

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

SHANNON PEREZ, et al., )  
)  
*Plaintiffs,* )  
)  
- and - )  
)  
EDDIE BERNICE JOHNSON, et al., )  
)  
- and - )  
)  
TEXAS STATE CONFERENCE OF )  
NAACP BRANCHES, et al., )  
)  
*Plaintiff Intervenors,* )  
)  
v. )  
)  
RICK PERRY, et al., )  
)  
*Defendants,* )

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

MEXICAN AMERICAN LEGISLATIVE )  
CAUCUS, TEXAS HOUSE OF )  
REPRESENTATIVES (MALC), )  
)  
*Plaintiffs,* )  
)  
- and - )  
)  
HONORABLE HENRY CUELLAR, et al., )  
)  
*Plaintiff Intervenors,* )  
)  
v. )  
)  
STATE OF TEXAS, et al., )  
)  
*Defendants* )

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CIVIL ACTION NO.  
SA-11-CA-361-OLG-JES-XR  
[Consolidated case]

TEXAS LATINO REDISTRICTING TASK )  
FORCE, et al., )  
*Plaintiffs,* )  
v. )  
RICK PERRY, et al., )  
*Defendants,* )

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CIVIL ACTION NO.  
SA-11-CA-490-OLG-JES-XR  
[Consolidated case]

MARAGARITA v. QUESADA, et al., )  
*Plaintiffs,* )  
v. )  
RICK PERRY, et al., )  
*Defendants,* )

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CIVIL ACTION NO.  
SA-11-CA-592-OLG-JES-XR  
[Consolidated case]

JOHN T. MORRIS, )  
*Plaintiff,* )  
v. )  
STATE OF TEXAS, et al., )  
*Defendants,* )

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CIVIL ACTION NO.  
SA-11-CA-615-OLG-JES-XR  
[Consolidated case]

EDDIE RODRIGUEZ, et al.,

*Plaintiff,*

v.

STATE OF TEXAS, et al.,

*Defendants.*

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CIVIL ACTION NO.  
SA-11-CA-635-OLG-JES-XR  
[Consolidated case]

POST-TRIAL BRIEF OF PLAINTIFFS  
TEXAS LATINO REDISTRICTING TASK FORCE, ET AL.

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**POST-TRIAL BRIEF OF PLAINTIFFS TEXAS LATINO REDISTRICTING TASK  
FORCE, ET AL.**

Plaintiffs in the case originally styled *Texas Latino Redistricting Task Force, et al. v. Perry, et al.*, No. 5:11-cv-490, (the “*Latino Task Force* Plaintiffs”) file this post-trial brief and show the Court the following:

**I. INTRODUCTION**

In 2006, the U.S. Supreme Court held that the Texas congressional redistricting plan diluted Latino voting strength in violation of section 2 of the Voting Rights Act of 1965. Less than five years later, the Texas Legislature once again took up statewide redistricting. Because of strong Latino population growth, Texas had gained four new congressional seats. Texas redistricters knew that in 2011 Latino voters were poised to oust the incumbent in a number of districts around the state and Latino population growth supported the creation of additional opportunity districts. In response, Texas enacted congressional and State House redistricting plans that systematically diluted Latino voting strength. Where Latino population had grown enough to constitute the majority of an additional district, Texas redistricters refused to add a district. Where Latino voters had increased to the point at which they might elect their preferred candidate over the incumbent, redistricters reduced Latino voting strength in that district. The end result was a congressional redistricting plan that created no additional Latino opportunity districts and a State House redistricting plan that contained fewer Latino opportunity districts than the benchmark.

**II. ARGUMENT**

**A. PLANS C185 AND H283 DISCRIMINATE IN EFFECT AGAINST  
LATINOS IN VIOLATION OF SECTION 2 OF THE VOTING RIGHTS  
ACT, 42 U.S.C. 1973, *et seq***

Plan C185 and Plan H283 dilute Latino voting strength in Texas by packing Latino voters into a limited number of districts and fracturing Latino voters across other districts. Both plans also carefully carve up Latino population to create districts in which Latinos are unable to

elect their candidate of choice despite being close to or even slightly higher than 50% of the registered voter population.

Plan H283 fails to create additional Latino opportunity districts in Harris County and the Rio Grande Valley, instead packing Latino voters to minimize their electoral influence. Plan H283 also packs Latino voters in Bexar County and El Paso County to prevent Latino voters in HD117 and HD78 from electing their candidates of choice. Finally, H283 eliminated HD33 -- an existing Latino majority district in Nueces County. Plan C185 fails to create additional Latino opportunity districts, including in South and West Texas, Dallas-Ft. Worth and Houston.

In 1982, Congress amended the Voting Rights Act to reach discriminatory conduct that might otherwise evade liability under the more stringent intent standard established in *City of Mobile v. Bolden*, 446 U.S. 55 (1980). The 1982 amendment created a “results-based” test to analyze vote dilution claims. S. Rep. No. 97-417, at 40 (1982), *reprinted in* 1982 U.S.C.C.A.N. at 218 (“S. Rep.”)

In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the U.S. Supreme Court set out a framework for determining whether a districting plan dilutes minority voting strength in violation of Section 2. In *Gingles*, the Supreme Court established a two-step inquiry for analysis of vote dilution claims. *Id.* at 50-51. First, the minority group must be able to demonstrate: (1) “that it is sufficiently large and geographically compact to constitute a majority in a single-member district;” (2) “that it is politically cohesive;” and (3) “that the white majority votes sufficiently as a bloc to enable it – in the absence of special circumstances, . . . usually to defeat the minority’s preferred candidate.” *Id.*

The second step of the inquiry requires the Court “to consider the ‘totality of the circumstances’ and to determine, based ‘upon a searching practical evaluation of the ‘past and

present reality’ whether the political process is equally open to minority voters.’” *Id.* at 79 (citations and internal quotation marks omitted). The Senate Judiciary Committee, in a report accompanying the 1982 amendments to the Voting Rights Act, provided a non-exclusive list of factors that a court should consider in determining whether the challenged practice impermissibly impairs the ability of the minority group to elect their preferred representatives.<sup>1</sup>

**1. *Gingles* 1: Latinos are Sufficiently Numerous and Compact to Constitute the Majority of Additional Districts**

The Latino community in Texas is sufficiently large and compact to constitute the majority of additional districts in the challenged redistricting plans. *See Gingles*, 487 U.S. at 50-51; *Johnson v. DeGrandy*, 512 U.S. 997, 1008 (1994) (“When applied to a claim that single-

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<sup>1</sup> These factors include, but are not limited to:

- (1) the extent of any history of official discrimination in the state or political subdivision affecting the right of a member of a minority group to register, vote, or participate in the democratic process;
- (2) the extent to which voting in government elections is racially polarized;
- (3) the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group (for example, unusually large election districts, majority vote requirements, prohibitions against bullet voting);
- (4) exclusion of minorities from a candidate slating process;
- (5) the extent to which minority group members in the state or political subdivision bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
- (6) the use of overt or subtle racial appeals in political campaigns;
- (7) the extent to which minorities have been elected to public office in the jurisdiction.

Additional factors are: “whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs” of the minority group and “whether the policy underlying the . . . use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.” S. Rep. at 29; *see also Gingles*, 478 U.S. at 48 n.15.

member districts dilute minority votes, the first *Gingles* precondition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice.”<sup>2</sup>

Relying on the Census Bureau’s American Community Survey (“ACS”), which is the best available source for citizenship data (FOF 1665), Plaintiffs have demonstrated that Latinos are sufficiently numerous and compact to comprise the citizen voting age majority of additional State House districts.

Plaintiffs have shown that Latinos are sufficiently numerous and compact to comprise the citizen voting age majority of seven congressional districts in South and West Texas, as well as a district in the Dallas-Fort Worth area. Finally, Plaintiffs have shown that Latinos and African Americans together are sufficiently numerous and compact to comprise the citizen voting age majority of an additional district in Houston.

As described in more detail below, with respect to the House plan, Latinos are sufficiently numerous and compact to comprise the citizen voting age majority in more districts than contained in H283, including in Harris County, Nueces County and the Rio Grande Valley. *See Gingles*, 487 U.S. at 50-51; *Johnson v. DeGrandy*, 512 U.S. 997, 1008 (1994); *see also See Bartlett v. Strickland*, 556 U.S. 1, 12 (2009); *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997); *Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848 (5th Cir. 1999) (FOF 19).

Latinos are also sufficiently numerous and compact to comprise voting majorities in Bexar County and El Paso County where the State created bare majority districts in which

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<sup>2</sup> Although the *Gingles* test was developed in litigation over an at-large election system, it also applies in redistricting cases where a plan is challenged for failure to draw a sufficient number of majority minority districts. *Grove v. Emison*, 507 U.S. 25, 39-41 (1993).

Latinos cannot elect their candidate of choice. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 428 (2006). (recognizing that “it may be possible for a citizen voting-age majority to lack real electoral opportunity”); *see also Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848 (5th Cir. 1999). *Gingles*, 478 U.S. at 46 n. 11. (“Dilution of racial minority group voting strength may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.”). In Bexar County, the State created HD117 with a bare 50.1% SSVR and less than 50% likelihood of electing the Latino-preferred candidate, illegally diluting Latino voting strength by ‘packing’ Latino voters into surrounding Latino majority districts. Similarly, in El Paso County the State created HD78 with 47.1% SSVR and less than 50% likelihood of electing the Latino-preferred candidate.

With respect to the congressional plan, Latinos are sufficiently numerous and compact to comprise the citizen voting age majority in more districts than contained in C185, including in Dallas Ft. Worth. In South and West Texas, the State created CD23 with a 54.8% SSVR and a one in ten likelihood of electing the Latino-preferred candidate, illegally diluting Latino voting strength by ‘packing’ Latino voters into surrounding Latino majority districts. The removal of Nueces County from the South Texas configuration of congressional districts fractures Latino voters and minimizes their voting strength in the region.

The Latino community is compact in areas where new Latino opportunity districts can be created. *See LULAC v. Perry*, 548 U.S. at 433 (the compactness inquiry under § 2 examines the compactness of the minority community, not the compactness of the contested district). Because in Texas new Latino opportunity districts are most easily created where there is significant nearby Latino population, the new Latino opportunity districts “take into account

traditional districting principles such as maintaining communities of interest and traditional boundaries.” *Id.* (internal quotations omitted).

**a. Gingles Prong 1: State House Plan**

There are 32 Latino opportunity districts in H100 -- the State House benchmark.<sup>3</sup> (Pl. Ex. 201). H283, the State House redistricting plan enacted by the Texas Legislature in 2011, reduced the number of Latino opportunity districts to 30.<sup>4</sup> (FOF Appendix B at ¶ 1).

The Task Force Plaintiffs’ Plan H292 demonstrates that the Latino citizen voting age population in Texas is sufficiently large and geographically compact to comprise 34 Latino opportunity districts.<sup>5</sup> (FOF 37).

Plan H292:

- maintains two Latino opportunity districts in Nueces County;
- balances Latino population in El Paso County to add a Latino opportunity district;
- balances Latino population in Bexar County to restore a Latino opportunity district; and
- combines the population overages from districts in Cameron and Hidalgo counties to capture the “organic” district that grew in the Rio Grande Valley.

Dr. Richard Engstrom’s analysis of election data demonstrates that Plan H292 contains

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<sup>3</sup> The Latino opportunity districts in H100, the benchmark plan are: 31, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90, 103, 104, 116, 117, 118, 119, 123, 124, 125, 140, 143, 145, and 148. (FOF 2).

<sup>4</sup> The Latino opportunity districts in H283 are: 31, 34, 36, 37, 38, 39, 40, 41, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90, 103, 104, 116, 118, 119, 123, 124, 125, 140, 143, 145, and 148. (FOF Appendix B at ¶ 1).

<sup>5</sup> The Latino opportunity districts in H292 are: 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 51, 74, 75, 76, 77, 78, 79, 90, 103, 104, 116, 117, 118, 119, 123, 124, 125, 140, 143, 145, and 148. (FOF 37).



34 Latino opportunity districts. (FOF 37). The State's expert Dr. Giberson testified that HDs 35, 78, and 117 in Plan H292 are compact. (Ex. J-42, at 32:11-25)

Michael Seifert and Hidalgo County Judge Ramon Garcia described in detail the community of interest and dire infrastructure needs of the lower Rio Grande Valley, where H292 locates a new House district. (FOF 48-71).

Like the benchmark plan, Plaintiffs' demonstrative H292 includes two Latino opportunity districts in Nueces County and one Anglo district that spills north out of Nueces County. (FOF 43, 44). Although the State claims that the Texas Constitution's whole county provision requires Nueces County to contain only two House districts with no spillover, this rule must yield to section 2 of the Voting Rights Act. *See Bartlett v. Strickland*, 556 U.S. 1, 7 (2009) ("It is common ground that state election-law requirements like the Whole County Provision may be superseded by federal law—for instance, the one-person, one-vote principle of the Equal Protection Clause of the United States Constitution."); *see also Larios v. Cox*, 314 F. Supp. 2d 1357, 1360 (N.D. Ga. 2004) (when court crafted interim remedial plan, "[p]lainly, the requirements of the Constitution and the Voting Rights Act took precedence over any traditional redistricting principles."); *Colleton Cnty. Council v. McConnell*, 201 F. Supp. 2d 618, 648-49 (D.S.C. 2002), *opinion clarified* (Apr. 18, 2002) ("[T]he principle of preserving county lines occupies a subordinate role to the federal directives embodied in the United States Constitution and the Voting Rights Act"); *Cousin v. McWherter*, 845 F. Supp. 525, 528 (E.D. Tenn. 1994) ("The Tennessee Constitution also prohibits splitting counties to create seats in the Legislature in Art. II, Section 5, but this has also been done to prevent a constitutional and/or Voting Rights violation. The Tennessee Constitution does not preempt the Voting Rights Act."); and *Georgia State Conference of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 996 F. Supp. 2d 1353, 1363 (N.D.

Ga. 2014) (“consideration of a traditional redistricting principle like incumbent protection is subordinate to the goal of remedying” a § 2 violation and the requirements of the Constitution).

The Texas Legislative Council shares this view that the whole county provision is subordinate to the Voting Rights Act. David Hanna of the Texas Legislative Council advised redistricters in an April 7, 2011 memo that the Texas County Line Rule would “have to yield to the federal Voting Rights Act if it can be shown retrogression could be avoided by splitting the county.” (FOF 684). The Texas Legislative Council PowerPoint on the County Line Rule for House Districts presented on March 1, 2011 states, “Basic Rule: A county may be cut in drawing a house district only when required to comply with: the one-person, one-vote requirement of the 14th Amendment to the United States Constitution; or the Voting Rights Act.” (FOF 752). Mr. Hanna testified that he never advised anyone during the 2011 redistricting process that the Voting Rights Act would have to yield to the Texas county line rule and in fact “would have said quite the opposite.” (FOF 753).

The Court’s interim State House plan, H309, includes 34 Latino opportunity districts, further demonstrating the ability to create additional Latino opportunity districts when compared to the State’s enacted H283. The Court’s interim plan:

- better balances the distribution of Latino population in El Paso County and creates an HD78 with a majority of SSVR;
- restores HD117 in Bexar County to its former status as a Latino opportunity district;
- creates a new Latino opportunity district in the Rio Grande Valley (HD35); and
- balances Latino population in Harris County to create an additional Latino opportunity district (HD 144).

(FOF 39, 40).

**b. Congressional Plan**

There are seven Latino opportunity districts in the congressional benchmark Plan C100.<sup>6</sup> (FOF 920). Despite substantial Latino population growth and the addition of four congressional seats to the Texas delegation, the Legislature enacted a congressional redistricting plan that includes seven Latino opportunity districts, effectively adding none.<sup>7</sup> (FOF 941-947).

In C185, CD27 and CD23 do not provide Latinos with an opportunity to elect their candidate of choice. (FOF 952-973). CD 34 is a swap for the benchmark CD27 and thus provides no additional opportunity for Latinos to elect their candidate of choice (FOF 970-973). Similarly, although the State created a new Latino opportunity district in CD35, it stripped Latinos in CD23 of the ability to elect their preferred candidates. (FOF 952-960, 976-996). The State's expert witness, Dr. John Alford, conceded that CD23 in C185 is not an opportunity district, explaining that CD23 "is probably less likely to perform than it was and so I certainly wouldn't count and don't -- in all of this discussion, I haven't counted the 23rd as an effective minority district in the newly adopted plan, but it does remain a majority district." (FOF 957).

As demonstrated by Plan C190, the Latino citizen voting age population in Texas is sufficiently large and geographically compact to comprise nine Latino opportunity districts.<sup>8</sup> (FOF 1607, 1096-1104). Dr. Richard Engstrom's analysis of election data also reveals that Plan C190 contains nine districts in which Latinos have the opportunity to elect their candidate of choice. (FOF 997).

The Court's interim redistricting plan, C235, contains eight districts in which Latinos constitute the majority of the citizen voting age population -- one more than the State's enacted

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<sup>6</sup> The Latino opportunity districts in C100 are: 15, 16, 20, 23, 27, 28, and 29. (FOF 920).

<sup>7</sup> The Latino opportunity districts in C185 are: 15, 16, 20, 28, 29, 34, and 35. (FOF 941).

<sup>8</sup> The Latino opportunity districts in C190 are: 6, 15, 16, 20, 23, 28, 34, and 35. (FOF 997).

C185. (FOF 999).

**(i) Dallas Ft. Worth**

Since 2000, the Latino population in the densely populated Dallas-Fort Worth Metroplex has grown to a level where it is sufficiently large and geographically compact to comprise the citizen voting age majority of a congressional district. (Pl. Ex. 332) Plan C190 contains a Latino majority district in the Dallas Ft. Worth Metroplex that contains 50.4% HCVAP. (FOF Appendix F at ¶ 3). The exogenous election analysis of Dr. Engstrom shows that CD6 in C190 elects the Latino-preferred candidate in seven of seven racially-contested general elections. (FOF Appendix F at ¶ 4).

The Latino majority district proposed by the Texas Latino Redistricting Task Force in Plan C190 in the Dallas-Fort Worth Metroplex encompasses communities of interest, taking in similar neighborhoods in Fort Worth, Dallas, Grand Prairie, and portions of Irving and Farmers Branch. (FOF 1000-1014). The schools in the proposed district have large, growing English Language Learner (or ELL) populations. (FOF 1005). The streets and transportation infrastructure in the proposed district are uniformly poor. (FOF 1006). The housing in these areas is typically low- to middle-income housing, and there is substantial multifamily housing. (FOF 1006). The residents in these areas largely work in construction or run small businesses in the district, such as markets and restaurants. There are numerous small businesses throughout the proposed district. (FOF 1007). The residents of the areas reflected in this proposed congressional district have much in common, culturally, linguistically, and economically. There are many cultural celebrations, parades, festivals, health fairs, and colleges fairs that are widely attended on a regular basis in this area. (FOF 1008) A Fort Worth mall within CD 6 in Plan C190 is targeted at Hispanic consumers, draws people from both Fort Worth and Dallas, and is

very crowded every weekend. (FOF 1011).

**(ii) South and West Texas**

In the benchmark congressional plan, the six Latino opportunity congressional districts in South and West Texas had a combined overpopulation of 506,723. (FOF 1110). Given the ideal district size of 698,488, the overpopulation in South and West Texas constituted 72.5% of a new Latino opportunity district. *Id.*

Plan C190 contains seven Latino opportunity districts in South and West Texas. (FOF 1016). Plan C190 includes the shape of CD 35 from the State's enacted plan C185 to demonstrate that the State could have created its CD 35 as an additional Latino opportunity district and not subtracted from the existing Latino opportunity districts in South and West Texas. (Ex. J-11). CD35 in C190 follows the I-35 corridor between San Antonio and Austin and lay witnesses described the communities of interest encompassed by the district in Austin and San Antonio. (FOF 1041-1057).

In south and west Texas, the Latino communities are similarly compact within each opportunity district. The Supreme Court held that CD 23 was a § 2 district in 2006. *LULAC v. Perry*, 548 U.S. 428. The Latino community in the area of CD23 has become only more populous since then. (FOF 953; *see also* FOF Appendix D at ¶¶ 473).

Plan C190 does not suffer from a number of defects present in Plan C185. In South and West Texas, Plan C190 does not split communities such as the City of Eagle Pass and Maverick County. Plan C190 does not sever Nueces County, a Latino majority county traditionally included in the South and West Texas configuration of Latino opportunity districts. (FOF 1016, 1038). Plan C190 also avoids the fragmentation of the Latino population in the Dallas Ft. Worth area. Dr. Giberson testified in his deposition that many of the Latino opportunity districts in Plan

C190 are compact. (FOF 1096-1104).

The Court's interim congressional redistricting plan, C235, also demonstrates the feasibility of creating seven Latino opportunity districts in South and West Texas. (FOF 998, 999).

The State does not dispute the ease with which seven Latino opportunity districts can be drawn in South and West Texas. (FOF 1444, 1448). Mr. Downton, the State's congressional map-drawer, testified that it was possible to draw seven Latino opportunity congressional districts in South and West Texas. (FOF 1337).

## **2. *Gingles* 2 and 3: Racially Polarized Voting**

The State concedes that voting is racially polarized in Texas (with the caveat that the State is not prepared to concede that there is racially polarized voting in Nueces and Kleberg counties). (FOF 93-94). However, the State's expert Dr. Alford did not disagree with the Task Force expert's analysis showing that voting is racially polarized in Nueces County and in an area of South Texas including Kleberg County. Dr. Alford testified that he did not do any work on matters related to the State House and the State offered no analysis of voting in Nueces and Kleberg counties. (FOF 18; *see also* Ex. E-17).

Prong two of the *Gingles* test requires plaintiffs to demonstrate that Latinos are politically cohesive, while *Gingles* prong three requires plaintiffs to demonstrate that the white majority votes sufficiently as a bloc to enable it, in the absence of special circumstances such as the minority candidate running unopposed, usually to defeat the minority's preferred candidate. *See Gingles*, 478 U.S. at 51. In practice, the two inquiries merge into the concept of racially polarized voting. *See, e.g. E. Jefferson Coal. for Leadership & Dev. v. Parish of Jefferson*, 926 F.2d 487, 493 (5th Cir. 1991).

Racially polarized voting is a practical inquiry into whether racial voting patterns impede the election of minority-preferred candidates. Thus, the Supreme Court noted in *Gingles*, “[i]f the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests.” *Gingles*, 478 U.S. at 50. Similarly, the standard for bloc voting is whether “the white majority votes *sufficiently as a bloc* to enable it—in the absence of special circumstances, such as the minority candidate running unopposed, to defeat the minority’s preferred candidate.” *Id.* (emphasis added) (internal citations omitted).

In the *Gingles* analysis, political cohesion is judged “primarily on the basis of the voting preferences expressed in actual elections.” *Gomez v. City of Watsonville*, 863 F.2d 1407, 1415 (9th Cir. 1988). Evidence of racially polarized voting “establishes both cohesiveness of the minority group and the power of white bloc voting to defeat the minority’s candidates.” *Id.* at 1415 (quoting *Collins v. City of Norfolk*, 816 F. 2d 932, 935 (4th Cir. 1987)) (internal quotation marks omitted). Whether Latinos are cohesive is not a question to be determined “prior to and apart from a study of polarized voting.” *Campos v. City of Baytown*, 840 F. 2d 1240, 1244 (5th Cir. 1988).

Because ballots are secret, experts estimate group voting behavior using statistical analyses. One such analysis is ecological inference. The Latino Task Force Plaintiffs’ expert, Dr. Richard Engstrom, used ecological inference to measure the presence of racially polarized voting. (FOF110, 165-168). “[Ecological inference] is similar to [ecological regression], but abandons the assumption of linearity that ER relies upon.” *Benavidez v. City of Irving, Tex.*, 638 F.Supp.2d 709, 724 (N.D. Tex. 2009). “This methodology was developed subsequent to the *Gingles* decision, and was designed specifically for the purpose of arriving at estimates in this

type of case.” *Id.* (crediting testimony of Dr. Richard Engstrom).

The State’s expert witness, Dr. John Alford, expressed “faith in Dr. Engstrom and...confidence that [ecological inference] would give us the most stable picture we could get.” (2011 Tr. 1859:3-4). Ecological inference is an accepted method of analysis. *See e.g., Rodriguez v. Harris Cnty., Tex.*, 964 F. Supp. 2d 686, 768 (S.D. Tex. 2013); *Fabela v. City of Farmers Branch, Tex.*, 2012 WL 3135545 (N.D. Tex. Aug. 2, 2012); *Benavidez v. City of Irving, Tex.*, 638 F. Supp. 2d 709, 723 (N.D. Tex. 2009); *Jamison v. Tupelo, Mississippi*, 471 F. Supp. 2d 706, 713 (N.D. Miss. 2007); *United States v. Village of Port Chester*, No. 06 Civ. 15173(SCR), 2008 WL 190502, at \*11 (S.D.N.Y. Jan. 17, 2008); *United States v. City of Euclid*, 580 F.Supp.2d 584, 596 (N.D. Ohio 2008).

Dr. Engstrom analyzed racially contested elections because they provide the most probative evidence of racially polarized voting. *See Magnolia Bar Ass’n, Inc. v. Lee*, 994 F.2d 1143, 1149 (5th Cir. 1993) (“This court has repeatedly stated that, when statistical evidence is used to establish legally significant white bloc voting, the most probative elections are generally those in which a minority candidate runs against a white candidate.” (citing *Westwego Citizens for Better Gov’t v. City of Westwego*, 872 F.2d 1201, 1208 n. 7 (5th Cir.1989))). The State’s expert, Dr. Alford, agreed that elections in which both candidates are Anglo not do not reveal anything about the impact of ethnic voting, because Latinos cannot express an ethnic preference when there are two white candidates opposing each other. (FOF 162).

Dr. Engstrom analyzed voting patterns in several regions of the State: Bexar County, Dallas County, El Paso County, Harris County, Nueces County, Tarrant County, Travis County and a combined area of 52 counties in South Texas. (FOF 113-152).

In order to tailor his inquiry most closely to voter behavior, Dr. Engstrom used 2012 and



2010 data on voters who cast ballots derived from polling place sign-in sheets and matched by the Texas Secretary of State to Spanish-surnamed voter lists. (FOF 111). For earlier years, Dr. Engstrom relied on data showing the number of Spanish-surnamed and non-Spanish-surnamed voters in each precinct. (FOF 111). Dr. Engstrom also performed a multi-variate analysis which relied on citizen voting age population by precinct in order to estimate candidate preferences of Latinos, African Americans and Others (primarily Anglos). (FOF 111). Dr. Engstrom conducted a multivariate analysis for all geographic areas in his study except Nueces and El Paso counties, where there was a very small African American population. (FOF 165; Ex. E-7, Engstrom Corr. Rebuttal Report at 25).

Dr. Alford, the State's expert witness, stated that "Engstrom's analysis uses the best combination of modern statistical techniques and quality data." (Ex. E-17, Alford Expert Report, at 11). For his study, Dr. Engstrom examined exogenous and endogenous elections, both of which provide important information when determining whether voting is polarized along racial lines. *See Magnolia Bar Ass'n v. Lee*, 793 F. Supp. 1386, 1399 (S.D. Miss. 1992), *aff'd*, 994 F.2d 1143 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 555 (1993); *Westwego Citizens for Better Gov't. v. Westwego*, 946 F.2d 1109, 1120 n.15 (5th Cir. 1991); *E. Jefferson Coalition for Leadership Dev. v. Parish of Jefferson*, 926 F.2d 487, 493 (5th Cir. 1991); *see also Rangel v. Morales*, 8 F.3d 242, 247 (5th Cir. 1993) (district court erred by failing to consider exogenous elections "when it had only one endogenous election from which to consider the third *Gingles* factor"). The exogenous elections analyzed by Dr. Engstrom included racially contested statewide elections held from 2006-2012.

With respect to exogenous elections, Dr. Engstrom concluded that Latinos voted cohesively in general and primary elections in all the geographic areas he studied. (FOF 96, 101-

112, 113-152). He further concluded that in general elections, Latino preferences are shared by African Americans but not by others. In the Democratic primary elections, Latino preferences were not consistently shared by the rest of the primary voters. (FOF 96, 101-112, 113-152).

Dr. Engstrom also examined the 2010 endogenous elections in CD 23, CD 27, HD 33 and HD78 in which the Latino preferred incumbent was defeated. Dr. Engstrom found that in each of these elections voting was racially polarized. (FOF 5, 143, 937, 1162; Ex. E-7, Engstrom Corr. Rebuttal Report, at 25). Dr. Engstrom further performed a turnout analysis and concluded that although Latinos constituted the majority of registered voters in CD23, CD27, and HD33, they did not constitute the majority of voters who turned out to vote in the election. (FOF 6, 938, 1162) Although Latinos voted cohesively for their preferred candidate, their relatively lower turnout, combined with low Anglo cross-over voting, resulted in the defeat of the Latino-preferred incumbent in each instance.

Dr. Engstrom concluded that racial group differences in voting preferences are common across the seven counties he analyzed and in the South Texas area. (FOF 96, 101-112, 113-152). Latino voters were very cohesive in their preferences for Latino candidates, across different offices and across election cycles, in general elections and in Democratic primaries. Dr. Engstrom noted that Latino voters exercise discretion in choosing which Latino candidates to support and that not every Latino candidate on the ballot can expect to be their preferred candidate, in general or primary elections. (FOF 101-102). Dr. Engstrom concluded that Latino-preferred candidates were supported in general elections by African American voters as well. (FOF 96, 101-112, 113-152). However, this African American support was not typically present in primaries. Finally, Dr. Engstrom concluded that the other voters usually cast a majority of their votes for the opponents of Latino-preferred candidates in primary elections as well, and

consistently do so in general elections. (FOF 96, 101-112, 113-152).

The State's expert witness, Dr. John Alford, testified in the 2001 Texas congressional redistricting case that voting in Texas was racially polarized. (FOF 153). In this case, similar to Dr. Engstrom, Dr. Alford found a consistent pattern of divergent candidate preferences between Latinos and Anglos statewide, as well as divergent voting by Latinos and African Americans in the Democratic primary. Dr. Alford did not criticize Dr. Engstrom's conclusions regarding racially polarized voting. (FOF 153, Ex. E-17). On the contrary, Dr. Alford built his report's table around the analysis of Dr. Engstrom and testified that he did not reach any conclusion that required him to disbelieve Dr. Engstrom's analysis. (FOF 154).

Dr. Engstrom's conclusions regarding racially polarized voting are further supported by the U.S. Supreme Court's observation in *LULAC v. Perry* that racially polarized voting was "evident" in South and West Texas. 548 U.S. at 427. The Supreme Court further noted that "[t]he polarization in District 23 was especially severe." *Id.*

In *LULAC v. Perry*, the Supreme Court relied on the district court's findings that in CD23 Anglo crossover for the Latino-preferred candidate did not exceed 17%, and Latino cohesion for the Latino-preferred candidate did not drop below 70% in order to conclude that Latino challengers had demonstrated "sufficient minority cohesion and majority bloc voting to meet the second and third *Gingles* requirements." *Id.* at 427 (*citing Session v. Perry*, 298 F. Supp. 2d 451, 496-497 (E.D. Tex. 2004)).

The level of polarization in *LULAC v. Perry* is consistent with the levels of polarization found by Dr. Engstrom in this case. Dr. Engstrom, examining the South Texas region in which CD 23 is located, found that in racially contested elections from 2006-2010, Latino support for their preferred candidates ranged from 81% to 89%. Dr. Engstrom further found that Anglo

support for Latino-preferred candidates ranged from 13% to 19%. (FOF 6, 8, 11, 14, 16, Ex. E-7).

In this case, the conclusion of every expert witness who conducted a statistical analysis of voting statewide and in regions of the state show that Latinos and Anglos prefer different candidates. Although the State's expert Dr. Alford suggested that that the differences he observed in candidate support by Latinos and non-Latinos may not rise to the level of polarization (FOF 157-164), it is well-established that in order to be racially polarized, voting patterns need not be extreme. *See Thornburg*, 478 U.S. at 81 (Appendix A to Opinion of Brennan, J); *see also, Clark v. Calhoun County, Miss.*, 88 F.3d 1393 (5th Cir. 1996) (citing to 71% cohesive voting by Black voters); *Westwego Citizens for Better Government v. City of Westwego*, 946 F.2d 1109, 1191 (5th Cir. 1991).

### **3. Totality of the Circumstances**

Establishing the three *Gingles* preconditions is necessary but not sufficient to prove a Voting Rights Act violation. *See Johnson v. DeGrandy*, 507 U.S. 997, 1011 (1994). However, "it will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of the circumstances." *Clark v. Calhoun County, Miss.*, 21 F.3d 92, 97 (5th Cir. 1994) (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993)).

In addition to the *Gingles* preconditions, the court may also examine the factors enumerated in the Senate Judiciary Committee Report to Section 2 and adopted by the Supreme Court in *Gingles*, 473 U.S. at 36, 37, 44-45, to determine whether, under the totality of the circumstances, the challenged practice or structure results in a lack of equal opportunity for

Latinos to participate in the political process and to elect candidates of their choice.<sup>9</sup>

There is no requirement that all seven factors be met or that “any particular number of factors be proved, or that a majority of them point one way or the other.” S. Rep. at 29. “The courts ordinarily have not used these factors . . . as a mechanical ‘point counting’ device . . . . Rather, the provision requires the court’s overall judgment, based on the totality of circumstances and guided by those relevant factors in the particular case, of whether the voting strength of minority voters is, in the language of *Fortson* and *Burns*, ‘minimized or canceled out.’” *Id.* at 29 n. 118. The Court in *Gingles* explained that the Senate factors must be applied with an eye toward a “practical evaluation of the ‘past and present reality’ and on a ‘functional’ view of the political process.” *Gingles*, 478 U.S. at 45, *quoting* S. Rep. at 30 n. 120.

Because “courts have recognized that disproportionate educational, employment, income

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<sup>9</sup>These factors include, but are not limited to:

- (1) the extent of any history of official discrimination in the state or political subdivision affecting the right of a member of a minority group to register, vote, or participate in the democratic process;
- (2) the extent to which voting in government elections is racially polarized;
- (3) the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group (for example, unusually large election districts, majority vote requirements, prohibitions against bullet voting);
- (4) exclusion of minorities from a candidate slating process;
- (5) the extent to which minority group members in the state or political subdivision bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
- (6) the use of overt or subtle racial appeals in political campaigns;
- (7) the extent to which minorities have been elected to public office in the jurisdiction.

Additional factors are: “whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs” of the minority group and “whether the policy underlying the . . . use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.” S. Rep. at 29; *see also Gingles*, 478 U.S. at 48 n.15.

levels and living conditions arising from past discrimination tend to depress minority political participation, . . . plaintiffs need not prove any further causal nexus between their disparate socioeconomic status and the depressed level of political participation.” S. Rep. at 29 n. 114 (citing *White v. Regester*, 412 U.S. 755, 768 (1973) and *Kirksey v. Bd. of Supervisors*, 528 F.2d 139,145 (5th Cir. 1977); *see also Clark*, 88 F.3d at 1399; and *LULAC v. Clements*, 999 F.2d 831, 867 (5th Cir. 1993) (Senate Report does not “insist[] upon a causal nexus between socioeconomic status and depressed participation”).

In *LULAC v. Perry*, the Supreme Court noted that the “the long history of discrimination against Latinos and Blacks in Texas’ . . . may well ‘hinder their ability to participate effectively in the political process’” and found a section 2 violation under the totality of the circumstances. *LULAC v. Perry*, 548 U.S. 399, 439-40, 442 (quoting *Session*, 298 F.Supp.2d, at 473, 492 and *Gingles*, 478 U.S., at 45).

The Supreme Court explained:

Texas has a long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process. Devices such as the poll tax, an all-white primary system, and the restrictive voter registration time periods are an unfortunate part of this State’s minority voting rights history. The history of official discrimination in the Texas election process—stretching back to Reconstruction—led to the inclusion of the state as a covered jurisdiction under Section 5 in the 1975 amendments to the Voting Rights Act. Since Texas became a covered jurisdiction, the Department of Justice has frequently interposed objections against the State and its subdivisions.

*LULAC v. Perry*, 548 U.S. 399, 439-40 (2006), *quoting Vera v. Richards*, 861 F. Supp. 1304, 1317 S.D.Tex.1994).

Dr. Andres Tijerina, an historian and expert in Texas Mexican American history, testified in this case that there exists a long history of discrimination against Latinos in Texas and that

Latinos bear the present effects of that discrimination in the form of lower rates of political participation. (FOF 178, 191, 196-200, 204, 208, 246, 247, 258-269, 339-347, 358- 364, 414; Ex. E-10 [Dkt. 149-6, at p. 32]) Much of that discrimination, including the poll tax, refusal to register voters, segregated public facilities, segregated schools and employment discrimination, has been experienced by Latino voters still living today. (FOF 192, 194, 305-310, 312, 313, 320, 322-323, 325, 348, 365-373, 385-386, 388, 391; Ex. E-10 [Dkt. 149-6, at p. 32]).

The legacy of historical discrimination persists today in the form of lower socio-economic status for Latinos in Texas. Dr. Jorge Chapa, a demographer and specialist in Latino population studies, testified that even among third- and subsequent-generation Latinos living in Texas, educational achievement and earnings lag far behind Anglos. (FOF 244, 245; Ex. E-1, at p. 4). Dr. Chapa presented data showing that Latino voter turnout rates remain below that of Anglos in Texas. (FOF 247, 249, 252; Ex. E-1 at p. 16).

Former Texas State Senator Joe Bernal testified at trial about his personal experiences with discrimination against Latinos in San Antonio, including segregation in public accommodations and punishment for speaking Spanish in public schools. (FOF 312, 391) Senator Bernal testified that he introduced a bill in the Texas Legislature to eliminate the poll tax, but federal law made it illegal first. (FOF 192). Former Texas State Senator Gonzalo Barrientos provided similar testimony about discrimination against Latinos in Austin and other parts of Texas, including describing his experiences with the poll tax, segregated public accommodations, punishment for speaking Spanish in public schools, and Latino children dropping out of school early because they had to work in the fields. (FOF 194, 226, 305-310, 369-373, 381-384, 389) Additional witnesses provided testimony regarding similar discrimination against Latinos in Dallas, Houston, El Paso and South Texas. (FOF 192, 194,

305-310, 312, 313, 320, 322-323, 325, 348, 365-373, 385-386, 388, 391).

The State did not contest the Task Force Plaintiffs' evidence of the present effects of past racial discrimination and offered no conclusions regarding the lingering effects of prior discrimination in the Latino community. (FOF 248).

**a. Proportionality as a Factor in the Totality of Circumstances**

Whether or not Latinos constitute the majority in a number of districts proportional to their population "is a relevant fact in the totality of circumstances." *Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994).

Latinos constitute more than 25% of the citizen voting age population of Texas. (FOF 1607). Under this measure, proportionality would require 9 congressional districts out of a total of 36. The State's Plan C185 creates only seven Latino opportunity districts. On the House side, proportionality would require 37 or 38 districts of 150. Defendants' Plan C292 creates 30, two fewer than existed in the benchmark.

In cases involving claims of statewide vote dilution, such as this case, proportionality is measured on a statewide basis. *LULAC*, 548 U.S. at 436. The Supreme Court in *LULAC* rejected the argument by Texas that proportionality for Latinos in section 2 cases is limited to a specific geographic area and instead concluded that because Latinos "have alleged statewide vote dilution based on a statewide plan . . . Particularly given the presence of racially polarized voting—and the possible submergence of minority votes—throughout Texas, it makes sense to use the entire State in assessing proportionality." *LULAC v. Perry*, 548 U.S. at 437-38.

In *LULAC v. Perry*, based on HCVAP, "Latinos [we]re . . . two districts shy of proportional representation." *Id.* at 438. Here, even using 2010 HCVAP figures, Latinos are again two districts shy of proportional representation in C190. In H283, Latinos are at least



seven districts shy of proportional representation. The lack of proportionality in Latino opportunity districts in the congressional and house plans supports Plaintiffs' section 2 claim.

**B. PLAN H283 INTENTIONALLY DISCRIMINATES AGAINST LATINOS IN VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT AND THE FOURTEENTH AMENDMENT**

The Fourteenth Amendment forbids intentional discrimination in legislative line-drawing. *City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 66 (1980). Although typically courts defer to legislative redistricting, that deference is overcome by evidence of race-based decision making. *Miller v. Johnson*, 515 U.S. 900, 915 (1995) (quoting *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 218 (1995)), *Garza v. County of Los Angeles*, 756 F. Supp. 1298, 1349 (C.D. Cal. 1990), *aff'd*, 918 F.2d 763 (9th Cir. 1990).

There are two distinct claims of intentional discrimination in redistricting. The first challenges the use of race as a basis for separating voters into districts and was first recognized in *Shaw v. Reno*, 509 U.S. 630 (1993). *See also Miller v. Johnson*, 515 U.S. at 911. The second claim targets actions “disadvantaging voters of a particular race,” and is “analytically distinct” from claims under the *Shaw v. Reno* line of cases. *See Miller v. Johnson*, 515 U.S. 900, 911 (1995) (explaining distinction between claims). A non-*Shaw* claim of intentional discrimination in redistricting asserts that the jurisdiction “enacted a particular voting scheme as a purposeful device ‘to minimize or cancel out the voting potential of racial or ethnic minorities’” *Id. See also City of Mobile v. Bolden*, 446 U.S. 55 (1980) *superseded in part by statute on other grounds* by 42 U.S.C. § 1973; *Rogers v. Lodge*, 458 U.S. 613, 617 (1982) (redistricting plan violates the Fourteenth Amendment if “‘conceived or operated as purposeful device to further racial discrimination’ by minimizing, canceling out or diluting the voting strength of racial elements in the voting population.”) (quoting *Whitcomb v. Chavis*, 403 U.S. 124, 149 (1971)); *Garza v.*

*County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990) (same).<sup>10</sup>

Courts have long recognized that public decision making bodies, like the State of Texas, can have more than one motive when enacting a statute. *See Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) (“Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the ‘dominant’ or ‘primary’ one.”).

The Court in *Arlington Heights* continued:

In fact, it is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.

Id at 265-266.

In *Arlington Heights*, the Supreme Court explained that when determining whether racially discriminatory intent or purpose is a motivating factor behind an official action, a court must make “a sensitive inquiry into such circumstantial and direct evidence as may be available.” *Arlington Heights*, 429 U.S. at 266.

The Court explained further that, in addition to direct evidence, circumstantial evidence of discriminatory intent includes:

- the impact of the official action, *i.e.* whether it “bears more heavily on one race than another” and whether “a clear pattern, unexplainable on grounds other than race emerges from the effect of the state action even when the

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<sup>10</sup> Both *Shaw* and *Miller* acknowledge these differences. *See Miller v. Johnson*, 515 U.S. 900, 911 (1995); *Shaw v. Reno*, 509 U.S. 630, 651-52 (1993).

governing legislation appears neutral on its face;”

- the historical background of the decision;
- the specific sequence of events leading up to the challenged decision;
- departures from the normal procedural sequence;
- substantive departures, “particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached;” and
- The legislative or administrative history, especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports.

*Arlington Heights*, 429 U.S. at 264-68.

As shown below, application of the Arlington Heights factors to this case demonstrates that the State’s congressional and House redistricting plans are motivated by the intent to dilute Latino voting strength in violation of the Fourteenth Amendment.

### **1. The Discriminatory Impact of Plan H283**

Although Plans H283 appears facially neutral, “a clear pattern, unexplainable on grounds other than race emerges from the effect of the state action[.]” *Arlington Heights*, 429 U.S. at 266, citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1977); *Guinn v. United States*, 238 U.S. 347 (1915); *Lane v. Wilson*, 307 U.S. 268 (1939); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

Much like the municipal boundary in *Gomillion*, which at every turn excluded African American voters from the city, the boundaries of H283 eliminate existing Latino opportunity districts and avoid creating new Latino opportunity districts in every location where such a district could be created.

H283:

- In Bexar County, where Latino voters in HD117 were poised to oust the incumbent and elect the Latino-preferred candidate, Texas redistricters reduced the Spanish-surnamed voter registration (SSVR) and reduced the number of elections in which the Latino-preferred candidate was projected to win. (FOF 681; PL Ex. 29, 1689).
- In El Paso County, where Latino voters in HD78 were poised to oust the incumbent and elect the Latino-preferred candidate, Texas redistricters reduced the Spanish-surnamed voter registration (SSVR) and reduced the share of the vote the Latino-preferred candidate was projected to earn. (FOF 14; PL Ex. 14; Appendix A, ¶ 110, 111; Appendix B, ¶ 110, 111).
- In Cameron and Hidalgo counties, where the Latino population increased by the size of a State House district, Texas redistricters declined to create a new State House district, although redistricters created new Anglo-majority State House districts to accommodate population growth in Denton and Montgomery Counties. (FOF 35, 45, 46).
- In Harris County, where the Latino CVAP population increased sufficiently to constitute the majority of an additional State House district, Texas redistricters declined to create the additional Latino-majority district. (FOF 36, 38).
- In Nueces County, although the benchmark plan contained two Latino majority districts wholly within the county and an Anglo-majority district spilling out, Texas redistricters eliminated one of the Latino districts (HD33) and relocated it to Rockwall County where it became an Anglo district. (FOF 42).

In addition to the systematic thwarting of Latino voting strength in Texas, Plan H283

has an overall discriminatory impact on Latino voters. (*See* FOF 1-446, *infra*). In the face of shifting demographics, and the increase in the number of Latino eligible voters in Texas from 2000 to 2010, the State's refusal to create additional Latino opportunity districts, as well as its subtraction from the current number of Latino opportunity districts, is circumstantial evidence of an intent to limit Latino electoral strength.

## 2. Historical Background

Texas did not engage in consistent decennial redistricting until the U.S. Supreme Court declared in 1964 that malapportioned election districts violate the 14<sup>th</sup> Amendment. *See Wesberry v. Sanders*, 376 U.S. 1 (1964) and *Reynolds v. Sims*, 377 U.S. 533 (1964); *see also Kilgarlin v. Martin*, 252 F. Supp. 404, 410 (S.D. Tex. 1966) *rev'd sub nom. Kilgarlin v. Hill*, 386 U.S. 120 (1967).

In every redistricting cycle from 1972 to 2003, Texas enacted one or more statewide redistricting plans that discriminated against Latino voters. Most recently, in 2006, the U.S. Supreme Court struck down the Texas congressional redistricting plan because it diluted Latino voting strength in violation of section 2 of the Voting Rights Act. The Court found that Texas had improperly reduced the voting strength of Latinos in CD23 to protect an incumbent who was not Latino-preferred and noted that the reduction of Latino voting strength bore "the mark of intentional discrimination that could give rise to an equal protection violation." *LULAC v. Perry*, 548 U.S. at 440.

In the 2001 round of redistricting in Texas, the U.S. Department of Justice objected to parts of the state House plan because they caused an impermissible retrogression in Hispanic voting strength. (PL Ex. 229, at p. 4). Specifically, the 2001 state House plan eliminated a Latino district in Bexar County and reduced Latino voting strength in House Districts 35, 38,

and 74. (PL Ex. 229 at p. 8). The federal district court in *Balderas v. Texas*, No. 6:01-CV-158 (W.D. Tex. Nov. 28, 2001) modified the state House plan to remedy the discrimination by Texas. (PL Ex. 229).

In 1991, the U.S. Department of Justice blocked the state House redistricting plan because it “exhibit[ed] a pattern of districting decisions that appears to minimize Hispanic voting strength through packing or fragmenting Hispanic population concentrations unnecessarily.” (PL Ex. 1102 at 3). The U.S. Department of Justice found that: the redistricting plan reduced Latino voting strength in a House district in El Paso in order to protect a white incumbent; in Cameron and Hidalgo counties the redistricting plan reduced the Latino voting strength of a Latino district to protect a white incumbent; in Bexar County the redistricting plan packed Latino voters into HD118 and reduced Latino voting strength in HD117 to 50.9% HVAP; in South Texas the redistricting plan drew House districts in an east-west manner which over-concentrated Latino voting strength in districts to the south; and in Dallas County the redistricting plan reduced Latino voting strength in the one Latino majority district. (PL Ex. 1102 at 3-4).

In 1982, the U.S. Department of Justice blocked the Texas congressional redistricting plan because it diluted Latino voting strength. Specifically, the plan created two adjacent congressional districts in South Texas, one of which was 80.4% Mexican American and the other which was 52.9% Mexican American. (US Ex. 226). In 1982, the U.S. Department of Justice also blocked the state Senate redistricting plan because it “unnecessarily fragment[ed] minority concentrations in such a manner as to dilute the voting strength of the minority communities.” (PL Ex. 1099 at 2). The U.S. Department of Justice found that in Bexar County the state Senate plan removed a substantial number of Mexican Americans and added a

larger number of Anglos to an underpopulated district and diluted Latino voting strength. (PL Ex. 1099 at 2-3).

In 1976 the U.S. Department of Justice blocked the Texas House redistricting plan because it fractured Latino voting strength in Nueces County. (PL Ex. 1100) That same year, the U.S. Department of Justice also blocked the Texas House redistricting plan because it fractured minority voting strength in Jefferson and Tarrant counties. (PL Ex. 1101 at 2-3).

In 1973, the U.S. Supreme Court invalidated the Texas House plan because it discriminated against Latino and African American voters in violation of the 14<sup>th</sup> Amendment to the U.S. Constitution. *White v. Regester*, 412 U.S. 755 (1973). (2011 Tr. at 434:21-435:4)

In the 1980's and 1990's, the U.S. Department of Justice interposed section 5 objections to Texas election laws beyond redistricting, including: the adoption of at-large voting for hospital districts (1989); failure to provide Spanish language versions of registration forms and instructions (1995); and allowing agency employees to reject voter registration applications (1995). (FOF 188; US Ex. 234).

The history of redistricting in Texas demonstrates that the State has consistently used legislative line-drawing to minimize the opportunity of Latinos to elect the candidates of their choice. (FOF 189-229).

**a. The 2011 Legislative Session**

The Texas Legislature enacted its 2011 redistricting plans in the context of strong racial tension and heated debate about Latinos, Spanish-speaking people, undocumented immigration and calls for stricter voter identification to prevent election fraud. (FOF 427-434; PL Exh. 202, 335-1, and E-8 at pp. 1, 6). Larry Gonzales, a Latino Republican member of the Texas House, testified that he had some long discussions with other Republican members on the House floor

about the racial tone of the debate during the 2011 Session. (FOF 431). Rep. Gonzales further testified that the legislative debate upset some Latinos because it seemed to be aimed at them personally. (FOF 430). In an interview with National Public Radio, Aaron Pena, another Latino Republican member of the Texas House, explained, “The tone of the debate is basically saying: We don’t want you. This is a war over our culture. These people bring diseases into our country.” (FOF 445).

Although the 2011 Legislative Session took up several controversial proposals related to immigration, the Session was also characterized by elected officials criticizing Latinos and Spanish-speakers without respect to immigration status. (FOF 434-436). During the 2011 Special Legislative Session, the chairman of the Senate Transportation and Homeland Security Committee Chris Harris chastised a Spanish-speaking witness who tried to testify at a hearing through an interpreter: “Did I understand him correctly that he has been here since 1998? . . . Why aren’t you speaking in English, then? . . . It’s insulting to us. It is very insulting.” (FOF 432).

During the 2011 Special Legislative Session, a legislatively-sponsored speaker on the Capitol steps stated: “If you really want to know why in Texas we don’t get immigration legislation passed, it’s because we have 37, 36 Hispanic legislators in the Texas Legislature. All of the states that have passed legislation have a handful.” (FOF 433).

Also during the 2011 Legislative Session, State Representative Leo Berman spoke on public radio regarding Texas immigration bills and whether or not to seek Latino voter support. He stated, “So what vote are we going after? We’re going after a vote that doesn’t vote Republican anyway.” (FOF 443).



### 3. Sequence of Events Leading up to the Challenged Decision

The specific sequence of events leading up to the enactment of H283 and the bill's legislative history reveal that Texas redistricters were very conscious of the growing Latino electorate in Texas and drew maps behind closed doors with the goal of limiting Latino voting strength.

The 2011 Texas Legislative Session started on January 11, 2011. (July 2014 Tr. at 1929:25-1930:9). Later that month, on January 24, 2011, the Texas House of Representatives rejected a rules adoption providing that all redistricting maps passed by the Legislature should comply with the Voting Rights Act. (FOF 448).

On February 9, 2011, House Speaker Joe Straus named Rep. Burt Solomons Chair of the House Redistricting Committee. (FOF 450). Chairman Solomons hired Ryan Downton as legal counsel to the Redistricting Committee. Ryan Downton was an attorney in private practice who focused on commercial litigation with some healthcare; he was also part owner of a medical imaging center. Ryan Downton did not specialize in election or redistricting law. Ryan Downton worked under the supervision of Bonnie Bruce, Redistricting Committee Clerk and Chief of Staff for Burt Solomons. (FOF 452).

Gerardo Interiano was counsel to House Speaker Joe Straus and served as the lead staffer in charge of the House redistricting plan. (FOF 455). Ms. Bruce, Mr. Downton and Mr. Interiano shared a suite of offices in the Capitol building. (FOF 456).

Throughout the redistricting process, Bonnie Bruce had frequent contact with attorneys at the Texas Legislative Council. Ms. Bruce talked to either David Hanna or Jeff Archer daily and exchanged emails with them. Ms. Bruce consulted Mr. Hanna and Mr. Archer about retrogression, about the maps, and about what was possible for the Redistricting Committee to

do or not do. She also consulted Mr. Hanna and Mr. Archer about the hearings, public input, and the timing of the hearings. (FOF 466).

Chairman Solomons filed an empty “shell” bill for the Texas State House map in early March 2011. (FOF 462). The House Redistricting Committee held its first hearing on March 1, 2011 and only took public testimony from the state demographer and the Texas Legislative Council on the population increases and the laws regarding redistricting. (FOF 463). In its March 1, 2011 public hearing, the Redistricting Committee had no redistricting plan for public review or comment. (FOF 464).

At the request of Ms. Bruce, David Hanna produced a series of three memos analyzing the committee’s draft House maps. Ms. Bruce shared the Hanna memos with Gerardo Interiano, Ryan Downton and Representative Solomons. (FOF 467).

On April 6, 2011, Ryan Downton sent a House redistricting map to David Hanna with a request for Mr. Hanna to run a retrogression analysis. (FOF 468). Two days later, David Hanna sent an email to Denise Davis, Chief of Staff to Speaker Straus, warning Ms. Davis that “your minority districts have some issues with Sec. 5.” (FOF 469).

Mr. Hanna sent his email to Ms. Davis after completing his April 7 memo, titled “Possible Retrogression Issues for Black and Hispanic Districts in Proposed House Plan.” Mr. Hanna’s memo warned that the draft House plan reduced the Latino voting strength in a number of districts around the state and recommended restoration of the districts. (FOF 470, 471).

On April 12, 2011, Mr. Hanna prepared his second legal memo, analyzing the Committee’s draft plan H110. The memo raised a retrogression concern regarding the elimination of HD33 in Nueces County as well as the reduction of Latino voting strength in

other counties, including Bexar, Dallas, Tarrant, and Harris counties. The memo further urged the Committee to consider whether section 2 of the Voting Rights Act required the creation of a fifth Latino opportunity district in Harris County. (FOF 472). During the redistricting process, David Hanna had successfully drafted an additional Latino majority House district in Harris County when compared to the benchmark. (FOF 473).

The following day, on April 13, Chairman Solomons made public a redistricting map for the Texas House. That plan was titled H113. (FOF 474). On April 14, 2011, the House Redistricting Committee posted a notice for an April 15, 2011 public hearing on the bill. (FOF 475).

On April 15, 2011 the Latino Redistricting Task Force testified in the House Redistricting Committee and informed the Committee that the Committee's proposed House redistricting Map H113 reduced Latino electoral opportunity. (FOF 476). The Task Force informed the committee that Latinos had fewer electoral opportunities in the Committee's proposal when compared to the benchmark map and that the map presented a serious question of retrogression under section 5 of the Voting Rights Act. (FOF 476). The Task Force also stated that the Committee map's failure to create Latino majority districts where appropriate raised the strong possibility that the plan diluted Latino voting strength in violation of section 2. (FOF 476). In its testimony to the Committee, the Task Force specifically criticized the elimination of HD33 in Nueces County, the failure to create an additional Latino opportunity district in the Rio Grande Valley, and the lopsided allocation of Latino voters in El Paso County, Harris County and Hidalgo County that limited Latino electoral opportunity. (FOF 477). During the redistricting process, the Mexican American Legislative Caucus (MALC) also drew alternative maps that increased Latino electoral opportunity and presented them to

the Legislature. (FOF 478).

The House Redistricting Committee held a public hearing again on April 17, 2011, which was Palm Sunday. (FOF 479). On April 19, 2011, the Committee met without taking public testimony and reported out plan H153. (FOF 479).

On April 20, David Hanna prepared his third legal memo for the redistricters and analyzed H153, the redistricting plan passed out of Committee. Like the second Hanna memo, the third memo continued to express retrogression concerns with the elimination of HD33 in Nueces County and the reduction of SSVR in districts in Bexar, Dallas, Hidalgo, and Travis counties. (FOF 480). Mr. Hanna shared all three of his legal memos with Bonnie Bruce, Gerardo Interiano and Ryan Downton. (FOF 481).

On April 21, 2011, as the leadership set the calendar for when the redistricting bill would be taken up on the floor, David Hanna emailed Gerardo Interiano and Ryan Downton to present a head count of majority Latino districts in plan H153. The email stated that H153 was potentially vulnerable under section 5 of the Voting Rights Act. The email also stated that an alternative proposal presented to the Legislature, H115, created additional Latino majority districts when compared to H153. (FOF 482).

Mr. Hanna testified that at the time he prepared the memo, he had been able to create additional Latino majority districts in Texas when compared to H153 and also that he was aware of a number of plans submitted by minority groups that created additional minority opportunity districts. (FOF 483).

In addition to the warnings from the Texas Legislative Council, the redistricters had election analyses from the Office of the Attorney General, including an April 22, 2011, email to Ms. Bruce enclosing a reaggregated election analysis for draft HDs 40, 41, 78, 137, 139, 140

and 141 in H153 which Ms. Bruce shared with Chairman Solomons, Gerardo Interiano and Ryan Downton. (FOF 484).

The redistricting bill was debated on the House floor on April 27 and 28, 2011. (FOF 485). On April 27, 2011, MALDEF wrote to Chairman Solomons regarding the proposed redistricting plan H153. The letter explained that although H153 increased the SSVR in two existing Latino opportunity districts, raising the SSVR in those districts did not create new Latino opportunity districts that could offset the loss of District 33. The letter concluded that H153 was retrogressive under section 5. (FOF 486).

The redistricting bill passed in the House on April 28, 2011. The Senate held one hearing on the House bill, on May 6, 2011 and then passed the House redistricting bill without amendment on May 21, 2011. (FOF 487). The House plan was signed by the Governor on June 17, 2011. (FOF 487).

**a. HD 78**

In the 2011 Legislative Session, Rep. Joe Pickett, the dean of the El Paso delegation, initiated and managed the El Paso House delegation's efforts to propose a redistricting plan for El Paso House districts. (FOF 488).

In the benchmark plan, HD78 was the only House district in El Paso County that had an SSVR below 50%. (FOF 22; US Ex. 374). HD78 had been won by Joe Moody in 2008 and won by Dee Margo in 2010. (FOF 492). Rep. Pickett testified that, with respect to HD77 and HD78, he wanted high Hispanic percentages in both districts because Latinos are the overwhelming majority in El Paso. (FOF 494). Rep. Pickett sought to avoid creating a map that concentrated Anglos into one district in El Paso and believed that doing so would be “glaring.” (FOF 493).

In late February and early March, 2011, Rep. Pickett and his staff began to work on the new redistricting plan for El Paso County and produced five to six drafts. (FOF 497). While creating his draft redistricting plans, Rep. Pickett received input from several members of the delegation. (FOF 498).

In mid-March, Rep. Pickett showed a draft redistricting map to members of the El Paso delegation. (FOF 504). The proposal that Rep. Pickett shared with the El Paso delegation featured an HD77 with a northeast extension that was fairly rounded and no long northwest extension. (FOF 505).

On March 15, 2011, Rep. Pickett shared a redistricting proposal for El Paso with Chairman Solomons. The draft map had the rounded “chef’s hat” shaped extension to the northeast and no long extension to the northwest. (FOF 506). The draft map shared by Rep. Pickett with Chairman Solomons on March 15, 2011 contained an SSVR for HD78 that was slightly higher than the benchmark. (FOF 507).

Rep. Pickett testified that he wanted to give Chairman Solomons a map with every member’s signature so that Chairman Solomons would know that all members had agreed to the plan. (FOF 510). Mr. Margo testified that he recalled Rep. Pickett calling El Paso delegation members to meet on the House floor to sign the final map to be delivered to the Committee. (FOF 511). Mr. Margo signed the map presented by Mr. Pickett. (FOF 512).

Although Rep. Marquez signed the map presented to her by Rep. Pickett, she did not agree with the plan and voiced objections to Rep. Pickett. (FOF 514-516). Although he believed it was too late in the process to make additional changes, Rep. Pickett told Rep. Marquez that if she wanted additional changes to her district, she would have to negotiate them with Rep. Margo. (FOF 517, 519). Rep. Marquez spoke to Rep. Margo and he agreed to

changes to the map which Rep. Marquez conveyed to Rep. Pickett. (FOF 520). The later map received by Rep. Pickett from Rep. Marquez contained a version of HD77 that featured a western “antler” as well as an extension to the northeast. (FOF 521). The map sent by Rep. Marquez also contained an SSVR for HD78 that was 45.8% -- lower than the benchmark HD78. (FOF 522).

On March 21, 2011, Rep. Pickett sent two redistricting maps to the REDAPPL account of Chairman Solomons. One map was similar to the earlier map sent by Rep. Pickett to Rep. Solomons. The second map was similar to the map sent by Rep. Marquez to Rep. Pickett. (FOF 526). After sending the two maps, Rep. Pickett told Chairman Solomons that he had an agreed-upon map by the members of the delegation, and one of them kept coming back with some concerns. Rep. Pickett further told Chairman Solomons, “It is up to you how you want to handle it.” (FOF 527).

The map signed by the delegation and Rep. Pickett, and which was sent by Rep. Pickett to the Redistricting Committee as his final draft, resembles the “chef’s hat” map with no western antler and did not split any precincts. (FOF 528). Rep. Pickett testified that there was no more activity in his redistricting plan account after March 21, 2011 because he felt that his job was done. (FOF 536).

Chairman Solomons testified that although he had received ‘chef’s hat’ versions of HD77 from Rep. Pickett in which HD78’s SSVR was above the benchmark, the redistricting committee moved forward with the version of the map in which HD77 had ‘antlers’ and HD78 had an SSVR below the benchmark. (FOF 538). On April 11, 2011, despite opening two Pickett maps showing an improved SSVR for HD78 and more compact configuration, Mr. Downton continued to work on the “antler” map to modify the boundaries of HD77 and HD78.

(FOF 554).

On April 13, 2011, the House Redistricting Committee released its statewide House redistricting plan (H113). The El Paso portion of the map featured Mr. Downton's 'antlers' configuration of HD77 and an HD78 with an SSVR below the benchmark. (FOF 558). Mr. Downton's final map for El Paso split 14 precincts along the boundary for HD77 and HD78. (FOF 561). Mr. Downton's final map for El Paso also reduced the performance of Latino-preferred candidates in HD78 when compared to the benchmark HD78. (FOF 290).

Mr. Downton testified that as he drew the boundary between HD77 and HD78, he looked at block level data for Hispanic population and that he split precincts and moved blocks across the boundaries between House District 77 and 78 based on that Hispanic population. (FOF 562). Mr. Downton testified that while he was mapping he had the election data on and he selected blocks based on Hispanic shading while keeping an eye on the fluctuations in the plan statistics on political results. (FOF 563).

Mr. Downton testified that he made his changes to El Paso map for the purpose of increasing the SSVR in HD78 but conceded that if he had wanted to increase the SSVR in HD78, he could have simply moved two whole precincts in the western "antler" from HD77 to HD78 and moved three whole precinct in the eastern "antler" from HD78 to HD77. (FOF 560). Mr. Downton testified that he could have increased the SSVR of HD78 above the level he achieved in his plan by using whole precincts. (FOF 564).

On April 13, 2011, following the release of the House Committee's draft redistricting plan, Gerardo Interiano was at his desk at 9:00pm and opened two maps in his REDAPPL account. (FOF 567, 569, 571). The first plan included an HD78 that is very compact and has an SSVR of 52.6%, and Molina garnered 51.7% of the vote. (FOF 568; PL Ex. 518 at 20).



The second plan was a copy of the first, made by Mr. Interiano, and bears the label "El Paso – VRA." (FOF 569). Mr. Interiano sent the compact map of HD78 to Mr. David Hanna that same evening of April 13, 2011. (FOF 572).

On April 22, 2011, Ms. Bonnie Bruce received an email from the Office of the Attorney General enclosing a reagggregated election analysis for HD78 in H153. Ms. Bruce shared the analysis with Chairman Solomons, Gerardo Interiano and Ryan Downton. (FOF 573). The reagggregated election analysis showed that HD78 in H153 elected the Latino-preferred candidate in two of ten racially contested elections. The analysis further showed that the margin of victory for the two prevailing Latino candidates had been reduced when compared to the benchmark HD78. (FOF 575).

**b. HD117**

During the 2011 Legislative Session, State Representatives Ruth Jones McClendon and Michael Villarreal led the effort of the Bexar County delegation to propose a Bexar County map. (FOF 583). Representative Mike Villarreal oversaw the process of gathering draft maps from the Bexar County representatives and presented draft maps to the delegation. (FOF 584). Rep. Villarreal gave guidance to the delegation members about compliance with the Voting Rights Act, talked to the delegation about certain indices of Latino voting strength including Hispanic Citizen Voting Age Population and Spanish Surname Voter Registration, and urged the delegation to be careful about compliance with the Voting Rights Act. (FOF 590-591).

In 2011, John Garza was the State Representative for House District 117. (FOF 592). In the benchmark HD117, the SSVR was 50.3%. (FOF 603). Rep. Garza had been defeated when he ran in 2008 for state representative in House District 117, but was elected when he ran for the same office in 2010. (FOF 596). In 2010, the margin of victory for Rep. Garza in

HD117 was 1,070 votes. (FOF 597).

Gerardo Interiano testified that Mr. Garza wanted a district in which he could be reelected. (FOF 595). Rep. Garza testified that he believed that 2012 was going to be a tougher race than 2010 for him, and in drafting his ideal district map for the delegation he wanted to be reelected and maintain his voter strength. (FOF 599).

After he was elected in 2010, Rep. Garza reviewed election and turnout data for his race. (FOF 598). Rep. Garza also looked at the demographics that supported him in the HD117 election in 2010. (FOF 606). Going into redistricting, Rep. Garza knew that in his 2010 election he had performed stronger in the northern part of his district than in the southern part, and that in 2010 he had performed stronger outside Loop 410 in Bexar County than inside Loop 410. (FOF 609). He also looked at the precincts that gave him strong support and precincts that gave him weak support. (FOF 600). Rep. Garza acknowledged that he lost by wide margins several precincts—1040, 1025, 1045 and 1044— that contain portions of the South San Antonio Independent School District. (FOF 610).

During redistricting, Rep. Garza looked at precinct returns not just for his 2010 race but for a number of races, including the governor's race, the attorney general's race and some other statewide races. When he was deciding what areas he wanted to add to his district and what areas he wanted to incorporate, Rep. Garza and his staff reviewed election returns for contests going back to 2006. (FOF 602). Rep. Garza testified that as they reviewed draft maps, his staff would do analysis of the areas that he was picking up and losing and would crunch numbers for him. (FOF 603).

Rep. Garza testified that one of his goals for redistricting was to spin the district farther north because that area tended to be more Anglo and more conservative. (FOF 607). Rep.

Garza testified that when he shared his desires for his district with other members of his delegation, the desires were met with some chagrin. (FOF 608).

During redistricting, Rep. Garza and his staff did an analysis of the turnout in HD117. (FOF 611). Rep. Garza said that he and the other members of the Bexar County delegation understood the differences between rural versus urban and that they had conversations to that effect. (FOF 612). Rep. Garza believed that rural Hispanic turnout would be low. (FOF 613).

Gerardo Interiano assisted Representative Garza and Representative Garza's staff in drawing proposals for HD117. (FOF 617). Mr. Interiano testified that his work with Rep. Garza and Rep. Garza's staff on HD117 involved "a constant flow of communication" in which Rep. Garza's staff exchanged maps with Mr. Interiano and Mr. Interiano recommended they look at certain areas. (FOF 618).

Mr. Interiano testified that he mapped in his office with Mr. Garza and Mr. Garza's staff and then forwarded the draft maps to Mr. Garza's REDAPPL account. (FOF 619). Mr. Interiano testified that as he worked on drafts of HD117 with Mr. Garza and Mr. Garza's staff, he would run elections on the drafts to measure the political performance. (FOF 620). Mr. Interiano testified that when he was crafting HD117, he turned on SSVR shading in REDAPPL. (FOF 621).

Rep. Villareal sent at least nine redistricting proposals for Bexar County to Mr. Interiano. (FOF 623). On February 28, 2011, Mr. Interiano received a proposed Bexar County map from Rep. Villarreal in which the SSVR in HD117 was 53.1%. (FOF 624).

On March 1-2 2011, Mr. Interiano worked on a plan in his REDAPPL account titled "Bexar County Interiano draft 2." The non-suspense SSVR for HD117 in that map was 47.3%. (FOF 625).

On March 1, 2011, Mr. Interiano sent to Rep. Garza a map with the comments: “Here is the draft that we discussed.” The map was the product of discussions Mr. Interiano had with Mr. Garza and Mr. Garza’s staff and was drawn by Mr. Interiano at their direction. The non-suspense SSVR for HD117 in that map was 47.3%. (FOF 626). Rep. Garza submitted the map drawn by Mr. Interiano to the Bexar County delegation as his proposal. (FOF 627).

Rep. Villarreal went to Gerardo Interiano with the concern that Rep. Garza’s proposed district would not pass muster under the Voting Rights Act. (FOF 628). Gerardo Interiano met with the the legal team for the redistricting effort and subsequently told Rep. Garza that Rep. Garza’s ideal district would not work. (FOF 629). Mr. Interiano told Rep. Garza that his SSVR would have to remain over 50% in order to resolve concerns under the Voting Rights Act. (FOF 630).

Rep. Garza was unhappy that he had to go back to the drawing board because he wanted his district to take in more territory to the north. (FOF 632). Rep. Garza then asked Mr. Interiano to work with Rep. Garza’s staff to change the district.

Mr. Interiano testified that there were two ways to raise the SSVR of HD117 above 50%. One was to take the district into the far south of Bexar County and into Whispering Winds area. The second was to go into inner city San Antonio. (FOF 633). Mr. Interiano testified that raising the SSVR in HD117 was a balancing act because of the goal to keep Rep. Garza’s “political numbers up.” (FOF 634).

On March 22, 2011, Mr. Interiano received two maps from Rep. Villarreal in which HD117 had an SSVR of 50.5%, and candidate Molina won the 2006 race for Court of Criminal Appeals. (FOF 640-641).

On March 23, Rep. Garza’s REDAPPL account shows a plan titled “plan idea 1, 48

percent.” The map has an SSVR of 48% for HD117 in 2010 and 48.6% of the vote for candidate Molina in the Court of Criminal Appeals race in 2010. (FOF 643).

On March 25, 2011, Mr. Interiano created and sent to Rep. Garza a redistricting plan with the comments “edited with Lynlie and Art.” (FOF 644). Lynlie Wallace and Art Martinez were the chiefs of staff of State Representatives Lyle Larson and John Garza. (FOF 636). Mr. Interiano’s map extended HD117 farther to the north and south. Mr. Interiano’s version of HD117 in this map contained 48% SSVR and candidate Molina lost the 2006 race for Court of Criminal Appeals with 46.8 % of the vote. (FOF 645).

On March 29, 2011, Rep. Garza sent a map to Mr. Interiano with the note “Current 117.” The version of HD117 in this map contained 50% SSVR and candidate Molina lost the 2006 race for Court of Criminal Appeals with 48.7 % of the vote. Rep. Garza’s map extended HD117 into the far north and south of Bexar County. (FOF 649).

On the same day, March 29, 2011, Rep. Villareal sent another proposal to Mr. Interiano that featured an HD117 with over 50% SSVR in which candidate Molina won the 2006 race for Court of Criminal Appeals. Rep. Villarreal’s map did not extend HD117 to the far north and far south of Bexar County and Rep. Villarreal’s map assigned more territory to HD117 from inside Loop 1604. (FOF 650).

Mr. Interiano testified that he made the final changes to HD117. He described that while making the final changes in REDAPPL, he would have been looking at political data and making sure that the SSVR was visible in the statistics. He would have turned on shading for political results and begun adding and removing portions. Mr. Interiano testified that his process involved a lot of testing, going back and forth and trying one region and seeing what happened to the numbers, trying another region and trying to keep HD117 at or above the

benchmark on SSVR and as high Republican as he could. Mr. Interiano testified that more than likely the chiefs of staff for Representatives Garza and Larson would have been in the room with him as he made the changes to HD117. (FOF 652).

The changes across versions of HD117 developed by Rep. Garza and Mr. Interiano show small modifications that raise the SSVR to 50.1% but maintain the percent vote for candidate Molina in 2006 below 50%. (FOF 654).

After the Bexar County map was dropped into the statewide Committee plan H153, Mr. Interiano reviewed the OAG10 analysis and knew that the Hispanic performance, *i.e.* the rate at which Hispanic voters were able to elect their candidates of choice, dropped in HD117. (FOF 664).

On March 29, 2011, Rep. Villarreal abandoned his effort to create an HD117 with higher Latino performance and incorporated into his maps a version of HD117 that Mr. Interiano had developed with the Rep. Garza and his staff. HD117 in this map contained an SSVR of 50.1% and candidate Molina lost the 2006 race for Court of Criminal Appeals with 48.8% of the vote. (FOF 653).

Rep. Joe Farias objected to the removal of the City of Somerset and the community of Whispering Winds in southern Bexar County from his HD118 and their assignment to Mr. Garza's HD117. (FOF 657). Whispering Winds and the City of Somerset are predominately Hispanic. (FOF 658). Rep. Farias looked at election turnout data for the City of Somerset and community of Whispering Winds and noted that the turnout was very low in both places. (FOF 659). Rep. Farias intended to keep Somerset and Whispering Winds in District 118 because although he did not win a majority of votes in these areas he wanted to continue representing these neglected and low-income areas and he wanted to help them with their water, sewer

treatment and education issues. (FOF 660).

When the disagreement arose regarding whether Somerset and Whispering Winds would be placed in HD117 or HD118, Rep. Farias met with the House Speaker and the Speaker subsequently decided that Rep. Garza should get the area in dispute. (FOF 662). The Bexar County delegation map proposal was delivered to Redistricting Chairman Burt Solomons over Representative Farias's objection. (FOF 663).

On April 27, 2011, Representative Farias presented an amendment to the redistricting bill on the House floor that would have moved Somerset and Whispering Winds into HD118. (FOF 666).

Rep. Garza told Rep. Farias that he wanted the Somerset and Whispering Winds in HD117 because he wanted more "Mexicans" in his district. (FOF 676). Rep. Farias was offended by Rep. Garza's use of the term "Mexicans" in their conversation. (July 2014 Tr. At 335:5-336:5). Rep. Garza also told Rep. Farias that he would not vote for an amendment if it went one tenth of one percent above 50.1%. (FOF 669). Rep. John Garza did not accept any of the draft maps proposed by Rep. Farias that raised District 117 above 50.1% SSVR, including plans that were at 50.3% and 50.4%. (FOF 673).

On the House floor, Chairman Solomons opposed the Farias amendment and voted to table it. (FOF 667). The Farias amendment died on the House floor. (FOF 671).

From the benchmark plan, H100, to the enacted plan, H283, SSVR dropped in HD 117 from 50.3% to 50.1%. The performance of Mr. Molina in the CCA Presiding Judge 2006 election dropped from 51.2% to 48.8%. (FOF 681). Mr. Interiano conceded that although the Bexar County map in the enacted plan achieved a 50.1% SSVR and a Molina 2006 below 50%, there could have been other drafts that had a 50% SSVR and a higher percent vote for Molina. (FOF 682).

#### **4. Direct Evidence of Discrimination**

Direct evidence of intentional discrimination in the State House plan includes explicit racial statements and the use of race to draw districts with a nominal Latino majority that would not elect the Latino-preferred candidate. For example, John Garza, who fared poorly in Latino majority precincts, testified that in order to bolster his re-election he wanted to extend the boundaries of HD117 farther north because that area tended to be more Anglo and more conservative. (FOF 607). In a discussion with Rep. Farias on the House floor, Mr. Garza explained that his new district boundary took in Somerset and Whispering Winds because “all I want is more Mexicans in my district.” (FOF 677). Mr. Garza also told Rep. Farias that he would not accept any proposal that raised his SSVR above 50.1%.” (FOF 669).

##### **a. Use of Race to Draw HD78**

Ryan Downton drew the boundaries of HD77 and HD78 including the final ‘antlers’ configuration and an SSVR for HD78 below the benchmark. (FOF 558).

Mr. Downton testified that as he drew the boundary between HD77 and HD78, he looked at block level data for Hispanic population and that he split precincts and moved blocks across the boundaries between House District 77 and 78 based on that Hispanic population. (FOF 562). Mr. Downton testified that while he was mapping he had the election data on and he selected blocks based on Hispanic shading while keeping an eye on the fluctuations in the plan statistics on political results. (FOF 563).

Mr. Downton’s final map for El Paso split 14 precincts along the boundary for HD77 and HD78. (FOF 561). Mr. Downton’s final map for El Paso also reduces the performance of Latino-preferred candidates in HD78 when compared to the benchmark. (PL Ex. 290).

Mr. Downton testified that he made his changes to El Paso map for the purpose of increasing the SSVR in HD78 but conceded that if he had wanted to increase the SSVR in HD78, he could have simply moved two whole precincts in the western “antler” from HD77 to HD78 and moved three whole precinct in the eastern “antler” from HD78 to HD77. (FOF 560; see also PL Ex. 1007 (corrected)). Mr. Downton testified that he could have increased the



SSVR of HD78 above the level he achieved in his plan by using whole precincts. (FOF 564).

**b. Use of Race to Draw HD117**

With the participation of the chiefs of staff for Representatives Garza and Larson, Mr. Interiano created the final version of HD117 in REDAPPL by looking at SSVR and political results. He added and removed geography, going back and forth and trying one region then another with the goal of creating an SSVR majority district that was likely to elect Mr. Garza. (FOF 652). Rep. Garza insisted that he wanted the Latinos in Somerset and Whispering Winds, he knew that Latino voter turnout in rural areas was low and he rejected proposals from Rep. Farias that would raise HD117's SSVR by taking in the higher turnout areas of South San Antonio ISD inside Loop 410. (FOF 613, 673, 675).

Rep. Garza's racial statements, and Mr. Interiano's technique of swapping geographic territory into and out of HD117 while monitoring election performance and SSVR, provide direct evidence of an effort to bolster the reelection chances of Mr. Garza, who knew that he did not receive strong support from Latino voters, by taking in areas in which Latino voter turnout was low. In this way, redistricters purposefully designed a district that contained the barest majority of SSVR and lowest percentage of the vote for Latino-preferred candidates in order to minimize Latino electoral opportunity and elect the non-Latino-preferred candidate.

**5. Departures from the Normal Procedural Sequence**

The adoption of the House redistricting plan was characterized by numerous departures from the normal procedural sequence. At the outset of the Session, on January 24, 2011, the Texas House of Representatives rejected a rules adoption providing that all legislatively approved maps would comply with the Voting Rights Act. (FOF 448).

The House redistricting process was rushed with limited opportunity for public input. (FOF 696, 703-704). The House Redistricting Committee held a hearing in March 2011, without a proposed House map on which the public could comment. (FOF 702). At the time, the House redistricting bill was an empty "shell bill" filed by Chairman Solomons. Chairman Solomons did not reveal a redistricting plan for his bill until the following month, shortly before

holding hearings and the bill's passage in the House. (FOF 702).

Chairman Solomons released map H113 on April 13, 2011 at 4:42 p.m. The public and minority legislators then had less than two days in which to analyze H113 and prepare a response before the April 15, 2011 committee hearing. (FOF 705). The House Rules provide for a three to five day rule for hearing postings. (FOF 704).

The April 17, 2011 House Redistricting Committee hearing was held on Palm Sunday. (FOF 707). Chairman Solomons did not attend the Palm Sunday hearing. (FOF 708). Notice of the House Redistricting Committee on April 19, 2011 was announced on the floor of the House. (FOF 709). The House redistricting map was heard, amended and voted out of the House Redistricting Committee without an opportunity for public comment on April 19, 2011. (FOF 479).

There were few changes to the Texas House map from the time it was introduced until its passage. Public input was ignored. Changes to increase minority opportunity were not accepted. (FOF 711). The House leadership did not discuss the statewide map with the minority caucuses and never asked for input from MALC. (FOF 712).

Notice for the May 6, 2011 public hearing of HB 150 in the Senate Select Redistricting Committee was provided at 6:00 p.m. on May 4, 2011, less than 48 hours before the hearing. (FOF 714). Several State Senators complained that they did not have enough time to prepare for the redistricting hearings and that they did not have enough time to obtain expertise that help them analyze the redistricting plans. (FOF 699).

The Senate did not make any changes to Texas State House map. (FOF 715). As a result, the only meaningful opportunity for input was in the House of Representatives. (FOF 715).

The legislative leadership withheld redistricting legal resources and information from members. Ms. Bonnie Bruce did not tell any minority members of the House Redistricting Committee that the law firm of Baker Botts, which had been retained by the House Speaker's office, was available to them as a resource during redistricting. (FOF 1437). Chairman

Solomons did not allow questions to be asked of Ryan Downton in the House Committee hearing, claiming Downton was Solomons' personal counsel. (FOF 689).

The legislative leadership did not share the three legal memos prepared by David Hanna with minority members of the House Redistricting Committee or other minority members of the House, despite the important information in the memos warning that several draft maps were vulnerable under the Voting Rights Act. (FOF 690).

Ms. Bonnie Bruce received racially polarized voting analyses from the Texas Attorney General's Office and shared them with Ryan Downton, Gerardo Interiano and Chairman Solomons but did not share the analyses with minority members of the House Redistricting Committee or other minority members of the House. (FOF 691).

The House Redistricting Committee held field hearings before the 2011 legislative session but did not make transcripts of any of those field hearings. (FOF 694). The House Redistricting Committee's report on the field hearings was not substantive; the report included only the dates and locations of field hearings around the state but did not include any summaries of testimony at the hearings and did not include any explanation of how the House Redistricting Committee fulfilled its interim charge. (FOF 692-693). State Representative Abel Herrero testified that he believed the House Redistricting Committee field hearings were a façade because the testimony at the hearing was neither transcribed nor summarized for the full House and thus the House could not take into account the public testimony on communities of interest and comments on districts. (FOF 695).

**6. Departures from Normal Substantive Considerations**

**a. Failure to Employ Voting Rights Act Standards when drawing the map**

David Hanna, who served as senior legislative counsel with the Texas Legislative Council in the 2011 Legislature, made presentations to legislators about the legal requirements in redistricting, counseled legislators and their staff about redistricting law and was the principal author of a book created by the Texas Legislative Council that advised legislators about the legal

issues in redistricting. (FOF 716-717).

David Hanna counseled map drawers about compliance with section 2 and also advised map drawers that there might be some section 2 issues in their plans (FOF 719). David Hanna also prepared a series of legal memos and emails evaluating the House Committee's draft House plans and raising concerns about the plans under the Voting Rights Act. (FOF 718).

However, Mr. Hanna testified that he was never asked to provide a section 2 analysis for the House Committee's redistricting plans as they evolved. (FOF 720).

Chairman Solomons testified that he did not do anything to determine whether it was possible to draw additional minority opportunity districts in plans passed by the House of Representatives. (FOF 724). Chairman Solomons did not attempt to determine which districts were Latino opportunity districts or attempt to determine whether additional districts needed to be added anywhere, despite being aware of significant Latino growth and a potential need for one or two additional Latino opportunity districts. (FOF 725).

Chairman Solomons did not look into whether there was racially polarized voting in particular areas of the state or apply a particular number to come to his own understanding about which districts were Latino opportunity districts in the benchmark or the enacted plan H283. (FOF 726). Chairman Solomons testified that he did not ask his staff to check into drawing any additional Latino opportunity districts in Plan H283, and further testified that his staff never told him one would be needed. (FOF 727).

Mr. Downton, counsel for the Redistricting Committee, viewed the requirements of the Voting Rights Act as equal with getting enough votes to get the map passed. (FOF 730).

Gerardo Interiano, counsel for House Speaker Straus and the lead mapper for the House redistricting plan, testified that if there was an agreement among the members of a county delegation about the map for their county, Mr. Interiano would drop that county whole into the statewide map. (FOF 731, 1167).

Mr. Interiano testified that he considered the April 21, 2011 email from David Hanna, counting up Latino SSVR and HCVAP majority districts and comparing their number to the

benchmark plan, to be sufficient reassurance that H153 also complied with section 2 of the Voting Rights Act. (FOF 733).

Mr. Hanna testified that he never told anyone that H283 complied with the Voting Rights Act. (FOF 734).

**(i) Nueces County**

With respect to Nueces County, Mr. Interiano testified that in order to determine whether section 2 required two Latino districts in Nueces County, he used a standard of majority Spanish surnamed voter registration instead of majority Hispanic citizen voting age population. (FOF 737).

Mr. Interiano also testified that he never looked at whether it was possible to create two Hispanic citizen voting age population majority districts in Nueces County and that he didn't analyze elections to determine whether two Hispanic citizen voting age majority districts in Nueces County would be able to elect the Latino-preferred candidate. (FOF 735-736). Instead, Mr. Interiano concluded the Voting Rights Act did not require two Hispanic districts inside Nueces County because he could not create two districts with a majority Spanish surnamed voter registration. (FOF 738). The citizen voting age population of Nueces County is 54.6% Hispanic, thus allowing for two districts wholly contained within the county to be majority HCVAP. (FOF 742).

Mr. Interiano was aware that the first prong of the section 2 analysis requires a majority Hispanic citizen voting age *population* district as opposed to a majority Spanish surnamed voter *registration* district. On November 20, 2010, while they were still co-workers, Eric Opiela shared with Mr. Interiano an email in which Mr. Opiela analyzed a number of recent section 2 cases and concluded that either VAP or CVAP was the relevant standard. Mr. Opiela recommended that "we need to run both measures on all maps we draw to know where we stand regardless of which way the courts go (CVAP or VAP)." (FOF 740). Mr. Interiano further testified that when deciding whether to create an additional Latino opportunity district in the state, he used the metric of Spanish surnamed registered voters although he could have used

CVAP. (FOF 739).

Mr. Interiano testified that he did not discuss with David Hanna whether section 2 of the Voting Rights Act required Texas to place two Latino opportunity districts in Nueces County. (FOF 741).

**(ii) El Paso County**

Mr. Interiano testified that he never attempted to draw a fifth Latino opportunity district in El Paso County. (FOF 743). Mr. Downton testified that if Texas redistricters had wanted to, they could have created another majority Latino district in El Paso but they made the policy choice not to create that district. (FOF 744).

Chairman Solomons acknowledged that it is possible that the member from El Paso that is elected from non-Latino opportunity district might have wanted his boundary lines to remain the same despite it being a violation of the Voting Rights Act. (FOF 745).

**(iii) Rio Grande Valley**

Ryan Downton testified that although the Redistricting Committee could have combined the surplus population from Cameron and Hidalgo counties to create a new district, there was no legal reason to do so and the Redistricting Committee made a policy decision not to draw a district that would have combined the surplus population from the Cameron and Hidalgo counties. (FOF 747).

Mr. Interiano testified that he could not draw a new district in Cameron and Hidalgo counties because such a district would have cut a county line somewhere farther north in the map. Mr. Interiano conceded that section 2 could require the state to cut a county line somewhere farther north in the map if it were possible to create a majority Latino district. (FOF 748).

**(iv) Harris County**

On April 12, 2011, Mr. Hanna recommended to Bonnie Bruce, Gerardo Interiano and Ryan Downton that “Consideration should also be given as to whether fifth majority Hispanic

district could be drawn in Harris County and whether such district would be required by Section 2 of the Voting Rights Act.” (FOF 749). David Hanna had successfully drafted an additional Latino majority district in Harris County when compared to the benchmark. (FOF 750).

Despite Mr. Hanna’s urging, Mr. Downton claimed that he did not attempt to draw a fifth Latino majority district in Harris County and does not know if anyone else did. (FOF 751).

**b. Redistricters Improperly Elevated the State County Line Rule Over Federal Requirements**

House Redistricting Committee Chairman Solomons issued a public statement explaining that he rejected a proposed House plan that had been offered to the Committee because it broke the County Line Rule in order to create minority opportunity districts. (FOF 759).

Chairman Solomons testified at trial that the County Line Rule governed in a conflict between the County Line Rule and the federal Voting Rights Act. (FOF 758). Chairman Solomons further took the position that he was not going to break the County Line Rule unless the U.S. Supreme Court told him he must. (FOF 757) Mr. Interiano, the chief architect of the House map, testified that if a Latino majority district could not be drawn within the constraints of the County Line Rule, he concluded the district could not be drawn. (FOF 770).

Chairman Solomons took his position regarding the County Line Rule in direct contradiction to the legal advice provided by the Texas Legislative Council regarding compliance with federal law. The Texas Legislative Council presentation by Senior Legislative Counsel David Hanna on the County Line Rule for House Districts, provided to legislators on March 1, 2011 stated, “Basic Rule: A county may be cut in drawing a house district only when required to comply with: the one-person, one-vote requirement of the 14th Amendment to the United States Constitution; or the Voting Rights Act.” (FOF 752).

Mr. Hanna testified that he never advised anyone during the 2011 redistricting process that the Voting Rights Act would have to yield to the Texas county line rule and in fact “would have said quite the opposite.” (FOF 753).

Minority members of the Texas Legislature knew that the Legislative Council primer on redistricting placed a higher priority on compliance with the Voting Rights Act when compared to the preservation of the whole county. (FOF 755) In spite of this direction from legal counsel, redistricters justified their refusal to create any additional Latino opportunity districts in H283 on the need to follow the County Line Rule, even at the expense of the Voting Rights Act.

**(i) Rio Grande Valley**

Chairman Solomons knew that there were population overages in Hidalgo and Cameron Counties, but testified that he never came to the conclusion that an additional Latino opportunity House district should be drawn between Hidalgo and Cameron counties. (FOF 760).

Mr. Interiano testified that he performed an analysis under section 2 of the Voting Rights Act to determine whether a new Hispanic opportunity district could have been created in the Cameron and Hidalgo counties area. (FOF 763). Mr. Interiano was able to draw a Latino majority House district with the remainder populations of Hidalgo and Cameron Counties while keeping all of the districts in those counties within the correct deviation. (FOF 761). Mr. Interiano conceded that a compact, Latino majority House district could have been drawn between Hidalgo and Cameron Counties. (FOF 762).

Mr. Interiano testified that although he was able to draw a new House district using the surplus population in Cameron and Hidalgo counties, he chose not to do so because it would force a county split that would violate the County Line Rule. (FOF 764). Mr. Interiano further testified that combining the surplus population in Cameron and Hidalgo counties would not have, in and of itself, violated the County Line Rule, but a county split would have occurred farther north in the map. (FOF 765).

Ryan Downton testified that it was legally permissible to create a new House district using the population surplus from Cameron and Hidalgo counties. (FOF 767).

Despite redistricters' invocation of the County Line Rule to justify not creating an additional Latino majority House district in the Valley, Chairman Solomons testified that he could not define the difference between permissible spillover versus a cut that would violate the



County Line Rule (FOF 771).

Mr. Interiano testified that he had not studied the Court's interim map H309 to identify a violation of the county line rule resulting from the combination of Cameron and Hidalgo population into a new House district. Mr. Interiano further testified that if H309 did not unnecessarily split a county line, he thought it was possible to create the new district and not violate the county line rule. (FOF 766).

**(ii) Nueces County**

In his April 7, 2011, memo to redistricters, David Hanna expressed concern that the Committee's draft map eliminated a Latino majority district in Nueces County and explained that the Texas County Line Rule would "have to yield to the federal Voting Rights Act if it can be shown retrogression could be avoided by splitting the county." All three of Mr. Hanna's memos to redistricters recommended that redistricters investigate whether the second Latino majority district in Nueces County could be preserved by splitting the Nueces county line. (FOF 684-686).

Mr. Hanna testified at trial that if section 2 required the creation of an additional minority opportunity district in the area of Nueces County, the County Line Rule would not stand in the way because of the Supremacy Clause. (FOF 754).

However, after providing his three memos expressing concern about the elimination of HD33 in Nueces County, Mr. Hanna testified that his concern with respect to Nueces County was never resolved. (FOF 769).

Mr. Interiano testified that he could have created two Latino majority districts in Nueces County if he had put aside the county line rule. Mr. Interiano further testified that he saw proposals that created two Latino opportunity districts whole inside Nueces County and then spilled remaining population out of Nueces County but he did not want to invoke Section 2 in this context in order to break the county line rule. (FOF 768).

**c. Mappers Improperly Relied Only on Demographics to Evaluate Compliance With the Voting Rights Act**

During the redistricting process, Mr. Interiano had many discussions with Mr. Hanna about how to measure retrogression in order to comply with section 5. Their discussions included review of guidance from the U.S. Department of Justice and a DOJ objection letter to Texas in 2001. (FOF 774). Mr. Interiano knew that the 2001 DOJ letter stated that an election analysis should be conducted as part of the retrogression analysis. (FOF 775). The 2011 DOJ letter notes that it is important to use the “appropriate standard for determining whether a district is one in which Hispanic voters can elect a candidate of choice.” The letter specifically mentions that “election return information” should be considered and notes that Texas provided election data as part of its preclearance submission because Texas agreed that analysis of election data is important to determining minority ability to elect. (FOF 776).

In all three of his memos analyzing draft redistricting plans, David Hanna urged redistricters to conduct election analyses when evaluating their draft plans for Voting Rights Act compliance. (FOF 785). Mr. Hanna recommended that certain changes “should be further examined through an analysis of election results to ensure that these declines do not affect the ability of . . . voters to elect candidates of choice.” (FOF 785).

Mr. Hanna testified that whether or not a district offers minority voters the ability to elect their preferred candidate depends on election results and that one cannot determine ability to elect simply by looking at demographics. (FOF 780). Mr. Hanna also directed Mr. Interiano and other redistricting staff to the Attorney General’s Office to obtain an election analysis of proposed redistricting plans. (FOF 786).

Gerardo Interiano testified that he received election analyses from the Texas Attorney General’s Office and that they were important in analyzing plans for compliance with the Voting Rights Act. (FOF 777, 484). Mr. Interiano testified that Hispanic voting-age population, Hispanic citizen voting-age population, Spanish surname voter registration, and election performance must all be considered to determine if a district is a Latino opportunity district.

(FOF 781).

Despite having educated himself about the legal standards under the Voting Rights Act, his familiarity with the 2001 DOJ letter, and his possession of election analyses conducted by the Attorney General's Office, Gerardo Interiano testified that he used an email from David Hanna, that counted up the number of HCVAP and SSVR majority districts in H153, to conclude that he had a green light under the Voting Rights Act to go to the floor with the House plan. (FOF 778). Ryan Downton similarly testified that he concluded that he a green light under the Voting Rights Act to go to the floor with the House plan after receiving Mr. Hanna's April 21 email. (FOF 779, 484).

David Hanna did not represent his district-counting memo as a determination of whether the draft House plan complied with the Voting Rights Act. On the contrary, Mr. Hanna testified that although he was not an expert in analyzing election returns, he thought he "could help out the folks with more objective measure, just totaling up the demographic numbers for districts." (FOF 783). Mr. Hanna testified that he mainly looked at the demographic features of districts and, if he wanted to know if a district was a Latino opportunity district, he would farm out the election analysis to his boss Jeff Archer. (FOF 784). Mr. Hanna further testified that Jeff Archer conducted election analysis on the Committee's draft House plans. (FOF 790).

David Hanna testified that he understood section 5 to require performing districts and he did not analyze performance. (FOF 787). Mr. Hanna further testified that a "shortcoming" of relying only on demographic data of a district, without looking at election analysis, is that one might mischaracterize a district for section 5 purposes. (FOF 788).

Chairman Solomons testified at trial that the U.S. Department of Justice provided guidance to redistricters on section 5 and set out various factors to consider when determining whether a district provided minority voters with the ability to elect their candidates of choice. (FOF 789). Although Chairman Solomons knew that under section 5 of the Voting Rights Act, he could not decrease the number of protected districts from the benchmark plan to the proposed plan, Chairman Solomons did not announce the number of protected districts in the benchmark

plan, did not announce the standard he used to determine whether a district was protected or not protected, and did not make it clear how a plan was to comply with section 5 of the Voting Rights Act like he did with the Texas County Line Rule. (FOF 772). Chairman Solomons testified that he did not know, at the time of the 2011 redistricting, how many protected districts there were in the benchmark plan. (FOF 773).

On May 23, 2011, the State of Texas made an “informal submission” to the DOJ regarding Plan H283. The informal submission acknowledged DOJ’s publication of 76 Fed. Reg. 7470 (Feb. 8, 2011), which states that DOJ does not rely on predetermined demographic percentages to assess compliance. (FOF 791-792).

**d. Mappers Disingenuously Placed More Latinos Into Existing Opportunity Districts to Claim Offsets Under Section 5**

In the benchmark plan, HD90 and HD148 were 45% and 40% SSVR, respectively. (FOF 793). David Hanna considered HD90 and HD148 in the benchmark plan to be Latino ability to elect districts and to be section 5 protected districts. (FOF 794). This is because, as Mr. Hanna explained, one could have a district that is slightly below 50% SSVR that would still be a Latino opportunity district. (FOF 795).

In Plan H110, an early plan created by the House Redistricting Committee, the SSVR of both HD90 and HD148 were reduced below the benchmark for those districts. (FOF 796). David Hanna wrote in his second memo analyzing possible retrogression that the reductions in SSVR in HD90 and HD148 below benchmark levels raised concerns under the Voting Rights Act. (FOF 797). In its plan H153, the House Redistricting Committee raised the SSVR of HD90 and HD148 to 47.9% and 49% SSVR respectively. Mr. Hanna then wrote in his third memo that the retrogression concerns with HD90 and HD148 had been resolved. (FOF 798).

David Hanna testified that when the Committee’s final plan H283 increased the SSVR of HD90 and HD148 over 50%, it may not have increased the number of Latino ability to elect districts. (FOF 800). David Hanna further testified that one could make the argument that when the state raised the SSVR in existing Latino ability to elect districts, the state masked the loss of

an ability to elect districts elsewhere. (FOF 801).

House Redistricting Committee Chairman Solomons testified that the changes made to District 90 in Tarrant County and District 148 in Harris County were not intended to increase the number of Latino opportunity districts but, rather, were intended to increase the percentage of Latino population in those existing opportunity districts. (FOF 802).

By contrast, Mr. Downton testified that he believed the way to resolve any section 5 retrogression concerns with the elimination of HD33 in Nueces County was to find another district somewhere in the state that was below 50% SSVR and raise the SSVR above 50%. (FOF 804).

**(i) HD 90**

David Hanna identified HD90 as a Latino opportunity to elect district in the benchmark plan to Bonnie Bruce, Gerardo Interiano and Ryan Downton. (FOF 807). In the benchmark plan, HD90 had an SSVR of 45%. (FOF 808). Ryan Downton worked with State Representative Charlie Geren to produce a consensus plan for the Tarrant County delegation. (FOF 810).

The consensus map produced by the Tarrant County delegation reduced the SSVR of HD90 from 45% to 40%. (FOF 811). This version of HD90 left out Hispanic voting age population to the southeast and to the west of the district. (FOF 814; PL Ex. 1011).

In his retrogression memos of April 7 and April 12, 2011, David Hanna advised Bonnie Bruce, Gerardo Interiano and Ryan Downton that the reduction of SSVR in HD90 could potentially create a retrogression issue. Mr. Hanna recommended that the redistricters restore the SSVR of HD90, explaining “further consideration should be given to see whether the level of SSVR in the proposed plan can be raised to come closer to the level in the current plan.” (FOF 812).

Following the Redistricting Committee’s public hearing on April 15, 2011, Mr. Interiano asked Rep. Geren to modify his draft of HD90 to raise the SSVR of HD90. (FOF 815). The next plan released by the Redistricting Committee, H153, included an HD90 with an SSVR of

47.9% and took in the Hispanic voting age population to the southeast and the far south of the district. (FOF 816). After H153 raised the SSVR of HD90, Mr. Hanna removed the concern about HD90 from his retrogression analysis. Mr. Hanna did not characterize HD90 in the enacted plan as a “new” Latino opportunity district. (FOF 817).

**(ii) HD148**

David Hanna identified HD148 as a Latino opportunity to elect district in the benchmark plan to Bonnie Bruce, Gerardo Interiano and Ryan Downton. (FOF 818). Ryan Downton also believed that Latino voters were electing their candidate of choice in HD148 in the benchmark plan. (FOF 819).

In his retrogression memos of April 7 and April 12, 2011, David Hanna advised Bonnie Bruce, Gerardo Interiano and Ryan Downton that the Committee’s proposed redistricting plans reduced the SSVR of HD148 and could potentially create a retrogression issue with respect to Latinos’ ability to elect their candidate of choice. Mr. Hanna recommended that the redistricters restore the SSVR of HD148, explaining “Given that there is a sizable cushion in adjacent District 145 over 50% SSVR, it should be possible to restore District 148 to its current level of SSVR.” After a later draft of the redistricting proposal raised the SSVR of HD148, Mr. Hanna removed that concern from his retrogression analysis. Mr. Hanna did not characterize HD148 in the enacted plan as a “new” Latino opportunity district. (FOF 820).

Mr. Downton testified that he would agree that raising the SSVR of HD148 to 50% did not enhance the ability of minority voters to elect their candidate of choice. (FOF 822).

**f. The Redistricting Leadership Did Not Review Maps for Legal Compliance**

Chairman Solomons testified that he assumed that Voting Rights Act compliance was being looked at by the county delegation in the drop-in counties and did not independently verify whether the counties had enough Latino opportunity districts. (FOF 825). Chairman Solomons also testified that he relied on others, including staff, the Legislative Council and the Attorney General’s office to advise him on whether districts were in compliance with the Voting

Rights Act. (FOF 826).

Mr. Interiano was aware that in Plan H283, “under one of the metrics, there was one additional or two additional [minority districts] that were above the 50-percent benchmark [and] for one of the other metrics, there wasn't. (FOF 827). Nevertheless, he did not recommend that the leadership make further efforts to determine whether they included the correct number of minority opportunity districts in the plan in order to comply with the Voting Rights Act. (FOF 778 ).

**g. Redistricters Departed From Traditional Criteria Such as Avoiding Precinct Cuts and Respecting Communities of Interest**

In places where it employs race-based redistricting, Plan H283 splits precincts, divides communities of interest and does not protect partisan interests – flaunting traditional redistricting criteria.

**(i) Failure to Protect Partisan Interests**

In HD78, redistricters departed from partisanship considerations. In the final version of HD78 in H283, HD78 lost a portion of a geographic area called North Hills to HD77. North Hills had been a good area for Mr. Margo in his 2010 elections and he didn't want to give up what he considered to be the stronger Republican precincts. (FOF 828). In the final version of HD78, HD78 lost a geographic area named Festival to HD77. The Festival area had been a strong area for Dee Margo in his 2010 election, including the 23<sup>rd</sup> precinct, Mr. Margo's district office and the homes of his mother-in-law and most of his financial supporters. Mr. Margo testified that the Festival area he lost is “a pretty darn good Republican area.” (FOF 829-830). In the final version of HD78, HD78 also lost (to HD77) a portion of the Upper Valley located north of Country Club Road which had been a strong area for Mr. Margo in his 2010 election. (FOF 831).

Mr. Margo's electoral support in the Upper Valley area included a substantial number of Hispanic Republicans. (FOF 832). Mr. Margo would have preferred if the redistricters had simply cut HD77 off at Country Club Rd. (FOF 833). Mr. Margo testified that he would not

normally have wanted to give up a Republican precinct or a precinct with a good Republican/Democratic balance. (FOF 834).

Mr. Margo did not agree to have precinct 23 removed from HD78 and the change was made by redistricting staff, not Mr. Margo's staff. (FOF 578). Mr. Margo testified that between the Upper Valley, Festival and North Hills, his district gave up territory that was fairly supportive of him as a Republican in the enacted map. Mr. Margo further testified that his District 78 wasn't just giving up strong Democratic precincts to HD77, he was giving up Republican precincts to 77 as well. (FOF 837).

**(ii) Split Precincts**

Redistricters also violated a traditional redistricting rule by splitting precincts. Rep. Pickett, who managed the El Paso delegation's redistricting effort, had the goal of not splitting any precincts. (FOF 838). Rep. Pickett testified that Redistricting Committee Chairman Solomons asked him not to split precincts and "put the fear of God" into him not to split precincts. (FOF 839). The redistricting proposal for El Paso County submitted by Rep. Pickett to the House Redistricting Committee did not split any precincts. (FOF 840).

Data on the number of Democratic or Republican votes cast is not available below the precinct level of geography. (FOF 841). In plan H283, the border between House District 78 and House District 77 splits 14 precincts. (FOF 842). Joseph Moody, an attorney and state representative for HD78, testified regarding the neighborhoods in the area of HD77 and HD78 and that there was no rationale based on community of interest to justify the precincts splits H283. (FOF 843-886).

**(iii) Divided Communities of Interest**

Discussing the boundaries of the antlers separating HD77 and HD78 in H283, Former HD78 Representative Dee Margo did not know why the boundary of HD77 in H283 would: follow Round Rock Drive or Mackinaw Street or follow Rushing Street and Sun Valley. Mr. Margo also did not know why HD77 becomes thin along Railroad Drive in the eastern portion or why DH77 follows Chippendale St. along the boundary of HD79. (FOF 879).



Texas Senator Jose Rodriguez described the areas of El Paso that are encompassed by HD78 in H283, including communities of interest that are distinct from each other in terms of socio-economic status, occupation and housing. (FOF 880).

Contrary to the State's assertion, House District 78 in plan H283 does not follow the contours of the Franklin Mountains in El Paso. (FOF 884, 886). State Rep. Moody said that there is significant population between the western edge of the Franklin Mountains in El Paso and the nearest boundary between HD 77 and HD 78. (FOF 885). Texas Senator Jose Rodriguez identified areas where the boundaries of HD78 in H283 do not follow the Franklin Mountains, including the area east of Resler and Mesa which contains the Mountain Arroyo Neighborhood Association and Thunderbird Estates, as well as an area west of Alabama St. and north of Fred Wilson. (FOF 887).

HDs 77 and 78 in H283 split a historic community in northeast El Paso. This community has its own identity, its own high school, Irving, and is divided by the configuration of districts in H283. The high performing Latino population is packed into HD 77. (FOF 888).

HD78 specifically carves out Latino communities. For example, Latino neighborhoods to the east of Doniphan Road are excluded and affluent Anglo neighborhoods to the west of Doniphan Road are included. Plan H283 cuts the St. Judas Church out of the district. This is a church with a highly Latino parish, and its removal is an example of carving out Latinos. (FOF 892). The enacted HD 78 divides communities in the Northeast and along Doniphan Road that have no reason to be split except to carve out Latino neighborhoods. (FOF 894).

**(iv) Failure to Follow Expressed Criteria in HD117**

Although Gerardo Interiano testified that Representative Garza directed that he wanted HD117 to be rural, Mr. Interiano conceded that areas in the north of HD117 in the enacted plan H283 are suburban and heavily developed. (*compare* FOF 896 *with* FOF 899).

Although Gerardo Interiano testified that Representative Garza directed that he wanted HD117 to be outside the City of San Antonio because of water issues pending in the legislature and the courts, Mr. Garza testified to the opposite, claiming he did not have any goals with

respect to whether or not HD117 would include portions of the Bexar Metropolitan Water District. (*compare* FOF 896 *with* FOF 901). During redistricting, Rep. Garza did not know how the boundaries of his District—117—under the benchmark plan lined up with the boundaries of the BexarMet Water District. (FOF 902).

Contrary to Mr. Interiano’s testimony regarding the goals for drafting HD117, HD117 as enacted does not stay outside Loop 1604 or the City of San Antonio. Mr. Interiano conceded that HD117 goes takes in portions of the City of San Antonio in the northern end of the district, where Loop 1604 meets up with IH-10 west. (FOF 898). Also contrary to Mr. Interiano’s testimony, HD117 takes in significant non-rural areas. (FOF 899). Mr. Interiano conceded that HD117 took in substantial suburban development in the northern end of the district, outside of Loop 1604 and to the west of I-10. (FOF 899). Mr. Interiano further testified that HD117 took in significant suburban development outside Loop 1604 and south of Bandera Road. (FOF 899).

Chairman Solomons opposed the Farias amendment to the House redistricting bill in part because he claimed the amendment split 6 precincts along the boundary of HD117 and HD118. Chairman Solomons took the opposite position in supporting the El Paso portion of H283, which split 14 precincts along the boundary of HD77 and HD78. (FOF 895).

**(v) Bizarre Extensions in Nueces County -- HD33**

In Nueces County, after eliminating a Latino majority district, redistricters created bizarre extensions of HD34. The extensions of HD34 carve out portions of HD32 for inclusion into HD34. (FOF 903). In H283, the boundary between HD34 and HD32 departs from street geography. (FOF 904). HD34 extends a “boot” into HD32 to remove the homes of Raul Torres and Solomon Ortiz, Jr. from HD32. The “boot” thus removes these potential rivals, both of whom are Hispanic, from the district represented by Todd Hunter. (FOF 905). Raul Torres, a former Republican State Representative and Solomon Ortiz, Jr., a former Democratic State Representative, both have past legislative experience representing HD33. (FOF 906).

In H283, an area named Los Encinos was placed into HD32 where it protrudes into HD34. Los Encinos contains a high Hispanic population but low voter turnout. (FOF 907).

HD32 also contains a northern extension to take in the Hillcrest area; the Hillcrest area contains a high African American population but low voter turnout. (FOF 908). These minority and low turnout areas are placed in Mr. Hunter's HD32.

**h. Redistricters Drew Challenged Portions of the map Behind Closed Doors and Excluded Legislators who had Been Named in Charge of Their County Redistricting**

Around the time of the first formal meeting of the House Redistricting Committee, Chairman Burt Solomons asked Rep. Pickett to take the lead on El Paso redistricting. (FOF 909). Chairman Solomons and Rep. Pickett were friends, Austin roommates and officed near each other in the Capitol. (FOF 910). Rep. Pickett was also a "Straus Lieutenant" -- an early supporter of Rep. Joe Straus for Speaker of the Texas House who received committee chairmanships to assist the Speaker with his policy agenda. (FOF 911-914).

Although the House leadership made clear to Rep. Pickett that El Paso would be a drop-in county, after Rep. Pickett submitted his preferred map, signed by the delegation, to Chairman Solomons, the Redistricting Committee redrew the map. (FOF 916, 553-566).

In Bexar County, Rep. Mike Villareal was in charge of gathering the proposals from the member of the Bexar County delegation and assembling them into a drop-in map for the Redistricting Committee. (FOF 917, 584-591). Rep. Villareal sent nine maps to Gerardo Interiano containing versions of HD117 that were over 50% SSVR and in which candidate Molina won the 2006 race for Court of Criminal Appeals. (FOF 918, 623, 640-642, 650). At the same time that Mr. Villareal was sending his maps on behalf of the delegation to Mr. Interiano, Mr. Interiano was working on a different version of HD117 with lower Hispanic performance which was ultimately incorporated into the final Bexar County map. (FOF 919, 640-654)

**7. The Factors set out in *LULAC v. Perry* Support a Finding of Discrimination**

In *LULAC v. Perry*, the Supreme Court observed that in CD23 "the State took away Latinos' opportunity because Latinos were about to exercise it" and that the revision of CD23

“bears the mark of intentional discrimination that could give rise to an equal protection claim.” *LULAC*, 548 U.S. at 440. The factors identified by the Supreme Court in *LULAC v. Perry* as indicative of intentional discrimination are present in the revisions to HD78 and HD117 in H283.

First, Latino voters in HD78 and HD117 “were poised to elect their candidate of choice.” *LULAC*, 548 U.S. at 438. In HD78, the non-Latino-preferred candidate had won the 2010 election and faced running for re-election in a district that was reaching 50% SSVR. (FOF 14, 15, 492, 495, 513, 578, 836). In HD117, the incumbent John Garza had not fared well in Latino-majority precincts in San Antonio in his 2010 election and wanted to extend the boundaries of HD117 north to pick up more Anglo voters. (FOF 597-599, 607, 610). Gerardo Interiano shared the goal of bolstering the reelection chances of Mr. Garza. (FOF 634, 655, 896, 897). Mr. Downton monitored election data as he drew HD78. (FOF 561-563).

Second, Latinos in HD78 and HD117 “were becoming more politically active.” *Id.* In HD78, the SSVR was approaching 50%. (US Ex. 373). In HD117, the SSVR was just over 50%. (FOF 26). In both districts, increased voting by Latinos threatened the incumbents.

Third, the changes to HD78 and HD117 reduced Latino voters’ ability to elect their candidate of choice. *LULAC*, 548 U.S. at 424-25, 427. In both districts, Mr. Interiano and Mr. Downton used SSVR and election results in REDAPPL to swap geography into and out of the districts they were drawing to arrive at districts that had slightly lower SSVR and performed worse for Latino-preferred candidates than the benchmark. (FOF 561-563, 634, 652, 20-26).

Fourth, redistricters intentionally drew HD78 and HD117 to have nominal majorities for political reasons. *LULAC*, 548 U.S. at 424-25. Gerardo Interiano crafted an HD117 with 50.1% SSVR and a low percentage of votes for Latino-preferred candidates. (FOF 634, 652) Rep. Garza maintained that he would not accept any district over 50.1%. (FOF 673). In HD78, Ryan Downton split 14 precincts along the boundary between HD77 and HD78 in order to create HD78 with 47.1% SSVR and a low percentage of votes for Latino-preferred candidates. (FOF 842).

**C. PLAN C185 INTENTIONALLY DISCRIMINATES AGAINST LATINOS IN VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT AND THE FOURTEENTH AMENDMENT**

The State’s congressional redistricting plan intentionally discriminated against Latinos through vote dilution as well as through race-based redistricting prohibited by the *Shaw v. Reno* line of cases. The State assigned Latino voters into and out of CD 23 because of their race and also acted expressly to limit the voting power of Latinos. The State also assigned Latino voters in the Dallas Ft. Worth area into and out of CDs 6 and 26 on the basis of their race. The State’s actions are unlawful even if the State can point to other, purportedly non-racial purposes. See *LULAC v. Perry*, 548 U.S. at 441; *Garza v. County of L.A.*, 756 F. Supp. 1298, 1349 (C.D. Cal. 1990) *aff’d*, 918 F.2d 763 (9th Cir. 1990) (“racial discrimination is not just another competing consideration.”) (citing *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977)).

**1. The Discriminatory Impact of Plan C185**

Although C185 appears facially neutral, “a clear pattern, unexplainable on grounds other than race emerges from the effect of the state action[.]” *Arlington Heights*, 429 U.S. at 266, citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1977); *Guinn v. United States*, 238 U.S. 347 (1915); *Lane v. Wilson*, 307 U.S. 268 (1939); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

The boundaries of C185 avoid creating new Latino opportunity districts in every location where such a district could be created or dismantle an existing opportunity district to offset the creation of another.

**C185**

- In South and West Texas, where Latino voters in CD23 were poised to oust the incumbent and elect the Latino-preferred candidate, Texas redistricters swapped territory into and out of CD23 to reduce the Latino voter turnout rate and reduce the number of elections in which the Latino-preferred candidate was projected to win to one in ten. (FOF 952-960).

- Along the Gulf Coast in South Texas, where Latino voters in CD27 were poised to oust the incumbent and elect the Latino-preferred candidate, Texas redistricters converted CD27 into an Anglo majority district, stranding over 200,000 Nueces County Latinos in a district in which they cannot elect their candidate of choice. (FOF 961-969).
- In Dallas and Tarrant counties, where Latinos constituted 162.97% and 54.49% of the population growth and the total Latino population exceeds 1 million, Texas redistricters fractured Latino voters across congressional districts and created bizarre boundaries including the “lightning bolt” of CD26. (FOF 1428, 552, 1397, 1624-1631; Ex. E-9, tbl. 4).
- In Harris County, where Latinos constituted 79.75% of the population growth and the total Latino population exceeds 1.5 million, Texas redistricters created boundaries that prevented the emergence of a new combined opportunity district. (FOF 974, 975, 1061-1065; Ex. E-9, tbl. 3, 4).

In addition to the systematic thwarting of Latino voting strength in Texas, Plan C185 has an overall discriminatory impact on Latino voters, as described above in Section II (A).

In the face of shifting demographics, and the increase in the number of Latino eligible voters in Texas from 2000 to 2010, the State’s refusal to create additional Latino opportunity congressional districts is circumstantial evidence of an intent to limit Latino electoral strength in the new redistricting plans.

### **Discriminatory Impact in CD23**

In C185, CD23 took in new territory from counties from north and east of the Pecos River and portions of Frio, LaSalle and Atascosa counties. Neighborhoods around Socorro in

south El Paso County were divided and added to Congressional District 23. The southern half of the city of Eagle Pass and Maverick County were removed from Congressional District 23. (FOF 1398).

In El Paso, CD23 swapped territory with CD16 although CD16 was overpopulated and only needed to shed population into CD23. (FOF 1399). The effect of the swaps in El Paso between CD16 and CD23 was to add a greater number of Latino registered voters with a turnout rate of 11% to CD23 and remove a smaller number of Latino registered voters with a turnout rate of 14.9% from CD23. The overall effect of the move was to decrease the Latino turnout rate in CD23 but increase the SSVR. (FOF 1400).

In West Texas, mappers assigned seven counties and 33,730 people to CD23 from CD11. (FOF 1401). CD11 was only overpopulated by about 12,000 people but redistricters assigned 33,730 people to CD23 from CD11. (FOF 1402). The overall effect of the move of these counties into CD23 was to add twice as many non-Latino registered voters to CD23 as Latino registered voters. (FOF 1403). In addition, the move of these counties into CD23 increased the participation gap between Latinos and non-Latinos because the Latino turnout rate in the added counties was 22.9% and the turnout rate of the non-Latino voters was 39.6%. In essence, the change imported a group of Latino voters that have a lower voter turnout rate and a much larger group of Anglo voters who have a much higher turnout rate. (FOF 1404).

In South Texas, redistricters removed half of Maverick County from CD23 and drew portions of Frio, Atascosa and LaSalle counties into CD23. The net effect of the move was to increase the number of Latino registered voters in the district but the Latino voters coming into CD23 had a lower turnout rate than the Latino voters removed from CD 23. (FOF 1405). The changes to CD23 in South Texas also had the effect of increasing the non-Latino turnout rate

because the non-Latino voters removed from the district had a turnout rate of 22.8% and the non-Latino voters added to CD23 had a turnout rate of 41.8%. The overall effect of the changes to CD23 in South Texas was to widen the participation gap between Latino and non-Latino voters. (FOF 1406).

In Bexar County, the movement of Latino voters into and out of CD23 had the net effect of removing approximately 76,000 Latino registered voters with a turnout rate of 23.9%. (FOF 1407).

Overall, the turnout rate of the Latino voters who were added to CD23 was lower than the turnout rate of the Latino voters removed from CD23. (FOF 1408). The changes to CD23 in C185 decreased the Latino voter turnout rate by 2% and increased the non-Latino voter turnout rate by 2% while also increasing the SSVR by 2%. The changes in voter turnout in CD23 are significant in light of how close some elections have been in the past. (FOF 1409).

In CD23 in C185, non-Latino voters turn out at 41.6%, much higher than the rate of Latino voters in CD23, whose turnout rate is 22.9%, based on the 2010 General Election turnout rates. (FOF 1410). Dr. Flores testified that based on his observations and experience as a political scientist in Texas, the changes to CD23 in C185 were calculated to create a CD23 that had more Latino registered voters but would have a lower Latino turnout rate. (FOF 1412).

## **2. Historical Background**

The description of the historical background to the 2011 redistricting is in section II. B. 2 above at pages 27-30.

## **3. Sequence of Events Leading up to Challenged Decision**

When the Texas Legislature started its 2011 redistricting cycle, the benchmark congressional plan was a court-ordered remedy following the U.S. Supreme Court's decision in



*League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440 (2006) On remand from the U.S. Supreme Court, and in order to bring the map into compliance with section 2 of the Voting Rights Act, the district court in *LULAC v. Perry* added portions of Bexar County to CD23 and released several Hill Country counties into CD21. (FOF 1106). In total, the district court adjusted the boundaries of five congressional districts in order to repair CD23. (FOF1107).

Texas gained four new congressional seats in the apportionment following the 2010 Census. (FOF 1109). In South and West Texas, all the Latino-majority districts were overpopulated relative to the new 2010 ideal district population. The combined excess population added up to three-quarters of an additional congressional district. (FOF 1110).

Eric Opiela was working for Texas House Speaker Joe Straus in the fall of 2010 when Gerardo Interiano started working on redistricting for Speaker Straus. Mr. Interiano had known Mr. Eric Opiela since at least 2004 and they had been students together at the University of Texas. (FOF 1112). Mr. Opiela later changed jobs and started working as the redistricting attorney for the Texas Republican congressional delegation. (FOF 1128).

Ms. Bonnie Bruce, Chief of Staff for Redistricting Chairman Solomons, called Mr. Opiela a "frequent flyer" because of the frequency with which Mr. Opiela visited the House Redistricting Committee office. (FOF 1114). Ms. Bruce testified that during the redistricting process, Mr. Opiela would visit the Redistricting Committee offices with a redistricting laptop to talk about congressional redistricting and "would drop by the office frequently to tell us about some new idea that he had had." (FOF 1115). Mr. Opiela also visited and discussed redistricting with the Senate Redistricting Committee Director, Doug Davis, (FOF 1117) and Ryan Downton, House Redistricting Committee Counsel. (FOF 1118, FOF 1126).

Mr. Interiano communicated frequently with Mr. Opiela during the process of drafting

the congressional plans. (FOF 1119). Although David Hanna, an attorney with the Texas Legislative Council, with close to 25 years' experience in redistricting, was available to provide Mr. Interiano and other redistricters advice on congressional redistricting, David Hanna was not asked to and did not provide any written analysis of possible section 2 or section 5 issues in any draft congressional plans, although he prepared those types of memos for the House redistricting phase. (FOF 1122).

At the start of the 2011 redistricting process, the legislative leadership decided, with respect to the division of labor between the House and the Senate, that the House would focus on the House map, in order to get it done during the regular session, and the Senate was going to take the lead on the congressional map. The Senate then took the lead on the congressional map. (FOF 1124). Doug Davis, Director of the Senate Redistricting Committee, was the lead mapper in the Senate and reported to Senate Redistricting Chairman Kel Seliger. (FOF 1125). Ryan Downton, counsel for the House Committee on Redistricting, was the primary person responsible for the drawing of the congressional map in the House. (FOF 1126). Gerardo Interiano assisted Ryan Downton on the congressional map. (FOF 1127). Around May 3, 2011, Ryan Downton started working on a congressional map. (FOF 1274).

During the 2011 legislative session, Congressman Lamar Smith was the point person for and proposed maps on behalf of the Republican congressional delegation, with the exception of Congressman Barton. (FOF 1128). In mid- to late-April 2011, Congressman Lamar Smith sent a congressional redistricting proposal to Mr. Interiano which contained a majority minority district in the Dallas Ft. Worth area as well as an additional Latino majority district in South-Central Texas. Mr. Interiano testified that he shared Congressman Smith's proposal with Ryan Downton. (FOF 1132).

On May 2, 2011, Governor Perry sent a redistricting plan to Chairman Solomons who forwarded the plan to Ryan Downton. Like the plan proposed by the Republican members of Congress, Governor Perry's plan created a Hispanic VAP majority congressional district in Dallas Ft. Worth. (FOF 1135).

Mr. Downton testified that in mid to late May, Chairman Solomons made the decision that the congressional map would not have a new majority minority district in Dallas Ft. Worth. (FOF 1140). Chairman Solomons testified that he and Chairman Seliger made the decision not to draw a majority minority district in the Dallas Ft. Worth area because staff advised them that such a district was not legally required. (FOF 1141).

The Republican congressional delegation met with Senate Chairman Seliger and asked if he would try to give Mr. Farenthold a good chance to hold his district, CD27. In response, Chairman Seliger cut Nueces County up out of the benchmark CD 27 and put it into an Anglo-majority district higher north. This change to CD 27 ended up in the enacted plan. (Aug. 2014 Day 1 Tr., 228:8-229:15, Aug. 11, 2014; PL Ex. 1131; PL Ex. 386). On the House side, Chairman Solomons also decided that Nueces County would be removed from the majority Latino congressional district running south and instead be placed in a congressional district running north. (FOF 1131).

During the regular session, the legislative leadership decided not to have a House and Congressional redistricting proposal under consideration at the same time. As a result, no draft congressional plan was released by either redistricting committee during the regular session. (FOF 1142).

As the regular session was coming to an end, House Redistricting Chairman Solomons and Senate Redistricting Chairman Seliger talked and decided that the House would take the

lead on congressional redistricting. Chairman Solomons sent Ryan Downton and Gerardo Interiano to meet with Doug Davis, the lead mapper in the Senate, and the three agreed to move forward with Mr. Downton's draft map. (FOF 1143).

The 2011 regular legislative session ended without the House or Senate releasing or passing a Congressional redistricting bill and Governor Perry called a special session for redistricting. (FOF 1144).

On the evening of May 30, Ryan Downton finished his congressional map and sent it to the Texas Legislative Council for publication. (FOF 1145). The following day Chairmen Solomons and Seliger made a congressional plan public as the Solomons-Seliger Congressional Proposal – C125. (FOF 1146).

The Texas House provided notice for the hearing on the congressional redistricting bill on June 1 for a public hearing on June 2, 2011. (FOF 1147). The public had approximately 48 hours to review the congressional map before the June 2<sup>nd</sup> committee hearing, which was the only opportunity for public comment on any of the Committee's redistricting bills in the House. (FOF 1148). The Senate redistricting committee took public testimony on the bill the following day, June 3, 2011, and voted out the bill. (FOF 1149). The House hearing on June 2<sup>nd</sup> and the Senate hearing on June 3<sup>rd</sup> were the only opportunities provided for public comment on the congressional bills. (FOF 1150). The Senate passed the redistricting bill on June 6, 2011. (FOF 1151).

On June 9, 2011, the House Redistricting Committee met and took up a substitute plan – C149. The Committee did not take public testimony and voted out the bill. (FOF 1152). On June 13, 2011, Chairman Solomons released Plan C170, "Chairman Solomons' West Texas Amendment," as a planned floor amendment. (FOF 1153). The following day, June 14, the

House took up the redistricting bill for debate and adopted Chairman Solomons' floor amendment C170. (FOF 1153). On June 15, 2011, following further amendments, the House passed the final congressional plan, C185. (FOF 1154). On June 20, 2011, the Senate concurred in the House amendments. (FOF 1155).

**a. CD23: Specific Sequence of Events**

At the start of the 2011 redistricting cycle, CD23 was a Latino opportunity district. (FOF 1158). (FOF 928-935). In the 2010 election in CD23, voting was racially polarized. The Latino-preferred candidate received an estimated 84.7% of the votes cast by Latinos but only 18.1% of votes cast by non-Latinos. The percentage of those turning out who were Latino was 40.77%. (FOF 1162-1163). With low Anglo voter support, the incumbent in CD23, who was Latino-preferred, received only 44.44% of the total votes cast in the election. (FOF 1162). Francisco Canseco won the election and was the incumbent in CD23 at the time of redistricting. (FOF 1165).

On November 17, 2010, Mr. Interiano and Mr. Opiela, who worked together in the House Speaker's office, exchanged a series of emails regarding the redistricting of CD23 and CD27. In the initial email, Mr. Opiela wrote that certain data "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 the Hispanic CVAPs up to majority status, but leave the Spanish surnamed RV and TO the lowest. This is especially valuable in shoring up Canseco and Farenthold." The email from Mr. Opiela contained the subject line: "useful metric." (FOF 1166).

When he received the "useful metric" email from Mr. Opiela, Mr. Interiano had previously worked as a campaign manager and had routinely worked with voter turnout and

voter registration information. (FOF 1168). Mr. Interiano testified that although at first he had no clue what Mr. Opiela meant in his “useful metric” email, he later came to understand that Mr. Opiela was trying to figure out if he could use those metrics to draw a district where there was a lower turnout of Spanish surname voters while leaving the Hispanic population higher. (FOF 1169). Mr. Interiano further testified that during redistricting he understood Mr. Opiela was trying to draw districts that had demographic benchmarks above a certain level but would elect a candidate who was not the Hispanic candidate of choice. (FOF 1170).

Mr. Interiano testified:

Q. [T]here was never any doubt in your mind 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, right?

A. I think that is correct, yes, sir.

Q. So it is clear that that was his goal, right?

A. To create a district that met the benchmarks and gave Congressman Canseco the best chance to be reelected, yes, sir.

Q. And it was someone who was not a Hispanic candidate of choice and Mr. Opiela knew that, right?

A. I believe so, yes, sir.

(Aug. 2014 Day 1 Tr., 375:19-376:6, Aug. 11, 2014)

Mr. Opiela had a large trove of data available to him in drawing plans, including election results by precinct for statewide races and a database of all registered voters that allowed him to identify voters at the block level by their voting history and Spanish surname designation. (FOF 1171-1172).

Following his exchange with Eric Opiela about the “useful metric,” Mr. Interiano sent a series of requests to the Texas Legislative Council seeking the data requested by Mr. Opiela in

his “nudge factor” email. Mr. Interiano forwarded the responses from the Texas Legislative Council, including data, to Mr. Opiela and others. (FOF 1173). Mr. Interiano used his personal email address for his exchanges with Mr. Opiela because he believed that the communications were in the nature of “political work.” (FOF 1174).

On November 20, 2010, Eric Opiela shared with Mr. Interiano an email from Congressman Smith expressing concern, among other things, about CD23 and implicitly acknowledging that the incumbent, Francisco Canseco, was not the Latino preferred candidate. Congressman Smith wrote, “What’s the best way to help Canseco? . . . Do we have to draw dist where candidate who recd majority of Hispanic vote wld have won?” (FOF 1176). The November 20 email that Mr. Opiela shared with Mr. Interiano includes a response by Mr. Opiela that he believes that Mr. Canseco is not the minority candidate of choice in CD23. (FOF 1177).

Mr. Opiela referred openly to race when strategizing on how to bolster Mr. Canseco’s reelection. In his email, Mr. Opiela mentions that he and Mr. Interiano had been discussing “the problems inherent in trying to protect both Farenthold and Canseco” and explains that it will be “INCREDIBLY difficult” to comply with the Voting Rights Act and enhance Rep. Farenthold’s reelectability. With respect to CD23, Mr. Opiela states that one possibility is to “move Canseco up to pick up Anglo voters in Midland, but then we pair him with Conaway--which is unacceptable, and probably will lead to a Section 2 vote dilution claim on the basis of (the new) CD 23. You see the problem?” Mr. Opiela mentions “Anglo voters” four times in one paragraph of his email. (FOF 1178) Mr. Interiano testified that his conversation with Mr. Opiela was about the challenges associated with CD23 and 27 because they had “two Republicans that had been elected in heavily Hispanic districts[.]” (FOF 1179).

Mr. Canseco, the incumbent of CD23, was not worried about representing a Latino

majority district. At the beginning of the 2011 redistricting process, Mr. Canseco's goal was to maintain the integrity of Congressional District 23 as a Hispanic majority district because he identified himself as Hispanic and wanted to represent an area of Texas that was identified with Hispanics. He testified that putting him in an Anglo district would not be a good fit for him, and he communicated his goal of maintaining the character and Hispanic population levels of his district to his chief of staff, Scott Yeldell. (FOF 1180).

An important factor for Mr. Canseco in the redrawing of CD23 was being able to survive a racially contested Republican primary election. Mr. Canseco ran as a Republican candidate for CD23 in 2004 and 2008 but was defeated in the Republican Primary by non-Latino candidates. In 2010, Mr. Canseco won the Republican primary runoff election by 750 votes. (FOF 1548). After his general election defeat in 2012, Mr. Canseco chose to run again in Congressional 23 in 2014 but was defeated by a non-Latino in the Republican Primary. (FOF 1549).

Mr. Canseco would agree that a redistricter needs to be sensitive, when drawing a Latino majority district, to the areas that will support a Latino Republican in the primary. (FOF 1550). Mr. Canseco testified that his electoral support in his 2010 run for Congress came not just from strong Republican precincts, but also Democratic crossover support from the south side of San Antonio, in some of the border counties and other areas of the district. (FOF 1551)

Mr. Canseco testified that he was part of conversations about acquiring a purely Republican area for the newly drawn district, but he rejected the idea because he would not make it through a contested Republican primary and because the district would not be a good fit for him. (FOF 1181). Mr. Canseco was not looking for an arrangement for CD23 along the lines of what happened with Blake Farenthold in Congressional District 27. (FOF 1182). Mr.



Canseco testified, with respect to the instructions he gave his Chief of Staff on redistricting CD23, that “I did not want a Farenthold district. And, by that, I mean I didn't want to go northwest. I wanted to maintain the border integrity, the rural integrity, the San Antonio aspect of it, which was ultimately maintained.” (FOF 1183).

Mr. Canseco communicated to Lamar Smith, whom he knew was taking the lead on redistricting for the Republican delegation, that it was important that CD23 comply with the Voting Rights Act, otherwise it wouldn't work. Mr. Canseco told Congressman Smith that the constraints in redistricting CD23 were: releasing 150,000 or more in population, preserving the characteristics of the 23rd District as a minority opportunity district, and making sure that it works, so that it is competitive within the structure of the Voting Rights Act. (FOF 1184). Mr. Canseco never met with Eric Opiela or Gerardo Interiano. (FOF 1186).

On the Senate side, Senator Seliger identified benchmark CD23 as a Latino opportunity district along with CDs 15, 16, 20, 27, 28, and 29. (FOF 1188). Sen. Seliger was aware that in general, if he had wanted to release 149,000 people from CD23 to bring it into the population ideal, he could have simply retracted the district toward the U.S.-Mexico border. Sen. Seliger testified that if he had done so, Latino voters in that situation would have determined the outcome of an election in Congressional 23. (FOF 1190).

However, Sen. Seliger did not ask his staff to explore the possibility of making CD23 a district in which Latino voters had a significantly greater share of the electorate than they did in the benchmark. He also did not look at whether it was possible to draw the south Texas configuration of districts to include the new Latino District 35 and still significantly increase the Spanish Surname Voter Registration in CD23. (FOF 1191).

Senator Seliger's goal was to figure out if there was any way in political terms he could

help Congressman Canseco hold Congressional District 23. (FOF 1192). Senator Seliger wanted to make Congressional District 23 politically safer for Mr. Canseco because he felt that Mr. Canseco's election in 2010 was a bit of an aberration and he did not know if Congressional District 23 in the benchmark was reliable for Mr. Canseco. He also thought it was possible that Mr. Canseco would lose in Congressional District 23 in 2012 if the district was not reconfigured in some way. (FOF 1193).

While he was working on Congressional District 23, Sen. Seliger looked at voting patterns and ethnicity and would go into various counties to see what he could do to change the district. He even looked at one point at splitting Webb County to reach his goal for Congressional 23, but decided not to because the Supreme Court had criticized a Webb County split in CD23 in *LULAC v. Perry*. (FOF 1194).

As the Senate redistricters worked on the map, Senator Seliger concluded that he could not keep CD23 as a Latino opportunity district and piece it together where it served Mr. Canseco. Specifically, he believed that if he made it too much of a sure thing for Congressman Canseco, he would be compromising CD 23's status as an opportunity district, which he could not do. (FOF 1195). Senator Seliger explained: "[w]e didn't really do a very good job, I don't think. We just couldn't satisfy ourselves." (FOF 1196).

On April 6, 2011, Mr. Opiela sent a proposed redistricting plan to Mr. Downton's personal email address. (FOF 1197). The plan sent by Mr. Opiela included a CD23 that took in counties north and east of the Pecos River including Loving, Ward, Winkler, Crane, Upton, Reagan, Schleicher, Crockett and all of Sutton. In Mr. Opiela's plan, Maverick County was moved out of Congressional 23. (FOF 1198).

On April 13, 2011, Doug Davis, who was working on congressional redistricting in the

Senate, wrote “We’re still concerned about the Voting Rights Act” in an email to the National Republican Congressional Committee. The email is part of a series of exchanges with the subject line “Canseco.” In the emails, Mr. Davis explains that he had analyzed a proposed plan for CD23 and although “[i]t looks nice politically,” he still has concerns under the Voting Rights Act. Mr. Davis concludes, “We’re going to have to put our best legal minds on the 23<sup>rd</sup>. We just don’t know what their verdict will be.” (FOF 1201). Mr. Interiano testified that Doug Davis told him he was concerned about certain drafts of Congressional 23 and that Mr. Davis was concerned that Latinos might not be able to elect their candidate of choice in those drafts of CD23. (FOF 1202).

In April and May, Mr. Opiela sent a series of congressional proposals to Ryan Downton which shared similar features of CD23 including taking in counties north and east of the Pecos River, excluding Maverick County, and having an HCVAP close to 58%. (FOF 1203). Mr. Downton testified that when he ran OAG10 analyses on his various drafts of CD23, they usually came back as electing the Latino-preferred candidate in 1 of 10 elections. (FOF 1204).

Senator Seliger testified that as the process moved forward, the House came up with a congressional plan and Senator Seliger thought that the plan looked good. Thus, the architecture of CD23 came from the House. (FOF 1205). However, Mr. Davis continued to work on draft maps of CD23. On May 19, 2011, David Hanna received a map in his REDAPPL account from Doug Davis. The comments on the map from Mr. Davis said: “Pushing the envelope... Give it a gander, if you will. 2 Valley districts that are high in concentrations, obviously. 23 and 28 are the operatives here.” (FOF 1206). The map from Mr. Davis showed a CD23 and a CD28 that were balanced in non-suspense SSVR. CD23 contained Maverick County whole and did not include counties north and east of the Pecos River —Loving, Ward, Winkler, Crane, Upton and

Reagan. (FOF 1210). In Mr. Davis's map, CD23 elected the Latino candidate of choice in 3 out of 10 of the OAG10 elections. (PL Ex. 1208).

Mr. Interiano also continued to review maps that showed greater levels of Latino electoral opportunity for CD23 when compared to Mr. Opiela's proposals. On May 20, 2011, Mr. Interiano's REDAPPL account showed a "Congressional Proposal Map 2" as Plan STRJC106. (FOF 1209). Plan STRJC106 included a CD23 that contained Maverick County whole and did not include counties north and east of the Pecos River —Loving, Ward, Winkler, Crane, Upton and Reagan. The CD23 non-suspense SSVR was 62.1%. With respect to exogenous elections, Linda Yanez won with 62% in 2008, Mr. Noriega won with 58.9% of the vote, and Mr. Molina won with 56.2% for Court of Criminal Appeals, place 4. (FOF 1210). Mr. Interiano testified that during the redistricting process he was aware of proposals that improved Latino voting strength in CD23 and that created additional Latino opportunity districts in the statewide map. (FOF 1211).

Nevertheless, the Redistricting Committee moved forward with a map for CD23 similar to the proposals by Mr. Opiela. (FOF 1214). On May 20, 2011, Mr. Interiano also opened a "Congressional Committee Map" in which CD23 included Ward, Crane, Upton, Reagan, Crockett, Schleicher and the remainder of Sutton counties and excluded Maverick County. This version of CD 23 had an SSVR of 52.6%, about ten points lower than STRJC106. With respect to exogenous elections, Ms. Yanez won her race with only 50.5 percent of the vote, Mr. Noriega lost with 47.4% of the vote and Mr. Molina lost with 46.6% of the vote. (FOF 1212).

On May 28, 2011, Mr. Interiano wrote in an email to Ryan Downton with a cc to Doug Davis, "Any guidance on your 23. Have you been able to make any of the changes that we all discussed?" Mr. Downton responded, "Have it over 59% HCVAP, but still at 1/10." (FOF

1215).

David Hanna was concerned about the configuration of CD23 as it developed. Mr. Hanna was concerned that that CD23 might not comply with section 2 and that the district might be retrogressive under section 5 of the Voting Rights Act (FOF 1217). During the 2011 redistricting, Jeff Archer was the interim assistant executive director at the Texas Legislative Council and the supervisor of David Hanna. (FOF 1218). Mr. Archer had extensive experience with redistricting law and had authored a redistricting publication for use by legislators. (FOF 1219-1220).

At the end of May, 2011, Mr. Hanna asked Mr. Archer to examine draft CD23. Mr. Hanna told Mr. Archer that Doug Davis wanted somebody to take a look at a proposed CD23 to determine whether there was a problem with it being an opportunity district or not. Mr. Archer performed some independent analysis of the district and expressed a concern that the Congressional District 23 was not preserved as a minority opportunity district. (FOF 1221). This version of CD 23, which came from Ryan Downton, was virtually the same across several draft plans—C120, C125 and C130. (FOF 1222).

Looking at the trend in the draft Congressional District 23 election results, Mr. Archer thought that the draft district was in the gray area and he was not sure that Hispanics had an opportunity in that district. (FOF 1225). Mr. Archer expressed his concern about CD 23 possibly having “problems” to David Hanna. David Hanna testified that Mr. Archer told him that he had concerns about CD23 based on his election analysis. Mr. Hanna told Doug Davis and Gerardo Interiano that both he and Mr. Archer had concerns about CD23. (US Ex. 609 at 12; US Ex. 732 at 109; PL Ex. 291 at 940).

On June 10, 2011, Mr. Opiela sent an email to Mr. Interiano, Mr. Downton and

Congressman Smith in which he continued to discuss improving CD 23's Hispanic levels while maintaining it as a Republican district. Mr. Interiano understood the email to mean that Mr. Opiela was trying to make sure Mr. Canseco could be reelected while keeping the SSVR at benchmark levels. (FOF 1230). In his June 10, 2011 email, Mr. Opiela asked Mr. Interiano to have the two attached redistricting plans “run against election performance” and Mr. Interiano responded that he would. (FOF 1231).

On the following Monday, June 13, 2011 at 7:23 a.m., Mr. Opiela sent Mr. Interiano a plan for Congressional District 23 and saying “Let’s discuss this morning.” (FOF 1232). Mr. Interiano responded at 8:00am, “When can you come down to the redistricting office?” (FOF 1233). Mr. Opiela responded “45 mins” and Mr. Interiano wrote “Sounds good. . . I’m uploading it right now. . . see you here.” Mr. Interiano uploaded the redistricting plan into RedAppl where it became STRJ C116. (FOF 1235).

In Mr. Opiela’s plan, CD23 takes in Ward, Crane, Upton, Reagan, Crockett, Schleicher and Sutton counties. Maverick County is split between CDs 23 and 28. With respect to exogenous elections, Ms. Yanez won her race with only 50% of the vote. Mr. Noriega lost with 46.9% and Mr. Molina lost both of his races for Court of Criminal Appeals. (FOF 1236).

At 8:16am, Mr. Interiano emailed David Hanna, “Can you come down to the redistricting office when you get here?” Mr. Hanna responded, “Around 9 OK?” (FOF 1237). Mr. Interiano then received a report on Hispanic citizen voting age population from the Texas Legislative Council 8:34am. (FOF 1238).

At 8:33am, Mr. Interiano sent the map to Mr. Downton. The note with the map says “possible floor map.” (FOF 1240). At 12:45pm Mr. Interiano received a map in his REDAPPL account with the note “floor amendment, slight revision.” (FOF 1241). At 3:24, Mr. Downton

finished working on HRC1C194, labelled "Solomons floor amendment - final" (FOF 1243). Mr. Downton sent the plan to the Texas Legislative Council which made the plan public as Chairman Solomons' West Texas Amendment, C170. (FOF 1244). Mr. Opiela's map and the "floor amendment" maps exchanged between Mr. Interiano and Mr. Downton on June 13 are very similar. (FOF 1242).

Chairman Solomons testified that his staff would have been aware that the Solomons West Texas amendment reduced the election performance for Latino preferred candidates in CD 23. (FOF 1245).

The following day, June 14, the House took up the redistricting bill for debate and adopted Chairman Solomons' floor amendment C170. (FOF 1246). The configuration of CD23 in C170 was incorporated into the final enacted plan C185. (FOF 1247).

Plan C170, Chairman Solomons' West Texas Amendment, retained the Opiela map's split of Maverick County and inclusion of counties north and west of the Pecos River, as well as decreased election performance for Latino-preferred candidates when compared to the benchmark. C170 reflected some changes to Mr. Opiela's boundary between CD23 and CD16 in El Paso and some changes to the boundary between CD23 and CD20 that slightly reduced the SSVR in CD20 from Mr. Opiela's version. Plan C170 (FOF 1248).

Mr. Opiela was unhappy with the changes made by Mr. Downton to his map because the changes decreased SSVR in CD20. Later in the evening of June 13, Mr. Opiela wrote to Congressman Smith and his Chief of Staff Jennifer Brown and explained his view that Latino population in CD20 should not be assigned to CD23: "They stole [Latino voters] from CD 20. This was the whole point behind this exercise. I gave them the tools to fix this, and it was used for this." (FOF 1249).

The following day, on June 14, Mr. Opiela wrote to Mr. Interiano to express his support for Plan C149, although he was disappointed that the SSVR in CD20 was below the benchmark. Mr. Opiela concludes: “What is done is done. Let’s get this bill passed!” (FOF 1250)

As floor debate of the Congressional redistricting plan proceeded in the House, Aaron Pena, a Hispanic Republican state representative from South Texas, made public PLAN C179; which would have amended Chairman Solomons’ PLAN C170, pulled CD23 out of Schleicher and Sutton counties and extended CD23 into more of Bexar County. (FOF 1251). Eric Opiela analyzed the Pena Amendment, concluded that the amendment resulted in “130 less generic Republican congressional votes in [20]10.” The analysis was forwarded by Bonnie Bruce to Chairman Solomons who responded “It needs to be withdrawn. Not going to accept the Pena amendment.” (FOF 1252). Chairman Solomons testified he opposed the Pena Amendment based on Eric Opiela’s analysis. (FOF 1253).

Although at the start of the 2011 redistricting cycle, CD23 was overpopulated by about 149,000 people, instead of simply shedding 149,000 individuals out of CD 23, the redistricters moved over 600,000 individuals into and out of the district. (FOF 1494). C185 moved over 300,000 individuals in Bexar County out of CD 23 and about 60,000 individuals into CD 23 from Bexar County. (FOF 1495). In El Paso, CD23 swapped territory with CD16 although CD16 was overpopulated and only needed to shed population into CD23. (FOF 1399). In West Texas, benchmark CD11 was only overpopulated by about 12,000 people but redistricters assigned 33,730 people to CD23 from CD11. (FOF 1402).

Mr. Canseco testified that he did not see a map of Congressional 23 in the enacted plan until after the plan was passed. (FOF 1256). Near the end of the redistricting process, Mr. Canseco learned from his Chief of Staff that the redistricting plan drawn in the Texas



Legislature took Republican precincts in the Helotes area out of CD23 and gave them to District 20. (FOF 1257). Mr. Canseco also became aware that he was losing some of the precincts on the south side of San Antonio that had been very strong for him in his primary. Mr. Canseco testified that he was concerned that losing the south side precincts might make it difficult for him in his reelection if he drew a Republican primary challenger. (FOF 1258).

Mr. Hanna testified that after C185 was enacted, he and Mr. Archer continued to have concerns that CD23 violated the Voting Rights Act. (FOF 1264).

**b. Dallas Ft. Worth: Specific Sequence of Events**

On April 5, 2011, Mr. Interiano received an email from a staffer for Congressman Lamar Smith, enclosing a confidential memorandum from Rep. Smith. (FOF 1266). Rep. Smith stated in his memo that he wanted to create an opportunity district for minorities in the Dallas-Fort Worth area. (FOF 1267)

On May 9, David Hanna received two redistricting plans from Ryan Downton with the comments "First Plan for review" and "Second plan for review." (FOF 1268). The plans sent by Mr. Downton to Mr. Hanna included a CD33 in Dallas-Ft. Worth that looked to Mr. Hanna to be potentially a majority minority district. (FOF 1269).

On May 14, 2011, Mr. Opiela forwarded to Mr. Interiano a letter from Congressman Smith to his colleagues in the Republican delegation regarding their congressional redistricting proposal. The letter stated: "The delegation proposal adds a new DFW VRA district for two reasons: 1, to minimize the possibility of a successful Section 2 claim since there are over a million voting age Hispanics in DFW and they do not have either an effective coalition or Hispanic majority district. And 2, politically, if a new Democratic district is not created in DFW, the long-term prospects of Congressman Sessions and to some extent Congressman

Marchant's district as Republican majority districts becomes unlikely in the out years of this decade." (FOF 1270).

Ryan Downton testified that he was aware of the potential beneficial effects on members of the Republican delegation in the DFW area by creating a majority minority district: creating a new minority opportunity district in Dallas Ft. Worth served a Republican partisan purpose by taking Democratic votes and concentrating them in a new district. (FOF 1271).

On May 2, 2011, Ryan Downton received a plan from the Texas Governor's office that proposed creating a Hispanic VAP majority district in the Dallas Ft. Worth area. (FOF 1273).

A May 17th, 2011 email from Mr. Opiela to Mr. Interiano shows that Congressman Smith continued to advocate the creation of an additional minority opportunity district in the Dallas-Fort Worth area at that date. Mr. Smith also suggested that creating a new minority opportunity district in the Dallas-Fort Worth area would minimize the possibility of a successful Section 2 claim. (FOF 1275).

The House leadership rejected the proposals by the Governor and the Republican delegation to create a new majority minority district in Dallas Ft. Worth. (FOF 1276).

Mr. Downton testified that around May 25, 2011 Mr. Interiano instructed him to unite the Ft. Worth African American population in one congressional district. (FOF 1277). Mr. Downton further testified that he used racial shading in REDAPPL as a proxy for communities of interest because he did not know Ft. Worth at all. (FOF 1278). Mr. Downton testified that while mapping Ft. Worth in REDAPPL, he turned on the racial shading for black population and took the areas of more concentrated black population and put them all in 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 left those communities in separate districts.

(FOF 1279).

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.” (FOF 1280). Mr. Downton’s assignment of African Americans to CD12 and assignment of north and south Ft. Worth Latinos to separate congressional districts was incorporated into C125, the Solomons-Seliger Statewide redistricting plan released on May 31, 2011. (FOF 1281).

On June 9, 2011, for the statewide committee substitute by Chairman Solomons– C149 - - Mr. Downton again used racial shading to assign both the north and south Ft. Worth Latinos to CD26. (FOF 1282). Mr. Downton testified that he assigned the north and south Ft. Worth Latinos to CD26 because he read “on a blog” that they were a community of interest. Mr. Downton stated that he was not sure where the blog author was getting his information but the blog author showed north and south Ft. Worth Latinos in separate districts and Mr. Downton decided to put them in the same district. (FOF 1283). Mr. Downton 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.” (FOF 1284).

**c. Nueces County and CD 27: Specific Sequence of Events**

Sen. Seliger knew that Blake Farenthold, the incumbent of Congressional District 27, had won in 2010 and defeated a 27-year incumbent, Solomon Ortiz. He also assumed that Mr. Farenthold won by a small margin of votes and believed that Mr. Farenthold was not the Latino candidate of choice. (FOF 1285). Sen. Seliger was aware during redistricting that Nueces County is a Latino majority county (FOF 1286).

Representative Todd Hunter acknowledged that Nueces County is a majority Hispanic county but testified that he does not think of it as one. (FOF 1287). Rep. Hunter is a member of the House of Representatives for House District 32 in Nueces County. In 2011, he was a member of the Texas House Redistricting Committee. (FOF 1288).

Sen. Seliger cut Nueces County up out of the benchmark CD 27 and put it into a district higher north after meeting with Republicans in the Congressional delegation and being asked if he would mind looking to see if there was a way to get Mr. Farenthold a good chance to hold his district. This change to CD 27 ended up in the enacted plan. (FOF 1289).

Sen. Seliger described the benchmark Congressional District 27 as clearly an opportunity district and believed the new CD 27 was a district that Representative Farenthold could “hold.” Sen. Seliger added Congressional District 34 just to the west because he felt that he was clearly required to create an opportunity district coming out of the Valley. (FOF 1290).

In the benchmark plan C100, according to the 2010 Census, CD 27 was overpopulated by 43,505 individuals. (FOF 1292). Sen. Seliger knew that instead of taking Nueces County whole out of the south Texas congressional districts, that he could take Mr. Farenthold's neighborhood along Shore Drive in Corpus Christi and pair it with counties to the north to make him a safer district and leave the rest of Nueces County's population in the district that runs down the Gulf to Cameron County. (FOF 1293). It would have been possible to draw CD 27 by simply shedding the 43,500 additional voters; drawn this way, CD 27 would have remained a Latino opportunity district. (FOF 1294).

Mr. Downton admitted that CD 27 was redrawn so dramatically to give the Anglo incumbent a better chance for reelection and that the redistricters could have accomplished this goal by placing a small portion of Nueces County with the incumbent's home in a district that

went to the north and left the bulk of Nueces County in a South Texas district. (FOF 1295).

Mr. Interiano testified that a goal in the changes made to Congressional District 27 was improving the electoral chances of Representative Farenthold. (FOF 1291).

Ryan Downton testified that before reassigning Nueces County to a congressional district running north, he did not check with Hispanic leaders or voters in Nueces County to learn their views and he could not recall whether any of them testified before the committee during the 2010 interim hearings. (FOF 1296).

Rep. Todd Hunter did not think that anyone asked for Nueces County to be moved into an Anglo majority Congressional District during the 2010 and 2011 hearings for redistricting. He also does not remember any Latino representative or advocate ever testify that the 200,000 Latinos that are in Nueces County be moved into an Anglo congressional district. (FOF 1297)

According to Ryan Downton, redistricters did consider including Nueces County in the South Texas configuration of congressional districts, and it would have relieved pressure to maintain benchmark SSVR levels in CDs 20 and 23. (FOF 1298).

In the 1992 and 1994 elections, as well as the 1996 primary elections, Nueces County constituted a part of CD 27 and anchored a South Texas district. (FOF 1299). In the 1996 special elections, as well as the 1998 and 2000 elections, Nueces County constituted a part of CD 27 and anchored a South Texas district. (FOF 1300). In the 2002 elections, Nueces County constituted a part of CD 27, anchored a South Texas district and was split between two congressional districts. (FOF 1301). The North-South Rio Grande Valley configurations existed as far back as the 1990s. (FOF 1302).

#### **4. Direct Evidence of Discrimination**

##### **a. Texas Redistricters Reduced Latino Voting Strength in CD23 to Prevent Latinos From Electing Their Candidate of Choice**

The State's expert witness, Dr. Alford, testified that he had observed as an expert witness in 2003 that changes were made to CD23 to shore up the reelection prospects of Representative Bonilla and in Plan C185 the changes were made to shore up the reelection chances of Representative Canseco. (FOF 1314). Dr. Alford testified, with respect to the changes in CD23 from Plan C100 to Plan C185, that "[t]here are some obvious parallels between what happened previously and what happened this time." (FOF 1315).

Dr. Alford also stated, when discussing the changes to CD23 "we feel like we are all having déjà vu[.]" (FOF 1316). Dr. Alford testified that he had observed as an expert witness in 2003 that changes were made to CD23 to add overwhelmingly Anglo Hill Country counties, while splitting the city of Laredo and Webb County. Dr. Alford further testified that although he was unaware that Plan C185 added to CD23 the heavily Anglo counties north of the Pecos River, he did know that some people were upset that CD23 in Plan C185 splits the city of Eagle Pass and Maverick County. (FOF 1318).

Dr. Alford, testified that "If I was advising the legislature on drawing the 23rd, I would not have done what was done to the 23rd." (FOF 1320). Dr. Alford further testified:

[M]y first advice to the legislature would be just -- you know, in simple -- with a slight memory of history, do as little as possible to the 23<sup>rd</sup> as you can. It really has been a difficult -- it was a difficult district for the Court to draw. It was a difficult district for the legislature to draw. But, basically, enough is enough, right? Don't make this hard on yourself. . . Don't mess with the 23rd. That would be my first rule for drawing the districts.

(FOF 1320). Dr. Alford explained "I would have advised either making -- either -- rather than creating a replacement district for the 23rd, I would have advised making the 23rd itself a better performing district in terms of election numbers, or -- basically that, or leaving the 23rd alone." (FOF 1321).

Under C185, the opportunity for Latinos to elect their candidate of choice in CD 23 is reduced even though the district remains majority Latino. (FOF 953, 955-957; Flores Report, Ex. E-8 [Dkt. 191-1], at p. 10). In the areas that C185 moved into CD 23, the Latino voters underperform when compared to the Latino voters in the areas drawn out of CD 23, even though the percentage of Spanish surnamed registered voters (SSVR) increases. (FOF 1323).

**b. Mappers Redistricted on the Basis of Race to Protect Congressman Canseco**

To reduce Latino voter performance while keeping the SSVR percentage constant, or raising the SSVR percentage slightly as was done, the redistricters had to do very detailed searches for VTDs that underperformed but had a majority of Latino voters in them. (FOF 1323).

Mr. Downton, the author of the congressional plan, knew that Mr. Canseco was not the candidate of choice of Latinos but he redistricted CD23 with the goal of giving Mr. Canseco the best chance to be reelected. (FOF 1325-1326).

When he was drawing CD 23, Mr. Downton turned on the shading for election results and SSVR when drawing the maps. This meant that he could see the effects on election results and SSVR of every change he made the instant he made the change. (FOF 1327). Mr. Downton made these changes precinct-by-precinct, with the dual goals of strengthening the district for Mr. Canseco and increasing the SSVR. (FOF 1328). As a result, the precincts that Mr. Downton drew into CD23 had a slightly higher SSVR, but lower election results for Latino-preferred candidates. (FOF 1329).

Mr. Downton acknowledged that it was possible that in the precincts he swapped into CD23 Anglo voters turned out at higher rates than Latino voters. (FOF 1330). Mr. Downton

further acknowledged that the Latino majority precincts he swapped into CD23 could have been more racially polarized. (FOF 1330).

Mr. Downton was aware that Maverick County is strongly Latino. (FOF 1331). Mr. Downton admitted to removing the Maverick County voters, who are over 95% Latino, because they would not vote for the incumbent he sought to protect. (FOF 1335). Mr. Downton testified that taking all of Maverick County into CD23 and then shedding parts of Atascosa County back into CD28 could have potentially increased the voting strength of Hispanics in CD23, but it would have negatively affected Mr. Canseco's chance at being reelected so he decided against it. (FOF 1336).

Mr. Downton testified that the Maverick County split was an idea that he took from Mr. Opiela. (FOF 1338). Mr. Downton also testified that the concept of splitting Atascosa County came from Mr. Opiela, although Mr. Downton split the county differently. (FOF 1340). Mr. Downton testified that Chairman Solomons ultimately made the decision not to include Maverick County whole in CD23. (FOF 1339).

Sen. Seliger testified, while looking at the e-mail from Eric Opiela to Gerardo Interiano in which Opiela discusses "a nudge factor," the nudge factor is a point where the population going to the polls would increase Congressman Canseco and Farenthold's chances of winning the district. He agreed that the intent of the nudge factor being described in Mr. Opiela's e-mail appears to be to increase the Hispanic voting age population to a higher level but leave the Spanish surname voter registration and turnout lower than before. (FOF 1341).

Sen. Seliger believes that using the nudge factor as Mr. Opiela indicated in his e-mail might result in a district where there could be an increase in Hispanic citizen voting age population when compared to the benchmark, but poorer performance for the Hispanic-preferred



candidate on Election Day. He also believes it is possible that if somebody were to use the nudge factor in designing a district, that the district would have a majority Hispanic citizen voting age population, but the Hispanic voters would be unable to elect their candidate of choice. (FOF 1342).

Dr. Flores testified that the Opiela “nudge factor email” expresses a clear intent, in order to protect the incumbent of CD23, to pull CD23’s Hispanic population or CVAP up to majority status to create a congressional district that looks like a Hispanic majority district but yet leaves the Spanish surname RV and turnout the lowest--exactly what CD 23 looks like in C185. (Aug. 2014 Day 2 Tr., 524:21-525:24; PL Ex. 1617).

Dr. Flores testified that the Opiela “nudge factor email” does not seek to make CD23 more Republican by appealing to Latino voters to vote Republican. The intent of the email is not to get Latino voters to do anything but instead to create a district comprised of Latino voters who vote at lower rates than the Latino voters previously in CD23. (FOF 1414). Dr. Flores formed his opinion that Texas redistricters sought to lower the Latino turnout rate in CD23, and testified to that opinion, before seeing the Opiela “nudge factor” email. (FOF 1415).

**c. Redistricters Relied on the OAG10 to Ensure Latinos Would not Have the Opportunity to Elect in CD23**

During the redistricting process, Chairman Solomons and the staff working on redistricting received and relied on regression analyses on proposed districts based on ten statewide elections involving minority candidates. The analyses were provided by the Attorney General’s Office. (FOF 1349). Chairman Solomons testified, with respect to the reconstituted election analyses, “we looked at it all the time.” (FOF 1350).

The analyses were called the “OAG 10” because, for each draft district under review, the Office of the Attorney General analyzed the results of ten statewide general election contests

involving Latino and Anglo candidates between 2002 and 2010. The OAG 10 reports identified the Latino-preferred candidate in each district and indicated whether the preferred candidate would have carried that district. (FOF 1351).

Mr. Interiano and Mr. Downton would summarize the results of the OAG10 analysis by talking in terms of the number of victories for Latino-preferred candidates out of ten. The map drawers shared the OAG10 summaries for various draft plans among themselves and Mr. Interiano shared the results with Mr. Opiela. (FOF 1352). Mr. Hanna described the OAG10 as ten races chosen to measure performance for Hispanic voters when evaluating a redistricting plan. (FOF 1355). Dr. Flores testified that the OAG10 is the type of analysis that he would use as a political scientist to evaluate Latino opportunity to elect. (FOF 1368).

During the redistricting process, Mr. Hanna recommended that the redistricters perform election analyses to evaluate districts and he understood that the OAG10 was a critical component of showing whether a district was performing or not. (FOF 1357). Mr. Interiano testified that the existence of the OAG10 analyses was not public knowledge at the time of redistricting and that he did not share the OAG10 analyses with MALC, the Latino Task Force, or any members of the Texas House who represented minority opportunity districts. (FOF 1358).

The state's reaggregated election analysis showed that Congressional District 23 in the benchmark plan C100 elected the Latino preferred candidate in three out of ten racially contested general elections. (FOF 1159). However, the OAG10 included fewer than all of the racially-contested statewide elections held during the time period chosen for the index. (FOF 1363, 1364). Benchmark CD23 elected the Latino-preferred candidate in 7 of 14 racially-contested statewide elections held during the OAG10 time period. (FOF 930). Mr. Interiano conceded

that the OAG10 showed that the final version of Congressional District 23 in plan C185 elected the Latino preferred candidate in one out of ten racially contested general elections. (FOF 1362).

**d. Redistricters Relied on Racial Data to Create the Facade of a Latino Opportunity District**

Mr. Downton maintained that CD 23 in C185 is a Latino opportunity district because it has a majority of HCVAP. At the same time, Mr. Downton knew that the Latino candidate of choice won only 1 out of 10 reaggregated elections. (FOF 1371). Mr. Downton opined that any majority-SSVR district is a Latino opportunity district. (FOF 1372). Mr. Interiano conceded that a district with a majority Spanish surname voter registration and Hispanic citizen voting-age population is not in every circumstance a Latino opportunity district. (FOF 1373).

**e. Redistricters Separated Voters on the Basis of Race in Dallas Ft. Worth**

Although Mr. Downton testified that he created the “lightning bolt” that extends south out of CD26 for partisan purposes, he testified that later he turned on racial shading in order to draw the “lightning bolt” and that he used racial shading in REDAPPL to assign voters to districts on the basis of their race. (FOF 1377). Mr. Downton explained that he used racial shading in REDAPPL to assign Hispanic population to the “lightning bolt” of CD26 because he did not have personal knowledge of the community characteristics of the residents who lived inside the “lightning bolt” and used racial shading as a proxy for community of interest. (FOF 1377). Mr. Downton did not view an overlay of the boundaries of HD90 in the House plan while drawing the “lightning bolt.” (FOF 1380).

Mr. Downton conceded that in general the “lightning bolt” takes in higher concentrations of Latino population and that the boundary of CD26, where it splits precincts, takes in higher

concentrations of Latino population and leaves the less Latino blocks outside of the split. (FOF 1381-1387).

Mr. Downton also testified that he did not draw Latinos into CD26 for the purpose of creating a Hispanic opportunity district. (FOF 1388).

In Dallas County, where the boundary of CD6 splits precincts, Mr. Downton conceded that a higher percentage of Hispanic population is placed inside CD6 and a lower percentage of Hispanic population is placed outside CD6. (FOF 1389).

In all, Mr. Downton split 14 precincts with the “lightning bolt” of CD26 and an additional 4 precincts with the boundary between CD12 and CD33 in Tarrant County. (FOF 1393). Chairman Solomons was unable to provide a partisan explanation for why the extension of CD26 into Tarrant County follows the boundaries of the Hispanic population but not the African American population. Chairman Solomons was further unable to provide an explanation of why Congressional District 26 splits 38 precincts in Tarrant County. (FOF 1395).

Chairman Solomons testified that he gave no instruction to Mr. Downton regarding the Trinity River Development, or regarding the inclusion in CD 26 of Hispanics west of the areas that Mr. Burgess represented, and never had a discussion with Kay Granger about the Trinity River Project. (FOF 1396). Chairman Solomons agreed that for the purpose of complying with the requirement of population equality, District 26 could have taken in all of Denton County and only 30,000 people from Tarrant County, rather than the C185 lightning bolt configuration. (FOF 1397).

## **5. Procedural Departures**

The procedure for the congressional map in the special session was similar to the process for the Texas House map with little opportunity to make changes and a rushed timeline. (FOF

1419). During the regular session, there was no map proposed by the House Redistricting Committee or Chairman Solomons for public comment. (FOF 1420). Instead, during the regular session the House Redistricting Committee held hearings on congressional redistricting with no proposed congressional maps offered by the Committee. (FOF 1422).

During the regular session, the Senate Redistricting Committee did not hold any hearings on congressional redistricting; Sen. Seliger scheduled a public meeting for May 19th during the regular session and then cancelled it. (FOF 1423).

In the special session the process was rushed and the proposed legislation for the Congressional map passed both the House and Senate Chambers in 16 days. (FOF 1424). The House Redistricting Committee provided notice on June 1 of a hearing on the congressional redistricting bill on June 2, 2011; no subsequent public testimony was allowed for either HB 4 or SB 4 in the House Redistricting Committee. (FOF 1425).

During the special legislative session, the Senate Redistricting Committee held one public hearing to take testimony -- on June 3, 2011. The congressional plan that was publicly available for comment at that time was C130. (FOF 1426). Sen. Seliger testified that in Plan C130 Maverick County was wholly inside of CD23, no part of Atascosa County was in CD23 and the CD23 shape in El Paso was different than the way it ended up in the final plan. (FOF 1427). Although the public only saw C130 from the Senate Redistricting Committee, Sen. Seliger acknowledged differences between his plan, C130, and the enacted plan, C185. CD 23 went farther into the southside of San Antonio than the enacted plan. In Dallas/Fort Worth, and specifically in Tarrant County, Sen. Seliger's plan had a southern extension in CD26 that was a different shape than the one that ended up in C185. In C185, the southern extension of CD26 continues to the south farther and thinner than in his plan. (FOF 1428). As the map evolved past

C130, there never was a public hearing in the Senate on the changes made to C130, and there was not a public hearing on the House side after Sen. Seliger released plan C130. (FOF 1429).

In the special session, once a congressional map was produced by the Senate Committee, it was voted on within three days. (FOF 1430). Alternative maps for the congressional plan that proponents claimed better reflected the growth of the minority community were introduced and rejected during the special session. (FOF 1431).

U.S. Representative Marc Veasey, who is African American, testified that as a member of the House Redistricting Committee in 2011, he and others were kept in the dark and the leadership kept their activities secret. Mr. Veasey further testified that he was excluded from the planning of the three field hearings held by the Committee in the Dallas-Ft. Worth area. (FOF 1432).

When Mr. Downton received a congressional redistricting proposal from the Republican congressional delegation, he shared the proposal with the Redistricting Committee Chairman Burt Solomons but not the Vice-Chair Mike Villareal. (FOF 1433).

Although the legislative leadership received and relied on regression analyses prepared by the Texas Attorney General's Office, which showed the likelihood of proposed districts to elect the Latino candidate of choice, the legislative leadership did not share those reports with any minority legislators and did not inform minority legislators of the existence of the regression analyses. (FOF 1434). Mr. Interiano testified that the existence of the OAG10 analyses was not public knowledge at the time of redistricting and that he did not share the OAG10 analyses with MALC, the Latino Task Force, or any members of the Texas House who represented minority opportunity districts, although he did share the analyses with Eric Opiela. (FOF 1435).

Legislative leadership hired the law firm of Baker Botts to serve as a resource in the redistricting process. Chairman Solomons met with lawyers from Baker Botts, but did not tell any minority legislators on the redistricting committee that Baker Botts was a resource to them. (FOF 1437).

## **6. Substantive Departures**

### **a. Mappers Ignored Legal Standards**

Senator Kel Seliger, Chair of the Texas Senate Redistricting Committee, testified that no analysis was done to determine if Congressman Canseco was the Latino candidate of choice. (FOF 1439). Chairman Seliger conceded that if Mr. Canseco were not the Latino candidate of choice, and the Legislature nonetheless was taking steps to make this district safer for Mr. Canseco, “it would be a violation [of the Voting Rights Act].” (FOF 1441).

Mr. Interiano never conducted an analysis to determine if Representatives Canseco and Farenthold were the Latino preferred candidate. (FOF 1453). Mr. Interiano also did not undertake any analysis to determine how many Latino opportunity congressional districts should be drawn in Texas. (FOF 1454).

In drawing the map, Mr. Downton considered it legally risky to fail to increase the number of Latino opportunity congressional districts in South Texas. (FOF 1442). Mr. Downton looked at maps during the redistricting process that created 7 Latino majority congressional districts in South and West Texas that would elect a Latino preferred candidate more than half the time. (FOF 1443). Mr. Downton explained however that the decision not to draw seven was a “political” decision. (FOF 1444).

Although he looked at election performance when crafting CD23, Mr. Downton stated that he didn’t consider political performance as particularly relevant to compliance with the

Voting Rights Act. He further testified that he would classify a district as a majority minority district if it elected the minority candidate of choice 3 out of 10 times or 1 out of 10 times. (FOF 1446).

Mr. Hanna testified that he was aware during redistricting that it was possible to create a Congressional District 23 within the overall scheme of south Texas that would have alleviated his concerns with Hispanic performance. (FOF 1447). Mr. Hanna testified that if one had wanted to balance the Hispanic performance a little bit better between CD23 and CD28 in the congressional plan as it was evolving towards its final version, one could have taken Maverick County whole into CD23 and then shed some of either Dimmit, LaSalle or Atascosa into CD28 and basically done a swap between CD23 and CD28 that would have increased the Hispanic performance. (FOF 1448).

Chairman Solomons testified, with respect to creating a majority minority district in the Dallas Ft. Worth area, that if such a district was not legally required, he was not allowed to create it. (FOF 1450).

David Hanna testified that he was asked by Gerardo Interiano or Doug Davis to look at the “lightning bolt” in Dallas Ft. Worth for possible legal problems. Mr. Hanna testified that although he was aware of the potential of a *Shaw* violation and would have become concerned by block-level redistricting that separated Latinos from African Americans, he only examined the draft congressional map at the level of VTDs. (FOF 1451).

**b. Mappers Ignored Traditional Redistricting Criteria**

Mr. Downton testified that when he drafted CD23, he split Maverick County and the City of Eagle Pass, communities of interest that would normally be kept together by mappers following traditional redistricting criteria. (FOF 1455). Mr. Downton claimed that he



unintentionally split the City of Eagle Pass because he did not district at the block level but his testimony is undermined by the fact that he split two VTDs in the City of Eagle Pass, which requires districting at the block level. (FOF 1456). Mr. Downton testified that Chairman Solomons had the final sign-off on splitting Maverick County in the congressional map. (FOF 1457).

CD 23 in C185 splits 19 precincts in Bexar County. (FOF 1459).

Although Ryan Downton and Gerardo Interiano testified that C185 removes Nueces County from a district in which it is joined with Cameron County in order to make Nueces County the “anchor” of its own congressional district, Nueces County was already the anchor of benchmark CD27 because it was the largest population component of benchmark CD27. (FOF 1460).

**c. Leadership Did Not Review Maps for Legal Compliance**

As he took up redistricting in the 2011 Legislative Session, Sen Seliger was aware that, given the history of Texas, he would have to take care to comply with the Voting Rights Act. He was also aware that the previous Texas redistricting plans had been legally contested. (FOF 1461).

Although he knew that he had to take care to comply with the VRA, Sen. Seliger does not remember doing racially polarized voting analysis or ordering his staff to do so when the congressional plan came over to him from the House after they had worked on it. He also does not remember having any discussions about racially polarized voting within the Republican Party primary or doing any analysis in 2011 to help identify which candidates would be Latino candidates of choice in a particular election. (FOF 1466).

Sen. Seliger testified that he remembers having discussions with his staff about whether Latino voters in the new CD 23 would be able to elect their preferred candidate; Senator Solomons does not remember what they concluded about Latino ability to elect in CD 23 but remembers that he was assured the map was legal. (FOF 1467).

Despite all of the legal resources available to him, and the concerns about CD23 raised by his Committee director Doug Davis, Sen. Seliger chose to rely on Mr. Interiano and Mr. Downton (both of whom lacked any redistricting experience) to answer the questions about legality of the maps. (FOF 1468).

Chairman Solomons sat with Mr. Downton in front of mapping software to work on the congressional map. (FOF 1469). Chairman Solomons knew that if the number of wins in a minority district went from 3 in the base plan down to one it would be a problem and believed such a change in election performance would necessitate a change to the plan. (FOF 1470).

In light of the concerns about Voting Rights Act compliance raised by experienced redistricting lawyers with the Texas Legislative Council and the Senate Redistricting Committee, the testimony of Chairman Solomons is not credible when he says he chose to trust the vouching of his staff for the map as a legal map. (FOF 1530). Chairman Solomons also claimed that, despite being in charge of the redistricting process, he expressed no goals to his staff during the legislative session with respect to the configuration of CD 23. (FOF 1531). Chairman Solomons is also not credible when he claimed that his West Texas floor amendment, C170, which split Maverick County and featured a CD23 that could only elect the Latino-preferred candidate in only one of ten elections in the OAG10, was an amendment he was asked by staff to introduce. (FOF 1532).

**d. Leadership Ignored Concerns Raised by Staff**

On April 13, 2011, Doug Davis, who was working on congressional redistricting in the Senate, wrote “We’re still concerned about the Voting Rights Act” in an email to the National Republican Congressional Committee. The email is part of a series of exchanges with the subject line “Canseco.” In the emails, Mr. Davis explains that he analyzed a proposed plan for CD23 and although “[i]t looks nice politically,” he still had concerns under the Voting Rights Act. Mr. Davis concluded, “We’re going to have to put our best legal minds on the 23<sup>rd</sup>. We just don’t know what their verdict will be.” (FOF 1201). Senator Seliger later agreed to a configuration of CD23 drawn in the House without considering whether Doug Davis’s concerns had been resolved. (FOF 1472).

**e. Leadership Ignored Concerns Raised by Legal Advisors**

During the 2011 redistricting process Mr. Hanna did not tell anyone that the congressional plan under consideration by the Legislature complied with the Voting Rights Act. (FOF 1156). On the contrary, he asked his supervisor, Jeff Archer, to analyze CD23 and then communicated his and Mr. Archer’s concerns about CD23 back to the redistricters. Aug. 2014 Day 5 Tr., 1508:2-1508:15, Aug. 15, 2014) (Aug. 2014 Day 2 Tr., 644:2-645:10, Aug. 12, 2014). Despite Mr. Archer’s concerns, which Mr. Hanna shared and relayed to Doug Davis and Gerardo Interiano, the redistricters did not take steps to address those concerns in C185. (FOF 1474).

**f. Failure to Incorporate Wishes of Republican Congressional Delegation**

House Redistricting Chair Solomons testified that he sought input on congressional redistricting from the Texas congressional delegation. Chairman Solomons testified that the process was somewhat driven by the members of the delegation in that redistricters were

interested in what the members of the congressional delegation wanted, what they would like, and what they thought they could live with. (FOF 1482).

Chairman Solomons testified that Congressman Lamar Smith came to his office on several occasions during the regular legislative session, every two to three weeks, to discuss redistricting and Chairman Solomons urged Congressman Smith to provide him a proposal for congressional redistricting. (FOF 1483).

Chairman Solomons was aware that the Republican congressional delegation's proposal to place a Latino VAP majority district in Dallas Ft. Worth would have the dual benefit of creating a Hispanic district in Dallas and Tarrant Counties as well as strengthening Republican performance in the surrounding districts. (FOF 1486). Texas redistricters generally give a great deal of deference to the head of the congressional delegation of the same party when drawing new congressional districts and more often than not, the delegation's wishes are included in the redistricting plan. (FOF 1487).

Rep. Smith's proposed Latino DFW district, or a similar district, was not included in the enacted plan, C185. (FOF 1490).

Congressman Cuellar, a Democrat, worked closely with Congressman Smith to reach an agreement under which they would propose a congressional map with two new Latino districts in it. (FOF 1491). The Texas Legislature ignored the wishes of the Texas Republican congressional delegation, and this was a surprise to Rep. Cuellar, because the Legislature historically worked with the input of the delegation. (FOF 1492).

**g. Failure to preserve existing boundaries where possible**

**(i) CD23**

To make CD 23 conform to population requirements, the redistricters needed only to remove 149,000 individuals. (FOF 1493). Instead of simply removing 149,000 individuals from CD23, the redistricters moved over 600,000 individuals into and out of the district. (FOF 1494). The enacted plan, C185, moved over 300,000 individuals in Bexar County out of the CD23 and about 60,000 individuals into CD23 from Bexar County. (FOF 1495).

Senator Kel Seliger, Chair of the Texas Senate Select Redistricting Committee, testified that District 23 could have been pulled down closer to the border instead of going up to Loving, Ward, Crane, and Winkler counties to ensure Latinos determined the outcome of the election. (FOF 1498).

**(ii) CD27**

In C185, Nueces County effectively is in a different district than in the benchmark. (FOF 1500). The reconfiguration of CD 27 removed a substantial number of Latinos from the configuration of Latino opportunity districts in South Texas. (FOF 1499). As a result, there was less Latino population with which to draw Latino opportunity districts in South Texas. The removal of Nueces County from the South Texas configuration also resulted in the elimination of a Latino majority district, which was not necessary. (FOF 1501).

In the new CD27 in C185, Nueces County voters make up less than half of the registered voters of the district. (FOF 1501). Although Mr. Interiano testified that a goal of Plan C185 was to allow Nueces County to anchor a congressional district, he conceded that he did not know what portion of Congressional District 27 voters were in Nueces County in plan C100. (FOF 1503). Mr. Interiano also conducted no election analysis to determine if Nueces County could control the election in Congressional District 27 in plan C100. (FOF 1504).

**h. Failure to Examine Impact of Changes to CD23 on  
Republican Primary Election Performance for the Latino  
Republican Incumbent**

Mr. Interiano did not review any reaggregated election analysis containing primary elections. (FOF 1505). Mr. Downton did not look at primary data at all, and did not take any steps other than discussing the district with Rep. Canseco's office, to ensure that CD 23 in C185 would offer Latinos the opportunity to nominate their candidate of choice in the Republican primary. (FOF 1506).

Mr. Downton did not have any evidence regarding the degree to which voters in the Republican primary supported Latino candidates in the areas that he removed from CD 23 and he had no evidence to show that the West Texas counties that he put in CD 23 would support a Latino in the Republican primary. (FOF 1507).

Rep. Canseco won the 2010 primary runoff against a non-Spanish-surnamed opponent, Will Hurd, by only 722 votes. (FOF 1510). In the 2010 Republican primary, Rep. Canseco garnered only 32.16% of the vote, and the other 4 candidates got the remaining votes. (FOF 1511). In the areas of CD 23 that are the same in C100 and C185, Mr. Canseco beat Mr. Hurd by less than 200 votes in the 2010 Republican primary runoff. (FOF 1512). In the 2010 Republican primary, about one third of Rep. Canseco's votes came from the portions of Bexar County that were not included in CD 23 in Plan C185. (FOF 1513).

In the 2010 Republican primary, incumbent Railroad Commissioner Victor Carrillo performed better in the portions drawn out of CD 23 in C185 than he performed statewide and better than in those parts that remained in the district. (FOF 1514). Mr. Carrillo received high percentages of the votes cast in precincts in the south side of San Antonio and in Maverick County. (FOF 1518). The highest concentration of votes cast for Mr. Carrillo was in Bexar

County. (FOF 1519). Mr. Carrillo also won Maverick County with 56.6% of the vote cast in that Republican Primary. (FOF 1524).

Although Victor Carrillo was the incumbent and outspent David Porter by a margin of 20-to-1, he lost the Republican Primary statewide. (PL Ex. 390 [Dkt. 330-4, at p. 5]). Mr. Carrillo stated that his Hispanic surname caused his loss to David Porter. (FOF 1525-1526). In a letter he sent to his supporters following his defeat, Mr. Carrillo wrote: “I was handily defeated in spite of spending over \$600,000 [.] Given the choice between “Porter” and “Carrillo”-- unfortunately, the Hispanic-surname was a serious setback from which I could never recover although I did all in my power to overcome this built-in bias. I saw it last time but was able to win because the “non-Carrillo” vote was spread among three Anglo GOP primary opponents instead of just one. Also, the political dynamics have changed some since 2004... I also urge party leaders to not alienate the Hispanic/Latino voter in Texas, as we now comprise about 39% of the population and we remain the fastest-growing minority group in the nation.” (FOF 1527).

In light of this very recent history, Mr. Downton could have requested and received reports from the TLC showing Rep. Canseco’s Republican primary runoff performance in the areas he drew out of CD 23 in C185. (FOF 1516). Senator Kel Seliger, Chair of the Texas Senate Redistricting Committee, testified that no study was done in the counties of Loving, Ward, Winkler, or Crane counties to determine if the Republican primary voters would support an Hispanic candidate (FOF 1517).

The portions of Bexar County that were moved in and out of CD 23 in the enacted plan, C185, make it harder for a Latino Republican to survive a racially contested primary than it is in the benchmark, C100. (FOF 1529).

**7. The Factors set out in *LULAC v. Perry* Support a Finding of Discrimination**

In *LULAC v. Perry*, the Supreme Court observed that in CD23 “the State took away Latinos’ opportunity because Latinos were about to exercise it” and that the revision of CD23 “bears the mark of intentional discrimination that could give rise to an equal protection claim.” *LULAC*, 548 U.S. at 440. The factors identified by the Supreme Court in *LULAC v. Perry* as indicative of intentional discrimination are present in the revisions to CD23 in Plan C185.

First, “District 23’s Latino voters were poised to elect their candidate of choice.” *LULAC*, 548 U.S. at 438. Chairman Seliger testified that he wanted to make CD23 politically safer for Mr. Canseco because he felt that Mr. Canseco’s election in 2010 was a bit of an aberration and he did not know if Congressional District 23 in the benchmark was reliable for Mr. Canseco. He also thought it was possible that Mr. Canseco would lose in Congressional District 23 in 2012 if the district was not reconfigured in some way. (FOF 1193). On the House side, Ryan Downton and Gerardo Interiano shared the goal of bolstering the reelection of Mr. Canseco although he was not the Latino-preferred candidate. (FOF 1325, 1335).

Second, Latinos in CD23 “were becoming more politically active.” *Id.* CD 23, a majority Latino district, had grown substantially in its Latino population and was overpopulated by 149,000 (FOF 1164, 1597). Maverick County’s voters, who are overwhelmingly Latino, had increased their political organization and increased their participation rates since the year 2000 in order to become a more important political player in CD23. (FOF 1536).

As a result of Latino growth and mobilization, CD23 had “an increasingly powerful Latino population that threatened to oust the incumbent[.]” *LULAC*, 548 U.S. at 423-24 (2006). The Supreme Court explained:



In old District 23 the increase in Latino voter registration and overall population, the concomitant rise in Latino voting power in each successive election, the near-victory of the Latino candidate of choice in 2002, and the resulting threat to the Bonilla incumbency, were the very reasons that led the State to redraw the district lines. Since the redistricting prevented the immediate success of the emergent Latino majority in District 23, there was a denial of opportunity in the real sense of that term.

*LULAC*, 548 U.S. at 428-29 (internal citations omitted).

Third, the changes to the district reduced Latino voters' ability to elect their candidate of choice. *LULAC*, 548 U.S. at 424-25, 427. Redistricters used the OAG10 analyses to craft a district in which the ability of Latino voters to elect their preferred candidate dropped to one in ten. The State's expert, Dr. Alford, testified that CD23 in C185 "is probably less likely to perform than it was, and so I certainly wouldn't and don't [and] haven't counted the 23rd as an effective minority district in the newly adopted plan." (FOF 957) He further stated, "I don't count 23 as one of the seven performing districts when I evaluate C-185." (FOF 957).

Fourth, redistricters intentionally drew CD23 to have a nominal majority for political reasons. *LULAC*, 548 U.S. at 424-25. Ryan Downton testified that when he was drawing CD 23, he turned on the shading for election results and SSVR when drawing the maps. This meant that he could see the effects on election results and SSVR of every change he made the instant he made the change. (FOF 1327). Mr. Downton made these changes precinct-by-precinct, with the dual goals of strengthening the district for Mr. Canseco and increasing the SSVR. (FOF 1328). The final result of Mr. Downton's efforts was a CD23 with a slightly higher SSVR but lower election results for Latino-preferred candidates. (FOF 1329). Mr. Downton maintained that his version of CD23 was Latino opportunity district because it had a majority of HCVAP. At the same time, Mr. Downton knew that the Latino candidate of choice won only 1 out of 10 reagggregated elections. (FOF 1371).

The “déjà vu” described by Dr. Alford when comparing the changes to CD23 in 2003 and 2011, highlighting the similarity of circumstances and changes to CD23, further supports a finding of intentional racial discrimination in this case. (FOF 1316-1318).

**D. TEXAS IMPROPERLY USED RACIAL STEREOTYPES TO JUSTIFY VOTE DILUTION AS INCUMBENCY PROTECTION IN H283 AND C185**

The State created and relied upon generalized stereotypes of Latino voting behavior to support dilution of Latino voting strength on the grounds that doing so furthered redistricters’ partisan political goals.

Official acts based on racial stereotyping are unconstitutional. *See Johnson v. California*, 543 U.S. 499, 519 (2005); *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“The Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”); *Watson v. Memphis*, 373 U.S. 526, 535-536 (1963) (rejecting claim by city officials that desegregation of city parks had to proceed slowly to “prevent interracial disturbances, violence, riots, and community confusion and turmoil” and concluding that such predictions were no more than “personal speculations or vague disquietudes.”)

Plans H283 and C185 disadvantage Latino voters to bolster the reelection of incumbents who are not Latino preferred and then claim that the vote dilution is justified by partisan interests. For example, Mr. Downton testified that he would not have moved forward with a draft version of CD23 that offered Latinos the opportunity to elect their preferred candidates in two or three elections out of ten because it “wouldn't have been good for Republicans.” (FOF 1546).

Congressman Lamar Smith used the terms “Republican district” and “Voting Rights district” in contrast with each other, employing the stereotype that the category of “Republican” is exclusive of minority voters. (FOF 1541-1542).

The Texas House leadership also adopted the view that creating a minority district was the opposite of creating a Republican district. Mr. Interiano testified that, with respect to Congressman Smith’s proposal to create a new majority minority district in Dallas Ft. Worth, Chairman Solomons determined that it was not required to draw the district and it “would have simply been an additional Democratic district in the state versus one that was required by the Voting Rights Act.” (FOF 1544).

Mr. Downton similarly testified that Chairman Solomons established a policy for the purposes of redistricting that only one of three of Texas’s new congressional districts would be a Democratic district, as opposed to a 2-2 split, because only one additional majority minority district was required by the Voting Rights Act. Mr. Downton further testified “[I]n considering the proposed north Texas districts, we didn't think they were required. We did think the central Texas district was required. And so if you took that, the other three had to be Republican districts.” (FOF 1545).

At times, redistricters were direct in expressing a plan to dilute Latino votes to preserve the incumbency of non-Latino-preferred candidates. Eric Opiela often used race in his communications. In a November 20, 2011 email to Mr. Interiano and Congressman Larmar Smith regarding how to improve Mr. Canseco’s chance of re-election, Mr. Opiela mentions that he and Mr. Interiano had been discussing “the problems inherent in trying to protect both Farenthold and Canseco” and that one possibility is to “move Canseco up to pick up Anglo voters in Midland, but then we pair him with Conaway--which is unacceptable, and probably will

lead to a Section 2 vote dilution claim on the basis of (the new) CD 23. You see the problem?”

Mr. Opiela uses the term “Anglo” four times in that one paragraph. (FOF 1540).

Undermining their claims of partisanship, redistricters did not examine whether they were making it more difficult for Mr. Canseco to be nominated in the CD23 Republican Primary. (FOF 1547). Near the end of the redistricting process, Mr. Canseco learned that he was losing precincts in Helotes and on the south side of San Antonio that had been very strong for him in his primary. Mr. Canseco testified that he was concerned that losing precincts that had been strong for him in the primary might make it difficult for him in his reelection if he drew a Republican primary challenger. (FOF 1552-1553, 1548-1551).

Republican elected officials acknowledge that Latinos can and do vote Republican. Francisco Canseco, former congressman for CD23, testified that he made connections during his campaign with Latino Democratic voters to tell them his message and ask for their vote and he believes he was successful in this effort. Mr. Canseco believes that Latino values are American values, not Democrat or Republican values. Mr. Canseco testified that he believes that Latinos in Texas are likely to vote either Republican or Democrat depending on the candidate and the candidate's message and that it's a question of the character of the candidate and the ability of that candidate to reach out, communicate and show leadership to that community. (FOF 1555).

Mr. Canseco testified that some of the issues on which he has appeal in the Latino community are common values like economic security, hard work and entrepreneurship, among others. He also communicated a message of economic development and employment and educational opportunities because he grew up in Laredo, which like other border areas suffers from underachievement in education and employment. (FOF 1556-1557).

Mr. Canseco testified that as a Hispanic Republican he can genuinely convey that he is a part of the Hispanic community and that he understands the subtleties that can be conveyed from one person of that group to another. He testified that such characteristics, and his cross-appeal to non-Hispanic populations, make him a good fit for a Latino majority district. (FOF 1558-1559).

Texas Senator Kel Seliger testified that Latino voters can vote Republican and that more Latinos do not vote Republican because Republicans have not done a very good job of reaching out to Latinos. He believes that more Republicans have not done a very good job of reaching out to Latinos because “they keep coming up with proposals to declare English the official language of Texas to no good end and things like that.” It is also his opinion that some of the positions related to immigration might not have done such a good job at reaching out to Latinos. Additionally, he thinks that it is possible that you could have a Latino majority district in which the Latinos preferred a Republican candidate in the general election. (FOF 1560).

State Representative Larry Gonzales, a Latino Republican, testified that Latinos in Texas are willing to vote for both Democratic and Republican candidates. (FOF 1568) Rep. Gonzales further testified that he helped create an organization to recruit and elect Latino Republicans to office in Texas. (FOF 1569).

State Representative J.M. Lozano, from Kleberg County, and former State Representative Aaron Pena of Hidalgo County, testified that they are both Latino Republicans who appealed to Latino voters and earned their votes. (FOF 1563).

Gerardo Interiano is a Hispanic Republican who worked on campaigns for Speaker Joe Straus and Congressman Lamar Smith. Mr. Interiano believes that Hispanics would respond to Republican messages around hard work and social conservatism. (FOF 1570) As a Hispanic Republican, Mr. Interiano testified that he is more cautious and sensitive when it comes to the

subject of immigration and he had seen materials or internet postings in which Hispanic Republicans are urging caution to their fellow Republicans to try to avoid sounding anti-Hispanic when talking about undocumented immigration. (FOF 1571).

Mr. Interiano believed, as a result of the rural nature of CD23, that Hispanic voters leaned more conservative in the district, and that rural Hispanics would favor a more conservative Democrat over a more liberal Democrat. Mr. Interiano also believed that in CD23 Hispanic Republican voters would prefer a moderate Republican candidate over a very conservative Republican candidate. (FOF 1572). Mr. Interiano was not surprised that CD23 Congressman Pete Gallego garnered a greater percentage of the vote in his 2012 general election than President Barack Obama won in CD 23. (FOF 1573).

The reality is that Latinos will support the candidates who work for their votes. Dr. Alford agreed that a Latino voter can vote for a Republican in one election and Democrat in the next election and further stated “I think that is something we -- we can clearly infer about Latino voting behavior from all of this analysis. There is much more movement across party lines, in terms of how Latinos are distributed[.]” (FOF 1554). Dr. Alford reviewed EI analysis and exit poll estimates of Hispanic support for Republican candidates in the 2008 and 2010 election, and opined: “maybe for Hispanic voters the notion of a right answer or sort of a one size fits all is maybe not as appropriate.” (FOF 1589). Dr. Alford further agreed that a Latino voter who is socially and fiscally conservative could feel that the Republican Party had walked away from him in the past few years, because of certain policy positions, and he might even find himself voting Democratic. (FOF 1590). Dr. Alford further testified that immigration policy is increasing the position of race in the current American political debate. (FOF 1592).

Latinos are flexible in their partisan affiliation. (1574-1575, 1583-1588). Latinos work on political races for both parties. (FOF 1576). Latinos also contribute to candidates for both parties. (FOF 1577). Alex Jimenez, who lives in Ft. Worth, helped the Republican Mayor of Fort Worth get elected. He also helped Mary Louise Garcia, a Republican, run for County Clerk, and she was elected. (FOF 1578). Mr. Jimenez chooses candidates to support by meeting them and seeing if they fit his values. (FOF 1579).

In chairing the Fort Worth and Dallas Hispanic Chambers of Commerce, Mr. Jimenez sought to influence legislation to help Hispanic businesses, and small businesses in particular. (FOF 1580). Mr. Jimenez's political involvement includes seeking economic development and education for everyone because he believes they need to be in place for a strong community. (FOF 1581).

Mr. Jimenez testified that Hispanic voters in CD 6 in Plan C190 will look at what a person stands for regardless of political party. If a candidate promises to create jobs and strengthen education, that candidate should have the Latino support. However, if he tells Hispanics to go to Mexico, he will lose it. Party does not matter—Hispanics in this area would support a Republican if their values coincided. (FOF 1582).

Texas State Representative Todd Hunter is a member of the House of Representatives for House District 32 in Nueces County. In 2011, he was a member of the Texas House Redistricting Committee. (FOF 1561) Rep. Hunter is active in the Nueces County Republican Party and acknowledged that the party contains Hispanic Republicans in Nueces County. (FOF 1562) Rep. Hunter believes that a Hispanic Republican can win a party primary in Nueces County. (FOF 1563).

Former State Representative Dee Margo testified that the Republican Party has appeal for Hispanics in El Paso County and that there are Hispanics who vote Republican in El Paso County. (FOF 1565) Mr. Margo testified that he had appeal among Hispanic Republicans in El Paso County and that the policy issues that were important to him, such as education and health care, were also helpful in gaining support from Hispanic Republicans in El Paso. He further testified that one immigration-related issue that helped him gain approval in the Hispanic community was his support of legislation in Texas that would allow undocumented residents who graduated from Texas high schools to pay in-state tuition at public universities. (FOF 1566).

With respect to his election to the State House, Mr. Margo testified that his support was a combination of Republicans and Democrats, that there was a substantial number of Hispanic voters among both of those groups, and that his positions on immigration, health care and education helped him win the votes of Hispanic Republicans and Democrats. (FOF 1567).

The State's refusal to increase the opportunity of Latinos to elect their candidate of choice, while consistently characterizing Latinos as Democrats and the goals of redistricting as seeking partisan advantage for Republicans, evidences the improper use of racial stereotypes about Latinos and intentional discrimination against Latinos on the basis of race.

### **III. CONCLUSION**

For the foregoing reasons, Plans C185 and H283 discriminate against Latinos in violation of the U.S. Constitution and the Voting Rights Act of 1965.

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Respectfully submitted,

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**Certificate of Service**

I hereby certify that on this 30<sup>th</sup> day of October, 2014, I served a copy of the foregoing Post-Trial 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.

/s/ Nina Perales  
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