

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

TERRY PETTEWAY, THE
HONORABLE DERRECK ROSE,
MICHAEL MONTEZ, SONNY
JAMES and PENNY POPE,

Plaintiffs,

v.

GALVESTON COUNTY, TEXAS,
and HONORABLE MARK HENRY,
in his official capacity as Galveston
County Judge,

Defendants.

Civil Action No. 3:22-cv-57

UNITED STATES OF AMERICA,

Plaintiff,

v.

GALVESTON COUNTY, TEXAS,
GALVESTON COUNTY
COMMISSIONERS COURT, and
HONORABLE MARK HENRY, in
his official capacity as Galveston
County Judge,

Defendants.

Civil Action No. 3:22-cv-93

DICKINSON BAY AREA BRANCH
NAACP, GALVESTON BRANCH
NAACP, MAINLAND BRANCH
NAACP, GALVESTON LULAC
COUNCIL 151, EDNA COURVILLE,
JOE A. COMPIAN, and LEON
PHILLIPS,

Civil Action No. 3:22-cv-117

Plaintiffs, §

v. §

GALVESTON COUNTY, TEXAS, §
HONORABLE MARK HENRY, in §
his official capacity as Galveston §
County Judge, and DWIGHT D. §
SULLIVAN, in his official capacity as §
Galveston County Clerk §

Defendants. §

UNITED STATES' POST-TRIAL BRIEF

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INTRODUCTION

The United States filed this action alleging the redistricting map for the Galveston County Commissioners Court, enacted on November 12, 2021, violates Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, because it results in the denial or abridgement of the County's Black and Latino residents of an equal opportunity to participate in the political process and was enacted, at least in part, for a discriminatory purpose. The United States has demonstrated the County's Black and Latino coalition satisfies the three *Gingles* preconditions, and that the totality of the circumstances establishes that the County's Black and Latino residents lack an equal opportunity to participate in the political process and elect candidates of their choice under the 2021 plan. The direct and circumstantial evidence also demonstrates that Defendants' actions were motivated by an intent to cancel out the opportunity of Black and Latino voters to participate equally in the political process.

For the reasons set forth below, as well as in Consolidated Plaintiffs' Findings of Fact (FOF) and Conclusions of Law (COL), this Court should find that the 2021 Galveston County Commissioners Court map has both the result and intent of diluting the voting strength of the County's Black and Latino residents in violation of Section 2 of the Voting Rights Act.

- I. The United States Has Established that the 2021 Galveston County Commissioners Court Map Has the Discriminatory Result of Canceling Out Black and Latino Voters' Opportunity to Elect Their Preferred Candidates**
 - A. Galveston County's Black and Latino population is sufficiently large and geographically compact to constitute a majority in a reasonably configured commissioners court precinct.**

The United States has demonstrated that the Black and Latino populations in Galveston County are sufficiently large and geographically compact to constitute a majority in a commissioner court precinct. *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986); *see also Allen v. Milligan*, 143 S. Ct. 1487, 1503 (2023); *League of United Latin American Citizens (LULAC) v. Perry*, 548 U.S. 399, 425 (2006) (citation omitted). As the Supreme Court recently clarified, the first *Gingles* precondition aids in showing that the minority community has the potential to elect its preferred candidates in some reasonably configured district. *Milligan*, 143 S. Ct. at 1503. A district is reasonably configured “if it comports with traditional redistricting criteria, such as being contiguous and reasonably compact.” *Id.* at 1503. To satisfy *Gingles* I, a plaintiff need only “adduce[] . . . one illustrative map that comport[s]” with this standard. *Id.* at 1512.

Here, as in *Milligan*, the record includes illustrative maps with a commissioners court precinct that has a majority-Black and Latino citizen voting age population (“CVAP”) that comports with traditional redistricting criteria while also providing Black and Latino voters with an equal opportunity to elect a candidate of their choice. FOF 71-88.

The United States’ expert Anthony Fairfax presented an illustrative plan with one such commissioners court precinct using the least change approach, which involved shifting a single voting district (“VTD”) overall from the 2012 plan, thus preserving the preexisting Precinct 3 as a Black and Latino majority-minority district. FOF 73, 82-83; *see* PX 384 at 170; PX 414 at 12-13. Private Plaintiffs’ experts also presented another twelve illustrative plans that contained majority Black and Latino commissioners court

precincts. FOF 71-72, 74-75, 78-81, 84-88. Seven even included a unified coastal precinct, a goal that Defendants purportedly prioritized, wherein the County's entire coastline is combined into one commissioners court precinct, while still containing a precinct in which the Black and Latino populations form the majority by CVAP. FOF 79-81, 84, 86, 94.

Notably, Defendants do not dispute that the Black and Latino populations combined are sufficiently large enough to meet *Gingles* I. Instead, Defendants contend that the County's Black and Latino populations cannot be combined to form a coalition district for purposes of satisfying *Gingles* I. However, Fifth Circuit precedent expressly recognizes that Section 2 protects such minority coalition districts and thus forecloses Defendants' arguments to the contrary. *See, e.g., League of United Latin American Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 863–64 (5th Cir. 1993) (en banc); *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988); *LULAC v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1499-1502 (5th Cir. 1987), *vacated on other grounds*, 829 F.2d 546 (5th Cir. 1987) (en banc).

In addition to meeting the numerosity component of *Gingles* I, the United States has demonstrated that the County's Black and Latino populations are sufficiently geographically compact to be contained within a reasonably configured commissioners court precinct, Illustrative Precinct 3. *See Milligan*, 143 S. Ct. at 1503. Defendants contend that the United States' illustrative plan is not reasonably configured solely because it includes a majority Black and Latino commissioners court precinct that is not "culturally compact," an ill-defined defense unsupported by law. Indeed, "cultural

compactness” is not a standalone element of Section 2 liability nor a standalone component of *Gingles* I. And even if Defendants assert that the United States’ illustrative plan is not geographically compact because Mr. Fairfax did not analyze specific communities of interest when drawing the illustrative plan, no case law requires such a showing. Having moved only one VTD, the illustrative plan did not affect any preexisting communities of interest. PX 337 ¶ 61. Moreover, courts have found that illustrative plans satisfy *Gingles* I even when the expert “did not consider specific communities of interest.” *Kumar v. Frisco Indep. Sch. Dist.*, 476 F. Supp. 3d 439, 489-99 (E.D. Tex. 2020).

Though the Fifth Circuit has not clearly defined “traditional districting principles,” *Elizondo v. Spring Branch Indep. Sch. Dist.*, No. 4:21CV1997, 2023 WL 2466401, at *5 (S.D. Tex. Feb. 13, 2023), the Supreme Court has identified contiguity and compactness as redistricting criteria sufficient to satisfy *Gingles* I. *Milligan*, 143 S. Ct. at 1503. Analyzing the illustrative plan for adherence to traditional redistricting criteria, Mr. Fairfax found that it met the criteria similarly or better than the 2012 Plan or 2021 Plan. FOF 82-83. The illustrative plan is within acceptable population deviation. *Id.* The plan splits the same amount, or fewer, municipalities and VTDs as the 2012 Plan. FOF 83. The illustrative plan is contiguous. FOF 82. And the plan performs similarly or better than both the 2012 Plan and the 2021 Plan on measures of compactness. *Id.* Even Defendants’ expert agrees that “all of Plaintiffs’ illustrative plans were about as reasonably compact as the enacted plan.” FOF 89.

To the extent Defendants argue that Illustrative Precinct 3 is not geographically

compact because of its shape, such an argument is flawed. Although district shape is relevant to determining whether a district satisfies the compactness inquiry, *Gingles I* “does not require some aesthetic ideal of compactness, but simply that the [minority] population be sufficiently compact to constitute a majority in a single-member district.” *Houston v. Lafayette Cnty.*, 56 F.3d 606, 611 (5th Cir. 1995) (quoting *Clark v. Calhoun Cnty.*, 21 F.3d 92, 95 (5th Cir. 1994)). Here, Mr. Fairfax has testified that Illustrative Precinct 3 is reasonably compact, FOF 82, and thus the Court need not weigh it against the 2021 Plan in a “beauty contest.” *Milligan*, 143 S. Ct. at 1505.

Finally, the United States has demonstrated that race did not predominate in the drawing of the illustrative plan. And Defendants have failed to provide any reliable evidence to the contrary. Mr. Fairfax credibly testified that neither race nor any single criterion predominated when he drew the illustrative plan. FOF 83. The illustrative plan’s compliance with neutral redistricting criteria confirms this, and Defendants did not dispute that Mr. Fairfax used non-racial traditional redistricting criteria. FOF 91. Defendants also did not dispute the appropriateness of Mr. Fairfax using a least-change approach and agreed it is a common approach when rebalancing populations following a census. *Id.* Defendants’ expert could not articulate his reasons for asserting that the illustrative plan prioritized race as a factor other than noting his work “comparing the outcomes” of the maps. *Id.*

Moreover, the Supreme Court recently reaffirmed there is a “difference ‘between being aware of racial considerations and being motivated by them.’ . . . The former is permissible; the latter is usually not.” *Milligan*, 143 S. Ct. at 1510 (citations omitted).

Indeed, Section 2 itself “demands consideration of race” as “[t]he question whether additional majority-*minority* districts can be drawn, after all, involves a ‘quintessentially race-conscious calculus.’” *Id.* (citations omitted). Consideration is not the same as predominance, and none of Defendants’ arguments or analyses provide any compelling evidence that race predominated in the United States’ illustrative plan. Accordingly, the United States has satisfied *Gingles* I.

B. Galveston County’s Black and Latino voters are politically cohesive.

The second *Gingles* precondition that the minority group must be “politically cohesive” is also met. “Plaintiffs normally demonstrate minority political cohesion by showing that ‘a significant number of minority group members usually vote for the same candidates.’” ECF No. 124 at 18 (quoting *Gingles*, 478 U.S. at 56). “[T]he most persuasive evidence of inter-minority political cohesion . . . is to be found in *voting patterns*.” *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989) (describing *Campos*, 840 F.2d at 1244-45) (emphasis in original). Further, “statistical evidence is not a *sin qua non* to establishing cohesion.” *Id.* at 454. Instead, “lay testimony from members of the community” can also establish cohesion. *Monroe v. City of Woodville*, 897 F.2d 763, 764 (5th Cir. 1990) (per curiam); see also *Westwego Citizens for Better Gov’t v. City of Westwego*, 946 F.2d 1109, 1118 n.12 (5th Cir. 1991).

1. Extensive statistical evidence proves that Black and Latino voters in Galveston County are politically cohesive.

Utilizing widely accepted statistical methods, including King’s ecological inference (“King’s EI”) and Rows by Columns (“RxC EI”), Plaintiffs’ quantitative experts, Dr. Jessica Trounstine, Dr. Matthew Barreto, and Dr. Kassra Oskooii, analyzed a

large cross section of elections across multiple levels of government. FOF 108-113; PX 356, 384, 465, 476, 505; *see, e.g., Rodriguez v. Harris Cnty.*, 964 F. Supp. 2d 686, 757–58 (S.D. Tex. 2013), *aff'd sub nom. Gonzalez v. Harris Cnty.*, 601 F. App'x 255 (5th Cir. 2015) (courts rely on ecological inference methods); *Nat'l Ass'n for Advancement of Colored People, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 382 (S.D.N.Y. 2020), *aff'd sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021) (RxC EI “is an improved EI technique that can generate estimates for more racial groups and more candidates”). Across their numerous analyses, a clear pattern emerged: Black and Latino voters “usually vote for the same candidates,” ECF No. 124 at 18 (quoting *Gingles*, 478 U.S. at 56), in general elections. FOF 116-118; *see also* FOF 119.

That Black and Latino voters in the County consistently vote for the same candidates in general elections is dispositive of whether they are politically cohesive because primary elections in Galveston County have limited probative value, if any, in determining inter-group cohesion. FOF 120-131, 142. Indeed, Defendants’ expert Dr. Alford testified that general elections “are the elections that provide the clearest picture” and that his conclusions “depend[] to a large degree on the pattern in general elections.” Tr. v. 10, 139:12-21; 141:4-7. Professor Trounstine testified that in the context of “racial and ethnic coalition building . . . political coalitions get built in the general election,” not the primary election. FOF 128. Further, primary elections are generally low turnout elections, meaning that the resulting estimates are less robust. FOF 129.

Plaintiffs’ quantitative experts also found that County-level patterns of voting hold true for Precinct 3 in illustrative maps prepared by Plaintiffs’ mapping experts. FOF 161.

2. Testimony from community leaders confirms that Black and Latino voters in Galveston County are politically cohesive.

Community leaders testified extensively as to the cohesion between Black and Latino voters in Galveston County. FOF 67, 143-147; *see also* COL 46 (listing cases identifying relevance of lay witness testimony on cohesion). For example, Galveston City Councilwoman Sharon Lewis testified that Black and Latino voters “typically . . . vote together,” including in non-partisan elections. FOF 144. Likewise, Lucille McGaskey—who has lived in Galveston County for 49 years, is involved in multiple community organizations, and has served as a campaign manager for a district judge candidate—testified that shared concerns regarding “healthcare, education, housing, and employment” lead Black and Latino voters to support the same candidates. FOF 144-45, 184-85. Several community leaders echoed Ms. McGaskey’s view that Galveston County’s Black and Latino communities share interests in the areas of healthcare, education, housing, and employment. FOF 145. Finally, community leaders testified about the extensive collaboration between local LULAC and NAACP branches in the County, including that many individuals are members of both organizations. FOF 146.

The second *Gingles* precondition is thus easily fulfilled. FOF 142, 147.

C. Galveston County’s Anglo majority voters vote sufficiently as a bloc to usually defeat preferred candidates of minority voters in the absence of a majority-minority district.

The third *Gingles* precondition that “the minority must be able 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” is met. *Gingles*, 478 U.S. at 50 (citations omitted). Every quantitative expert, including Defendants’ expert, agrees that Anglo bloc voting will prevent Galveston County’s Black and Latino voters from being able to elect their candidates of choice under the Enacted Plan. FOF 148, 154, 158-162.

Specifically, Plaintiffs’ quantitative experts conducted reconstituted election analyses on elections that encompassed the entirety of Galveston County. FOF 149-153. A reconstituted election analysis “extracts actual election results from . . . races that subsume the area being analyzed and determines, [voting] precinct-by-[voting] precinct within the new district . . . the ‘winner’ . . . , [thereby] . . . allow[ing] a researcher to determine how an individual candidate performed within the boundaries of the target district even though the actual election covered a different geographical area.” *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 693 (S.D. Tex. 2017) (reconstituted election analysis appropriate methodology for determining presence of racial bloc voting). FOF 159. Plaintiffs’ quantitative experts conducted reconstituted election analyses on the enacted map and on a total of seven illustrative maps prepared by Plaintiffs’ mapping experts. FOF 155-157.

All the analyses that Plaintiffs’ quantitative experts conducted reached the identical conclusion: Under the 2021 enacted map, Anglo bloc voting prevents Black and Latino voters from being able to elect candidates of choice in every election in every commissioners court precinct analyzed, including in Precinct 3, FOF 154, 160-162 while Black and Latino voters can elect candidates of choice in Precinct 3 in every election in

every one of the seven illustrative plans. FOF 155-157. Dr. Alford did not dispute any of these results. FOF 158.

The third *Gingles* precondition is thus easily fulfilled. FOF 163.

D. The totality of the circumstances show that the enacted plan dilutes Black and Latino residents’ voting strength in Galveston County.

After examining the *Gingles* preconditions, courts “adhere to the Supreme Court’s instruction to examine challenged laws and practices in an intensely fact-based and local totality-of-the-circumstances analysis.” *Veasey v. Abbott*, 830 F.3d 216, 261 (5th Cir. 2016) (citing *Gingles*, 478 U.S. at 36-38). The Senate Report that accompanied the 1982 amendments to Section 2 guides that totality of the circumstances inquiry, in the so-called “Senate Factors.” *Gingles*, 478 U.S. at 36-37. “[T]here is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” *Id.* at 45 (citation omitted). Rather, courts engage in a “searching practical evaluation of the past and present reality” to determine whether political processes are equally open. *Id.* (citation and quotation omitted).

The totality of the circumstances shows that the Galveston County Commissioners Court plan adopted in 2021 dilutes minority voting strength. The 2021 redistricting plan “occurred in the context of a history of official discrimination affecting the right to vote” of Galveston County’s Black and Latino populations. PX 412 at 1; Tr. v. 5, 94:8-95:22. The County had historically been subjected to discriminatory voting practices such as a poll tax and the all-white primary. FOF 198. While not “immediately contemporaneous,” *Veasey*, 830 F.3d at 232 n.14, “long-ago history of discrimination . . . cannot be ignored in the discriminatory effect analysis,” *id.* at 257 n.53; *LULAC*, 548

U.S. at 439-40, 442. More recently, the county and jurisdictions within it have continued this history of official voting-related discrimination. FOF 404-413; *see also* FOF 402-403. Between 1976 and 2013, the U.S. Attorney General has interposed objections under Section 5 to voting practices or procedures in Galveston County and its municipalities six times. FOF 201. The most recent was the 2011 redistricting cycle for commissioners court, when Judge Mark Henry, and Commissioners Stephen Holmes and Kenneth Clark, who were all current members at the time of the 2021 redistricting, sat on the court. FOF 277.

Voting in Galveston County is racially polarized. *See supra* section I.B. Reports from qualified experts and their testimony show not only that Black and Latino voters are cohesive, but that their candidates of choice are usually defeated in head-to-head contests by candidates favored by the Anglo majority. *Id.* Community members, including elected officials, have experienced racial polarization in their own campaigns. *See, e.g.*, FOF 143-46, 184-85.

Black and Latino voters in Galveston County bear the effects of significant socioeconomic disparities in income, education, employment, home ownership, and health-care coverage. *See* FOF 397-400, 452-493. In addition, Black and Latino voters, as measured by their consistently lower turnout rate than Anglo voters in Galveston County elections, have a depressed level of political participation. FOF 401. Together, these conditions hinder Black and Latino residents' ability to effectively participate politically. FOF 452-500.

Additionally, recent political campaigns in Galveston County have featured overt and subtle racial appeals. FOF 415-20. For example, in the Republican primary for county tax assessor-collector, a candidate challenging incumbent Cheryl Johnson sent out campaign literature featuring a tattooed Latino man who was not a Galveston County resident. FOF 417. The ad stated: “Texans can thank Cheryl Johnson for having illegal immigrants vote in this November’s Election!” FOF 417. In so stating, the mailer “uses text to associate her opposing candidate . . . with ‘illegal immigrants’ and appeals to race-based biases and fears regarding Latinos.” *Id.* Other candidates running in Galveston County have used anti-immigrant imagery and “invasion” language as an anti-minority appeal. *Id.*

Also, Black and Latino elected officials are underrepresented in public office. FOF 421. Only three Black persons have been elected to the commissioners court—in two instances from the majority-minority Precinct 3. FOF 422-25. Only one Latino has been elected to the commissioners court and his time in office ended 33 years ago. FOF 429. Black and Latino candidates’ success in county elections “has been slow, slight, and disproportionately lower than” their population share in Galveston County. *Patino*, 230 F. Supp. 3d at 715; *Clark v. Calhoun Cnty., Miss.*, 88 F.3d 1393, 1397 (5th Cir. 1996) (holding that lack of minority electoral success in relevant district has significant impact on the evaluation of vote-dilution claims). Although some Black and Latino candidates have won at the municipal level, most of these candidates have been elected from majority-minority single-member districts that permit minority voters to elect candidates of their choice. FOF 431.

Finally, the record includes evidence of a lack of responsiveness on the part of elected officials to the particularized needs of the minority community in Galveston County. *See* FOF 433-443, 451.

Based on “an intensely fact-based and local totality-of-the-circumstances analysis,” *Veasey*, 830 F.3d at 261 (citing *Gingles*, 478 U.S. at 36-38), involving a “searching practical evaluation of the past and present reality,” *Gingles*, 478 U.S. at 45, the Senate Factors weigh heavily in favor of finding a violation of Section 2. FOF 501.

II. The United States Has Established that the 2021 Galveston County Commissioners Court Map was Adopted with a Discriminatory Purpose

Defendants’ deliberate actions to eliminate the long-standing and only opportunity-to-elect commissioners court precinct constitute discriminatory intent in violation of Section 2. *Chisom v. Roemer*, 501 U.S. 380, 394 n.21, 404 (1991); *see also Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 766 (9th Cir. 1990) (“To the extent that a redistricting plan deliberately minimizes minority political power, it may violate both the Voting Rights Act and the Equal Protection Clause of the [F]ourteenth [A]mendment.”); FOF 502.

To establish a claim of discriminatory intent, “racial discrimination need only be one purpose, and not even a primary purpose” underlying the changes made to the commissioners court map. *See Veasey* 830. F.3d at 230 (quoting *United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009) *see also Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977).

Pursuant to *Arlington Heights*, “[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,” which is guided by a framework that entails an examination of the discriminatory impact of the enacted map, followed by an inquiry into the historical background of the decision, the sequence of events leading up to the decision, procedural or substantive deviations from the normal decision-making process, and the legislative history, especially where there are contemporary statements by members of the decision-making body. 429 U.S. at 265-68; *see also Veasey*, 830 F.3d at 231. Moreover, “indirect circumstantial evidence, including the normal inferences to be drawn from the foreseeability of defendant’s actions may be considered,” and the Senate Factor evidence set out above is also “a source of circumstantial evidence regarding discriminatory intent.” *Brown*, 561 F.3d at 433.);

The record here includes direct evidence establishing Defendants’ primary motivation for devising and adopting the enacted map was to dismantle the existing majority-minority district in Precinct 3. *See infra* section I.A. While this evidence alone suffices for a finding of intentional discrimination, the record also includes overwhelming circumstantial evidence that Defendants intended to minimize or “cancel out” Black and Latino voters’ opportunity to elect candidates of their choice.

A. Direct and circumstantial evidence of the enacted map’s discriminatory impact on the County’s Black and Latino residents and Defendants’ knowledge of the impact supports a finding of intentional discrimination.

The impact of the official action and whether it “bears more heavily on one race than another,” is an “important starting point” for assessment of the circumstantial

evidence and whether it supports a conclusion of discriminatory intent. *Arlington Heights*, 429 U.S. at 266. This is because “people usually intend the natural consequences of their actions.” *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 487 (1997).

The clear impact of the enacted commissioners court map is to dilute minority voting strength and fully eliminate the County’s Black and Latino citizens’ opportunity to elect a candidate of choice. FOF 187, 192, 195. Defendants achieved this by dramatically reshaping Precinct 3 such that the combined minority citizen voting age population decreased from over 58% in the previous map to the lowest Black and Latino CVAP proportion of any commissioners court precinct in the enacted map, and it unnecessarily fragmented the Black and Latino population concentrations across the four commissioners court precincts such that minority voters are a majority in none. FOF 187-188. Indeed, all three of Plaintiffs’ quantitative experts concluded that reconstituted election analyses confirm that the 2021 map eliminates the opportunity for Black and Latino voters to elect the candidates of their choice in Galveston County. FOF 189; *see supra* section I.C.

This discriminatory impact on the County’s minority voters was a direct result of Defendants’ deliberate choices. FOF 192. The record makes it clear that throughout the 2021 redistricting process, the proponents of the enacted map, Map 2, were well aware of the entirely foreseeable discriminatory impact that dismantling Precinct 3 would have on minority voters’ electoral opportunity. First, the County’s redistricting counsel and primary map drawer, Dale Oldham, and members of the commissioners court who voted in favor of Map 2 including, County Judge Mark Henry and Commissioners Joseph

Giusti and Darrell Apffel, all testified that they knew Precinct 3 operated as the County's long-standing and only majority-minority commissioners court precinct. FOF 191, 229, 230. Second, having been part of the 2011-2012 redistricting cycle, Judge Henry, Commissioner Clark, and Mr. Oldham were on notice of the effect that a reduction of the minority population in Precinct 3 would have on minority voters' opportunity to elect. FOF 276-278; *see also* JX 6. Next, the commissioners had received public comments both through the online portal and during the November 12 special session objecting to Map 2 because of the discriminatory impact of dismantling Precinct 3 as the County's only minority-majority district, as well as a racially polarized voting analysis from Commissioner Holmes. FOF 273-274, 350, 353. Lastly, and most telling, Defendants testified that they understood that Map 2 dismantled Precinct 3 as a majority-minority district. FOF 193, 251, 253-254, 256-257; *see e.g.*, Tr. v. 9, 149:15-19 (Giusti) ("knew prior to casting [his] vote in favor of Map 2 that if adopted, it would eliminate the majority minority Black and Hispanic voting age population in Precinct 3"); Trial Tr, vol 9, 329:24-330:14 (Apffel).

Despite the knowledge that the impact of dismantling Precinct 3 would be to preclude minority voters from having any representation on the commissioners court, Defendants voted in favor of adopting Map 2 although the alternative option, Map 1, kept the lone majority-minority commissioners court precinct intact. FOF 256-257, 355. Accordingly, the Court can draw "the normal inferences to be drawn from the foreseeability of defendant's action." *See McMillan v. Escambia Cnty.*, 748 F.2d 1037, 1047 (5th Cir. 1984); *see also Washington v. Davis*, 426 U.S. 229, 253 (1976) (Stevens,

J., concurring) (“[N]ormally the actor is presumed to have intended the natural consequences of his deeds.”).

B. The context of the 2021 Galveston County redistricting process includes a long history of voting-related discrimination.

The long history of racial and voting-related discrimination in Galveston County is a significant factor under the *Arlington Heights* analysis and supports a finding that purposeful discrimination infected the adoption of the 2021 commissioners court map. 458 U.S. at 267; *see also Rogers v. Lodge*, 458 U.S. 613, 625 (1982); FOF 196-199, 396; PX 412.

While federal intervention ended discriminatory practices like poll taxes and white only primaries, the record shows that following the extension of coverage under Section 5 of the Voting Rights Act to Texas and its political subdivisions, the County’s history is still marked by several attempts to eliminate electoral opportunities for minority residents. *See supra* section I.D.; FOF 199-208.

Most relevant is the fact that maps proposed by the commissioners court yielded Section 5 objections from the Attorney General in two of the last three redistricting cycles. FOF 203, 219. In 1992, the Attorney General interposed a Section 5 objection on the County’s submission of its justice of the peace and constable map because of a failure to create a district containing a majority of Black and Latino residents, even though minority residents comprised 31.4% of the County’s population. PX 2. Subsequent litigation concerning the 1992 map resulted in a consent judgment that directed the County to create two districts that “w[ould] create the opportunity for minority voters to

participate in the political process leading to the nomination and election of Justices of the Peace and Constables.” PX 2; FOF 203.

Most recently, in 2012, the Attorney General interposed a Section 5 objection to the County’s submission of its 2011 redistricting maps for justice of the peace and constable districts and for the County commissioners court. JX 6; FOF 208, 219. The factors identified in the Attorney General’s objection letter included: (a) the County’s deliberate decision not to adopt a set of criteria (to guide the redistricting process) in order “to avoid being held to a procedural or substantive standard of conduct”; (b) “the deliberate exclusion from meaningful involvement in key deliberations of the only member of the commissioners court elected from a minority ability-to-elect precinct”; and (c) the retrogressive impact on minority voting strength from the relocation of a largely white area (the Bolivar Peninsula) from Precinct 1 into Precinct 3—which was the lone minority ability-to-elect district for the commissioner court. JX 6; FOF 209, 219, 276. Subsequently, the County’s revised commissioners court map retaining Precinct 3 as a majority-minority district was precleared under Section 5. FOF 220-221.

That the 2021 redistricting cycle was the first redrawing of the County’s map following the Supreme Court’s 2013 decision in *Shelby County v. Holder*, 570 U.S. 529, and the circumstances of the 2011-2012 redistricting cycle are of particular salience inasmuch as Judge Henry expressed a desire to adopt in 2021 a very similar map that resulted in a Section 5 objection in 2012. FOF 279. In fact, both he and the County’s counsel, Mr. Oldham, fully recognized the map wasn’t “legally” something they were able to do in 2011-2012, but that the elimination of the County’s obligation to meet

Section 5's requirements facilitated the dismantling of Precinct 3 as a majority-minority district in 2021. FOF 279, 372; Tr. v. 8, 39:14-24.

Indeed, the County's history evinces that Defendants have long been committed to eliminating the only majority-minority commissioners court precinct and the 2021 redistricting cycle and the enacted map reflect the culmination of those efforts. FOF 208-210.

C. The sequence of events leading up to the enactment of the 2021 commissioners court map and the substantive and procedural departures from the usual redistricting process evince discriminatory purpose.

The record also establishes that the sequence of events leading up to the enactment of the 2021 commissioners court map was characterized by multiple “[d]epartures from the normal procedural sequence,” including significant substantive deviations from prior redistricting cycles. *Arlington Heights*, 429 U.S. at 267; FOF 211-215, 275. As a result, the adopted map resulted from a process that lacked structure or transparency, was plagued by significant unwarranted, if not purposeful, delays, severely curtailed public participation, and excluded the only minority commissioner.

First, the commissioners court failed to put into place the typical redistricting procedural safeguards it had employed in previous cycles, including the adoption of a timeline and redistricting criteria. The absence of a publicly disclosed schedule for the 2021 redistricting cycle was a departure from the past three cycles during which the commissioners adopted a timeline setting out key dates in the process and dates for public hearings. FOF 280-281. Indeed, during the 2011-2012 redistricting cycle, the commissioners court adopted a timeline that expressly accounted for the Section 5

preclearance review process and the candidate filing period. JX 45 at 1; FOF 217.

Similarly, Defendants made a deliberate choice not to adopt a set of criteria to guide the 2021 redistricting process. FOF 285. The lack of redistricting criteria is particularly notable because as the Attorney General informed county officials in 2012 the failure to adopt criteria was evidence the County was “avoid[ing] being held to a procedural or substantive standard of conduct with regard to the manner in which it complied with the constitutional and statutory requirements of redistricting.” JX 6 at 2; FOF 215-216. And Judge Henry testified he was aware of this fact. FOF 286-290.

Second, the initial action the commissioners court took related to the 2021 redistricting cycle, the hiring of redistricting counsel in April 2021, signaled that the process would fully disregard public input and lack transparency. FOF 291. Without reviewing any other proposals for redistricting counsel as the commissioners court had in the past and without public disclosure, Judge Henry directed his staff to contact and engage Dale Oldham. FOF 222-223, 292-294. Mr. Oldham had been one of the County’s counsel during the 2011-2012 cycle, which resulted in a Section 5 objection to the commissioners court and justice of the peace and constables maps. FOF 214; JX 45.

Next, the commissioners court undertook a process that prevented public scrutiny by engaging in unwarranted delays that led to a compressed and rushed timeline for consideration and adoption of the 2021 commissioners court map. FOF 284, 301.

Although the 2021 redistricting cycle required some adjustment due to the later than usual release of the 2020 Census P.L. 94-171 data, the evidence shows that the County had sufficient time to engage in a process that was timely and allowed for meaningful

public participation. FOF 225, 302, 305, 309, 312. Yet, despite having hired redistricting counsel on April 5, 2021, and having fully usable Census data available to them on August 12, 2021, FOF 226, 303, 304, the County did not commence its redistricting work for several more weeks, when Mr. Oldham started meeting with members of the commissioners court on September 8, 2021. FOF 231, 235. Then, more than two months following the August data release, on October 14, 2021, redistricting counsel retained geographer, Thomas Bryan, to draw the maps. FOF 236, 306.

The commissioners court's first public activity on redistricting following the hiring of counsel on April 5, did not occur until October 29, 2021, when the County posted images of proposed Map 1 and Map 2 on its website. Devoid of any demographic or other data analysis or information regarding a submission deadline, the online comment portal was the only opportunity for public comment prior to enactment of Map 2. FOF 264-266, 295, 298-300, 316-317. Ultimately, however, neither Judge Henry nor any commissioner reviewed all the comments received on the portal. FOF 318, 346-347.

Further, and in sharp contrast to past redistricting cycles when the commissioners court held multiple public hearings throughout the County to solicit public input, in 2021, it held one special session on November 12, 2021, which was also where the commissioners voted to adopt the final map, Map 2. FOF JX 45 at 9; 217, 296-297, 310-311, 314-315. The date, time, location, and structure of the November 12 special session further limited the opportunity for public input and deviated significantly from the typical forum to consider proposed redistricting plans. FOF 333-334, 338. Instead of hosting the special session at the Galveston County Courthouse where commissioner court

meetings usually take place, the session was held at the significantly smaller League City Annex, which did not have the capacity to accommodate the community members that showed up to provide comment on the proposed maps, was not equipped with a microphone or adequate sound system, and was under construction with limited parking and accessibility. FOF 335-337, 339-342.

Also, despite overwhelming opposition from minority community members and residents in general, the commissioners court voted to adopt Map 2 without accounting for any of the public's input. FOF 273, 345-349, 353-355. Indeed, there is considerable evidence that the commissioners court failed to hold additional public hearings precisely to limit public input, and Defendants provided no reasonable explanation as to why they did not begin the drawing of the maps until mid-October or scheduled the only hearing on the last possible day to adopt a map. FOF 267-268, 270, 309, 313, 350-352.

Notwithstanding Defendants' claims that the commissioners court was not expecting the November 13, 2021 deadline imposed by the Texas Secretary of State for submission of its map, Judge Henry and every commissioner was aware that the 2021 redistricting had to be completed by mid-November due to the candidate filing period. FOF 269, 281, 307-308; *see also* JX 34; JX 45 at 1.

Lastly, the exclusion of the only minority member of the commissioners court, Stephen Holmes, further illuminates the discriminatory nature of the County's redistricting process. The evidence shows that Commissioner Holmes was excluded from discussions with the county judge and the other commissioners, as well as the map drawers, he was never sent underlying demographic data for the map proposals that he

requested, and he was not notified when the proposed maps were finalized. FOF 258-261, 282-283, 328, 357-63.

Cumulatively, the direct and circumstantial evidence presented at trial all points to the conclusion that Defendants intended to adopt a map that eliminated minority voters' opportunity to elect. Accordingly, they saw no need to adopt a timeline or redistricting criteria or engage in a process that invited input from the commissioners court's only minority commissioner or members of the public. FOF 262-263, 267-268, 270-272, 284, 305, 313-314, 390.

D. Defendants' contemporaneous statements and tenuous justifications for the enacted map further support a finding of discriminatory intent.

Contemporaneous statements made by proponents of Map 2 during the process and the tenuous justifications Defendants offer for their actions further support an inference that the adoption of the 2021 commissioners court map was motivated by discriminatory intent. FOF 364-371; PX 593 at 5-7.

In addition to equalizing population, among the primary justifications or "criteria" Defendants claim to have prioritized during the redistricting process was Judge Henry's desire for a coastal precinct combining Bolivar Peninsula and Galveston Island. Yet, the record is lacking any evidence that County residents had demanded or even relayed the need for a unified coastal precinct. FOF 380-384. Instead, the historical record shows that there had been opposition from residents of the Bolivar Peninsula and Galveston Island to a single coastal district. FOF 385. Moreover, the evidence reflects that at no point during the process of drawing the proposed maps or receiving instruction from Dale Oldham, was Thomas Bryan, the geographer retained by the County, informed that the

creation of a coastal precinct was a priority. FOF 239, 243; *see Veasey v. Abbott*, 830 F.3d 216, 262–63 (5th Cir. 2016) (acknowledging that the provisions of the enacted law at issue failed to correspond in any meaningful way to the legitimate interests the [jurisdiction] claimed to have been advancing, favored a finding that the law was racially discriminatory).

Even if this stated justification was legitimate, meeting this objective did not require, nor explain, the dismantling of previous Precinct 3 as the County’s only majority-minority district. FOF 248, 374-375. Mr. Oldham not only agreed that it was possible to create a coastal precinct while retaining a majority-minority district in the commissioners court map, but also admitted that nothing about the configuration of Precinct 2 as a coastal district required the elimination of Precinct 3 as a majority-minority district in which Black and Latino voters had the opportunity to elect a candidate of choice. Tr. vol. 8, 168:18-169:1. This fact is further confirmed by at least seven of the Plaintiffs’ illustrative maps that include a coastal precinct while preserving a majority-minority Precinct 3. FOF 98, 376-379. In line with Mr. Oldham’s testimony is Judge Henry’s admission that he did not request, nor would he have asked for, a coastal precinct map that also maintained the historic majority-minority Precinct 3. FOF 394. This is particularly supportive of a finding of discriminatory intent.

Defendants have also contended that partisan composition of their districts was among the criteria and justifications for the enacted map. FOF 369; PX 593 at 5-7. However, partisanship is not an acceptable or legal justification for intentional race-based vote dilution, as legislators may not purposefully dismantle minority opportunity districts

merely to fulfill partisan objectives. *Perez v. Abbott*, 250 F. Supp. 3d 123, 180 (W.D. Tex. 2017) (concluding that “it is sufficient that redistricters acted to undermine minority voting strength for partisan advantage,” for the court to make a finding of intentional discrimination under Section 2 of the Voting Rights Act). To prevail on its claim of intentional vote dilution in violation of Section 2, Plaintiffs need only show that discriminatory purpose was one factor in the 2021 redistricting of the commissioners court and not that it was the only or primary purpose. *Id.*; *Arlington Heights*, 429 U.S. at 265-266. The United States has made that showing here; thus, any possible alternative motives for the enacted map, including partisan advantage, do not immunize Defendants from liability for intentionally diluting the electoral power of the County’s Black and Latino residents.

CONCLUSION

The United States and consolidated Plaintiffs have established that the map the Galveston County Commissioners Court adopted in 2021 has both the result and intent of denying the County’s Black and Latino voters the opportunity to elect candidates of their choice. Accordingly, the United States requests that this Court enter judgment in favor of Plaintiffs by (1) declaring that the 2021 Galveston County Commissioners Court map violates Section 2 of the Voting Rights Act; (2) permanently enjoining Defendants from conducting any future elections under the 2021 map; (3) instructing Defendants to present the Court with a remedial plan that fully cures this violation; and (4) failing presentation of such a remedial plan by Defendants, adopt one of the Plaintiffs’ plans or one of its own design. An appropriate order is attached.

Respectfully submitted this 11th day of September 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2023, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification to all counsel of record in this case.

/s/ Catherine Meza
CATHERINE MEZA