

UNITED STATES DISTRICT COURT
DISTRICT OF DISTRICT OF COLUMBIA

STATE OF TEXAS,

Plaintiff,

- against -

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

Defendants.

CIVIL ACTION NO. 1:11-cv-01303

Three-Judge panel: RMC-TBG-BAH

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

EXHIBIT 1

Supplemental Expert Report of Dr. Henry Flores

**Supplemental Report
of
Henry Flores, PhD
In
*Texas v U.S.A., et al***

Introduction

This report supplements my previous report submitted on behalf of defendant intervenor Texas Latino Redistricting Task Force in the above-styled matter. My report is submitted subsequent to a review of documents released by the plaintiff in January 2012 and also of the deposition of Mr. Gerardo Interiano conducted on January 10, 2012.

Retention

I was retained by the Mexican American Legal Defense and Educational Fund on behalf of the defendant-intervenor Texas Latino Redistricting Task Force to examine evidence and offer my opinion regarding whether there are indicia of discriminatory racial purpose in the congressional and Texas state house redistricting plans enacted by the State of Texas in 2011. I was asked to examine the redistricting process including the circumstances surrounding the drawing of congressional districts (CD) 23 and 27 and Texas House of Representative districts (HD) 33 and 78. Additionally, I was asked to examine the State's response to the possibility of drawing another house district in the Cameron-Hidalgo County region and the configuration of congressional districts in the Dallas-Ft. Worth area.

Documents Reviewed

The opinions set forth in this report were based on a review of the following documents:

- Comments to draft "informal submissions" by David Hanna
- "Oral Deposition of Gerardo Interiano." January 10, 2012. Texas v. U.S., No. 11-cv-1303 and Deposition Exhibits Nos. 1 – 20.
- Copies of the following emails:
 - From: David Hanna, To: Denise Davis, Subj: redist issues, Date: 2/17/2011 9:52 PM.

- From: David Hanna, To: Denise Davis, Subj: slowing down plan a bit, Date: 4/8/2011 9:24 PM.
- From: David Hanna, To: Dendav (Denise Davis), Subj: Re: slowing down plan a bit, Date: 4/8/2011 9:45 PM.
- From: David Hanna, To: Denise Davis (home), Subj: Re: Fwd: Numbers – NEED INPUT, Date: 4/13/2011 6:47 AM
- From: Gerardo Interiano, To: Denise Davis, Lisa Kaufman, Gordon Johnson, Subj: Re: Numbers – NEED INPUT, Date: April 12, 2011.
- From: David Hanna, To: Denise Davis, Subj: HB 150, Date: 4/17/2011 9:54 PM.
- From: David Hanna, To: Denise Davis, Subj: he needs to sign the redistricting bills, Date: 6/1/2011 9:23 AM.
- From: David Hanna, To: Denise Davis (home), Subj: house redistricting committee, Date: 6/6/2011 8:22 PM.
- From: David Hanna, To: Doug Davis; Doug Davis_SC, Subj: OK to talk to Heath?, Date: Thursday, June 02, 2011 1:21PM.
- From: Doug Davis, To: 'Lee' Padilla', Subj: RE: Canseco, Date: April 13, 2011 9:24 AM.
- From: Blaine Brunson, To: Doug Davis_SC; Reb Wayne, Subj: RE: Sen. Hegar, Date: Wednesday, June 01, 2011 1:58 PM.
- From: David Hanna, To: Karina Davis, Subj: pre-doing committee report, Date: Wednesday, May 11, 2011 6:03 PM.
- From: Bonnie L. Bruce, To: Gerardo Interiano; Burt Solomons; Ryan Downton_HC, Subj: FW: hearing schedule, Date: Wednesday, April 13, 2011 11:37 AM.
- From: Bonnie L. Bruce, To: Bonnie L. Bruce 'burtsolomons@gmail.com', Subj: RE: Calendar Rule, Date: Thursday, March 17, 2011 11:13 AM.
- From: David Hanna, To: Gerardo Interiano, Subj: Re:, Re:, Re:, Date: Friday, January 21, 2011 8:36AM.

- From: Lisa Kaufman, To: Gerardo Interiano, Subj: Re: you in office?, Date: Friday, June 10, 2011 7:02 PM.
- From: Bonnie L. Bruce, To: Gerardo Interiano, Subj: Re: Racially Polarized Voting Summaries, Date: Friday, April 22, 2011 10:05 PM.
- From: Mike Baselice, To: Doug Davis, Subj: H276 comparison, Date: Thu 4/28/11 3:24 PM.
- From: Jeff Archer, To: David Hanna; Gerardo Interiano, Subj: RE: Nueces County, Date: Tuesday, March 22, 2011 7:30 PM.
- From: Gerardo Interiano, To: Eric Opiela, Subj: Re:, Date: Friday, December 10, 2011 4:11 PM.
- From: David Hanna, To: Gerardo Interiano, Subj: RE: Amendment Retrogression Analysis, Date: Friday, April 22, 2011 11:11 AM.
- From: David Hanna, To: Gerardo Interiano, Subj: state plan for which no Section 5 determination has been made, Date: Wednesday, July 20, 2011 10:09 AM.
- From: David Hanna, To: Gerardo Interiano, Subj: Re: Quick Question, Date: Monday, February 07, 2011 9:04 AM.
- From: Gerardo Interiano, To: Lisa Kaufman, Subj: County Splitting vs. Deviation, Date: Tuesday February 01, 2011 10:02 AM.
- From: Gerardo Interiano, To: Denis Davis (home); Lisa Kaufman, Subj: Talking Points, Date: Tuesday, March 29, 2011 10:47 AM.
- From: David Hanna, To: Gerardo Interiano, Subj: retrogression benchmark, Date: Wednesday, April 13, 2011 9:03 PM.
- From: Gerardo Interiano, To: Eric Opiela, Subj: Date: Friday, December 10, 2010 4:11 PM.
- From: Eric Opiela, To: Gerardo Interiano, Subj: useful metric, Date: Friday, November 19, 2010 6:39 AM.
- From: David Hanna, To: Gerardo Interiano, Subj: Quick Question, Date: Monday, February 07, 2011 9:04 AM.
- From: David Hanna, To: Gerardo Interiano, Subj: retrogression benchmark, Date: Wednesday, April 13, 2011 9:03 PM.

- From: David Hanna, To: Gerardo Interiano, Subj: performing districts, Date: Thursday, April 14, 2011 6:19 PM.
- From: Bonnie L. Bruce, To: Gerardo Interiano, Subj: Racially Polarized Voting Summaries, Date: Friday, April 22, 2011 10:05 PM.
- From: Jeff Archer, To: Gerardo Interiano, Subj: Dallas County Map, Date: Sunday, April 24, 2011 9:01 PM.
- From: Gerardo Interiano, To: Gerardo Interiano, Subj: Congressional One Pager, Date: Wednesday, June 01, 2011 10:35 PM.
- From: David Hanna, To: Gerardo Interiano, Subj: Congressional Map, Date: Monday, June 06, 2011 9:22 AM.
- From: David Hanna, To: Gerardo Interiano, Subj: Attorney-Client Privilege Redistricting, Date: Thursday, June 09, 2011 8:25 PM.
- From: David Hanna, To: Gerardo Interiano, Subj: , Date, Thursday, June 09, 2011 3:24 PM.

Awareness of Race

The documents disclosed by the State in January indicate a conscious effort by map-drawers to identify voter tabulation districts (election precincts) that possessed a majority of Hispanic Voting Age Population, Citizen Voting Age Population, and Spanish Surnamed Registered Voters but also had low turnout rates by Latino voters and use these precincts to produce a CD 23 that would appear to be a Latino ability to elect district but in reality would not perform as such because of racially polarized voting and the low levels of Latino voter turnout.

Email communications between Mr. David Hanna, counsel with the Texas Legislative Council, Messrs. Eric Opiela and Gerardo Interiano, both Counsel to Speaker Straus at the relevant times, Ms. Denise Davis, Chief of Staff of the Speaker of the Texas House of Representatives, Mr. Jeff Archer, counsel with the Texas Legislative Council, and Ms. Lisa Kaufman, Counsel to the Texas House Speaker, from November, 2010 to as late as June 10th of 2011 indicate that those responsible for redistricting were aware that racially polarized voting existed in the state and that the growing Latino population would make it increasingly difficult to maintain

the existing number of Latino ability to elect districts in both the Texas Congressional delegation and the Texas State House. In an email dated Feb. 7, 2011, for instance, David Hanna communicated with Mr. Interiano concerning what the population of Hispanics would be necessary to insure that a district “performed.” Mr. Hanna made it clear that a district that had 51% Latinos, of any measure, would be problematic. In mail dated April 13 and 14, 2011, Mr. Hanna also pointed out that the redistricters had to be careful concerning retrogression issues, citing various Supreme Court decisions and the reauthorization of the VRA in 2006 as raising issues with the maps under consideration at that time. On April 23 and 24, 2011, Mr. Archer, Chief Legislative Counsel to the Texas Legislative Council, communicated with Mr. Interiano concerning the level of Hispanics in State House Districts 103 and 104 in Dallas County. The same conversation appears in emails on the previous day, April 21, concerning the Hispanic population of Nueces County. Finally, Mr. Reed Clay of the State Attorney General’s Office issued an opinion for Mr. Interiano indicating what may happen if the state’s congressional and State House plans were challenged in federal court on Section 2 and Section 5 grounds of the VRA.

These communications make clear that the position of the Legislative Council attorneys was that if the State was not more careful in the manner in which it redistricted, and did not alter its maps, it likely would encounter pre-clearance problems and likely violate Section 2 of the Voting Rights Act.

“Precinct-swapping” Redistricting

As I described in my previous report in this case, a review of the precincts that were swapped in and out of District 23 between the benchmark (C100) plan and the legislatively adopted plan (C185) reveals that this “bait and switch” operation resulted in: a change in the election performance of the State’s CD 23 to reduce the likelihood of success of Latino-preferred candidates; the splitting in half of Maverick County which is almost entirely Hispanic and sits on the Texas-Mexican border; and “cracking” into three districts the traditional Hispanic voting community of South Bexar County. Finally, several predominantly Anglo counties situated above the Pecos River that had not previously been part of CD 23 but had

been part of CD 11 were added to CD 23, changing the composition of the electorate of this congressional district dramatically. The State's CD 23, if allowed to stand, even though it is a majority-minority district when looking at demographic data, will be one where the Hispanic voters are not able to elect a candidate of choice of either political party.

The recently-disclosed documents from the State reveal that this methodology was devised early in the redistricting process and was presented by Mr. Opiela to Mr. Interiano while both were working as counsel to Texas House Speaker Straus.

In an email dated November 17, 2010 with a subject heading entitled "useful metric" Mr. Opiela indicated that it would be "useful for someone to go in and calculate a ratio for every census block in the state of CVAP/Total Population, a ratio of Hispanic CVAP/Total Hispanic Population, and a ratio of Spanish Surname RV/Total Hispanic Population." Then Mr. Opiela says it would be useful to calculate "Spanish Surname Turnout/Total Turnout ratio" for elections in 2006-2008 in a spreadsheet. These data could then be used to identify what he called a "nudge factor" that would help "pull the districts['] Total Hispanic Pop and Hispanic CVAPs up to majority status, but leave the Spanish Surname RV [registered voters] and TO [turnout] the lowest." Then Mr. Opiela indicates that this would be helpful in "shoring up Canseco and Farenthold," both freshmen incumbents who are not the candidates of choice of Latinos but who reside in Latino ability districts. Essentially, Mr. Opiela is describing moving Latino-majority precincts in and out of congressional districts 23 and 27 to exchange precincts with greater rates of Latino turnout for precincts with lower rates of Latino turnout. This precinct swapping would reduce the relative rate of Latino turnout in the district thus keeping the Latino CVAP and SSVR the same while simultaneously improving the election chances of the candidate not preferred by Latino voters. Mr. Opiela describes the precinct swapping to reduce the relative rate of Latino turnout in CD 23 to Mr. Interiano as a "nudge" factor to give an advantage to incumbents in CDs 23 and 27 who they knew were not the preferred candidates of Latino voters.

Mr. Interiano subsequently requested data from the Texas Legislative Council to facilitate the swapping of precincts and sent what he received to Mr. Opiela, who had left the Speaker's employment to work for the Texas Republican congressional delegation, including Mr. Canseco and Mr. Farenthold, the incumbents of CD23 and CD27.

This exchange of emails provides direct evidence of purpose to manipulate precincts based on Hispanic voter turnout to create districts that on the surface appeared to be Hispanic ability to elect districts but, in performance, were not.

Redistricting Committee Hearings

The recently disclosed documents reveal that the legislative hearings on redistricting plans were rushed and input from minority legislators, both senators and house members, was ignored or not solicited. In my opinion, the rushed process and exclusion of minority legislators is a departure from normal procedure and constitutes evidence of discriminatory purpose. Email communications between the Texas Legislative Council's Office, specifically Mr. David Hanna, and Ms. Bonnie Bruce, the Chief of Staff to Rep. Bert Solomons and House Redistricting Clerk, together with email between Ms. Bruce and staff members of the Speaker of the House and Mr. Hanna, dated March 29, 2011 indicate that redistricters slowed the process down during the regular session, despite the availability of plans to propose. In the end, this resulted in the public hearings being subjected to a compressed time schedule at the end of the session with hearings being scheduled on Sundays, little public notice and little notification. Waiting until the last minute is a strategic way in which to limit debate and input on sensitive matters such as Voting Rights Act compliance. The redistricters and those responsible knew from the beginning of the process that the maps would most likely be subject to litigation and thus they limited debate.

Conclusions and Opinion

The documents used as the foundation for this supplemental report provide further evidence that the redistricting plans for both the congressional and the state house districts were adopted with a racially discriminatory purpose. The precinct-

swapping methodology described in Mr. Opiela's email appears to have been utilized to insure that the State's new CD 23, which had been electing candidates preferred by Latino voters in the benchmark, no longer provides Latino citizens with an ability to elect a candidate of their choice.

Beyond the precinct-swapping described above, the recently-disclosed documents reveal further evidence of racial purpose in the changes made to CDs 23, CD27, HD 78 and HD 33. The email communications between Messrs. Opiela and Interiano cited earlier in this report outlining the creation of a metric that would allow the mappers to create congressional and house districts that are Hispanic majority in appearance but substantively do not allow Latino voters to elect candidates of their choice, as well as the other materials I examined, shed light on the sequence of events leading up to the adoption of the new House and Congressional redistricting plans and reveal departures from the normal substantive and procedural practice that indicate racially discriminatory purpose. These communications occurred while the maps were being drawn during the 2011 legislative session and special session.

Essentially, the documents I analyzed, coupled with the other evidence discussed in my previous report have led me to identify, without any hesitation, evidence indicating that the Texas redistricting process of 2011 and the construction of the congressional and Texas House plans was infected by racially discriminatory purpose. The recently disclosed materials provide further evidence that redistricters intentionally manipulated geography and Hispanic voter numbers to insure that Latino voters would have less of an ability to elect candidates of choice in the State's adopted plans when compared to the current plans.

Submitted by



Henry Flores, PhD
Consultant