

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

**DEFENDANT-INTERVENOR TEXAS LATINO REDISTRICTING TASK FORCE'S  
NOTICE OF FILING PRE-FILED WRITTEN DIRECT TESTIMONY**

**EXHIBIT 6**

**Expert Report of Dr. Henry Flores**

**Expert Report**  
**In**  
***STATE OF TEXAS, et al v UNITED STATES OF AMERICA and ERIC H. HOLDER, JR.***  
**No. 1:11-CV-01303**  
**October 21, 2011**  
**Submitted by**  
**Henry Flores, PhD**

**Introduction**

My name is Henry Flores and I am over the age of eighteen (18) years, have never been convicted of a crime and am fully competent to express the below opinions. The following facts and opinions are within my personal and professional knowledge and competence and are true and correct.

Currently, I am Dean of the Graduate School and a tenured Full Professor of Political Science at St. Mary's University in San Antonio, Texas where I have been employed 28 years; I am in my eighth year as dean. I've served as Chair of the Department of Political Science twice and twice each as the Director of Graduate Studies in the department and as Director of the Masters in Public Administration prior to my tenure as dean. I teach graduate classes in Research Methods and Statistics and Decision Theory and have taught undergraduate classes in Texas Politics, Political Parties, and Latino Politics. My academic vitae is attached with more details of my career (Appendix A).

The University of California at Santa Barbara granted my PhD in Political Science in December 1981 with specializations in American Politics, Public Administration, Political Theory/Philosophy, and Multivariate Statistical Analysis. I

have published numerous books and articles, encyclopedia entries and invited chapters in books as well as presented learned papers on racially polarized voting, Latino Politics, Latino voting behavior, political theory and urban politics. Throughout many of my published pieces I have spoken to the racialized nature of politics in San Antonio, Texas, Los Angeles, California, the southwestern United States and the nation. I have testified in well over 25 voting rights cases since 1986 one of which was a submission to the Assistant Attorney General of the United States for Civil Rights concerning congressional and state legislative redistricting in Texas (1992). Subsequently, I testified on behalf of the Republican Party of Texas in *Terrazas v Slagle* (1992), the redistricting of the state senate, on the nature of racialized voting in the state. In 2001 I testified in *Balderas v Texas* (U.S. Dist. Ct. E.D. Tex. No. 6:01cv158) which concerned the State Senate, House and US Congressional redistricting of 2001 as a consulting expert on racially polarized voting and discriminatory intent. During the 2001 round of redistricting I also appeared and submitted testimony to six Texas state assembly hearings on the racially polarized nature of elections in the state. Finally, I have offered expert testimony in 15 additional civil and criminal suits, from both the defendant and plaintiff perspectives, concerning employment discrimination, change of venue and probate matters. A complete listing of all lawsuits where I have provided expert testimony appears in my attached vitae.

### **Retention**

The Mexican American Legal Defense and Educational Fund retained my services on behalf of the *Latino Task Force* plaintiffs in this matter as an expert

witness in discriminatory racial intent. Specifically I was retained to determine whether there was discriminatory racial intent in the congressional and Texas state house redistricting plans enacted in 2011. My focus was primarily on United States Congressional Districts (CDs) 23 and 27 and Texas House of Representative Districts (TH) 33, 78 and 117.

### **Data and Literature Review**

My expert opinions are based on a review of the following information:

- a. Maps and data packets for Congressional Plans C100 and C185 and Texas House District Plans H100 and H283.
- b. Two United States Supreme Court decisions—*Village of Arlington Heights v. Metropolitan* 492 US 252 (1977) and *LULAC v Perry* 548 US 399 (2006).
- c. The final judgments and opinions in *Balderas v Texas* (2001).
- d. The expert reports and court testimonies of Drs. J. Morgan Kousser, Richard Engstrom , and Andres Tijerina in *Perez v Perry* (No. 11-CA-361 U.S. Dist. Ct. W.D. Tex.).
- e. The expert report of Dr. J. Morgan Kousser in *LULAC v Perry* (2006).
- f. The expert report of Dr. Lisa Handley and Dr. Theodore Arrington in this case.
- g. Summaries of the Texas Senate Select Committee on Redistricting Hearings (2011).
- h. Summaries of the Texas House Redistricting Committee’s Hearings (2011).
- i. “Voting Rights in Texas 1982 – 2006.” Perales, Nina, Luis Figueroa, and Criselda G. Rivas. Southern California Review of Law and Social Justice. Los

Angeles: University of Southern California Gould School of Law (hereinafter referred to as "Voting Rights in Texas").

- j. "A Revealed Preferences Method for Evaluating Redistricting Intent" an unpublished manuscript by Drs. Micah Altman (MIT) and Michael McDonald (George Mason University).
- k. The trial testimony of Texas State Senator Ken Seliger, Chairman of the State Senate Select Committee on Redistricting, Texas State Representative Burt Solomon, Chairman of the Texas House Redistricting Committee, and Mr. Ryan Downton, the General Counsel to the House Redistricting Committee.
- l. The deposition of Mr. Gerardo Interiano, Counsel to the Speaker of the Texas House of Representatives.
- m. A broad array of newspaper, newsmagazine, and law review articles concerning redistricting in Texas and other state legislation directly affecting Latinos such as policy on immigration, "sanctuary cities," use of English in public places, voter identification cards, educational funding and higher education reform among others.
- n. Maps and data packets for Congressional Plan C190 and Texas State House Plan H292.
- o. A review of the 2010 election-eve Texas poll conducted by Latino Decisions and a February 24, 2008 poll of Texas Latino voters conducted by the same firm.
- p. A summary of Congressman Francisco "Quico" Canseco's (R-TX, CD23) legislative sponsorship and co-sponsorship in the 112<sup>th</sup> National Congress.

## **Observations**

### **Historical**

The redistricting history of Texas together with the current political context, demography of the state over four decades, and the general climate of racial politics in the state form the basis of my opinion. It is the overall context, the totality of all circumstances and data, which underlie my opinion in this case.

It goes without saying that every round of Texas redistricting that I have been involved with has been subject to litigation by the Latino and/or African American communities. Representatives of each of these groups have sued the State of Texas claiming a violation of some element in the Voting Rights Act of 1965. The Republican Party, joined by Latinos in 1992, brought suit; in 2001 Latinos and African Americans joined together to bring suit; and, now, in 2011, the Texas redistricting process has been challenged by Latinos, African Americans and various other individuals. In each and every round of redistricting litigation the United States Congressional, State House and Senate maps have been challenged as has been the process itself in some instances.

The State of Texas has a rich history of having voting rights challenges brought against it or one of its political subdivisions more than 200 times since 1982. These challenges have been under the provisions of Sections 2, 5 or 203 of the Voting Rights Act of 1965 or the 14<sup>th</sup> and 15<sup>th</sup> Amendments of the United States Constitution ("Voting Rights in Texas").

The evidence presented to courts, in a panoply of voting rights cases over the last 25 years, have shown clear patterns of racially polarized voting where Hispanics

vote differently from their Anglo or non-Hispanic white fellow citizens. These racially polarized patterns are still in evidence as presented in the expert reports of both Drs. Engstrom and Kousser in *Perez .v Perry* which was recently tried to a three judge panel in the Western District of Texas sitting in San Antonio, Texas.

### **Climate of Racial Politics**

The acrimony which has been publicly reported in various media during this last Texas legislative session, both inside and outside of the Legislature, surrounding policy areas directly affecting Latinos including redistricting, immigration reform, “sanctuary cities,” and educational reform has been the most racially charged I have witnessed throughout my 30 plus year career in higher education and more than 25 years as a voting rights expert.

The brief summaries of both the Senate Select Committee on Redistricting and the House Redistricting Committee hearings surrounding the passage of redistricting legislation are replete with examples of hearings without public input or testimony, rushed meetings, meetings intentionally not scheduled until after the regular session and, at least in one instance, the complete disregard for the input of a sitting state senator seeking a courtesy. Additionally, the input of representatives of both the Latino and African American communities were never given serious consideration during this process. The entire atmosphere surrounding the hearings calls into question the motives of the committee membership particularly that of the chairs. My observation is that these committees functioned outside of their normal and customary rules and procedures as they passed the state’s redistricting legislation.

A review of the Texas statewide election-eve 2010 poll conducted by Latino Decisions, a well-respected national Latino polling organization, and released on November 2, 2010 indicated that the most important issue for Latinos was immigration (35%) followed by jobs (28%) and education (16%). The Latino Decisions Texas Statewide Poll of Feb. 24, 2008 further shows that the economy, health care and immigration were issues of greatest concern to Texas Latino voters.

A review of Congressman Canseco's (R-TX, CD23) sponsored and cosponsored legislation during the 112<sup>th</sup> Congress found that he did not sponsor any legislation on immigration reform other than to increase law enforcement on the border. It is clear that his sponsorship and co-sponsorship record does not coincide with the expressed policy interests and wishes of his Latino constituents.

#### **Review of the District Lines**

I have reviewed the maps generated through REDAPPL and provided to me by MALDEF and compared the existing benchmark plan, H100 with plan H283 (Texas House plan). Also, I have reviewed the maps created by REDAPPL and provided to me by MALDEF and compared the existing benchmark, C100 with plan C185 (United States Congressional plan).

I reviewed the district boundaries of both United States Congressional Districts 23 and 27 together with the surrounding districts and the demographic data accompanying those plans. Additionally, I examined district boundaries of Texas House Districts 33, 78 and 117 together with the surrounding districts and the demographic data accompanying these plans. Finally, I looked at the redistricting maps and demographic data for both Congressional and Texas House



redistricting efforts in the geographical regions of Cameron and Hidalgo Counties.

Almost all of the documentation that forms the basis of my opinion has been provided by MALDEF legal counsel.

### **Conclusions and Observations of the Redistricting Process**

As the court has pointed out proving “racial intent” is difficult but not impossible. Recently, the Supreme Court in *LULAC v Perry* (2006) provided us with a path to follow in determining whether or not, through the observations of the decision makers and the political circumstances surrounding the action, one can conclude that race was the intention of those drawing congressional districts in specific circumstances.

Earlier in *Arlington Heights v Metropolitan Housing Corp.* (1977) the Court declared that “sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face.” The court noted that “the historical background,” ... and “specific sequence of events leading up to the challenged decision” .... As well as “departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role; substantive departures too may be relevant” in determining racially discriminatory intent.

In the drawing of Congressional Districts 23 and 27 and Texas House Districts 33, 78 and 117 I have concluded that indeed race was the predominant factor guiding the redistricters. They intentionally manipulated the Hispanic population numbers, provided for redistricting, to insure the re-electibility of the incumbents to the exclusion of the representational interests of Latinos thereby

preventing this protected population from having the opportunity to elect a candidate of their choice.

Additionally, it is my opinion that the redistricting committee completely ignored the wishes of South Texas in considering drawing an additional House district in the region of Cameron and Hidalgo Counties. Now I will discuss each of the counties and districts upon which I am reporting.

### **El Paso County**

It is my observation that the distribution of the Latino population and Spanish Surnamed Voter Registration (SSVR) numbers were uneven across the five Texas House districts in Plan H283 in El Paso County. A close inspection of each district reveals that the Latino population could be more evenly distributed among all five districts resulting in giving Latinos the opportunity to elect their preferred candidate in all of El Paso's House districts (Exhibit 1). For instance, in districts 75, 76, 77 and 79 the SSVR is above 64.6% with HD76 having an SSVR of 89.4% at the highest end of the range and HD79 having an SSVR of 64.6%. Yet on the northern edge of the county, bordering HD77 and HD79 lies HD78 with only an SSVR of 47.1% (Exhibit 2; Exhibit 3). Further investigation reveals that 14 VTDS or precincts were minutely split to arrive at this imbalance of SSVR among all five Texas House Districts (Exhibit 4; Exhibit 5). Finally, the deliberateness of the redistricters can be visibly seen in the Google Earth Satellite Photo (Exhibit 6) as the southeastern boundary of H78 "snakes" its way through Latino neighborhoods. These exhibits together with the affidavit of Ms. Carmen Rodriguez, a resident and native of El Paso, Texas, support my opinion that the redistricters were consciously

manipulating heavily Latino precincts and neighborhoods to avoid creating a House district in the northern part of El Paso County that would allow Hispanics to elect a candidate of their choice. Dr. Richard Engstrom's racially polarized voting analysis demonstrating that Representative Margo was not the Latino candidate of choice in HD 78 in the 2010 General Election lends even more substantiation to my opinion. (Engstrom Corr. Rebuttal at 25-26.)

### **Bexar County**

In Bexar County, Plan H283 reduces the SSVR of HD 117 from 50.8% to 50.1%. A review of Dr. Lisa Handley's election performance research (A Section 5 Voting Analysis of the Proposed Texas House Plan) indicates that the performance level of HD117 is reduced from 60 to 20 (100 point scale) making this district even less likely to allow Hispanics to elect a preferred candidate. This severe reduction is underlaid by the racially polarized nature of the electorate in HD117 as evidenced in the same report by Dr. Handley.

The redistricters again carefully removed high performing Latino districts from the Westside of San Antonio, Texas and replaced them with higher performing Anglo precincts from the far northwest side of the city. In effect, the redistricters not only reconfigured HD117 from the benchmark to H283 geographically but also changed the political dynamics of the district in that they have created what appears to be an Hispanic majority or opportunity district but in substance is not (Exhibit 7).

### **Nueces County**

The H283 Plan completely eliminates House District 33 that exists in the benchmark plan (Exhibit 8). This district has historically been located in the heart

of Corpus Christi, Texas and was a majority SSVR district. The effect is that under H283 Nueces County is deprived of a Latino majority district and their representation in the state legislature is reduced from three members to two. The elimination of House 33 represents the elimination of a district where Latinos have the opportunity to elect a preferred candidate.

### **Cameron and Hidalgo Counties**

An additional House district can be added in the geographical area along the Mexican border known as "The Valley" which is centered in Cameron and Hidalgo Counties (Exhibit 9). A close perusal of the deviations among the 6 districts, drawn under H283, and two other surrounding districts indicates that there is sufficient population to create an additional district in this region. Adding a new district in this region is important because "The Valley" has been one of the fastest growing population centers of the state over the last two decades. Also, and almost equally as important, is this area has traditionally and historically been understood as an integrated economic, cultural, social and political region of Texas. The small towns in this region share a rich common history reaching further back than the founding of the state and represent a unique community of interest.

### **United States Congressional District 23**

Latinos have an opportunity to elect a candidate of their preference in CD23 under the benchmark plan. Engstrom Corr. Rebuttal at 26-28. Under C185, however, the opportunity to elect for Latinos is reduced even though the district remains majority Hispanic. This reduction is based on the cracking of a traditional voting community on the South Side of San Antonio, Texas (Exhibit 10; Exhibit 11:

Exhibit 12). This community, bound on the west by Lackland AFB and on the east by Interstate Highway 10 stretching all the way south to Highway 1604 and north to the central city, has been an entire community of interest within CD 23 historically. Under C185 the South Side, as it is traditionally known in San Antonio political and social culture, has been “cracked” three ways with the majority of this population moved into both new CDs 20 and 35.

In another part of benchmark CD23, the city of Eagle Pass, Texas and the county in which it resides, Maverick, has been “cracked” or “split” in two sending half the population into neighboring CD28. Maverick County has traditionally been kept whole in CD 23 until now (Exhibit 13).

The same type of “splitting” and “cracking” has occurred to several small towns in El Paso County (Exhibit 14; Exhibit 15). Finally, the addition of counties from CD 11 where the Latino community underperforms, essentially voting at lower rates than other Latino communities throughout CD23 such as the parts of the South Side of San Antonio excluded from CD23 in C185 (Exhibit 16). The redistricters simply replaced high performing/participation Latino voters with low participation Latino voters (Exhibit 17). In my opinion this is tantamount to a “bait and switch” making CD 23 in C185 appear to be a Latino opportunity district when in substance it is not.

Under CD23 in C185 Latinos are deprived of their opportunity to elect a preferred candidate even though they remain a majority of the population. In order to achieve this end the redistricters laboriously and intentionally manipulated the district’s boundaries to add and subtract more than 612,191 individuals to simply

reduce the population of CD23 by 149,163 to meet the “one person, one vote” requirement of the constitution. Redistricters moved in a total of 231,514 new individuals and also removed 380,677 individuals from the district (Exhibit 18). Beyond the manipulation of the population in absolute numbers, a deeper analysis of the registered voters within the district together with the performance of the Hispanic preferred candidates in 14 endogenous elections between 2002 and 2010 lend substantiation to my conclusion (Exhibit 19).

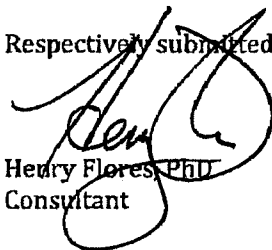
If one compares the percentage turnout of SSVR in the benchmark C100 plan for CD23 with that of SSVR in C185 one will note that the SSVR turnout for the 2010 General Election drops 1.98% from 24.84% to 22.86% (Exhibit 17). Taking the analysis another step further one discovers that under the benchmark plan the Hispanic preferred candidate is successful in 7 of the 14 general endogenous elections between 2002 and 2010 for a 50% success rate. Under Plan C185 there is a stark difference in that a reaggregation of the same elections in the redrawn CD 23 reveals that the Latino preferred candidates win only 3 of the 14 elections, a 24.4% rate or more than a 50% reduction from the rate in the benchmark plan (Exhibit 19). The effect on support for the Latino-preferred candidate, as reflected in general election votes for the Latino preferred candidate in CD 23 from the district in the benchmark to the “new” one in C185 is dramatic; the votes garnered by Latino preferred candidates is reduced 3.2% in that district between 2006 and 2010 and 2.4% between 2002 and 2010. These data demonstrate that the “new” CD23 in C185 is structured to insure lower Hispanic turnout rates than in the benchmark CD23. These latter observations simply lend further substantiation to my

conclusion that the method utilized to redraw CD23 in C185 was designed intentionally to reduce Latino voter turnout in order to insure that Hispanics would be denied an opportunity to elect a candidate of choice.

**United States Congressional District 27**

Latinos have the opportunity to elect their preferred candidate in the benchmark CD27. Engstrom Corr. Rebuttal at 26-28. In C185 the new CD27 reduced the SSVR from 69.2% to 45.1% when compared to C100 the benchmark plan. Dr. Richard Engstrom's racially polarized voting analysis demonstrates that Representative Farenthold was not the Latino candidate of choice in CD27 in the 2010 General Election. Id. at 25-26) This 24% reduction in SSVR intentionally dilutes Latino voting power and prohibits their ability to elect a candidate of choice. The reconfiguration of CD27 also removes a substantial number of Latinos from the configuration of Latino opportunity districts in South Texas and thus deprives voters in this region a seventh Latino opportunity district.

Respectively submitted,



Henry Flores, PhD  
Consultant