

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LULAC, *et al.*,

Plaintiffs,

v.

GREG ABBOTT, in his official capacity as
Governor of Texas, *et al.*,

Defendants.

Case No.: EP-21-CV-00259-JES-JVB
[Lead Case]

DECLARATION OF SENATOR BEVERLY POWELL

Pursuant to 28 U.S.C. § 1746, I, Beverly Powell, declare that:

1. I am over 18 years of age and competent to testify.
2. I regularly voted in elections and intend to vote in the 2022 election and subsequent elections.
3. I am Anglo and am the incumbent Democratic state senator representing District 10 in the Texas state senate. I have held this position since 2019.
4. I was elected in 2018 with overwhelming support from SD10's Black and Latino voters, and a portion of Anglo crossover voters.
5. I was encouraged to run for SD10 by Roy Brooks, who is the Commissioner for Tarrant County Precinct 1.
6. On October 30, 2019, I sent a letter to Sen. Joan Huffman, the Chair of the Senate Select Committee on Redistricting, to invite the Committee to attend a hearing in SD10 and to provide Sen. Huffman with some information about my district, including its vibrant and growing

minority community Attached as Exhibit A to my declaration is a true and correct copy of this letter.

7. On February 18, 2020, I sent Sen. Huffman a letter inviting the Senate Select Committee on Redistricting to hold a hearing at Tarrant County College South. Attached as Exhibit B to my declaration is a true and correct copy of this letter.

8. On November 19, 2020, my Chief of Staff Garry Jones and I met with Sen. Huffman and her aide Sean Opperman to discuss the redistricting process. We met in the Sam Houston building on the fourth floor. When Mr. Jones and I arrived, there were maps of SD10 sitting on the table for us.

9. During this meeting, I discussed how SD10's population was majority minority.

10. On September 14, 2021, Mr. Jones and I attended a meeting with Sen. Huffman and her aides Mr. Opperman and Anna Mackin on the fourth floor of the Sam Houston building. Mr. Jones and I arrived early and waited, and when we were called in by Sen. Huffman, there was a map of the newly drawn SD10 on a projector screen, and Mr. Opperman and Ms. Mackin were seated at computers. The image of SD10 displayed on the screen cleaved the benchmark district's minority populations apart and added Parker and Johnson Counties instead.

11. I informed Sen. Huffman that the benchmark SD10 was close to ideal population and there was no reason to make any changes to its boundaries.

12. I handed Sen. Huffman a series of maps of benchmark SD10 with racial shading to illustrate how the proposed plan cleaved apart SD10's minority communities. These included a map showing the location of SD10's Black community, its Hispanic community, its Asian and Other Race Community, a map of the combined Black and Hispanic community, a map showing all minorities combined, a map of the Anglo community, and a map showing how the minority

communities in SD10 supported me in the 2018 election. Attached as Exhibit C to my declaration are true and correct copies of the materials I provided to Sen. Huffman.

13. As I handed each map to Sen. Huffman, I read aloud the header indicating which racial demographic the map showed. Sen. Huffman looked at each map as I handed them to her. Sen. Huffman asked that we each initial and date the maps, which we did.

14. During the floor debate on SB4, Sen. Huffman said that she only “glanced” at the *first* map “for less than a second” and once she “realized it had racial data,” she “turned it over flat and [] said, I will not look at this.” Sen. Huffman did not need to look at the map first to know it showed racial data; I read the header on the map listing the racial data it contained as I handed it to Sen. Huffman. Moreover, Sen. Huffman reviewed the map for longer than “less than a second,” and I do not recall her saying “I will not look at this.” In fact, Sen. Huffman looked at each map as I handed them to her.

15. After Sen. Huffman was done viewing the maps, Mr. Jones asked to see some more details on the computer screen of the redrawn SD10.

16. I then provided Sen. Huffman with excerpts from the 2012 federal court ruling that ruled the 2011 effort to dismantle SD10 intentionally racially discriminatory, and Sen. Huffman acknowledged she was aware of the decision. The meeting ended shortly thereafter.

17. I was never informed by Sen. Huffman or her staff prior to the September 14, 2021 meeting that SD10 would be changed in this manner.

18. I sent a series of letters, maps, a fact sheet, and the federal court decision to illustrate my objection to Sen. Huffman’s proposal to dismantle SD10 as a performing crossover district for minority voters. I sent these to Sen. Huffman, all my senate colleagues, the House Redistricting Committee, and all members of the House.

19. After the September 14, 2021 meeting, Sen. Huffman never contacted me or my staff to discuss any changes to SD10, even though it was amended several times before the final plan was adopted and even though Sen. Huffman contacted other senators affected by the changes.

20. For example, the Senate Select Committee on Redistricting was scheduled to hold its first public hearing on the proposed senate plan at 10 AM CDT on September 24, 2021. At around 9 or 9:30 PM CDT on September 23, 2021, on the eve of that hearing, Sen. Huffman released a new version of the plan, eliminating about half of Parker County from the original proposal for SD10, and adding Palo Pinto, Stephens, Shackelford, Callahan, and Brown Counties. These counties came from three different benchmark senate districts, SD28 (Sen. Perry), SD30 (Sen. Springer), and SD24 (Sen. Buckingham). I was never contacted about these changes.

21. The change was so last minute that the large blown-up maps the Committee staff had printed and placed on easels for the public hearing on September 24, 2021 were the incorrect maps. Sen. Huffman explained that there was not time to print ones in time for the hearing.

I declare under penalty of perjury that the foregoing is true and correct.

November 23, 2021


Beverly Powell

EXHIBIT 2-A

COMMITTEE ON EDUCATION
COMMITTEE ON HEALTH AND HUMAN SERVICES
COMMITTEE ON HIGHER EDUCATION
COMMITTEE ON NATURAL RESOURCES
& ECONOMIC DEVELOPMENT



SENATOR BEVERLY POWELL
DISTRICT 10

October 30, 2019

The Honorable Joan Huffman
Chair, Senate Select Committee on Redistricting
Room 1E.15, Texas Capitol
Austin, TX 78701

Dear Chair Huffman,

I would like to formally invite the Senate Select Committee on Redistricting to Senate District 10 and offer any assistance in hosting an up-coming hearing of the committee.

While we are all proud of our constituencies, I feel strongly that the diversity of District 10 has much to provide your committee in its work toward an equitable and constitutional Senate map for 2021.

In many ways, Senate District 10 and Tarrant County are a microcosm of Texas. According to Census Bureau estimates, Tarrant's population of persons of color has grown by double digit percentages since 2010. Tarrant currently adds about 27,000 new residents each year, constituting one of the ten fastest growth rates in the nation.

I would be happy to recommend expert witnesses to aid the committee with respect to understanding the importance of redistricting to Senate District 10 and in preserving the right of its citizens, particularly people of color, to select the candidate of their choice. In addition, I would be honored to provide any logistical assistance you may require to facilitate a hearing.

I look forward to hearing your response and discussing the committee's availability.

Sincerely,

A handwritten signature in cursive script that reads "Beverly Powell".

Beverly Powell
Senator, District 10

cc: Members, Senate Select Committee on Redistricting

EXHIBIT 2-B

COMMITTEE ON EDUCATION
COMMITTEE ON HEALTH AND HUMAN SERVICES
COMMITTEE ON HIGHER EDUCATION
COMMITTEE ON NATURAL RESOURCES
& ECONOMIC DEVELOPMENT



SENATOR BEVERLY POWELL
DISTRICT 10

February 18, 2020

The Honorable Joan Huffman
Chair, Senate Select Committee on Redistricting
PO Box 12068
Austin, TX 78711

Dear Chairwoman Huffman:

Thank you for your invitation to participate in planning process of the upcoming hearing for the Senate Select Committee on Redistricting on September 17, 2020 in Denton/Tarrant counties. I believe public input during the redistricting process is crucial to ensuring the diverse voices of Texas are heard as we consider new district lines during the next legislative session.

It is my hope that you and the committee will consider choosing Tarrant County to host the September, 17th hearing. Specifically, it is my hope that the committee will consider Tarrant County College South as the venue for the committee hearing.

My office has been in contact with Tarrant County College South and has secured a day long reservation for the venue should you choose this location. The venue fits all the criteria provided in the original letter sent to my office on February 4th, 2020. The venue will also be free of charge to the committee.

Beyond serving as central location that is easily accessible to the public by car or public transportation, Tarrant County College South Campus reflects the growing diversity of Tarrant County and the community in which the college serves. Located off of Interstate 20, Tarrant County South serves the cities of Forest Hill, Everman, Edgecliff Village, Crowley, and South and Southeast Fort Worth. These communities are all some of the most diverse cities and populations in Tarrant County with both large African American populations and growing Hispanic populations. Proximity to these diverse areas of Tarrant County will allow for greater public input from Tarrant County's African American and Latino communities, while the central location and access to major interstates will allow easy access to those driving from others parts of the region.

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Chair Huffman

I look forward to working with you and the committee to ensure that the people of Tarrant County's voices are heard in the redistricting process. As a State Senator elected by African American and Latino voters, I am excited about the prospects of my diverse constituency being heard as we look forward to drawing district lines that ensure the voices of all Texans are fairly represented in the Texas Legislature.

Regards,

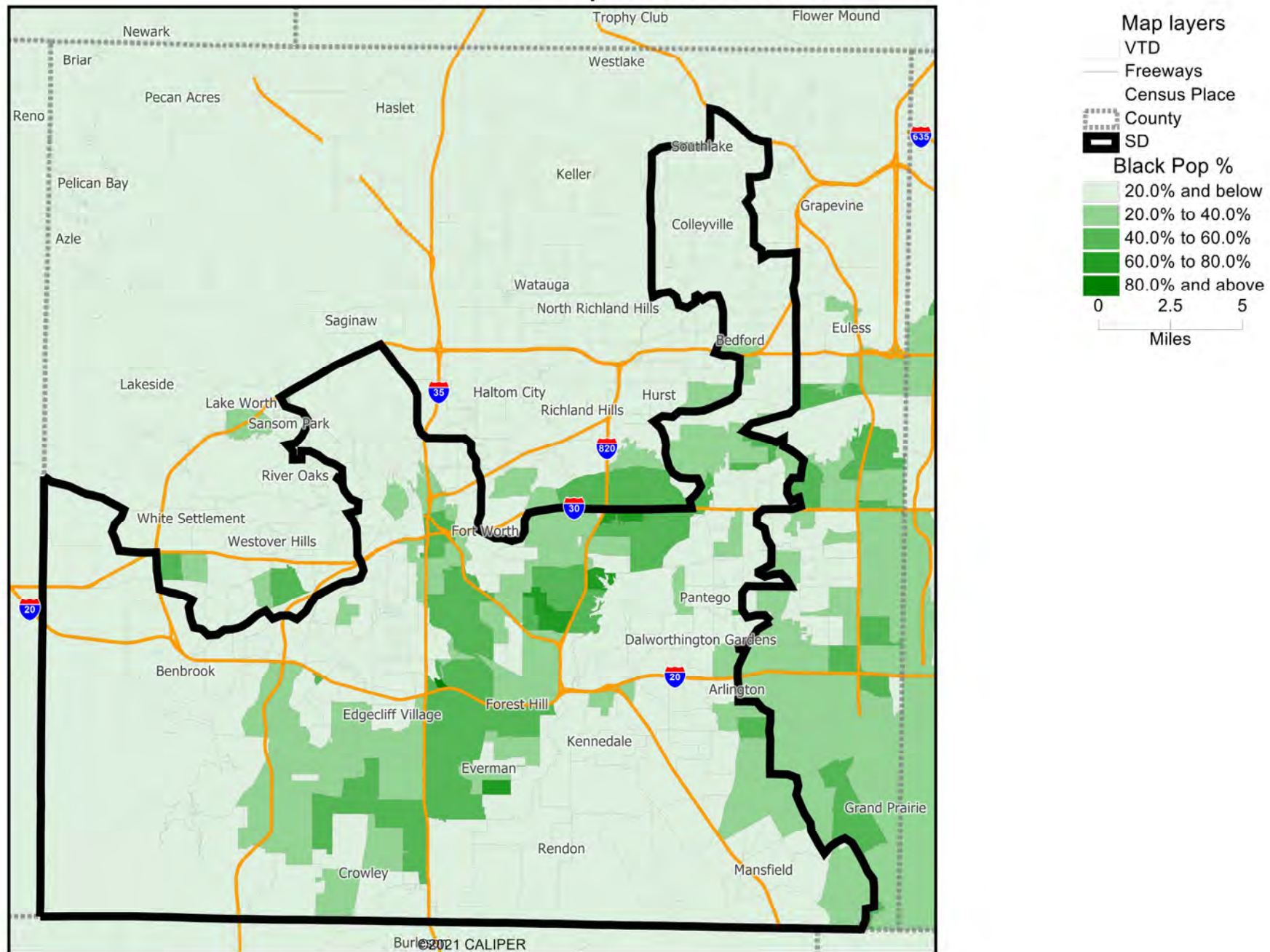
A handwritten signature in black ink that reads "Beverly Powell". The signature is written in a cursive, flowing style.

Beverly Powell
Texas State Senator, District 10

EXHIBIT 2-C

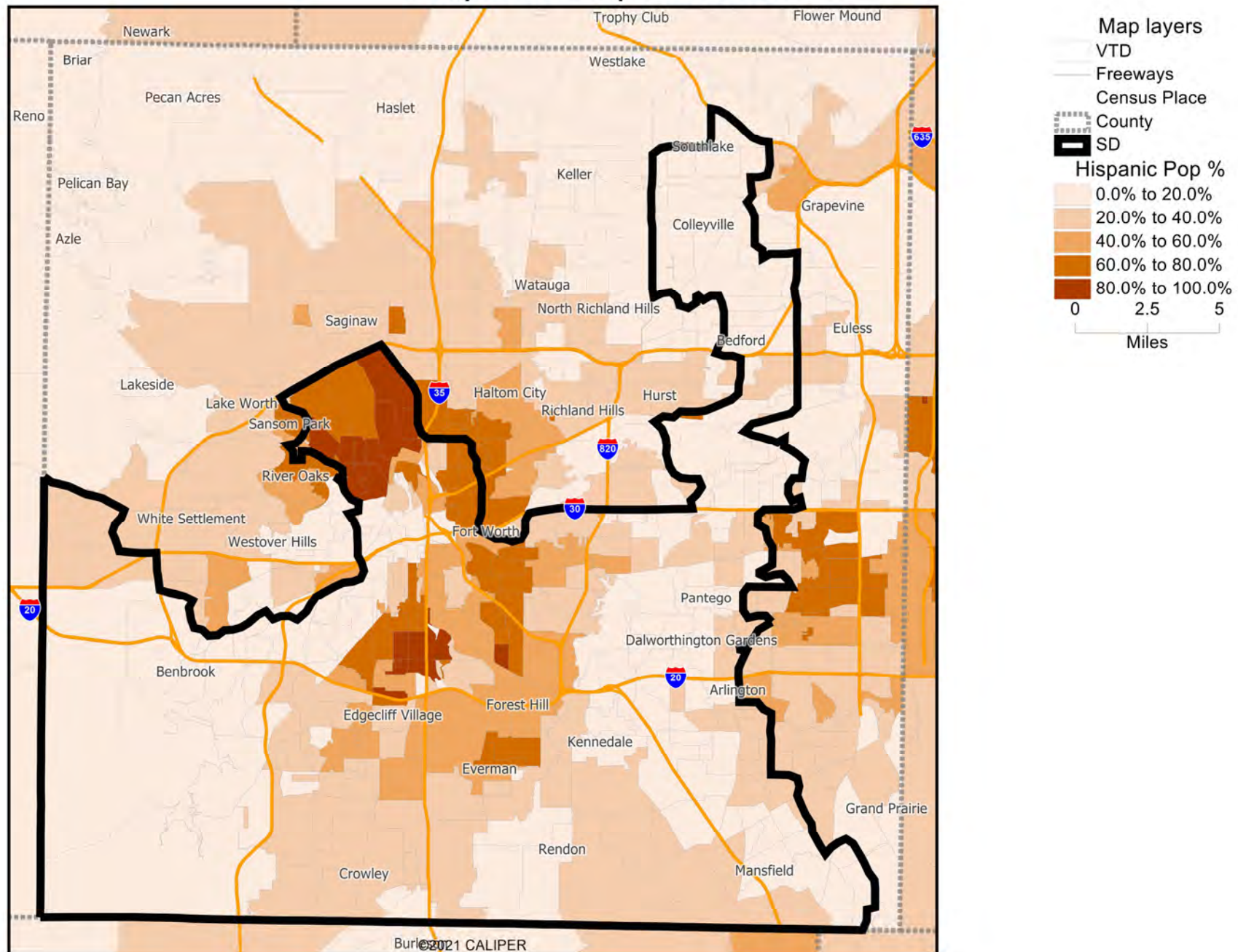
SD 10 Benchmark

Black Population 2020



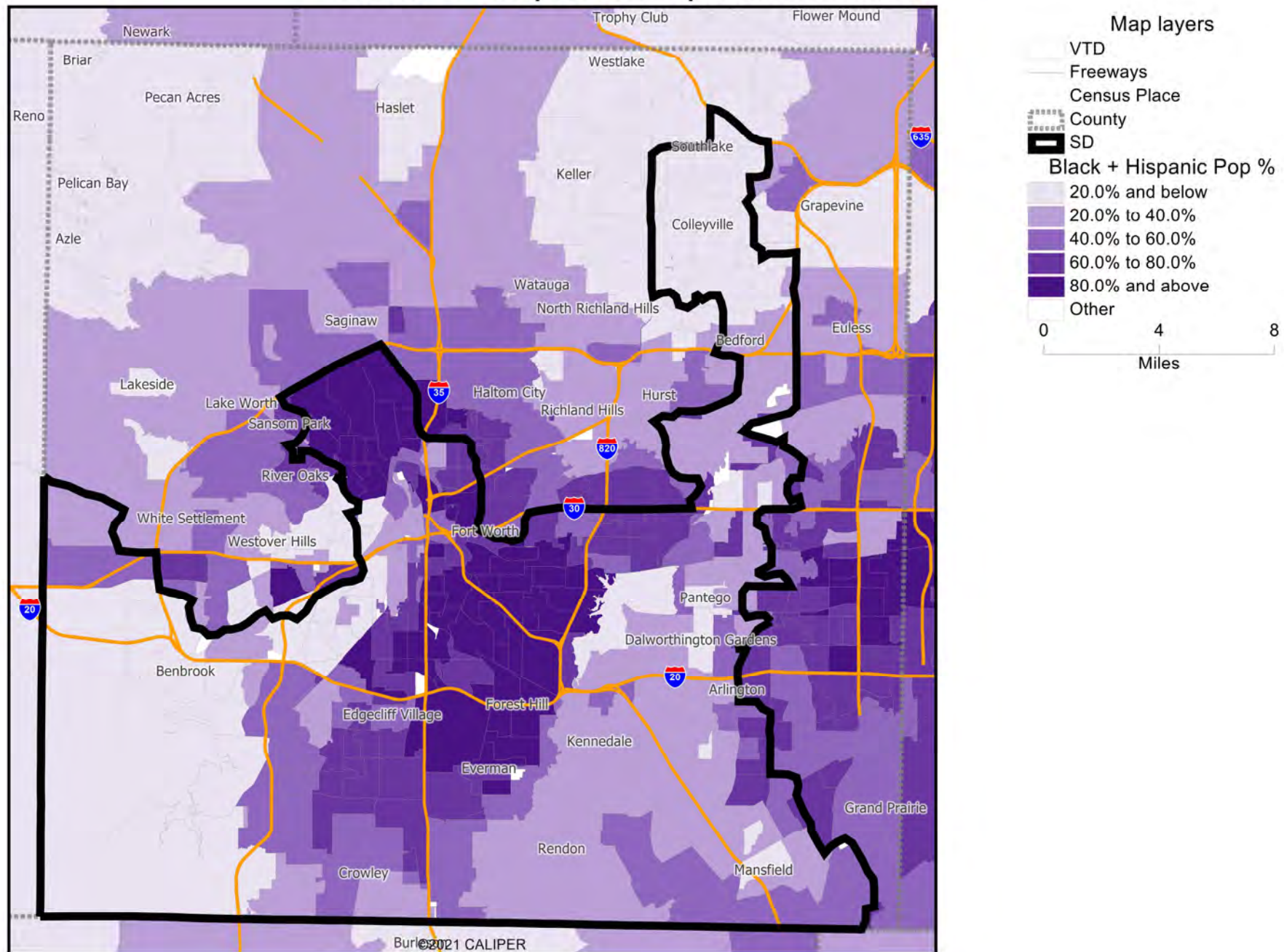
SD 10 Benchmark

Hispanic Population 2020



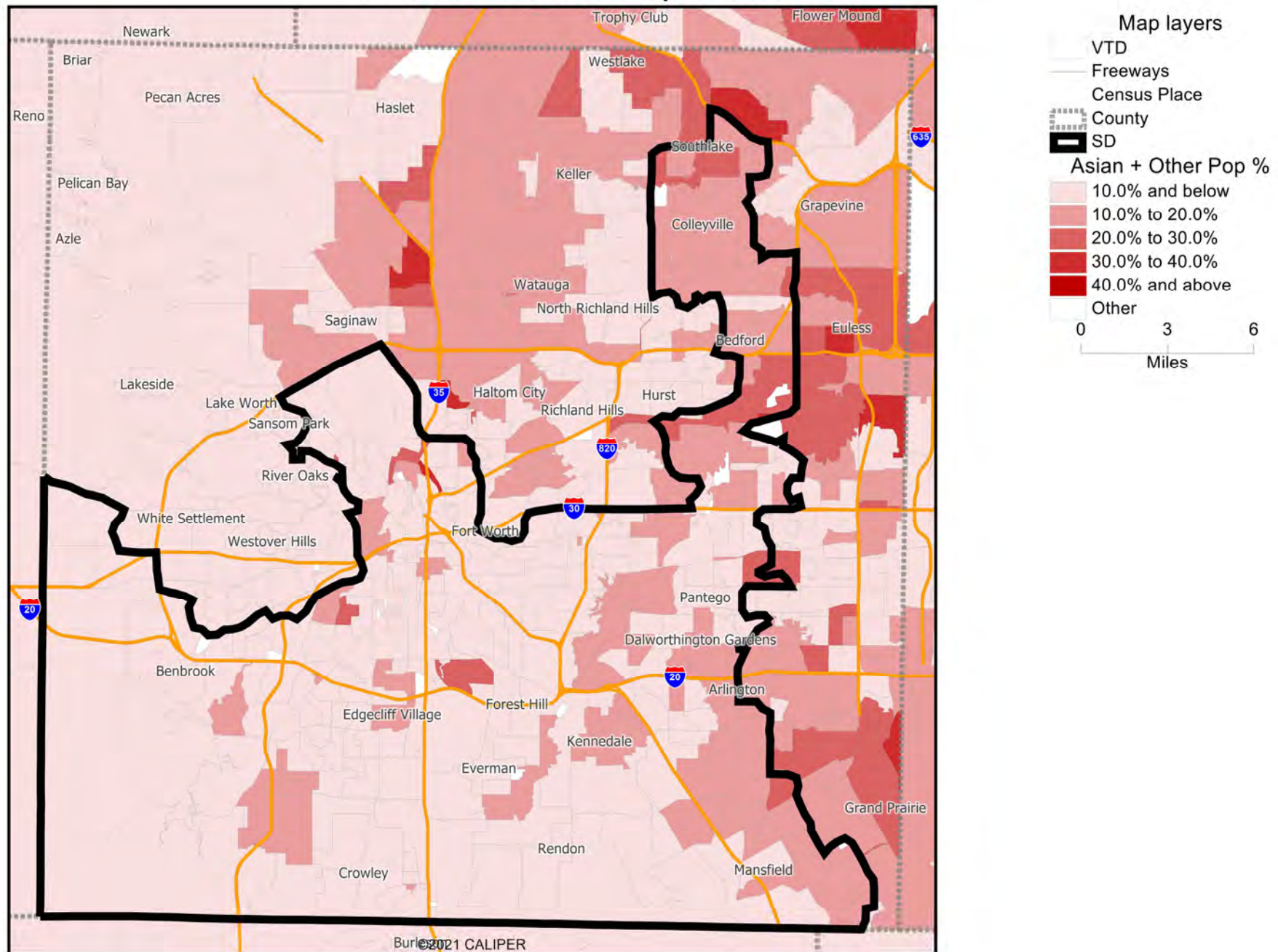
SD 10 Benchmark

Black + Hispanic Population 2020



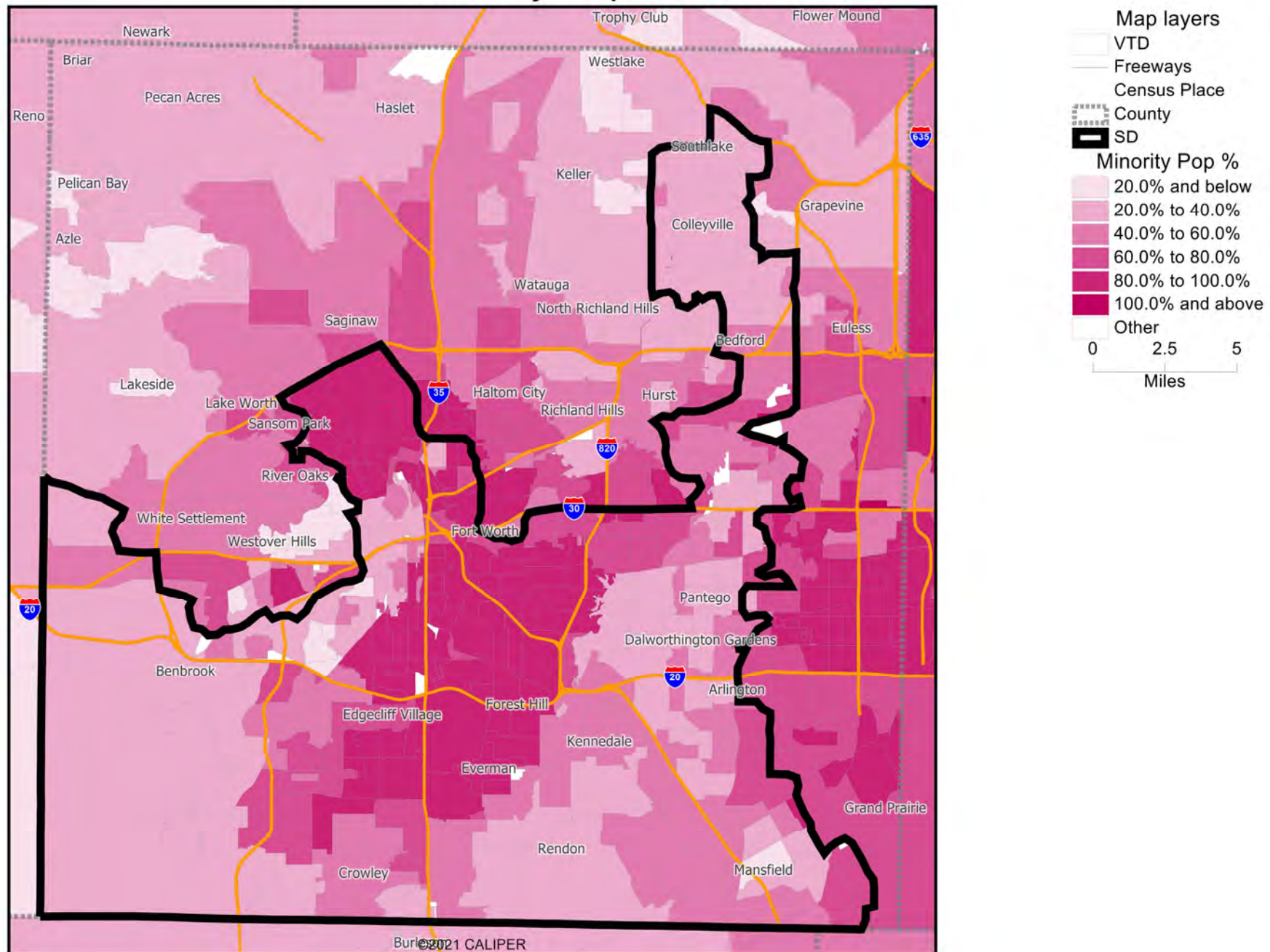
SD 10 Benchmark

Asian + Other Population 2020



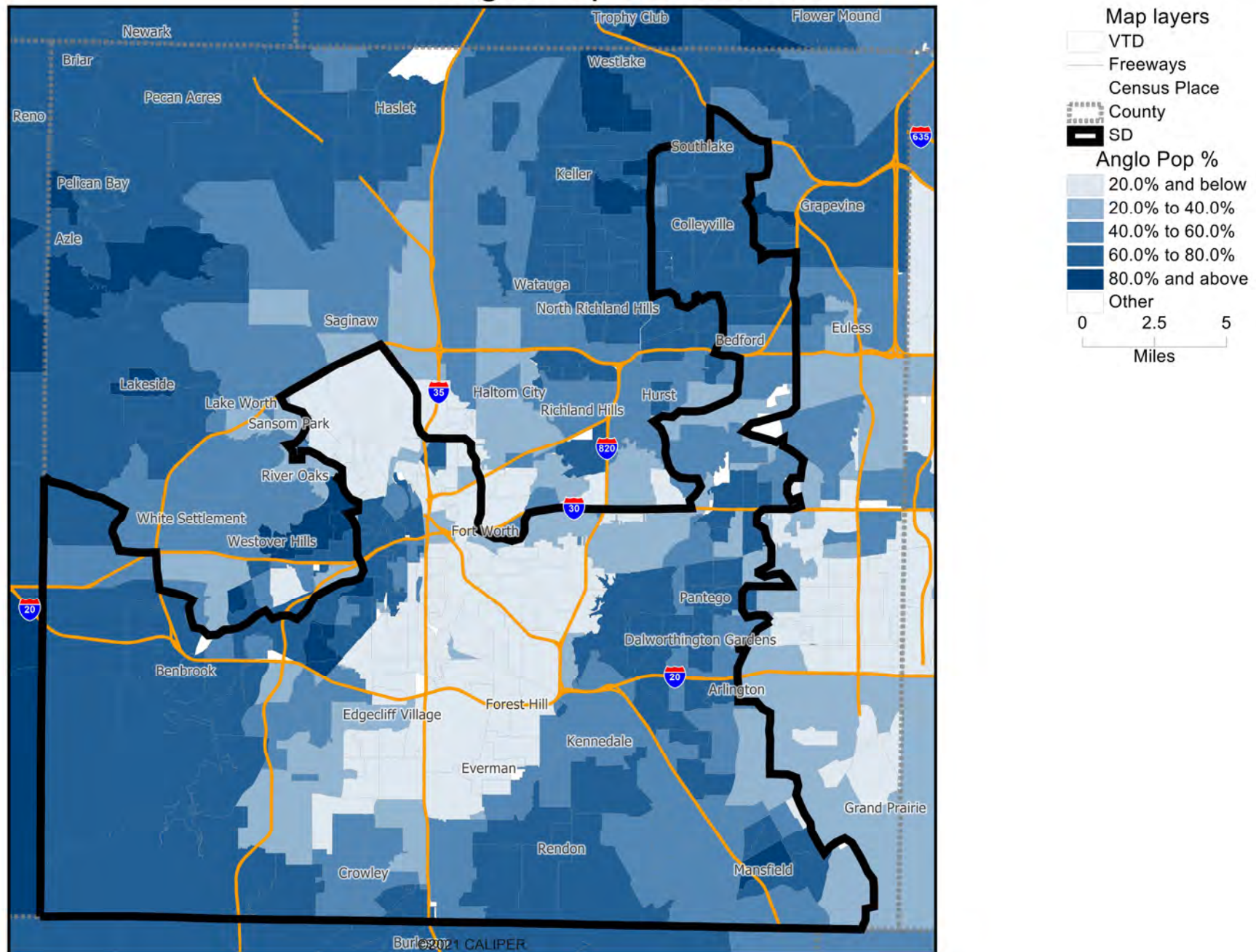
SD 10 Benchmark

Minority Population 2020



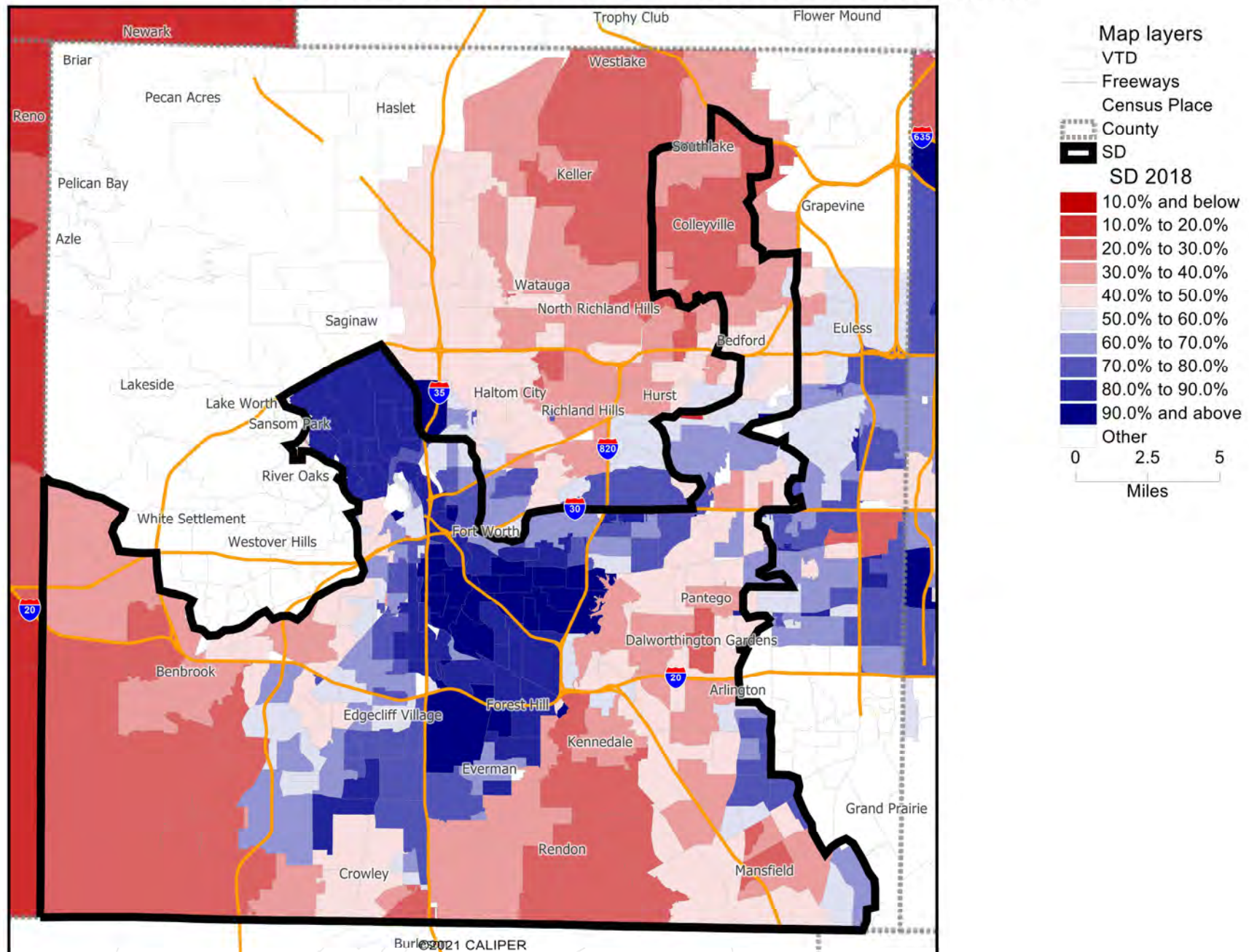
SD 10 Benchmark

Anglo Population 2020



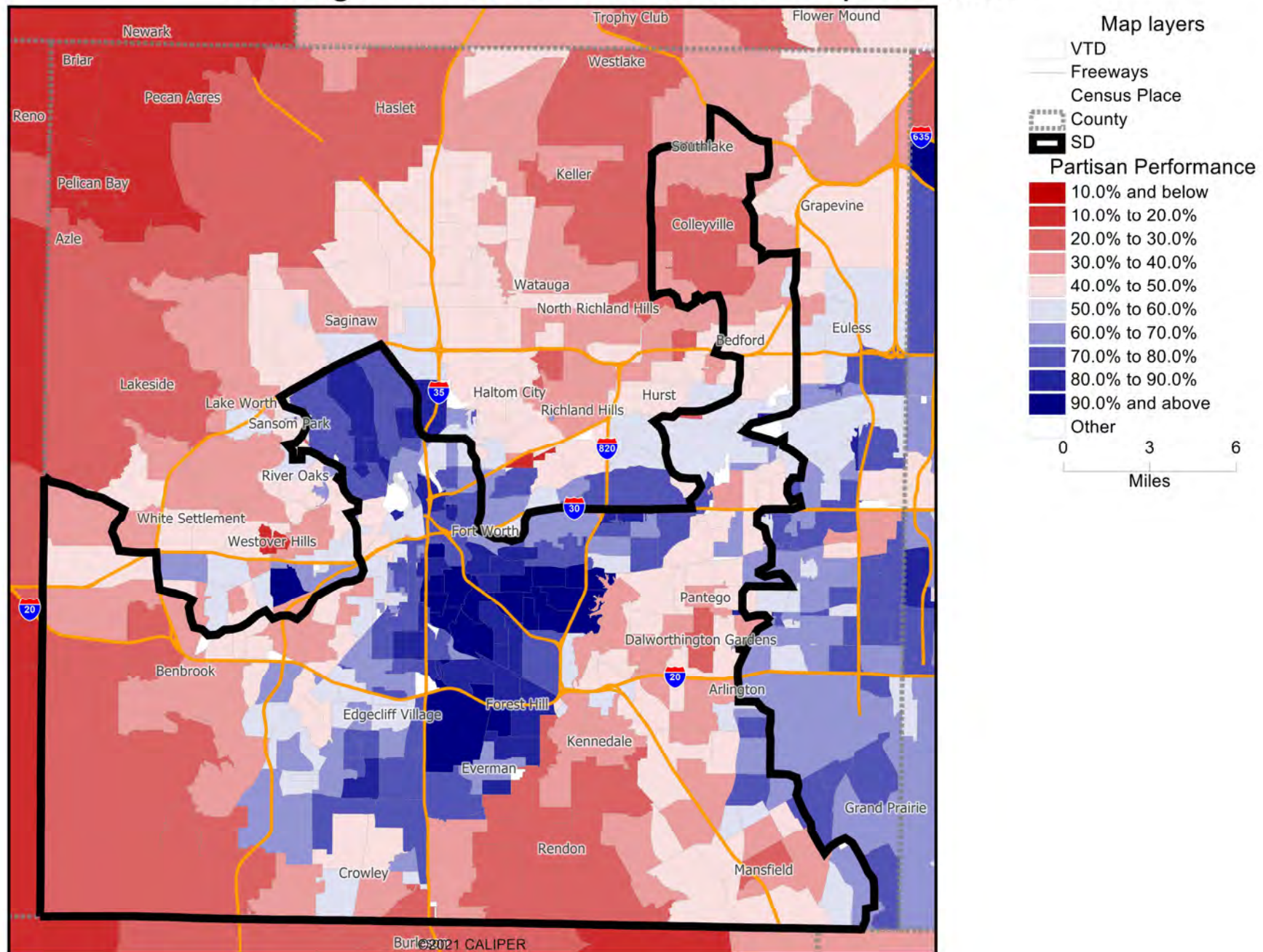
SD 10 Benchmark

Partisan Performance - Senate Districts 2018



SD 10 Benchmark

Average Partisan Performance - Top of Ticket



STATE OF TEXAS,

Plaintiff,

v.

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

Defendants, and

Wendy Davis, *et. al.*,

Intervenor-Defendants.

Before: GRIFFITH, *Circuit Judge*, COLLYER and HOWELL, *District Judges*.

Opinion for the Court filed by *Circuit Judge* GRIFFITH, in which *District Judge* HOWELL joins and *District Judge* COLLYER joins all except section III.A.3. Separate opinion for the Court with respect to retrogression in Congressional District 25 filed by *District Judge* HOWELL, in which *District Judge* COLLYER joins.

Dissenting opinion with respect to retrogression in Congressional District 25 filed by
Circuit Judge GRIFFITH.

Appendix filed by *District Judges* COLLYER and HOWELL, in which *Circuit Judge* GRIFFITH joins.

IV. State Senate Plan

Next we consider Texas's request to preclear its State Senate Plan. The United States has not objected to this plan, but the Davis Intervenors, the Texas State Conference of NAACP Branches, the League of United Latin America Citizens, and the Texas Legislative Black Caucus argue that the Senate Plan retrogresses and was enacted with discriminatory intent. Their arguments concern a single district, Senate District (SD) 10, which they contend is a coalition district in the benchmark plan, and which all parties agree is not an ability district in the enacted plan. These Intervenors also argue that discriminatory purpose motivated the legislature's decision to break up SD 10. We conclude that benchmark SD 10 is not a coalition district, and thus that the Senate Plan is not retrogressive. Nevertheless, we deny preclearance because Texas failed to carry its burden to show that it acted without discriminatory purpose in the face of largely unrebutted defense evidence and clear on-the-ground evidence of "cracking" minority communities of interest in SD 10. Thus, we conclude that the Texas legislature redrew the boundaries for SD 10 with discriminatory intent.

A. Retrogression in the Senate Plan

Benchmark SD 10 is located entirely within Tarrant County, which includes Fort Worth. When the Texas legislature last drew the district in 2001, the population was 56.6% Anglo, 16.7% Black, and 22.9% Hispanic. Defs.' Ex. 126, 2001 State of Texas Submission for State Senate Preclearance app. 1 (Aug. 15, 2001). Urging the Department of Justice to preclear the 2001 State Senate Plan, Texas justified SD 10's configuration by arguing that "[t]he voting strength of these minority communities in the future will depend on the cohesion within and between Black and Hispanic voters and the ability of such voters to form coalitions with other

racial or ethnic groups in support of their preferred candidates.” *Id.* at 18. In other words, Texas argued that SD 10 had the potential to become a coalition district.

The Department of Justice precleared the 2001 map, and, over the past decade, the minority population in SD 10 has continued to grow. According to the 2010 Census, 47.6% of the population in SD 10 was Anglo, 19.2% Black, and 28.9% Hispanic. Defs.’ Ex. 151, at 5. Minorities made up a smaller portion of the 2010 CVAP, however: 62.7% were Anglo, 18.3% Black, and 15.1% Hispanic. Pl.’s Ex. 15, at 8. Republicans have won almost every election in SD 10 in the past ten years, including the district’s endogenous State Senate elections from 2000-2008. No Democratic candidate running in a statewide or other exogenous election has ever won a majority of the vote in SD 10. *See* Alford Rep. 30.

The only Democrat to win an election in SD 10 is the district’s current senator, Wendy Davis, who was elected to a four-year term in 2008. Davis’s path to the State Senate began when Democratic candidate Terri Moore lost the 2006 election for Tarrant County District Attorney, yet received nearly half of the vote in SD 10. *See* Trial Tr. 30:10-25, 31:1-17, Jan. 18, 2012 PM. In light of these results, Democratic elected officials and community leaders in Tarrant County were of the view that if the Black and Hispanic communities “came together as a coalition to vote . . . they could win Senate District 10.” *Id.* at 30:15-16. These and other leaders within the district’s minority communities recruited Fort Worth City Council member Wendy Davis to run for State Senate. *Id.* at 32:3-25, 33:1-17; *see also id.* at 16:1-5, Jan. 20, 2012 AM (Senator Davis, testifying, “I was approached by leaders in our minority community in large part because of the work I’d done as a City Council person and asked if I would consider running for the Texas State Senate.”). Senator Davis ran unopposed in the 2008 Democratic primary, *see* Pl.’s Ex. 135, at 3,

then won the general election with 49.9% of the vote, beating the incumbent by 2.4% — approximately 7,100 out of 288,000 votes cast.³³ Pl.’s Ex. 31, at 14.

According to Texas’s expert, Davis received 99.6% of the Black vote, 85.3% of the Hispanic vote, and 25.8% of the Anglo vote. Trial Tr. 32:24-25, 33:1-16, Jan. 25, 2012 AM. Although this is strong evidence that the minority communities in SD 10 voted cohesively in the 2008 election, the argument that SD 10 is a coalition district runs into trouble when looking at evidence that the district’s minority communities have been effective in electing their preferred candidates.

At summary judgment, we noted that “evidence that a coalition had historical success in electing its candidates of choice would demonstrate that the minority voters in that district had, and would continue to have, an ability to elect their preferred candidates.” *Texas*, 831 F. Supp. 2d at 268. The case that SD 10 is an ability district turns on a single, razor-thin election victory, which is not “historical success.” Indeed, SD 10’s decade-long history of electing Republicans shows just the opposite. There is no doubt that the minority community came together to elect a preferred candidate in 2008, but a single victory is not the more exacting evidence needed for a coalition district. If it were, any single victory built upon the support of minority voters would create a claim for ability status.

B. Discriminatory Intent in the Senate Plan

There is no direct evidence that the Texas legislature acted with a racially discriminatory purpose in its reconfiguration of SD 10, and so we must look to circumstantial evidence. Once again, we look to the *Arlington Heights* factors to determine whether Texas has met its burden of disproving discriminatory intent.

³³ Richard Cross, a libertarian candidate, received 2.6% of the vote (7,591 votes). Pl.’s Ex. 31, at 14.

Considering first the impact of the redistricting — “whether it ‘bears more heavily on one race than another,’” *Arlington Heights*, 429 U.S. at 266 (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)), there is little question that dismantling SD 10 had a disparate impact on racial minority groups in the district. Even Dr. Alford agreed that the enacted plan “diminishes the voting strengths of Blacks and Latinos in [SD 10],” Trial Tr. 39:14, Jan. 25, 2012 AM. In a letter he sent to the Department of Justice objecting to the enacted Senate Plan, Texas State Senator Rodney Ellis explained in detail how the new boundaries eliminate the ability of minority citizens to elect their preferred candidates by submerging their votes within neighboring and predominantly Anglo districts:

The demolition of District 10 was achieved by cracking the African American and Hispanic voters into three other districts that share few, if any, common interests with the existing District’s minority coalition. The African American community in Fort Worth is “exported” into rural District 22 — an Anglo-controlled District that stretches over 120 miles south to Falls [County]. The Hispanic Ft. Worth North Side community is placed in Anglo suburban District 12, based in Denton County, while the growing South side Hispanic population remains in the reconfigured majority Anglo District 10.

Defs.’ Ex. 375, at 3. We find that Senator Ellis’s testimony is well supported by the record. *See also* Defs.’ Ex. 134, Expert Witness Report of Dr. Allan J. Lichtman ¶ 12 [hereinafter Lichtman Rep.] (“The state legislature, in dismantling benchmark SD 10 cracked the politically cohesive and geographically concentrated Latino and African American communities and placed members of those communities in districts in which they have no opportunity to elect candidates of their choice or participate effectively in the political process.”).

Texas does not deny this disparate impact, but responds that its decision to “crack” SD 10 is best explained by partisan, not racial, goals. Tex. Post-Trial Br. 25. While this is a potentially plausible rationale, *Arlington Heights* instructs that “[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such

circumstantial and direct evidence of intent as may be available,” and so we must “look to the other evidence.” 429 U.S. at 266.

These other factors do not support Texas’s case. The second factor is Texas’s history of discrimination, and as we discussed in our analysis of the Congressional Plan above, history is not on Texas’s side. The third considers the “specific sequence of events leading up to the challenged decision.” *Id.* at 267. The Senate’s principal mapdrawer and staff director of the Senate Redistricting Committee, Doug Davis (no relation to Senator Davis), began discussing draft maps of new Senate districts prior to the February 2011 release of official Census data by using projected population increases. Defs.’ Ex. 127, at 38-39. Once the 2011 general legislative session started in January, these maps were kept in an anteroom off the Senate floor, where many Republican members were taken individually by Chairman Seliger and Doug Davis to review the draft plans and provide input. *See, e.g.*, Trial Tr. 39:15-25, Jan. 20, 2012 AM; Defs.’ Ex. 809, Dep. of Senator Judith Zaffirini 29:22-25, 30:1-19, Jan. 6, 2012. Senator Davis was consistently rebuffed when she asked to see the plans for SD 10, even as another senator told her that the proposed plan was “shredding” her district. Trial Tr. 38:2-8, 40:11-14, Jan. 20, 2012 AM. Senator Judith Zaffirini’s uncontroverted testimony shows that this scenario was not unique to Senator Davis, but reflected a larger pattern: every senator who represented an ability district was excluded from this informal map-drawing process and was not allowed into the anteroom to preview the maps. *See* Defs.’ Ex. 809, Dep. of Senator Judith Zaffirini 30:1-3. Indeed, none of the senators representing ability districts were shown their districts until forty-eight hours before the map was introduced in the Senate. *See* Defs.’ Ex. 129.

Texas offered conflicting testimony in response. Doug Davis testified that “we were not printing maps and giving them to members,” Trial Tr. 172:10-11, Jan. 17, 2012 PM, suggesting

that at least part of this informal process that gave Republican senators opportunities to provide input into the plans did not occur. But Chairman Seliger, Davis's boss, testified that he provided paper maps to at least three senators during this period, all of them Anglo. Trial Tr. 68:1-3, Jan. 24, 2012 AM. In any case, it is clear that senators who represented minority districts were left out of the process.³⁴

Our skepticism about the legislative process that created enacted SD 10 is further fueled by an email sent between staff members on the eve of the Senate Redistricting Committee's markup of the proposed map. The ostensible purpose of the markup was to consider amendments to the proposed plan, but the email suggests a very different dynamic at work. David Hanna, a lawyer for the Texas Legislative Council, a nonpartisan agency that provides bill drafting and legislative research to the Texas legislature, sent an email to Doug Davis and Senate Parliamentarian Katrina Davis (Doug Davis's wife). Hanna's email responded to an earlier message Texas did not produce, but which concerned "precook[ing]" the committee report, *i.e.*, writing the report before the hearing had been held. Trial Tr. 71:23-25, 72:1-7, Jan. 24, 2012 AM. With a subject line titled, "pre-doing committee report," Hanna's email read:

No bueno. RedAppl [the redistricting software Texas used] time stamps everything when it assigns a plan. Doing [the Committee Report on] Thursday [May 12] would create [a] paper trail that some amendments were not going to be considered at all. Don't think this is a good idea for preclearance. Best approach is to do it afterwards and we'll go as fast as possible.

Defs.' Ex. 359. Although the chairman of the redistricting committee, Kel Seliger, denied knowing of any advance decision to refuse to consider amendments, he acknowledged what is apparent from the email: the boundaries of the new Senate districts would be a *fait accompli* by

³⁴ We also note that Texas did not refute testimony indicating that the field hearings held prior to the start of the 2011 legislative session were "perfunctory," Trial Tr. 94:20-21, Jan. 20, 2012 AM, and "a sham," with low attendance, low participation, and little invited testimony or prepared materials. Defs.' Ex. 809, Dep. of Senator Judith Zaffirini 7:11-21.

the time of the markup and the committee did not intend to consider any amendments to the plan. Trial Tr. 71:3-25, 72:1-16, Jan. 24, 2012 AM. We agree with Chairman Seliger that, at a minimum, this email shows that a plan was in place, at least at the staff level, such that no new proposals or amendments to the district map would be entertained at the markup.

Arlington Heights instructs that “departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role.” 429 U.S. at 267. This factor focuses on comparing past redistricting cycles to the present one for anomalous behavior. The State held no field hearings after Census data was released and proposed plans were drawn, unlike the hearings that were held after such data was available in the past. Defs.’ Ex. 134, at 13. Additionally, Senator Zaffirini testified that she, a senator of a minority district, “had never had less input into the drawing of any [redistricting] map” in over thirty years of redistricting experience,” Defs.’ Ex. 370, at 1, and that the 2010 redistricting process was the “least collaborative and most exclusive” she had ever experienced. Lichtman Rep. app. 7, Decl. of Senator Judith Zaffirini ¶ 3. We find this unchallenged testimony sufficient to conclude that the 2010 redistricting process was markedly different from previous years.

Finally, *Arlington Heights* states that “the legislative or administrative history may be highly relevant especially where there are contemporary statements by members of the decisionmaking body.” 429 U.S. at 268. Aside from the “No Bueno” email described above, we have no evidence of contemporary statements by the majority members or their staff “concerning the purpose of the official action,” *id.* But that email indicates, at a minimum, that redistricting committee staff feared their actions might create the appearance of impropriety under section 5. We do, however, have a statement published in the Senate journal from the eleven senators representing majority-minority districts and Senator Davis. They alleged that the fact they were

shut out from the map-drawing process until just forty-eight hours before the map was introduced in the Senate showed that the Senate Plan had a “racially discriminatory purpose.” Defs.’ Ex. 129, at 3. Other senators also wrote directly to Chairman Seliger to express their “disappointment in the process used to develop the Senate redistricting plan” and the “exclu[sion] [of] elected representatives of minority citizens” from that process. Defs.’ Ex. 132, at 1. Although statements from the senators aggrieved by the process do not necessarily show that it was racially discriminatory, instead of merely partisan, they do indicate that the majority was aware during redistricting that several members were upset by the irregular process, yet chose not to address their concerns.

We conclude that Texas has not shown that the Senate Plan was enacted without discriminatory intent. Senator Davis and other Intervenors provided credible circumstantial evidence of the type called for by the Supreme Court in *Arlington Heights*, which, as a whole, indicates that an improper motive may have played a role in the map-drawing process. Rather than directly rebut this evidence, Texas asserts only that the legislature’s motivations were wholly partisan, untainted by considerations of race. We agree that a plan that impacts minority citizens more harshly than majority citizens is not necessarily at odds with section 5. But under the VRA and *Arlington Heights*, it is not enough for Texas to offer a plausible, nonracial explanation that is not grounded in the record. It must, at a minimum, respond to evidence that shows racial and ethnic motivation, which it has failed to do. *See Arlington Heights*, 429 U.S. at 266 (“Absent a [clear pattern of discrimination] . . . the Court must look to other [circumstantial] evidence.”). Here, Texas has made no real attempt to engage with the *Arlington Heights* factors, even though it concedes that the Senate Plan has a disparate impact on minority voters in SD 10. We find it telling that the legislature deviated from typical redistricting procedures and excluded

minority voices from the process even as minority senators protested that section 5 was being run roughshod. One would expect a state that is as experienced with VRA litigation as Texas to have ensured that its redistricting process was beyond reproach. That Texas did not, and now fails to respond sufficiently to the parties' evidence of discriminatory intent, compels us to conclude that the Senate Plan was enacted with discriminatory purpose as to SD 10.

V. State House Plan

A. Retrogression in the State House Plan

The United States and the Intervenors argue that the enacted House Plan retrogresses minority voting power by eliminating eight ability districts (House Districts (HDs) 26, 33, 35, 41, 106, 117, 144, and 149) without creating any others. Texas acknowledges retrogression in HD 33, but argues the House Plan works no abridgement of minority voting rights in any of the other districts. Texas maintains that the loss of HD 33 is offset by the plan's provision for at least one and as many as three new ability districts. We conclude that the enacted plan will have the effect of abridging minority voting rights in four ability districts — HDs 33, 35, 117, and 149 — and that Texas did not create any new ability districts to offset those losses. Consequently, we conclude that the enacted plan cannot be precleared. We first analyze each of the eight alleged ability districts before turning to the three alleged offset districts.

1. Alleged Retrogressive Districts

a. State House District 33

Nueces County in southeastern Texas includes three State House districts in the benchmark plan. HDs 33 and 34 are entirely within the county; HD 32 partially so. Benchmark HD 33 comprises the core of Corpus Christi. HD 34 includes the western part of the county, and HD 32 covers much of the eastern portion and extends into other counties immediately north of