "Supreme Court Alabama Decision"]. On review, the Supreme Court noted probable jurisdiction with respect to the racial gerrymandering claims. 572 U. S. ___ (2014).

The Supreme Court vacated the three-judge court's decision and remanded the case for further proceedings. Writing for the Court majority, Justice Breyer observed that "[a] racial gerrymandering claim […] applies to the boundaries of individual districts. It applies district-by-district." Supreme Court Alabama Decision, slip op. at 6. The Court further explained:

> We have consistently described a claim of racial gerrymandering as a claim that race was improperly used in the drawing of the boundaries of one or more *specific electoral districts*. See, *e.g.*, *Shaw I*, 509 U. S., at 649 (violation consists of 'separat[ing] voters *into different districts* on the basis of race' (emphasis added)); *Vera*, 517 U. S., at 965 (principal opinion) ('[Courts] must scrutinize *each challenged district* . . .' (emphasis added)). We have described the plaintiff's evidentiary burden similarly. See *Miller [v. Johnson]*, *supra*, at 916 (plaintiff must show that 'race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without *a particular district*' (emphasis added))."

Id.

[2] The upshot of these changes was that the majority African-American districts were packed with additional African-American voters—the state's most reliable Democratic voters—so African Americans were packed into fewer districts. This had the effect of 'bleaching' adjoining districts of African-American voters, thereby strengthening Republican voting power in non-majority-minority legislative districts throughout the state.

The Supreme Court found that Plaintiffs had "presented much evidence at trial to show that that the legislature had deliberately moved black voters into […] majority-minority districts—again, a specific set of districts—in order to prevent the percentage of minority voters in each district from declining." *Id.*, slip op. at 9. The Court also recognized that "the plaintiffs relied heavily upon statewide evidence to prove that race predominated in the drawing of individual district lines," and the Court said "[s]uch evidence is perfectly relevant." *Id.*

In the *Alabama* case, the Court also noted that even if some districts are not racially gerrymandered, other districts may still be found to have been drawn as unconstitutional racial gerrymanders. The Court put it this way: "A showing that race-based criteria did not significantly affect the drawing of *some* Alabama districts, however, would have done little to defeat a claim that race-based criteria predominantly affected the drawing of *other* Alabama districts, such as Alabama's majority-minority districts primarily at issue here." *Id.*, slip op. at 7.

The District Court in the Alabama case "held in the alternative that the claims of racial gerrymandering must fail because '[r]ace was not the predominant motivating factor' in the creation of any of the challenged districts." *Alabama Legislative Black Caucus v. Alabama*, 989 F. Supp. 2d. 1227, 1293 (M.D. Ala. 2013). The Supreme Court held that "the District Court did not properly calculate 'predominance.'" Supreme Court Alabama Decision, slip op. at 15. The Court explained the burden of proof that plaintiffs must shoulder in order to prove that race predominated the drawing of a district in a racial gerrymandering case:

> A plaintiff pursuing a racial gerrymandering claim must show that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller*, 515 U. S., at 916. To do so, the "plaintiff must prove that the legislature subordinated *traditional race-neutral districting principles* . . . to racial considerations." *Ibid*. (emphasis added).
>
> * * *

> "[P]redominance" in the context of a racial gerrymandering claim is special. It is […] whether the legislature 'placed' race 'above traditional districting considerations in determining *which* persons were placed *in appropriately apportioned districts*.' (citation omitted). In other words, if the legislature must place 1,000 or so additional voters in a particular district in order to achieve an equal population goal, the 'predominance' question concerns *which* voters the legislature decides to choose, and specifically whether the legislature predominately uses race as opposed to other, 'traditional' factors when doing so.

Id., slip op. at 16-17.

Application of the Alabama Decision to This Case

All of the Plaintiffs in this case have brought claims of intentional racial vote dilution, alleging that the congressional districts are unconstitutional and violative of Section 2 of the Voting Rights Act. Those claims are analytically distinct from racial gerrymandering claims, such as those at issue in *Shaw v. Reno* and the recent Alabama case. To prevail on their intentional vote dilution claims, Plaintiffs need only show that racial discrimination was a factor in the State's redistricting, not that it was the sole or even the predominant purpose. Thus, even if this Court were to determine that race did not predominate in the configuration of certain congressional districts, the evidence in this record still supports a decision that Texas engaged in intentional vote dilution.

Plaintiffs in this case have proven their case of intentional discrimination. They have produced direct and circumstantial evidence that Texas acted with discriminatory intent in enacting the 2011 Congressional plan. This evidence of intentional discrimination amply supports findings of unconstitutional vote dilution and minority vote dilution under Section 2 of the Voting Rights Act. A substantial amount of that evidence also supports a finding of unconstitutional racial gerrymandering because it demonstrates that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller v. Johnson*, 515 U.S. 900, 916 (1995); *see also* Supreme Court Alabama Decision, slip op. at 6.

To prevail on the racial gerrymandering claims, the Quesada plaintiffs must show that race predominated in the assignment of voters to districts. The Alabama decision impacts those claims in two important ways.

First, the Plaintiffs in this case have presented strong evidence that intentional discrimination was a primary factor in how Defendants configured the congressional districts. Some of that evidence of intentional discrimination is statewide or affects the plan as a whole. For example, there is substantial evidence that: the 2011 redistricting process was racially exclusionary and discriminatory; the Defendants intentionally harmed Latino voters when they redrew Congressional District 23 and eliminated it as an effective Latino opportunity district; the Legislature activated race and ethnicity shading in drawing the plans and assigned voters to certain districts based on race or ethnicity; and Defendants, fully aware that minority population fueled approximately 90% of the growth of Texas between 2000 and 2010, nevertheless failed to create any new effective opportunity districts for African-American and Latino voters in the 2011 map. To the extent Plaintiffs in this case have presented statewide evidence of intentional discrimination by the State of Texas or evidence showing the plan as a whole has been infected by intentional discrimination, such evidence is "perfectly relevant" to "prove that race predominated in the drawing of individual district lines". *Id.*, slip op. at 9.[3]

Second, there is considerable evidence that in drawing the boundaries of certain congressional districts, the Texas map-drawers predominantly relied upon race in the "decision to place a significant number of voters within or without a particular district. *Miller*, 515 U. S., at 916." *Id.*, slip op. at 16. In so doing, traditional non-racial redistricting principles were trumped by these predominant racial considerations.

[3] As used in this filing, the term "race" refers to African-Americans and to Latinos/Hispanics.

In earlier filings by the Quesada Plaintiffs, we have detailed the evidence that establishes the Defendants' racially discriminatory intent with respect to Plan C185. *See, e.g.*, Quesada Plaintiffs' Bench Brief Summarizing Arguments, August 21, 2014 (Doc. 1234). That filing detailed: the racially exclusionary and discriminatory process of drawing Plan C185 (pp. 2-6); how, despite the dramatic population growth among Latinos and African Americans, Plan C185 added five new Anglo-controlled districts and no new minority opportunity districts (pp. 6-8); and how minority voters in four key areas of the State (CD 23, Dallas-Tarrant Counties, Nueces County, and Travis County) were the victims of intentional discrimination by the State (pp. 8-14).

In light of the Alabama decision, we have reviewed the record and set forth below evidence that establishes how race predominated in the drawing of certain congressional districts (Districts 6, 12, 23, 26, 27, 30 and 33). Where the evidence of predominantly assigning population based on race relates to a specific district, we have identified the specific congressional district that such evidence relates to, in keeping with guidance from the Alabama decision to relate evidence of racial gerrymandering claims "to the boundaries of individual districts." Supreme Court Alabama Decision, slip op. at 6.

The evidence of racial gerrymandering includes email exchanges among those responsible for drawing the maps discussing how they would assign voters on the basis of race or ethnicity into districts so as to intentionally diminish minority voting strength. It also includes statements made by key redistricting players (in emails, in depositions, and at trial) that were focused on race or ethnicity. Another source of evidence is the numerous voting precincts that were split along racial/ethnic lines in drawing certain congressional districts. Because the State's congressional map-drawer (Downton)

acknowledged that maintaining communities of interest was a traditional redistricting principle (see Trial Tr. 1754:10-1755:8 (2014)), splitting communities of interest and dividing precincts along racial lines shows that the State's enacted congressional plan "placed" race "above traditional districting considerations in determining *which* persons were placed *in appropriately apportioned districts*." Supreme Court Alabama Decision, slip op. at 6.[4]

Another source of evidence that demonstrates that certain congressional districts are the result of racial gerrymanders is the unusual shape of the districts. For example, the bizarre shape of the districts in the Tarrant and Dallas Counties region interlock like a jigsaw puzzle, divide minority communities, contain numerous split precincts along racial lines, and lead to the inescapable conclusion that race predominated in the creation of those districts. As explained *infra*, traditional redistricting principles, such as keeping communities of interest intact, were subordinated to race in the creation of those districts.

The evidence we detail below conclusively shows that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Id.*, slip. op. at 6.

Racially gerrymandered CD's 23 and 27:

Emails between map drawers, legislative staff, and political operatives establish direct evidence of intentional discrimination with respect to drawing certain districts, particularly CD 23 and CD 27. What they reflect is a conceived plan to redraw a majority Hispanic congressional district in such a way as to give the false impression that Hispanic voters would retain their effective opportunity to elect their preferred candidates even

[4] These categories and some of the evidence discussed herein are taken directly from the United States' Post-Trial Brief and Findings of Fact, filed October 30, 2014 (Doc. Nos. 1278 and 1279).

though the district would actually be controlled by Anglo voters. Thus, when Eric Opiela and Gerardo Interiano both served on the staff of House Speaker Joe Straus, Opiela suggested that Interiano focus on Hispanic turnout when crafting districts to maintain the superficial appearance of minority population majorities while minimizing actual minority electoral opportunity. US Ex. 75 (Email, Nov. 19, 2010). According to Opiela, "[i]t also would be good to calculate Spanish Surname Turnout/Total Turnout ratio for the 2006-2010 General Elections for all VTDs (I already have the data for this for 2006-2008 in a spreadsheet, just need to gather it for every VTD for 2010)." *Id.* Opiela added: "These metrics would be useful in identifying a 'nudge factor' by which one can analyze which census blocks, when added to a particular district (especially 50+1 minority majority districts) 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. This is especially valuable in shoring up Canseco and Farenthold." *See id.*[5] Such evidence shows powerfully that the decision to dismantle, eliminate or weaken Districts 23 (Canseco) and District 27 (Farenthold) were predominantly race driven.

Opiela, Interiano and Downton worked together to craft the redistricting maps that ultimately were enacted and are the subject of these lawsuits. Opiela visited the redistricting and legislative office. Trial Tr. 314:21-316:7(2014) (Interiano). He displayed maps to Interiano and Downton on his laptop. Trial Tr. 1728:12-23 (2014) (Downton). Interiano and Downton worked together on redistricting plans in the same office on the second floor of the State Capitol building. Trial Tr. 314:25-315:10 (2014) (Interiano). Interiano communicated frequently with Opiela to receive the views of Republican

[5] Interiano explained that in this email "Pop" stands for population, "RV" stands for registered voters, and "TO" stands for turnout. Trial Tr. 1536:15-1537:22 (2011) (Interiano).

members of the congressional delegation. *Id*. at 297:21-298:4. During the redistricting process, Opiela also used a 13.9-gigabyte database containing all registered voters, coded by census block, including Spanish surname designations and 10 years of individual voter turnout records. US Ex. 149 (Email, Nov. 22, 2010); Trial Tr. 1490:2-1493:16 (2011) (Interiano); Trial Tr. 298:20-299:21 (2014) (Interiano). This trio of map drawers thus had the data and software to assign voters on the basis of race and Spanish surname to certain districts, and they did so.

In these and other emails, Opiela and Interiano discuss maintaining the Hispanic citizen-voting age population ("HCVAP") in certain 2011 Congressional districts at the same level as in the existing 2006 Congressional districts by using voter turnout data to swap blocks or precincts with lower Hispanic turnout for those with higher Hispanic turnout. US Ex. 75 (Email, Nov. 19, 2010). Interiano admitted that "with regard to the nudge factor e-mail, there was never any doubt . . . that Mr. Opiela was trying to draw districts that would appear to be Latino opportunity districts because their demographic benchmarks were above a certain level but would elect a candidate who was not the Hispanic candidate of choice." Trial Tr. 375:19-25 (2014) (Interiano).

The map drawers predominantly used race as a proxy for partisanship, and they assumed that excluding politically active Hispanic voters was equivalent to excluding politically active Democratic voters.[6] Texas's Redistricting Application software, known as "RedAppl," has shading features that allow a map to be shaded by race or ethnicity. For example, if a map drawer wants to know all of the census blocks in which black voting

[6] In the Alabama redistricting case, the State argued that its motive in assigning African-American voters to districts was political not racial, because African-American voters were the most reliable Democratic voters. The Supreme Court did not accept the political justification in Alabama for the assignment of voters by race and neither should this Court.

age population ("VAP") is greater than 75 percent in Dallas County, he or she could turn on racial shading in RedAppl to obtain that information. Trial Tr. 760:3-12, 763:13-764:22 (2014) (Dyer).

When the map drawers combined the race-based turnout data, which Interiano and Opiela requested and received from the TLC, with racial population figures, they were able to create a block-level estimate of the number of Hispanic and non-Hispanic voters who turned out in a given election from a single census block. *See* Trial Tr. 375:19-25, (2014) (Interiano); US Ex. 76 (Email, Nov. 20, 2010). With this information, they were able to determine the level of Hispanic turnout in each census block and include (low turnout) or exclude (high turnout) Hispanic voters accordingly. *Id.*; Trial Tr. 258:19-260:24 (2014) (Dyer); Trial Tr. 396:4-25 (2014) (Arrington).

The nudge factor was needed only in those districts where state officials had to maintain the appearance of complying with the Voting Rights Act by keeping the demographic numbers roughly equal to those in the benchmark plan (C100) while at the same time making it more difficult for Hispanic voters to elect their candidate of choice in those same districts in the 2011 Congressional Plan.

The record is clear that the map drawers predominantly relied on race in crafting CD 23. Mr. Interiano admitted as much in his 2011 trial testimony when he acknowledged he redrew CD 23 to achieve the twin goals of maintaining or increasing Hispanic demographic percentages while providing an opportunity for the incumbent (Canseco) to be reelected. Trial Tr. 1454:23-1455:3 (2011); Ex. J-61, Vol.1, 102:5-11). Similarly, another of the principal map drawers (Mr. Downton), admitted that he too made changes to CD 23 to protect the incumbent who he knew was not the candidate of choice

of Latino voters. Trial Tr. 952:3-13; 966:3-5 (2011). There was also testimony that in crafting CD 23, the map drawer (Downton) used the software's racial features (SSVR) so he could see the racial impact of every change he made to the district as he swapped out voting precincts. Trial Tr. 954:4-8 (Downton) (2011); Ex. J-62-I at 56:15-57:8; Ex. J-62-I at 41:15-17; Trial Tr. 1454:23-1455:3 (Interiano) (2011); Ex. J-61-I, at 102:5-11.

Moreover, the map drawers' reliance on race was so substantial that they overrode traditional, nonracial redistricting principles. For example, Mr. Downton admitted that keeping communities of interest together was a traditional redistricting principle. His split of the communities of interest Maverick County and Eagle Pass was inconsistent with traditional redistricting criteria. Trial Tr. 1754:10-1755:8 (2014).

The emails and other evidence in the record provide further direct evidence of intentional discrimination, as well as evidence of how race/ethnicity drove the creation of certain congressional districts. Redistricting decision-makers thought and spoke in terms of race. For example, one email from Opiela describes his plan to protect the newly elected incumbents in CD 23 and CD 27 by adding "Anglo voters" to those districts and then, in the case of CD 23, adding enough low-turnout Hispanic areas of Bexar County to ensure its majority-minority population status. *Id*. at 1-2; *see* US Ex. 761 (CD 23 Election Analyses). Opiela refers to "Anglo voters" as the solution to his political problem not just once, but four times in a single paragraph. US Ex. 76 at 2 (Email, Nov. 20, 2010); Trial Tr. 343:1-348:1 (2014) (Interiano).

Regarding CD 23, Opiela explained that the better and more secretive way to harm Latino voters was to remove high turnout Latino precincts and replace them with low turnout precincts, because if you instead simply added Anglo voters to the district, that

would "put a neon sign telling the court to redraw [the district]." US. Ex. 629 (Email, May 30, 2011); US Ex. 352 ¶ 185 (Oct. 2011 Arrington Rep.); Trial Tr. 398:3-25 (2014) (Arrington).

Racially gerrymandered CD 27:

Because of the Voting Rights Act, Nueces County had been oriented southward in a congressional district for a third of a century. Trial Tr. 1212 (Korbel) (2014). In benchmark CD27 (Plan C100), CD 27 was 69.2% Latino VAP during the 2000-2010 decade. Rod. Exh. 929, 6th page. Its Latino CVAP was 63.8% (using 2005-2009 ACS tabulation) or 65.9% (using 2008-2012 ACS tabulation). Rod. Exh. 930. It was a Latino opportunity district. Trial Tr. 229 (K. Seliger) (2014).

When Congressman Farenthold was elected from CD27 in 2010, efforts began to protect him by trying to find Anglo voters to add to his congressional district. U.S. Exh. 690. House Redistricting Committee Chairman Solomons and Downton adopted a northward strategy; Solomons instructed that Nueces County would be oriented northward. Trial Tr. 1773 (Downton) (2014). Moving Nueces County northward meant eliminating one of the available alternatives for creating a new Latino opportunity district. *Id.* at 1774 (Downton).

By pushing CD 27 northward, the district intentionally grabbed Anglo population. Nueces County is the only county in the district with more than 50% Latino VAP. Rod. Exh. 938, 6th page. The addition of hundreds of thousands of Anglos into CD 27 adversely impacted Latinos in Nueces County: they have gone from being in a district with about 65% Latino CVAP to being in a district that has dropped to 43.0% Latino CVAP. Rod. Exh. 939, 3rd page (2008-2012 ACS survey). This single shift from one district to another greatly reduced the opportunity of the sizable Hispanic population in

Nueces County to elect candidates of their choice. Joint Exhibit 15 (Ansolabehere 2011 Rep. at 27). CD27 has gone from a performing or effective Latino opportunity district to an Anglo-controlled district. Rod. Exh. 907 at 33 (Ansolabehere Rep.).

The evidence reveals an overriding use of race in creating CD 23 and CD 27. It shows that any other traditional redistricting principles that may have been considered were subordinated to race in redrawing these two congressional districts. The evidence also contradicts the state's assertion that partisan politics, not race, predominantly drove the creation of the districts. To the extent that key redistricting participants conceived of partisan politics, they did so in distinctly racial/ethnic terms. In this sense, this case resembles the Alabama case where the State also argued its purpose was political, but the Supreme Court did not accept that explanation.

Splitting voting tabulation districts (also known as "VTDs" or "precincts") provides further evidence that the map-drawers predominantly relied on race in drawing districts in the 2011 map. When Texas split precincts, the only accurate statistical data available to guide boundaries were population data and racial composition; no political information was available to divide these precincts. Texas's redistricting application "RedAppl" provided population and race data at the census block level, which is typically a much smaller unit than a precinct. Trial Tr. 760:3-12, 763:13-764:22 (2014) (Dyer). Although RedAppl allocates election data to the census block level, that allocation is not accurate. Trial Tr. 396:4-397:22 (2014) (Arrington). RedAppl applies election results homogenously throughout a precinct. In other words, RedAppl assumes that the percentage of the vote received by a candidate in a particular census block within a precinct is identical to the percentage that the candidate received in the precinct as a

whole. Trial Tr. 785:11-787:9, Aug. 13, 2014 (Dyer); Trial Tr. 265:22-266:24(2014) (Dyer). Therefore, when Texas split precincts, it had no accurate way to determine the electoral performance of the census blocks within those precincts. Trial Tr. 128:9-129:5 (2014) (Arrington). Texas map drawers knew of this limitation in RedAppl. Trial Tr. 257:25-259:22 (2014) (Dyer).

Texas split an extraordinarily large number of precincts when it drew the 2011 congressional plan: 518 precincts. Trial Tr. 409:2-7 (2014) (Arrington); US Ex. 699 (RED-381, Plan C185); US Ex. 352 ¶165 & tbl.19 (Oct. 2011 Arrington Rep.). In some instances, the map drawers admitted that they relied on racial data in deciding whether and how to split precincts. Map drawers diluted minority voting strength in DFW by violating traditional redistricting principles—cracking minority communities and splitting precincts. Instead of allowing an additional minority opportunity district to occur naturally within the compact minority communities in the DFW Metroplex, the map drawers with scalpel-like precision "sliced and diced" much of the minority population among four Anglo-controlled Congressional districts—CD 6, CD 12, CD 26, and CD 33. US Ex. 674 (HRC Shapefiles, Part I); US Ex. 675 (HRC Shapefiles, Part II); US Ex. 711 at 1, 3-8 (Plan Packet, C185); US Ex. 704 (RED-110, Plan C185); Trial Tr. 690:18-691:2 (2011) (Korbel). To accomplish this, Ryan Downton, one of the two principal map drawers of the congressional plan (the other being Opiela), split a number of precincts in minority communities. Trial Tr. 690:18-691:2 (2011) (Korbel); US Ex. 704 (RED-110, Plan C185); Quesada Ex. 73 at 3-4 (Neighborhood Fractures Map); US Ex. 607 (Article, June 14, 2011).

Racially gerrymandered CDs 6, 12, 24, 30 and 33:

In Tarrant County, there is overwhelming evidence showing that the minority community was severely cracked and intentionally so. According to the U.S.'s expert witness Dr. Arrington, the cracking of the minority population here blocked the potential creation of a multi-racial majority-minority district. US Ex. 352 ¶28. Dr. Arrington added: "The line drawers intentionally divided the minority community in Tarrant County among four Congressional Districts (6, 12, 24, and 33), thereby preventing the Black and Hispanic population from being a majority in any one Congressional district in the County. Particularly egregious in this configuration is a 'lightning bolt' that extends down from the majority Anglo Denton County-based Congressional District 26 into Tarrant County. The lightning bolt extension divides 38 precincts to pick up two large majority Hispanic communities of interest and submerges that population into the majority Anglo district. The precision with which these precinct splits pick up these Hispanic communities is unexplainable on grounds other than race because partisan data was not available to guide these splits. The emails cited in the supplemental declaration (appendices 3 and 5) reinforce that this cracking intentionally diminished minority voting opportunities." US Ex. 352 ¶28.

Although the United States has not asserted a racial gerrymandering claim in this case under *Shaw v. Reno* or the recent Alabama redistricting case, its expert (Dr. Arrington) provided compelling evidence that the precinct splits in Dallas and Tarrant and Harris counties were evidence of classic racial gerrymanders. Dr. Arrington put it this way:

> There is no County Line Rule for Congressional districts. The presence of that Rule in the Texas Constitution suggests that Texas takes the community of interest in counties seriously. Avoiding county splits is one of the most frequently cited traditional districting principles. Yet all three of these major urban counties were sliced up in bizarre fashion in order to crack minority communities. This is a clear example of failure to follow traditional districting principles to the detriment of minority voters. As a political scientist I regard that as evidence of a traditional racial gerrymander designed to dilute minority voting strength.

US Ex. 352 ¶¶ 77-80, 100-03 & tbl.11, 164-73 & tbl.21 (Oct. 2011 Arrington Rep.); Trial Tr. 128:9-129:5, July 14, 2014 (Arrington).

Racially gerrymandered CD 6:

CD 6 is anchored in Ellis and Navarro Counties, both are majority Anglo, with Anglos making up 69.7 percent of the VAP in Ellis County and 65.1 percent of the VAP in Navarro County. US Ex. 711 at 1, 3 (Plan Packet, C185). CD 6 had a combined Black and Hispanic voting-age population (BHCVAP) of 38.6 percent, with most of the minority population located in Dallas County. US Ex. 711 at 1, 3 (Plan Packet, C185); US Ex 697 at 1 (RED-106, Plan C185). In the 2011 plan (C185), a "finger" reaches up from majority Anglo Ellis and Navarro Counties to take in large concentrations of African-American and Hispanic population from Dallas and Tarrant Counties. US Ex. 711 at 1, 3 (Plan Packet, C185); Trial Tr. 1129:9-1130:14 (2011) (Ansolabehere).

The boundaries of CD 6 under Plan C185 split 39 precincts. US Ex. 699 at 2 (RED-381, Plan C185). These splits disproportionately affect majority minority precincts—28 of the 39 precinct splits are majority minority precincts. *Id.* The configuration of CD 6 fractured minority communities of interest and diluted the voting strength of African-American and Hispanic voters along the border of Tarrant and Dallas

counties. Trial Tr. 1129:9-1130:14 (2011) (Ansolabehere); Quesada Ex. 73 at 3-4 (Neighborhood Fractures Map). The boundary between CD6 and CD30 in Southwest Dallas County particularly illustrates how state map drawers carefully added precincts with large African-American populations to CD 30 while excluding precincts with fewer African-American residents, thus fencing in African-Americans within CD 30 and separating voters on the basis of race. Trial Tr. 688:12 – 25 (2014)(Congresswoman Johnson).

Racially gerrymandered CD 12:

CD 12 is located entirely within Tarrant County and has a combine black and Hispanic CVAP (BHCVAP) of 28.1 percent. US Ex. 711 at 1, 4 (Plan Packet, C185); US Ex 697 at 1 (RED-106, Plan C185). The boundaries of CD 12 split 53 precincts to combine a majority of northern and western Tarrant County's suburban Anglo population with southeast Fort Worth, which is made up of several inner-city, low-income communities that are predominantly African-American. US Ex. 699 at 4-5 (RED-381, Plan C185); US Ex. 711 at 1, 4 (Plan Packet, C185). Quesada Ex. 73 at 3-4 (Neighborhood Fractures Map); US Ex. 704 at 74-82 (RED-110, Plan C185); US Ex. 607 (Article, June 14, 2011). CD 12 in the 2011 Plan divided minority communities of interest in Tarrant County. Quesada Ex. 73 at 3-4 (Neighborhood Fractures Map). Placing the minority population of southeast Fort Worth into a district that is anchored by the Anglo communities in northern and western Tarrant County nullifies the voting strength of the minority population.

Mr. Downton testified that in May 2011, Mr. Interiano instructed him to unite the Fort Worth African-American population into one congressional district. Trial Tr., 1618:6-1618:18 (2014). Mr. Downton further testified that he used racial shading in REDAPPL as

a proxy for communities of interest because he did not know Fort Worth at all. Trial Tr. 1618:19-1620:1, 1621:17-1622:17 (2014). Mr. Downton testified that while mapping FortWorth in REDAPPL, he turned on the racial shading for black population and put all the areas of more concentrated black population into District 12. He then looked at the Hispanic population and saw two distinct Hispanic communities—one in north Fort Worth and the other in south Fort Worth—and kept each of those communities together in separate districts. (Aug. 2014 Day 5 Tr., 1621:17-1622:13, Aug. 15, 2014). On May 28, 2011, Mr. Downton wrote an email to Gerardo Interiano and Doug Davis stating, "Changes made to keep the Black population together in District 12." US Ex. 630.

Mr. Downton's assignment of African Americans to CD12 and assignment of north and south Fort Worth Latinos to separate congressional districts was incorporated into C125, the Solomons-Seliger Statewide redistricting plan released on May 31, 2011. Trial Tr. 1621:17-1622:9 (2014) (Downton); DEF Ex. 506. On June 9, 2011, for the statewide committee substitute by Chairman Solomons– C149 – Mr. Downton again used racial shading to assign both north and south Ft. Worth Latinos to CD26. Trial Tr., 1623:17-1626:4 (2014) (Downton).[7]

Racially gerrymandered CD 26:

CD 26 in the 2011 Plan C185 was anchored in rural, majority-Anglo Denton County. US Ex. 711 at 1, 7 (Plan Packet, C185); *see also* US Ex. 755 (Map, Plan C185).

[7] The result of Texas's separating the minority communities among the various Anglo-controlled districts in North Texas was that minority voters were deprived of new congressional districts in the DFW region, despite the explosive population growth of African-Americans and Latinos there between 2000 and 2010. So the impact on minority voters was not only the injury they suffered when they were assigned to congressional districts on account of their race, but also when their racial assignment to Anglo-controlled districts deprived them of the opportunity to be in one or two new congressional districts in North Texas where they could elect their preferred candidate to Congress.

Anglos make up 67.5 percent of the VAP in Denton County. *Id*. CD 26 had a combined BHCVAP of 22 percent, most of which came from Tarrant County. US Ex. 711 at 1, 7 (Plan Packet, C185); US Ex 697 at 1 (RED-106, Plan C185). The largely Denton County-based congressional district strikes downward in a "lightning bolt" to take in two significant minority communities of interest in Tarrant County—Near North Side and Southeast Fort Worth. Quesada Ex. 73 at 3-4 (Neighborhood Fractures Map). Near North Side and Southeast Fort Worth are two urban, low-income, majority minority communities in Fort Worth. US Ex. 711 at 7 (Plan Packet, C185); Trial Tr. 1188:22-1189:9 (2014) (Moss); Trial Tr. 1130:9-25 (2011) (Ansolabehere); Trial Tr. 664:22-666:12 (2011) (Korbel).

Race was used to split precincts in CD 26 in the 2011 Plan. Trial Tr. 1710:9-20, Aug. 15, 2014 (Downton). The boundary of CD 26 divided 49 precincts, and 38 of these splits were located within the "lightning bolt" in Tarrant County. US Ex. 699 at 10-11 (RED-381, Plan C185); US Ex. 612 (Precinct Splits CD 26). The precinct splits pulled Hispanic population from Near North Side and Southeast Fort Worth into CD 26 while the non-Hispanic population was split out. Trial Tr. 409:8-410:18 (2014) (Arrington); US Ex. 352 ¶¶ 147, 190, tbls.16, 17, maps 7, 8 (Oct. 2011 Arrington Rep.); US Ex. 698 at 5 (RED-236, Plan C185); US Ex. 704 at 182-88 (RED-110, Plan C185).

In the benchmark congressional plan, C100, CD 26 dropped down from Denton County and made an incursion into Tarrant County. US Ex. 710 at 1 (Plan Packet, C100). However, that incursion did not pick up primarily Hispanic population like the incursion in the 2011 Plan C185. Trial Tr. 942:6-943:6, Sept. 9, 2011 (Downton). Downton testified that when he drew the CD 26 incursion, he was trying to keep the Hispanic population together, but he admitted that the

Hispanic population in CD 26 might not want to be included in a district based primarily in Denton County. Trial Tr. 1710:9-20, Aug. 15, 2014 (Downton). He also admitted that he had no personal knowledge to guide him in splitting the VTDs in CD 26, and that he simply used racial data to guide the splits. *Id.* The boundary between CD 26 and CD 12 at the eastern boundary of the "lightning bolt" divided minority communities of interest according to race. Trial Tr. 1710:9-20, Aug. 15, 2014 (Downton). Thus, the assignment of population to those two congressional districts was based on racial data, not political data. *Id.*; Quesada Ex. 73 at 3-4 (Neighborhood Fractures Map).

Mr. Downton testified that he assigned Latinos from north and south Fort Worth Latinos to CD26 because he read "on a blog" that they were a community of interest. Trial Tr. 1623:17-1626:4; 1627:18-1629:3 (2014). Mr. Downton also testified that originally he had assigned the predominantly African-American precinct of Como to CD26 where they would be combined with Latinos in a configuration similar to HD90 in the House plan. Mr. Downton testified that he later removed Como from CD26 and "put it with the black community in District 12." *Id.* These were clearly assignments based on race.

Racially gerrymandered and packed CD 30:

Under benchmark plan C100, CD 30 was a district in which African-American voters had an effective opportunity to elect a candidate of their choice. The 2011 Plan packed a large concentration of Dallas County's minority population into CD 30, which is represented by U.S. Representative Eddie Bernice Johnson. Trial Tr. 1272:19-1273:2, 1276:2-20 (2011) (Johnson); Trial Tr. 407:1-408:6 (2014) (Arrington). Packing occurs when a substantial minority population is added to a district where the minority community can already elect its candidates of choice, thus reducing the opportunity to create additional minority districts. Trial Tr. 1899:14-21 (2014) (Alford).

CD 30 had a black voting-age population (BVAP) of 42.5 percent under the benchmark plan C100. US Ex. 710 at 7, 10 (Plan Packet, C100). In the 2011 Plan, the total Black VAP in CD 30 was increased to 46.5 percent; and the combined black and Hispanic VAP was increased from 76.7% to 81.5%--an increase of 4.8%. US Ex. 711 at 7, 10 (Plan Packet, C185); US Ex 697 at 1 (RED-106, Plan C185). *Compare* US Ex. 710 at 7 (Plan Packet, C100), *with* US Ex. 711 at 7 (Plan Packet, C185). This excessive concentration of African-American and Hispanic population was not necessary for minorities to elect their candidate of choice in CD 30, Trial Tr. 1042:15-17 (2011) (Murray), and thus served only to further suppress and submerge minority voting strength in the DFW area. US Ex. 352 ¶ 149 (Oct. 2011 Arrington Rep.); Trial Tr. 1276:2-20 (2011) (Johnson); Trial Tr. 1281:12-15 (2013) (Rep. Eddie Bernice Johnson, describing packing of CD 30).

The following chart shows that in redrawing already performing CD 30, Texas packed and assigned more minorities to CD 30. The map drawers removed over 25,000 Anglos, added over 12,000 African Americans, and increased the black voting age population by 4%.

CD30	VAP	%Anglo VAP	Anglo VAP	%Black VAP	Black VAP
C185*	489,944	16.6%	81,552	46.5%	227,675
C100**	507,409	21.1%	107,229	42.5%	215,548
Net +/-	**-17,465**	**-4.5%**	**-25,677**	**4.0%**	**12,127**

Source: * Texas Legislative Council - http://gis1.tlc.state.tx.us/download/Congress/PLANC185r100.pdf

Source: ** Texas Legislative Council - http://gis1.tlc.state.tx.us/download/Congress/PLANC100r100.pdf

Racially gerrymandered CD 33:

Under plan C185, CD33 is an Anglo-controlled district anchored in Parker County, west of Tarrant. Quesada Exhs. 294 (at 4) and 340. CD 33, one of the State's newly apportioned congressional districts in the 2011 Plan, encompasses all of Parker County and parts of Wise County. US Ex. 711 at 1, 8 (Plan Packet, C185). Anglos make up 85.3 percent of the population in Parker County and 78.7 percent of the VAP in Wise County. *Id.* at 8. The district protrudes eastward into Tarrant County from Parker County and absorbs the growing African-American neighborhoods in southwest Fort Worth (Meadow Creek), and then extends narrowly eastward across the county to absorb growing African-American and Latino neighborhoods in Arlington. Quesada Exhibits 73, 294 (at 4), and 340. As it winds through Tarrant County, the district splits 10 precincts and fractures minority communities of interest in the City of Arlington, which has one of the fastest growing minority populations in Tarrant County, and subordinates their voting strength to that of the majority-Anglo electorate in Parker and Wise Counties. US Ex. 699 at 4-5 (RED-381, Plan C185); US Ex. 711 at 8 (Plan Packet, C185).

It was possible to create another minority opportunity congressional district in the DFW Metroplex. Trial Tr. 407:1-9 (2014) (Arrington); US Ex. 653 (L. Smith Proposal); US Ex. 674 (HRC Shapefiles, Part I); Ex. 675 (HRC Shapefiles, Part II); US Ex. 602 (Article, Apr. 7, 2011); US Ex. 606 (Article, June 9, 2011). The configuration of congressional districts in the DFW Metroplex in the 2011 Plan, which intentionally cracked the minority population, is evidence of discriminatory intent. Trial Tr. 407:1-408:6 (2014) (Arrington).

The bizarre shape of CDs 6, 12, 24, 30 and 33:

District shape is one of the principal categories of evidence upon which courts have relied in determining the role that race played in redistricting. The Supreme Court opinions in the racial gerrymandering cases are replete with descriptions of "finger-like extensions," "serpentine district[s]," "narrow and bizarrely shaped tentacles," "hook-like shape[s]," "spindly legs," and "ruffled feathers," to name just a few. As the Supreme Court explained in *Shaw v. Reno* itself, "reapportionment is one area in which appearances *do* matter."[8] A "bizarre" or "irregular" shape, however, in conjunction with certain racial and population-density data, may be "persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines."[9]

The congressional districts that intrude into Tarrant and Dallas County are bizarre in shape. District 6 protrudes into both Dallas and Tarrant Counties in a highly unusual manner. Its incursion into Tarrant resembles a Lego robot on its back and its protrusion into the western part of Dallas County looks like a highly jagged monster with open jaws that appear ready to gobble up the City of Dallas. District 12, though entirely within Tarrant County, is a horseshoe-shaped district that encompasses and surrounds the bizarre and highly jagged lightning bolt of District 26 that juts into Tarrant County from Denton County to the north.

The jagged and bizarre shape of these districts are so highly irregular that, on their face, they "rationally cannot be understood as anything other than an effort to 'segregat[e]. . . voters' on the basis of race." *Shaw v. Reno*, 509 U.S. 630, 646-647 (1993) (citing *Gomillion v. Lightfoot*, 364 U.S. 339 (1960)). Districts in the Dallas and Tarrant region

[8] *Shaw v. Reno*, 509 U.S. 630, 647 (1993).
[9] *Miller v. Johnson*, *supra*, 515 U.S. at 913.

were drawn at the census block level (by splitting precincts), and the result is that the boundary lines of Districts 6, 12, 23, 24, 30 and 33 "interlock 'like a jigsaw puzzle,'" "correlate almost perfectly with race," and are "unexplainable on grounds other than racial quotas established for those districts." *Bush v. Vera*, 517 U.S. 952, 961-64, 966-67, 972-76 (1996) (plurality opinion).

CONCLUSION

For the reasons set forth above, this Court should find that the following congressional districts are unconstitutional racial gerrymanders: 6, 12, 23, 26, 27, 30 and 33.

DATED: April 20, 2015

Respectfully submitted,

GERALD H. GOLDSTEIN
Goldstein, Goldstein and Hilley
310 S. St. Mary's Street
29th Floor Tower Life Bldg.
San Antonio, Texas78205
Phone: (210) 852-2858
Fax: (210) 226-8367

/s/ J. Gerald Hebert
J. GERALD HEBERT
Admitted *pro hac vice*
191 Somerville Street, #405
Alexandria, VA 22304
Telephone: 703-628-4673
Email: hebert@voterlaw.com

PAUL M. SMITH
D.C. Bar #358870
MICHAEL B. DESANCTIS
D.C. Bar #460961
JESSICA RING AMUNSON
D.C. Bar #497223
Jenner & Block LLP
1099 New York Ave., N.W.
Washington, D.C.20001
Tel: (202) 639-6000

Certificate of Service

I hereby certify that on this 20th day of April 2015, I served a copy of the foregoing Supplemental Brief on all counsel who are registered to receive NEFs through this Court's CM/ECF system. All attorneys who are not registered to receive NEFs have been served via email or first-class mail.

/s/ J. Gerald Hebert
J. Gerald Hebert