

UNITED STATES DISTRICT COURT
DISTRICT OF DISTRICT OF COLUMBIA

STATE OF TEXAS,

Plaintiff,

- against -

UNITED STATES OF AMERICA and ERIC H.
HOLDER, JR. in his official capacity as Attorney
General of the United States,

Defendants.

CIVIL ACTION NO. 1:11-cv-01303

Three-Judge panel: RMC-TBG-BAH

**RESPONSE OF TEXAS LATINO REDISTRICTING TASK FORCE
TO GONZALES INTERVENORS' BRIEF
REGARDING CONGRESSIONAL DISTRICT 25**

Defendant Intervenor Texas Latino Redistricting Task Force (the "Latino Task Force") respectfully submits the following Response to the Gonzales¹ Intervenor's Brief Regarding Congressional District 25:

INTRODUCTION

The recent briefs of the Gonzales Intervenor focus on a remedy for presumed violations of the Voting Rights Act.² However, any remedial congressional plan is in the hands of the Texas federal court. With respect to proof of ability to elect under section 5 of the Voting Rights Act, the Gonzales Intervenor has introduced no evidence showing that CD 25 is anything other

¹ Although counsel for the Gonzales Intervenor has spelled its client's name in various ways (compare "Gonzalez" in Mot. to Intervene and Answer, Dkt. 14, 14-1, 14-2, and 14-3, to "Gonzales" in Post Trial Br., Dkt. 204), the Task Force will use "Gonzales" in the hope that the latter filings are correct.

² See Resp. of Certain Def.-Intervenors to the Texas Latino Redistricting Task Force's Br. Relating to Congressional District 25 [hereinafter "Resp. of Certain Def.-Intervenors"] at 2-4, Dkt. 221 (referring to the court multiple times to proposed maps offered in *Perez v. Perry*, No. 5:11-cv-00360 (W.D. Tex. 2012)).

than an Anglo majority district in which Anglo voter preferences drive the outcome of both the Primary and the General Election.³

Nevertheless, the Gonzales Intervenors challenge as illegal any district configuration that disturbs the boundaries of benchmark CD 25. The *Perez* court noted that the Gonzales Intervenors' counsel attacked a new Latino-majority district as unconstitutional, explaining in its recent order on the congressional redistricting plan that "Certain Plaintiffs, but primarily the Rodriguez Plaintiffs, contend that 35 is an impermissible racial gerrymander[.]" *See Perez v. Perry* Order (on C235) Dkt. 691 at 41-42.¹ Because CD 25 is not an ability to elect district, shifting the majority of its Travis County Latino and African American voters into a majority-minority district does not violate section 5.

ARGUMENT

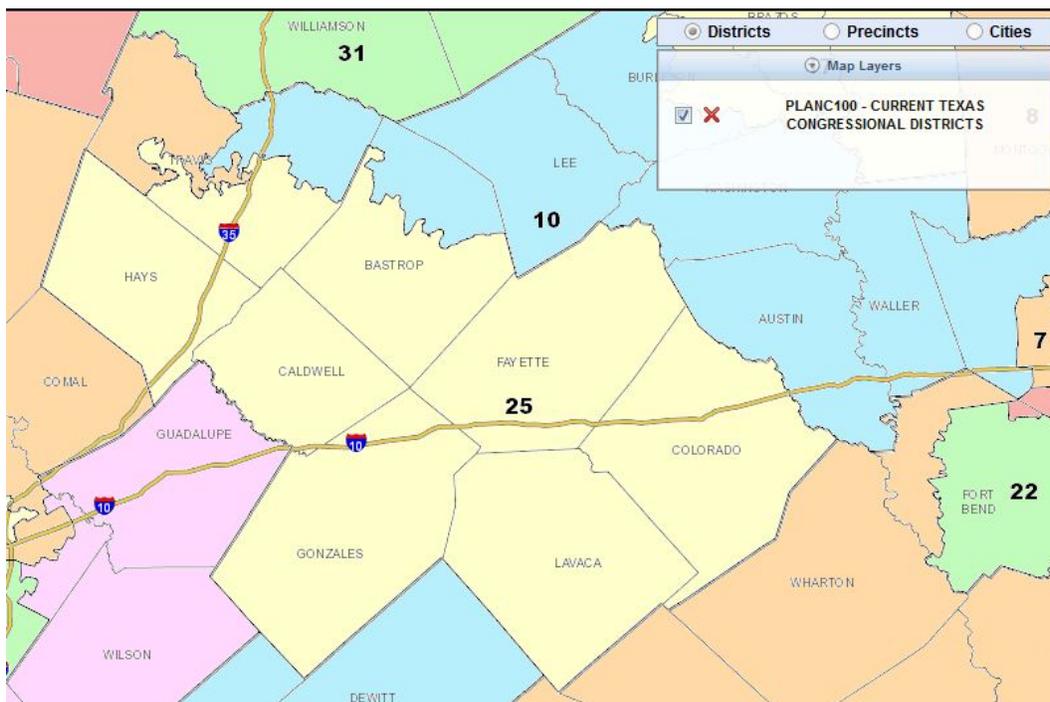
The Gonzales Intervenors do not dispute that CD 25 is an Anglo majority district and the Latino Task Force will not re-argue here the points made in Part II of its earlier brief.⁴ However, the Latino Task Force would like to address particular errors in the Gonzales Intervenors' characterization of its evidence and interpretation of section 5 of the Voting Rights Act.

³ The Gonzales Intervenors criticize the Latino Task Force for never previously "suggesting to the Court that CD 25 was not a minority-ability district[.]" Resp. of Certain Def. Intervenors at 3, Dkt. 221. The Gonzales Intervenors are correct in this assertion, and yet they miss the point. Precisely because CD 25 is not a Latino ability to elect district, the Latino Task Force did not count the district in its section 5 analysis and did not include a discussion of CD 25 in the Latino Task Force presentation. *See* Latino Task Force's Corrected Mem. of P. & A. in Opp'n to Pl.'s Mot. for Summ. J. at 12, Dkt. 85-2 ("The parties agree that the benchmark plan has seven congressional districts in which Latinos possess the ability to elect their candidates of choice: 15, 16, 20, 23, 27, 28, and 29."). However, after counsel for the Gonzales Intervenors argued to the *Perez* court that CD 35, a new Latino opportunity district, was precluded by the requirement to maintain the current boundaries of CD 25, the Task Force was forced to defend against this assertion by pointing out that CD 25 is an Anglo-majority district in which Latino voters lack the ability to elect their candidate of choice.

⁴ *See* Latino Task Force Resp. to the Ct.'s Order of March 6, 2012 at 6, Dkt. 219.

I. The Gonzales Intervenors Rely on Analysis of Travis County Elections, not Benchmark CD 25 Elections

Benchmark CD 25 is comprised of seven *whole* counties, plus a *portion* of Travis County.⁵



Screenshot of CD 25 in benchmark plan C100, Texas Legislative Council, *available at* <http://gis1.tlc.state.tx.us/>.

These seven counties in benchmark CD 25 include: Hays, Bastrop, Caldwell, Gonzales, Fayette, Lavaca and Colorado counties. Any analysis of voting patterns in CD 25 must examine the votes cast in precincts in benchmark CD 25, not a subset of precincts contained in benchmark CD 25, and not precincts outside benchmark CD 25.

⁵ See Latino Task Force Resp. to the Ct.’s Order of March 6, 2012 at 7, Dkt. 219.

A. The Electorate of Travis County is Different From the Electorate of Benchmark CD 25

In their briefing and expert reports, the Gonzales Intervenors focus almost exclusively on voting patterns in Travis County.⁶ This is incorrect for two reasons. First, only a portion of Travis County lies within the boundaries of benchmark CD 25. Travis County is larger than a congressional district and, in the benchmark plan, Travis County is divided into three congressional districts. The total population of Travis County is 1,024,266.⁷ By contrast, only 486,125 Travis County residents live in benchmark CD 25.⁸

Because most of Travis County's population, and voters, are located outside benchmark CD 25, Travis County election returns are primarily based on the votes cast by voters living *outside* benchmark CD 25. It is incorrect to base conclusions about minority ability to elect on analysis of votes cast outside benchmark CD 25.

⁶ See, e.g. Jan. 16, 2012 Rebuttal Report (of Dr. Ansolabehere) to the Supplemental Expert Report of Dr. John Alford [hereinafter "Jan. 16, 2012 Rebuttal Report of Dr. Ansolabehere"] at 23, Dkt. 155-3 ("I analyzed the Democratic Congressional primary elections for CD 25 *in Travis County*." (emphasis added)); *id.* at 45 (limiting analysis to Travis County). Dr. Murray bases his even more restrictive analysis on eight heavily-minority precincts in Travis County. March 13, 2012 Report of Dr. Richard Murray at 4-5, Dkt. 218-1. This methodology, known as homogenous precinct analysis, is outmoded and no longer employed by political scientists because it does not give a complete picture of minority voting patterns in the area of analysis. See Lisa Handley, *Vote Dilution: Measuring Voting Patterns by Race/Ethnicity*, NATIONAL CONFERENCE OF STATE LEGISLATURES, National Redistricting Seminar Highlights: Measuring Minority Vote Dilution (January 2011), <http://redistrictingonline.org/sancsl2011mvdtalk.html> (last visited March 27, 2012) ("Homogeneous Precinct Analysis: The simplest and least rigorous method requires identifying voting precincts comprised of at least 90% of one particular race. . . This method is not useful for areas that have no or too few homogeneous precincts to compare. Also, the voting precincts involved in homogeneous precinct analysis are often not a representative sample of voters."); Bruce M. Clarke & Robert Timothy Reagan, *Redistricting Litigation: An Overview of Legal, Statistical, and Case-Management Issues*, FEDERAL JUDICIAL CENTER (2002) at 54, <http://www.scribd.com/doc/8763913/3/A-Homogeneous-Precinct-Analysis> (last visited March 27, 2012) ("In contrast, the more racially mixed precincts there are, the less conclusive homogeneous precinct analysis can be."); BERNARD GROFMAN ET AL., *MINORITY REPRESENTATION AND THE QUEST FOR VOTING EQUALITY* 88-89 (Cambridge University Press 1992), available at <http://books.google.com> (last visited March 27, 2012) ("The principal disadvantages [of homogeneous precinct analysis] are that it may not always be possible to use it because of the absence of sufficiently homogeneous precincts and it does not use all the data that are available.").

⁷ Census 2010 Texas Population Data Tables, PX75 at 1.

⁸ Congressional Benchmark C100 Statewide Map and RED100, RED106, RED109, RED202, RED315 reports, PX11 at 7.

Second, most of benchmark CD 25 is located outside of Travis County. Hays, Bastrop, Caldwell, Gonzales, Fayette, Lavaca and Colorado counties constitute the bulk of benchmark CD 25's geography. Any analysis of CD 25 elections must include the behavior of voters living in these seven counties in benchmark CD 25. It is incorrect to base conclusions about minority ability to elect in CD 25 on analysis of only a subset of the votes cast in benchmark CD 25.

Nevertheless, the Gonzales Intervenors rely on the election behavior of Travis County voters to present conclusions about primary elections in benchmark CD 25. *See, e.g.*, Jan. 16, 2012 Rebuttal Report of Dr. Ansolabehere at 19-20, Dkt. 155-3 ("I performed this analysis only for the Democratic primaries in Travis County[.]"); *see also id.* at 45 (limiting analysis to Travis County).⁹

The Gonzales Intervenors go so far as to criticize the Latino Task Force for looking at elections in CD 25 as opposed to elections held only in Travis County: "the Task Force completely disregards the dozens of primaries in Travis County in which the minority-preferred candidates have been elected[.]" Supplemental Br. of Certain Def.-Intervenors on Congressional District 25 at 8, Dkt 217. However, whether or not minority-preferred candidates are successful in Travis County primaries simply does not answer the question whether Latinos or other minority voters *in CD 25* have the ability to nominate and elect their candidate of choice.

B. The Gonzales Intervenors Rely on Analysis of Precincts far Outside of Benchmark CD 25

In 2003, the Texas Legislature created a version of CD 25 that stretched 300 miles from Travis County to the U.S. Mexico Border. *See* DX0431 at 80. The U.S. Supreme Court in *LULAC v. Perry*, 548 U.S. 399, 435 (2006), concluded that this version of CD 25 was not

⁹ Dr. Murray similarly restricts his analysis to elections held in Travis County. *See* March 13, 2012 Report of Dr. Richard Murray at 3, Dkt. 218-1 (limiting primary election analysis to Travis County); *id.* at 4 (limiting analysis to "Data from the Travis County Clerk's office").

elections in the 2004 version of CD 25 would be the same as if those elections were held in benchmark CD 25.

Nevertheless, the Gonzales Intervenors rely on the outcome of the 2004 Democratic Primary in the very different configuration of CD 25 to argue that Latinos can nominate their preferred candidate in benchmark CD 25.¹⁰ In that election, the incumbent Lloyd Doggett defeated a Latina opponent who ran against him from the Rio Grande Valley. The Gonzales Intervenors declare that Lloyd Doggett was the Latino preferred candidate in that version of CD 25 but provide no analysis showing that the majority of Latinos in the district preferred Mr. Doggett. *See* Jan. 16, 2012 Rebuttal Report of Dr. Ansolabehere at 23, Dkt. 155-3 (limiting analysis of the 2004 Democratic congressional Primary to Travis County election returns). The differences in geography and electorate (and the fact that we don't know which candidate was preferred by the majority of Latino voters in the district as a whole) make it impossible to rely on the 2004 CD 25 congressional Primary election to determine whether *benchmark* CD 25 offers Latinos the opportunity to nominate and elect their preferred candidate.

II. None of the Evidence Offered by the Gonzales Intervenors Addresses the Question Whether Anglo Voters Dominate the Democratic Primary in Benchmark CD 25

There have been nine racially-contested Democratic Primary statewide elections in Texas since 2002 that can be used to evaluate whether Latino voters in benchmark CD 25 have the ability to nominate their candidate of choice to run in the General Election. *See* Ex. 2 to Latino Task Force's Resp. to the Ct.'s Order of March 6, 2012, Dkt. 219-2. The Gonzales Intervenors offer no analysis of these nine elections in benchmark CD 25.

¹⁰ Dr. Murray similarly relies on the results of the Democratic Primary election in the 2004 configuration of CD 25 to form conclusions about minority ability to elect, despite his recognition that CD 25 in 2004 was "a different configured district." March 13, 2012 Report of Dr. Richard Murray at 3, Dkt. 218-1.

Instead, the Gonzales Intervenors limit their discussion, and their analysis, to Travis County. By producing evidence related only to Travis County, the Gonzales Intervenors fail to provide any evidence of minority ability to elect in benchmark CD 25. By contrast, the evidence in the record related to benchmark CD 25 demonstrates that Anglos dominate the Democratic Primary.¹¹ *See* Ex. 2 to Latino Task Force’s Resp. to the Ct.’s Order of March 6, 2012, Dkt. 219-2; Congressional Benchmark C100 Statewide RPVA Analysis, PX24 at 582-83; Latino Task Force’s Resp. to the Ct.’s Order of March 6, 2012 at Part IV, Dkt. 219.

The Gonzales Intervenors also contend that because of an “established principle that general elections are highly relevant to determining minority-ability districts,” the Court must dismiss the evidence that Anglos dominate the Democratic Primary in CD 25 and thus Latino voters lack the ability to nominate their candidate of choice.¹² However, in relying on *Lewis v. Alamanace Cnty., N.C.*, 99 F.3d 600 (4th Cir. 1996), the Gonzales Intervenors fail to recognize that the case actually supports the Latino Task Force’s position about the importance of considering *both* general and primary elections. *See* Supplemental Brief, Dkt. 217 at 4. The court explained in *Lewis*:

The statute thus requires that minorities have an equal opportunity to participate not only in primary elections but also in general elections. From this, we believe it follows that the results in these two phases of the single election cycle must be

¹¹ The NAACP Intervenors address a different point, which is whether they approve of Congressman Lloyd Doggett as a congressman. Relying on legislative scorecards from the NAACP, the NAACP Intervenors argue that Congressman Doggett’s voting record demonstrates that he is the “candidate of choice of minority voters in the district.” Advisory of Def.-Intervenors Texas NAACP, et al. on Congressional District 25 at 2, Dkt. 218. However, the assertion that Congressman Doggett addresses “issues of concern to minority voters,” and the associated suggestion that Mr. Doggett’s representation is “good enough” for minority voters, does not answer the question whether minority voters have the ability to elect a candidate of their own choosing. *Id.*

¹² Resp. of Certain Def.-Intervenors at 5, Dkt. 221; *see* Latino Task Force Resp. to the Ct.’s Order of March 6, 2012 at 10-14, Dkt. 219. Dr. Murray similarly describes the General Election as the “effective” election in CD 25. March 13, 2012 Report of Dr. Richard Murray at 1-2; Dkt. 218-1. However Dr. Murray never addresses whether the Latino choice can be vetoed in the Primary Election. The elimination of minority-preferred candidates in Primary Elections is a familiar concept in the field of political science.

separately considered and analyzed, and, in recognition of this statutory requirement, that *Gingles*' third precondition can be satisfied by proof that, in either the primary or the general election, the minority-preferred candidate is usually defeated by white bloc voting. Not to separately consider primary and general elections risks masking regular defeat in one of these phases with repeated successes in the other, and thereby misperceiving a process that is palpably in violation of the Voting Rights Act, as not violative of the Act at all.

99 F.3d at 617.

A recent district court decision in the Wisconsin redistricting litigation acknowledges the same familiar rule:

[T]he Democratic candidate favored by the Latino community will not necessarily be the same as the Democratic candidate favored by the new non-Latino voters in the district. The latter are people who, as the record shows, have a vastly higher turn-out rate than do the Latinos. In other words, we may simply have a situation in which the real race is at the primary level, not during the general election, but all of the same problems will simply be pushed back one stage. As the Supreme Court pointed out in *O'Brien v. Brown*, 409 U.S. 1, 15-16 (1972), quoting from *United States v. Classic*, 313 U.S. 299, 308 (1941), "where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice, the right of the elector to have his ballot counted at the primary, is likewise included in the right protected by Article I, § 2."

Baldus v. Members of Wis. Gov't Accountability Bd., 2012 WL 983685, at *14 (E.D. Wis. March 22, 2012).

The Latino Task Force has never argued that general election results are not relevant in determining whether minorities have the ability to elect in a particular district, simply that general election results are not dispositive. This point is particularly true in a reliably Democratic district such as benchmark CD 25 where Congressman Lloyd Doggett has run unopposed in every Democratic primary. When Latino voters have no choice in the primary election, one cannot rely on General Election results to conclude that, under the Voting Rights Act, the district offers Latino voters the opportunity to elect their candidate of choice. In relying on general elections, the Gonzales Intervenors replace the Voting Rights Act's guarantee of

ability to elect with having minority voters' representatives chosen for them by the majority.

The Gonzales Intervenors' expert conceded, "The primary is not the final choice of who is going to represent that person in office, but it might be an important first step towards that election." Ex. J-24, Dep. of Dr. Stephen Ansolabehere at 35:16-36:6, *Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex. 2011). The bottom line is that Latino voter preferences can be vetoed by polarized voting in primary as well as general elections, and this occurs in benchmark CD 25. See Latino Task Force Resp. to the Ct.'s Order of March 6, 2012 at 6-7, 10-14, Dkt. 219. To suggest that the election of a Democrat in the General Election is sufficient to invoke the protections of the Voting Rights Act, when Latinos lack the ability to nominate their preferred candidate in the primary, is an unreasonable interpretation of the Act.

III. Gonzales Intervenors Misunderstand or Mischaracterize the Evidence on Benchmark CD 25

Even the scant analysis offered by the Gonzales Intervenors suggests that Anglos constitute the majority of voters in the Democratic Primary in CD 25. The total voter registration of CD 25 in the benchmark plan is 480,950. See RED-100 for C100, District Population Analysis with County Subtotals, PX11 at 7. Latino voter registration in benchmark CD 25 is only 98,183 (20%) of total registration. *Id.* Even assuming that all of the African American citizens of voting age in CD 25 are registered to vote, the combined Latino and African American voter registration could only number 143,542. See Texas Legislative Council, RED-106 Report for Plan C100, DX880.

The Gonzales Intervenors urge the Court to accept the proposition that half or a majority of Anglo voters are Democrats and would participate in the Democratic Primary. See Ex. E-15, Ansolabehere Report at 33-34, *Perez v. Perry*, No. 5:11-cv-360 [Dkt. 229-1] (W.D. Tex. filed Aug. 23, 2011) ("In Homogenous White Precincts in Travis County, the electorate divides 50-50

between Republicans and Democrats.”); Oct. 21, 2011 Ansolabehere Report on Minority and White Representation Under the Texas Congressional Plans C185 and C100 at 35, Dkt. 155-2; Ex. J-24, Dep. of Dr. Stephen Ansolabehere at 31:21-32:5, *Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex. 2011) (“It’s on the whites, where the difference depends on the analysis, somewhere in the high 40s, maybe as high as 50/50, but somewhere in the high 40s is the rate at which the whites in Travis were voting for republicans.”); *see also* March 13, 2012 Report of Dr. Richard Murray at 1, Dkt. 218-1 (“the Anglo majority in Travis County, *and elsewhere in CD 25*, splits its vote in the March partisan [primary] balloting.”) (emphasis added).¹³

In CD 25, a split in the Anglo vote would translate to at least 168,704 Anglo voters participating in the Democratic Primary. Even assuming that all Latino and African American voters participate in the Democratic Primary in CD 25, this number cannot exceed 143,542 votes. Given that minority citizens in Texas are less likely to register and turn out to vote than Anglo citizens, the majority of Anglo voters participating in the March Democratic primary is no doubt much greater. *See* Expert Report (of Dr. Jorge Chapa) on Hispanic Demographics and the Estimated Citizen Voting Age Population of Potential Voting Districts in Texas at 16, DX0823.

Quite simply, if half the Anglo voters in CD 25 participate in the Democratic Primary, as Gonzales Intervenors assert, the Anglo vote would dominate the Latino and African American vote in the election. This fact is consistent with the only evidence we have in this case about CD 25 elections – that the Anglo-preferred candidate almost always wins Democratic Primary elections in the district and Latinos are largely unable to nominate their preferred candidate when Anglos do not prefer that same candidate. *See* State’s Racially Polarized Voting Analysis, T 3,

¹³ The March 13, 2012 report of Dr. Murray is not part of the record in this case and was simply filed with the Court as an exhibit to a brief.

for CD 25 in Plan C100, PX24 at 579-80; Latino Task Force's Resp. to the Ct.'s Order of March 6, 2012 at Part IV, Dkt. 219.

Gonzales Intervenors attempt long after trial to discredit the State's turnout estimates. This attempt is unavailing. A brief comment by Dr. Alford that he didn't rely on a particular table related to one State House district does not invalidate the State's turnout estimates in a completely different table related to benchmark CD 25. *See* State's Racially Polarized Voting Analysis for CD 25 in Plan C100, PX24 at 577-600.

Furthermore, with respect to its Response brief, where the Gonzales Intervenors finally address the evidence showing that Latinos lack the ability to nominate their preferred candidates in primary elections in benchmark CD 25, the Gonzales Intervenors incorrectly read the evidence. The Latino Task Force provided the results, within the boundaries of benchmark CD 25, of the nine statewide Democratic Primary elections that featured a Latino candidate from 2002 to 2010. Latino candidates won only 3 of the 9 elections. *See* Ex. 2 to Latino Task Force's Resp. to the Ct.'s Order of March 6, 2012, Dkt. 219-2. The Gonzales Intervenors first mischaracterize the number of elections (claiming there are only 8) then go on to characterize the victory of a Latino Republican Primary candidate as a victory of a Latino Democratic Primary candidate. *See* Resp. of Certain Def.-Intervenors at 5, Dkt. 221.

Second, the Gonzales Intervenors claim that they demonstrated that candidate Linda Chavez-Thompson was not the Latino preferred candidate in her election and argue her loss should be counted as a success for Latino voters. *Id.* However, the Gonzales Intervenors again limited their analysis of primary elections to Travis County. By contrast, the polarized voting analysis of benchmark CD 25, which was conducted by the State, shows that candidate Chavez Thompson was preferred by Latino voters in the district as a whole. *See* State's Racially

Polarized Voting Analysis, T 4, for CD 25 in Plan C100, PX24 at 581-84. These errors lead the Gonzales Intervenors to claim incorrectly that Latino candidates won “six of eight” Democratic Primary elections. *See* Resp. of Certain Def.-Intervenors at 5, Dkt. 221. However, the evidence demonstrates that Latino candidates won only *three of the nine* Democratic Primary elections. *See* Ex. 2 to Latino Task Force’s Resp. to the Ct.’s Order of March 6, 2012, Dkt. 219-2.

Finally, the Gonzales Intervenors’ exclusive focus on preserving CD 25 is inconsistent with section 5. The Gonzales Intervenors assert “Our position is simply that dismantling CD 25 violates Section 5.” *See* Resp. of Certain Def.-Intervenors at 4, Dkt. 221. This invocation of the Voting Rights Act is intended to persuade the Court that any changes to CD 25 (and the attendant inconveniences to the incumbent) violate federal law, whether or not most of the affected minority voters are included in an ability to elect district created from portions of the benchmark CD 25.

Absent a showing of discriminatory purpose in the changes to CD 25, a finding of retrogression can only be made if the number of ability to elect districts is reduced statewide. *See* Def.-Intervenors’ Joint Mem. in Opp’n to Texas’ Summ. J. Mot. Section 5 Legal Standards at 5, Dkt. 74 (citing *Georgia v. Ashcroft*, 539 U.S. at 479 (“[I]n examining whether the new plan is retrogressive, the inquiry must encompass the entire statewide plan as a whole. [Citation omitted.] Thus, while the diminution of a minority group's effective exercise of the electoral franchise in one or two districts may be sufficient to show a violation of § 5, it is only sufficient if the covered jurisdiction cannot show that the gains in the plan as a whole offset the loss in a particular district.”)). Changes to CD 25 can be offset by providing the same ability to elect a minority-preferred candidate in another part of the state, or even in a neighboring district. It is simply not the case that changes to CD 25, standing alone, can create retrogression. For example,

Plan C185 creates a majority Latino CD 35 in South/Central Texas that contains 11% Black citizen voting age population (CVAP) – two percentage points higher than the Black CVAP in benchmark CD 25. CD 35 in Plan C185 also contains many of the African American voters who reside in benchmark CD 25. *See* Jan. 16, 2012 Rebuttal Report of Dr. Ansolabehere at 30, Dkt. 155-3. The suggestion by Gonzales Intervenors that African Americans are required by the Voting Rights Act to be included in a 9% BCVAP district, but their inclusion in an 11% BCVAP district violates the Act, is untenable.

IV. The Latino Task Force’s Position is Supported by the Opinion of the Texas District Court in *Perez v. Perry*

In its recent opinion, issued in support of its order on the 2012 interim congressional plan, the *Perez* court noted that in the State’s Plan C185, “the northern portion of CD 35 includes the bulk of the Hispanic minority population in Austin/Travis County that was formerly in CD 25. It is undisputed that CD 35 is a Latino majority district.” Order – Plan C235 at 4, *Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex. 2011) (attached as Ex. 2 to Motion for Leave to File Response of Texas Latino Redistricting Task Force to Gonzales Intervenors’ Brief Regarding Congressional District 25). The *Perez* court recognized that the inclusion of most of CD 25’s Latino population from Travis County in the new Latino-majority CD 25 is a consideration in the retrogression analysis:

Even though the Supreme Court has recognized the benefits of crossover districts in achieving the goals of the VRA, § 2 does not mandate preserving crossover districts. *Bartlett v. Strickland*, 556 U.S. 1, 23 (2009). Further, even if the D.C. Court concludes that benchmark CD 25 was a protected crossover district under § 5, CD 35 includes the bulk of the Travis County minority Hispanic population from CD 25, and its creation potentially offsets the loss of CD 25 for Hispanics so long as it is an appropriate § 2 district and an ability district for purposes of § 5.

Id. at 42.

Because African Americans constitute only 9% of the citizen voting age population of

CD 25, the *Perez* court recognized that this Court will face “serious and difficult questions” regarding whether African Americans, in combination with other voters, have the ability to elect their candidate of choice in CD 25, what protections would be afforded that ability under section 5, and whether there would be retrogression in the Texas map. *Id.* at 47-48.

With respect to discriminatory purpose, the *Perez* court recognized the essentially partisan nature of the changes to CD 25, finding that “[a]s a factual matter, however, the Court cannot conclude at this time that the dismantling of CD 25 was motivated by a discriminatory purpose as opposed to partisan politics.” *Id.* at 48.

In the end, the *Perez* court rejected the claims of the Gonzales/Rodriguez parties that the interim congressional plan must leave CD 25 unchanged and must prohibit the new Latino-majority CD 35 from including minority neighborhoods in Travis County.

CONCLUSION

The question of CD 25 is currently before this Court because the Gonzales/Rodriguez parties do not like that minority voters in Travis County were included in a new Latino-majority CD 35. However, the Gonzales Intervenors in this case present no evidence contradicting the evidence that Anglo voters in benchmark CD 25 dominate the Democratic Primary election and Latino voters lack the ability to nominate their candidate of choice in the district. The question of an interim remedy has already been decided by the *Perez* court and cannot be re-litigated here. With respect to the question pending before this Court, the Latino Task Force maintains that CD 25 is not a Latino ability to elect district as explained in full in its initial briefing.

Dated: March 27, 2012

Respectfully submitted,

/s/ Nina Perales

Nina Perales (D.C. Bar No. TX0040)

Rebecca Couto (*pro hac vice*)

Marisa Bono (*pro hac vice*)

Karolina Lyznik (*pro hac vice*)

Mexican American Legal Defense

& Educational Fund

110 Broadway, Suite 300

San Antonio, TX 78205

Telephone No.: (210) 224-5476

Facsimile No.: (210) 224-5382

E-mail address: nperales@maldef.org

*Attorneys for Defendant-Intervenor,
Texas Latino Redistricting Task Force*

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that she filed the foregoing document and all attachments using the Court's electronic case filing system on April 2, 2012.

/s/ Nina Perales

Nina Perales (D.C. Bar No. TX0040)