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

SHANNON PEREZ, *et al.*, *Plaintiffs,* v. STATE OF TEXAS, *et al.*, *Defendants.*	)	CIVIL ACTION NO. SA-11-CA-360-OLG-JES-XR [Lead case]
MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC), *Plaintiffs,* v. STATE OF TEXAS, *et al.*, *Defendants.*	)	CIVIL ACTION NO. SA-11-CA-361-OLG-JES-XR [Consolidated case]
TEXAS LATINO REDISTRICTING TASK FORCE, *et al.*, *Plaintiffs,* v. RICK PERRY, *Defendant.*	)	CIVIL ACTION NO. SA-11-CA-490-OLG-JES-XR [Consolidated case]

MARGARITA V. QUESADA, *et al.*,	)	CIVIL ACTION NO.
	)	SA-11-CA-592-OLG-JES-XR
Plaintiffs,	)	[Consolidated case]
	)	
v.	)	
	)	
RICK PERRY, *et al.*,	)	
	)	
Defendants.	)	
_____	)	
	)	
JOHN T. MORRIS,	)	CIVIL ACTION NO.
	)	SA-11-CA-615-OLG-JES-XR
Plaintiff,	)	[Consolidated case]
	)	
v.	)	
	)	
STATE OF TEXAS, *et al.*,	)	
	)	
Defendants.	)	
_____	)	
	)	
EDDIE RODRIGUEZ, *et al.*,	)	CIVIL ACTION NO.
	)	SA-11-CA-635-OLG-JES-XR
Plaintiffs,	)	[Consolidated case]
	)	
v.	)	
	)	
RICK PERRY, *et al.*,	)	
	)	
Defendants.	)	

DEFENDANTS' POST-TRIAL BRIEF

TABLE OF CONTENTS

Page

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES vii

SUMMARY OF CLAIMS 1

A. Section 2 of the Voting Rights Act 1

B. One Person, One Vote 2

C. Intentional Discrimination 2

ARGUMENT & AUTHORITIES 3

I. Introduction to the Section 2 Claims 3

II. Section 2 Enforces the Fifteenth Amendment By Prohibiting Conscious Denial of the Right to Vote as Well as Electoral Systems that Facilitate the Exclusion of Minority Voters from the Political Process 5

III. Reading Section 2 to Compel Race-Based Districts Without Proof of a Race-Based Injury Pushes the Statute Past its Constitutional Limits 8

A. There Is No Right to Race-Based Districts Under the Rubric of Proportionality, Maximization or Promotion of Partisan Preference 8

B. Under Plaintiffs' Interpretation of Section 2, It Is Also Not an Appropriate Exercise of Congress's Fifteenth Amendment Enforcement Power 12

IV. Plaintiffs' Section 2 Claims Asserted Against The Enacted Congressional Plan Fail As A Matter Of Law 13

A. Plaintiffs Failed to Satisfy the First *Gingles* Precondition 14

1. Plaintiffs Have Not Demonstrated That A Compact Latino Opportunity Congressional District Can Be Created In Dallas-Fort Worth 14

2. Plaintiffs Have Not Demonstrated That Additional Latino Opportunity Congressional Districts Can Be Created In Other Regions Of The State 16

B. Section 2 of the Voting Rights Act Does Not Recognize or Protect Coalition Districts 18

1. Plaintiffs' Argument Misreads Both Section 2 and the Cases Applying it 18

2. The Evidence Fatally Undermines Plaintiffs' Theory of Coalition Districts 24

C. Section 2 Does Not Require the State to Alter the Boundaries of Congressional District 23 26

1. Congressional District 23 is Consistent with the Voting Rights Act 26

2. The Evidence Does Not Support Attempts to Portray the Creation of District 23 as a Reenactment of 2003 Redistricting 27

3. Changing the Composition of District 23 to Alter the Outcome of The Most Recent Election is Unwarranted and Unlawful 29

D. Plaintiffs Have Not Proven a Section 2 Violation in Congressional District 27 31

E. Section 2 Provides a Remedy for Vote Dilution Only Where Voting is Polarized Because of Race and Not Because of Political Preference 33

1. The Evidence Leaves No Doubt that Voting Patterns Are Explained By Partisan Preference, Not Racial Animosity In the Electorate 35

2. The Evidence Is Also Not Sufficient to Prove that Legally Significant Racially Polarized Voting Exists in Texas 37

V. Plaintiffs Have Failed To Prove Vote Dilution Under Section 2 With Respect the Texas House of Representatives Plan 38

A. The Voting Rights Act Does Not Compel Texas to Subordinate Neutral Constitutional Redistricting Principles to the Goal of Maximizing Race-Based Districts 39

B. As Applied in the House Redistricting Plan, the Texas County-Line Rule Does Not Conflict with the VRA Because It Did Not Prevent the Creation of Any District Required by Section 2.....40

1. El Paso County.....41

2. Nueces County.....42

3. Hidalgo County and Cameron County.....44

C. The Legislature's Apportionment of 24 House Seats to Harris County Did Not Prevent the Creation of an Additional Latino- or African-American-Majority District.....45

D. Plaintiffs Have Not Proven That The State's Failure To Account For An Alleged Undercount In The Census Resulted In A Violation of Section 2 46

E. The Legislature Could Not Have Created Additional African-American Opportunity Districts for the Texas House of Representatives 47

VI. Plaintiffs Cannot Prove Vote Dilution Under the Totality of the Circumstances.....47

VII. Plaintiffs Have Not Established a Violation of the Equal Protection Clause 51

A. Plaintiffs Have Failed to Prove a Violation of One-Person, One-Vote in Plan H283.....51

1. The Equal Protection Clause Does Not Require Strict Population Equality in State Legislative Districts 51

2. The Plaintiffs Have Not Proven that Deviations from Ideal District Size in Plan H283 Resulted from Arbitrary or Discriminatory Considerations 54

3. Plaintiffs' Focus on Multidistrict Counties Begs the Basic Legal Question and Ignores Legitimate Causes of Population Deviation. 56

B. Congressional District 35 Is Within the State's Discretion to Create, But It Is Not Required by Section 2 57

1. Plaintiffs Have Failed to Establish Intentional Discrimination Based on Race or Ethnicity.....62

2. Plaintiffs General Allegations of Discriminatory Purpose Rely on Inferences that the Supreme Court Has Deemed Unsound as a Matter of Law.....65

CONCLUSION.....67

APPENDIX.....Attachment

Table of Authorities

Cases **Page**

Abrams v. Johnson,
521 U.S. 74 (1997).....34, 38

Adarand Constructors, Inc. v. Pena,
515 U.S. 200 (1995).....8, 9

Baird v. Consol. City of Indianapolis,
976 F.2d 357 (7th Cir. 1992) 19, 22

Bartlett v. Strickland,
129 S. Ct. 1231(2006);..... *passim*

Beer v. United States,
425 U.S. 130 (1976).....11, 34

Brown v. Thomson,
462 U.S. 835 (1983) 52

Bush v. Vera,
517 U.S. 952 (1996)..... *passim*

Campos v. City of Baytown,
840 F.2d 1240 (5th Cir. 1988) ..... *passim*

Campos v. City of Houston,
113 F.3d 544 (5th Cir. 1997) 15

Chen v. City of Houston,
206 F.3d 502 (5th Cir. 2000) 58, 62

City of Boerne v. Flores,
521 U.S. 507 (1997).....12

City of Mobile v. Bolden,
446 U.S. 55 (1980)..... *passim*

City of Richmond v. J.A. Croson Co.,
488 U.S. 469 (1989).....8, 9, 10

Clements v. Valles,
620 S.W.2d 112 (Tex. 1981).....39

Colleton County Council v. McConnell,
201 F. Supp. 2d 618 (D.S.C. 2002).....22

Connor v. Finch,
431 U.S. 407 (1977).....9

Cousin v. Sundquist,
145 F.3d 818 (6th Cir. 1998) 21

Daly v. Hunt,
93 F.3d 1212 (4th Cir. 1996) 52

Employment Division, Dep't. of Human Res. v. Smith,
494 U.S. 872 (1990).....12

Fairley v. Hattiesburg,
584 F.3d 660 (5th Cir. 2009) 46, 52

Fusari v. Steinberg,
419 U.S. 379 (1975).....53

Gaffney v. Cummings,
412 U.S. 740 (1973).....56

Georgia v. Ashcroft,
539 U.S. 461 (2003).....21, 24

Georgia v. Larios,
542 U.S. 947 (2004).....52, 53

Gomillion v. Lightfoot,
364 U.S. 339 (1960).....6, 63

Growe v. Emison,
507 U.S. 25 (1993).....7, 19, 24

Hall v. Virginia,
385 F.3d 421 (4th Cir. 2004) 21, 22, 23, 24

Holder v. Hall,
512 U.S. 874 (1994).....24

Hunt v. Cromartie,
526 U.S. 541 (1999).....40, 57, 63, 64

Johnson v. De Grandy,
512 U.S. 997 (1994) ..... *passim*

Johnson v. Miller,
864 F. Supp. 1354 (S.D. Ga. 1994) 38

Larios v. Cox,
300 F. Supp. 2d 1320 (N.D. Ga. 2004) ..... *passim*

Lopez v. Monterey County,
525 U.S. 266 (1999) 5, 6

LULAC v. Clements,
999 F.2d 831 (5th Cir. 1993) ..... *passim*

LULAC v. Midland Independent School District,
812 F.2d 1494 (5th Cir.) 20

LULAC v. Perry,
548 U.S. 399 (2006) ..... *passim*

Mallory v. Ohio,
38 F. Supp. 2d 525 (S.D. Ohio 1997) 34

Marylanders for Fair Representation, Inc. v. Schaefer,
849 F. Supp. 1022 (D. Md. 1994) 52, 53

Metro Broad., Inc. v. FCC,
497 U.S. 547 (1990) 9

Miller v. Johnson,
515 U.S. 900 (1995) ..... *passim*

Nipper v. Smith,
39 F.3d 1394 (11th Cir. 1994) 33

Nixon v. Kent County,
76 F.3d 1381 (6th Cir. 1996) 21

Overton v. City of Austin,
871 F.2d 529 (5th Cir. 1989) 64

Palmer v. Thompson,
403 U.S. 217 (1971) 64

Parents Involved in Community Schools v. Seattle School Dist. No. 1,
551 U.S. 701 (2007).....5

Parker v. Ohio,
263 F. Supp. 2d 1100 (S.D. Ohio 2003) 21

Personnel Adm'r of Mass. v. Feeney,
442 U. S. 256 (1979).....63, 64

Reed v. Town of Babylon,
914 F. Supp. 843 (E.D.N.Y. 1996) 34

Reynolds v. Sims,
377 U.S. 533 (1964).....51, 52

Robertson v. Bartels,
148 F. Supp. 2d 443 (D.N.J. 2001) 60

Rodriguez v. Pataki,
308 F. Supp. 2d 346 (S.D.N.Y. 2004).....21, 52, 53, 54

Rogers v. Lodge,
458 U.S. 613 (1982).....62, 63

Romero v. Pomona,
883 F.2d 1418 (9th Cir. 1989) 21

Salas v. Sw. Texas Jr. Coll. Dist.,
964 F.2d 1542 (5th Cir. 1992) 27

Sanchez v. Colorado,
97 F.3d 1303 (10th Cir. 1996) 21

Session v. Perry,
298 F. Supp. 2d 451 (E.D. Tex. 2004).....15, 22, 28

Shaw v. Hunt,
517 U.S. 899 (1996)..... *passim*

Shaw v. Reno,
509 U.S. 630 (1993)..... *passim*

Smith v. Clark,
189 F. Supp. 2d 529 (S.D. Miss. 2002).....22

Smith v. Craddick,
471 S.W.2d 375 (Tex. 1971).....39

South Carolina v. Katzenbach,
383 U.S. 301 (1966).....5, 12, 13

Thornburg v. Gingles,
478 U.S. 30 (1986)..... *passim*

Uno v. City of Holyoke,
72 F.3d 973 (1st Cir. 1995).....34

Valdespino v. Alamo Heights Indep. Sch. Dist.,
168 F.3d 848 (5th Cir. 1999) 20, 21

Village of Arlington Heights v. Metro. Hous. Dev. Corp.,
429 U.S. 252 (1977).....63, 64

Voinovich v. Quilter,
507 U.S. 146 (1993).....5, 19, 41

Washington v. Davis,
426 U.S. 229 (1976).....62

Whitcomb v. Chavis,
403 U.S. 124 (1971).....34

White v. Regester,
412 U.S. 755 (1973).....6, 52

STATUTES

42 U.S.C. §1973..... *passim*

42 U.S.C. § 1973(a) ..... *passim*

42 U.S.C. § 1973(b)..... *passim*

CONSTITUTIONAL AUTHORITIES

TEX. CONST. art. III, § 26 .....39, 45, 46

U.S. CONST. amend. IX 30

U.S. CONST. amend. XIV..... *passim*

U.S. CONST. amend. XIV § 5.....12

U.S. CONST. amend. XV.....5, 12, 13

U.S. CONST. amend. XV, § 2.....11

SUMMARY OF CLAIMS

A. Section 2 of the Voting Rights Act

Plaintiffs claim that the Texas Legislature's redistricting plans for Congress (Plan C185) and the Texas House of Representatives (Plan H283) violate section 2 of the Voting Rights Act (VRA) because they fail to create Latino and African-American electoral districts commensurate with the groups' population growth over the past decade. These claims fail for many reasons, including:

- Plaintiffs misinterpret the text of section 2 and divorce their analysis from the statutory goal of preventing "denial or abridgement of the right of any citizen of the United States to vote on account of race or color."

- While Plaintiffs repeatedly claim that Latinos constitute 65% of the State's voting age population, they fail to acknowledge that increases among voting age citizens within the Latino community constituted only 20% of the State's population growth.

- Plaintiffs urge a construction far beyond any standard endorsed by the Supreme Court in *Gingles* or elsewhere, which would cause section 2 to be unconstitutional.

- Plaintiffs fail to show that additional Latino or African-American opportunity districts could be drawn. Indeed, Plaintiffs' proposed districts not only fail the first *Gingles* threshold requirement, they would themselves be unconstitutional under *Shaw v. Reno*.

- The evidence does not prove—indeed it conclusively disproves—the type and extent of racially polarized or bloc voting necessary to establish the second and third *Gingles* threshold factors. Plaintiffs' insistence that legally significant racially polarized voting exists reflects a misunderstanding of *Gingles* and the Fourteenth Amendment.

- Plaintiffs judicially fail to prove that the totality of circumstances supports the extreme remedy of compelled race-based electoral districts. Indeed, the tremendous growth and diversity in the state along with the diversity already reflected in its elective offices precludes any justification for separating its citizens on account of race.

B. One Person, One Vote

The Mexican American Legislative Caucus and the Perez Plaintiffs claim that the Texas House redistricting plan violates the Fourteenth Amendment's Equal Protection Clause. They allege that the Legislature made no effort to adhere to the ideal district population, the deviations in the plan are unjustified, and population disparities among House districts were used to discriminate against minority voters. This claim fails for multiple reasons, including, but not limited to:

- Plaintiffs misunderstand the nature of the Equal Protection Clause's one-person, one-vote principle, which does not require the state to justify deviations from ideal district population unless (a) the total deviation is at least ten percent or (b) the plaintiff shows that the deviations result from wholly irrational or unconstitutional state policies.

- Plaintiffs do not even allege that the deviation exceeds ten percent.

- Plaintiffs do not identify any pattern of under- or over-population, much less an unconstitutional or irrational state policy regarding deviation from ideal district size.

C. Intentional Discrimination

Plaintiffs allege that the congressional and House redistricting plans were passed with the intent to discriminate against Latino and African-American voters on account of their race or ethnicity. This claim fails for multiple reasons, including:

- Plaintiffs have not produced any evidence of actual intent, on the part of any single legislator much less the Legislature as a body, to discriminate on the basis of race or ethnicity. Indeed, Plaintiffs' admitted that they had no evidence of such discrimination.

- Plaintiffs' intentional discrimination claims are based on a theory of disparate impact, which the Supreme Court has firmly rejected as a basis for Fourteenth Amendment liability.

ARGUMENT & AUTHORITIES

I. Introduction to the Section 2 Claims

This case is not about the denial of the right to vote. It is not about voting practices or procedures that target racial, ethnic, or language minority groups. In fact, it is not about voting practices or procedures at all. Judging from the Plaintiffs' pleadings and trial presentations, this case is about legally and facially flawed proportional representation claims and partisan politics.

From the beginning—indeed, even before the first maps were even enacted—this case has been about proportional representation. Plaintiffs uniformly contend that the Legislature had a legal obligation to create safe "minority-majority" districts in numbers that Plaintiffs consider to be commensurate with minority population growth over the last decade. But the claim that the State is required to earmark a number of electoral districts proportional to each racial or ethnic group's share of the eligible voting population is directly contrary to the text of the VRA and decades of Supreme Court decisions rejecting any such construction of the VRA on constitutional grounds. Indeed, the issue of rough proportionality is relevant only after a plaintiff satisfies the *Gingles* pre-conditions and, then, for the purpose of assessing whether the extreme remedy of race-based districting is necessary in the first place. Even assuming that Plaintiffs had actually demonstrated the preconditions for pursuing a section 2 claim—and they most assuredly have not—the new maps contain 8 of 36 (22%) congressional districts in which a Latino preferred candidate cannot be defeated by a motivated, cohesive anti-Latino bloc vote. This is proportionate to the Latino communities' 24.7% share of the state's eligible voting population.[1]

The object of these consolidated lawsuits is not to dismantle political structures that dilute the votes of discrete minorities or deprive them of an equal opportunity to participate in

[1] Likewise, the makeup of the State Legislature already shows itself to be roughly proportional to the eligible voting population. Exhibit D-65.

the political process. Rather, the object is to advance a political agenda, which Plaintiffs attempt to veil in race and predicate upon the assumption that Latinos and African-Americans only vote for Democrats regardless of the candidate. Indeed, when confronted with irrefutable electoral proof that Latinos do not monolithically support Democratic candidates, plaintiffs essentially declare the election a mulligan and simply demand additional race-based gerrymandering to fix the result. Thus, while Plaintiffs claim their lawsuit is apolitical, their challenge is disproportionately directed at districts with large Latino populations where voters have demonstrated a preference to elect Latino candidates who happen to be *Republicans*. Plaintiffs argue that the Legislature's effort to protect incumbents is somehow racially suspect, even where the district has become more, not less, Latino in the process.

The State draws these distinctions not to belittle the sincerity of Plaintiffs' claims, but only to put them in perspective under the Constitution and the VRA and because the record reveals a conspicuous lack of evidence that Plaintiffs suffered any actual dilution or cognizable injury. Anticipated lack of partisan electoral success at the polls (and for some plaintiffs, lack of political success during the recent legislative session, where partisan debate belongs) is not a legal injury. Put directly, "th[e] right to equal participation in the electoral process does not protect any 'political group,' however defined, from electoral defeat." *City of Mobile v. Bolden*, 446 U.S. 55, 77 (1980).

The crucial legal question in this case is whether section 2 of the VRA (a) guarantees the *equal opportunity* of all voters, regardless of race or ethnicity, to participate in elections or (b) requires the states to guarantee *electoral victory* for candidates preferred by voters of selected races and ethnicities. Plaintiffs seek to impose a categorical duty to draw districts that will ensure victory for whomever they deem to be the "minority preferred candidate." And under

Plaintiffs' construction of section 2 and the case law applying it, Plaintiffs are arguing that the "minority preferred candidate" is always a Democrat—regardless of the candidate's race.

The Plaintiffs' interpretation is at odds with the Supreme Court's instruction that "the ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994). If endorsed, this interpretation would push section 2 well beyond its constitutional moorings. *See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 730–31 (2007) (rejecting pursuit of racial proportionality in education as a compelling governmental interest on the ground that it would permanently embed race-based decision-making in American life) (citing *Miller v. Johnson*, 515 U.S. 900, 911 (1995)). As a result, this Court should reject the section 2 liability standard advocated by Plaintiffs.

II. Section 2 Enforces the Fifteenth Amendment By Prohibiting Conscious Denial of the Right to Vote as Well as Electoral Systems that Facilitate the Exclusion of Minority Voters from the Political Process.

Section 2 of the VRA, 42 U.S.C. §1973, was intended to "effectuate the Fifteenth Amendment's guarantee that no citizen's right to vote shall 'be denied or abridged . . . ***on account of race, color***, or previous condition of servitude.'" *Voinovich v. Quilter*, 507 U.S. 146, 152 (1993) (citation omitted, emphasis added). When Congress passed the VRA, state and local governments systematically denied African-American citizens their Fifteenth Amendment right to vote through a variety of means: systematic coercion and violence; more subtle but equally pernicious methods like "grandfather clauses, property qualifications, 'good character' tests," *South Carolina v. Katzenbach*, 383 U.S. 301, 311 (1966); literacy tests designed to guarantee that African-American citizens failed, *Lopez v. Monterey County*, 525 U.S. 266, 297 (1999)

(Thomas, J., dissenting); even the literal exclusion of African-American voters through racial gerrymanders. *See Gomillion v. Lightfoot*, 364 U.S. 339, 340 (1960).

After passage of the VRA curbed the most notorious abuses, the courts turned to less obvious, but no less pernicious, political structures such as multi-member districts, which all too often ensured that (1) the individual vote of each member of that cohesive racial minority suffered from "vote dilution," and (2) the representatives elected in such districts had no interest in pursuing or representing the minority vote and actually increased their prospects for re-election by disserving and abusing them. *See, e.g.*, *White v. Regester*, 412 U.S. 755, 768–70 (1973) (finding "invidious discrimination" in multi-member districts).[2] In these cases, minorities were trapped in multi-member districts where elections turned on race, so while minorities were afforded a literal right to vote, the franchise amounted to little "more than the right to cast meaningless ballots." *Bolden*, 446 U.S. at 104 (Marshall, J., dissenting).

Congress amended section 2 in 1982 to prohibit the use of voting practices or procedures "which results in a ***denial or abridgement*** of the right of any citizen of the United States to vote ***on account of race or color"***—not partisan preference. 42 U.S.C. § 1973(a) (emphasis added). The statute is violated where, "based on the totality of circumstances, it is shown that the political processes leading to nomination or election . . . are ***not equally open*** to participation by members of a [protected] class of citizens." *Id.* § 1973(b) (emphasis added). Shortly thereafter, the Supreme Court applied the amended statute to strike down a multi-member districting scheme in *Thornburg v. Gingles*, 478 U.S. 30, 48 (1986). A four-member plurality of the Court

[2] In *White*, the Court explicitly found the selective use of multi-member districts in urban districts of the Texas House of Representatives amounted to invidious discrimination.

fashioned a three-part test to determine whether a plaintiff could move forward with a vote dilution claim under section 2:

> [1] ***the*** minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single member district[;] . . .
> [2] ***the*** minority group must be able to show that it is politically cohesive [;] . . .
> [and] . . .
> [3] ***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.

Id. at 50–51 (emphasis added, internal citation omitted). If the plaintiff makes these three showings, "the trial court is to consider the 'totality of the circumstances' and to determine, based 'upon a searching practical evaluation of the past and present reality, whether the political process is equally open to minority voters.'" *Id.* at 79 (internal citation omitted). Notably, Justice White declined to join the plurality where it found in *dictum* that the race of the candidates running for office is irrelevant to racially-polarized voting analysis in the second and third prong. Because the record showed that African-American *and* white voters were indeed voting for candidates *on the basis of race*, *id.* at 61, Justice White was able to concur in the result. Four dissenters, led by Justice O'Connor, found the plurality opinion too far divorced from remedying the effects of deliberate past discrimination. *Id.* at 84, 91.

In *Growe v. Emison*, 507 U.S. 25, 40 (1993), the first Supreme Court case to apply *Gingles* to a single-member districting scheme, the Court recognized that "multimember districting plans, as well as at-large plans, generally pose greater threats to minority-voter participation in the political process than do single-member districts." Similarly, in *De Grandy*, 512 U.S. at 1012–13, the Court commented that "dilution may be more difficult to grasp" in a single-member districting scheme, and warned against over reliance on the *Gingles*' formulaic approach to dilution claims: "if the three *Gingles* factors may not be isolated as sufficient,

standing alone, to prove dilution in every multimember district challenge, *a fortiori* they must not be when the challenge goes to a series of multi-member districts." *Id.* Thus, under *Growe*, a plaintiff claiming dilution in a single-member districting scheme must now show "the possibility of creating more *than the existing number of reasonably compact districts* with a sufficiently large population to elect candidates of its choice." *Id.* at 1008 (emphasis added). Plaintiffs in this case have not only failed to meet the Court's legal standard, but they also failed to show the type or degree of polarized bloc voting that would require a race-based remedy. In fact, Plaintiffs steadfastly refuse to accept that section 2 should be read to redress only race-based harms.

III. Reading Section 2 to Compel Race-Based Districts Without Proof of a Race-Based Injury Pushes the Statute Past its Constitutional Limits.

A. There Is No Right to Race-Based Districts Under the Rubric of Proportionality, Maximization or Promotion of Partisan Preference.

The Equal Protection Clause limits the intentional disparate treatment of races to a very specific range of circumstances. *E.g.*, *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989). Section 2 does not compel states to create race-based electoral districts unless that drastic measure is necessary to provide a remedy the Constitution would allow, but even then it must be accomplished without subordinating "sound districting principles." *Shaw*, 509 U.S. at 657 (citation omitted). Race-based redistricting under section 2 is thus "a remedial device[] . . . aptly described as the 'politics of the second best.'" *De Grandy*, 512 U.S. at 1020 (citation omitted). Thus it is reserved for a serious, race-based harm. *Shaw v. Hunt*, 517 U.S. 899, 909 (1996) (*Shaw II*) (limiting race-based districting to narrowly tailored efforts to remedy proximate racial discrimination); *see also Bolden*, 446 U.S. at 76 n.23; *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 237–39 (1995). Accordingly, there is no general federal right to maximization or

proportionality of districts drawn for the purpose of benefitting any race of voters, much less the political parties with whom they align. *De Grandy*, 512 U.S. at 1016–17.[3]

While four Justices in *Gingles* would have endorsed the view that section 2 compelled racial redistricting—regardless of evidence of bloc voting on the basis of the race of candidates—a majority of the Court then understood the equal protection component of the Due Process Clause to leave *Congress* free of strict scrutiny where it engaged in "benign" racial discrimination, such as affirmative action. *Metro Broad., Inc. v. FCC*, 497 U.S. 547 (1990). Thus, while *the states* were presumptively barred from enacting laws promoting disparate treatment of the races to benefit a historically disadvantaged racial minority, that same rule did not apply to Congress or section 2. *Croson*, 488 U.S. at 491 (contrasting state authority with that of Congress). To survive strict scrutiny, race-conscious remedies imposed by *the states* must be narrowly tailored to cure reasonably proximate invidious discrimination. The states' asserted justification—remedying historic racism—failed because, in the Court's opinion, it had "no logical stopping point." *Id.* at 498 (citation omitted).

The notion that Congress possessed a freer hand than states to create race-based preferences expired in 1995 with the Court's decision in *Adarand*, 515 U.S. at 213–14. As a result, the Court's view of electoral districts drawn to favor members of certain racial groups—said to be compelled by section 2 or section 5—came to be viewed under a much harsher light. *E.g., Shaw I*, 509 U.S. at 656-57. After *Adarand*, it is clear that section 2 can only be constitutional to the extent it adheres to the same rule: compelled race-based redistricting can only be justified as a short-term remedy for purposeful, proximate governmental discrimination.

[3] Even Justice Marshall's dissent in *Bolden* rejected the argument being advanced here: "A requirement of proportional representation would indeed transform this Court into a 'super-legislature,' and would create the risk that some groups would receive an undeserved windfall of political influence." 446 U.S. at 123; *see also Connor v. Finch*, 431 U.S. 407, 428 (1977) (Blackmun, J., concurring).

See Croson, 488 U.S. at 498; *Miller*, 515 U.S. at 920–22; *Shaw II*, 517 U.S. at 909, 915. The Court, in keeping with the canon of constitutional avoidance,[4] has itself cabined section 2 to assure that it is construed to compel race-based districting only where there is "discrimination," that is "identif[ied] . . . with some specificity" and a "'strong basis in evidence' to conclude that remedial action [is] necessary." *Shaw II*, 517 U.S. at 909, 910 (citations omitted).

Plaintiffs' interpretation of section 2 would put it directly in conflict with the Equal Protection Clause of the Fourteenth Amendment in at least two ways.

First, Plaintiffs urge a reading of section 2 that would compel states to act on the basis of race regardless of the need to remedy racial discrimination in voting patterns as explored and elucidated by expert opinion. Usually that analysis would at least identify patterns of race-based voting suggesting that elected officials would be unresponsive to the interests of minority voters *because the voters are selecting candidates on the basis of their race*, a harm that is particularly acute in the context of so-called multi-member or at-large election regimes where a bloc voting white majority controls the outcome of multiple contests. Despite copious case law to the contrary, *supra*, Plaintiffs dismiss the need for any exploration into the cause for disparate voting tendencies within racial groups. Instead they urge that any statistically significant difference among the races in their tendency to support different political parties, calls for a separation of the races into different political districts to allow each race to elect the party of its preference,

[4] The Supreme Court has acknowledged the manifest ambiguity of section 2 as amended after *Bolden*. *See LULAC v. Perry*, 548 U.S. 399, 426 (2006) ("The general terms of the statutory standard 'totality of the circumstances' requires judicial interpretation."). It has also repeatedly warned that efforts to expand the VRA's reach beyond the substantive limits of the Fifteenth Amendment "raise serious [constitutional] problems." *Bartlett v. Strickland*, 129 S. Ct. 1231, 1249 (2009); *see also De Grandy*, 512 U.S. at 1028-29 (Kennedy, J., concurring) ("It is important to emphasize that the precedents to which I refer, like today's decision, only construe the statute and do not purport to address its constitutional implications. . . . As a general matter, the sorting of persons with an intent to divide by reason of race raises the most serious constitutional questions.").

creating exactly the type of harm—officials elected *on the basis of race*—that the VRA was designed to avoid.

Section 2, as written, does not direct race-based districting wherever in the United States African-Americans, whites and Latinos support Democrats and Republicans at different rates. Plaintiffs' construction perverts section 2 and reduces its laudable objectives by employing the VRA as a crass partisan tool. It would also render the statute unconstitutional if endorsed. *E.g.*, *Bartlett v. Strickland*, 129 S. Ct. 1231, 1245 (2006) ("We must be most cautious before interpreting a statute to require courts to make inquiries based on racial classifications and race-based predictions. The statutory mandate petitioners urge us to find in § 2 raises serious constitutional questions."). The Supreme Court has repeatedly rejected any interpretation of the VRA that would permit a state simply to "separate its citizens into different voting districts on the basis of race," *Miller*, 515 U.S. at 911 (citing *Shaw I*, 509 U.S. at 649), absent a compelling and documented need to remedy past or present discrimination. An interest in curing "generalized assertions of past discrimination" of the type plaintiffs have identified here does not amount to a compelling interest. *Shaw II*, 517 U.S. at 909–10. And, even where a compelling interest in remedying proximate discrimination is shown, the remedy must be narrowly tailored to actually address the injury. *Bush v. Vera*, 517 U.S. 952, 977–79 (1996).

Second, Plaintiffs attempt to use section 2 to advance the dubious goal of requiring racial proportionality in the control of a state's political districts. The plain text of that section 2 says otherwise. Moreover, the Supreme Court has repeatedly and "sternly set its face against the claim, however phrased, that the Constitution somehow guarantees proportional representation," *Bolden*, 446 U.S. at 79; *id.* at 76 n.23; *Beer v. United States*, 425 U.S. 130, 131 n.1 (1976). No Supreme Court decision has ever suggested to the contrary. Instead, the Supreme Court has

stated that such a requirement could ultimately be harmful. For example, Justice O'Connor expressed concern that "use of a mathematical formula to assure a minimum number of majority-minority districts tends to sustain the existence of ghettos by promoting the notion that political clout is to be gained or maintained by marshaling particular racial, ethnic, or religious groups in enclaves." *De Grandy*, 512 U.S. at 1030 (O'Connor, J., concurring) (quotation omitted).

B. Under Plaintiffs' Interpretation of Section 2, It Is Also Not an Appropriate Exercise of Congress's Fifteenth Amendment Enforcement Power.

The Equal Protection concern is not the only constitutional infirmity in Plaintiffs' construction of section 2. Section 2 was enacted pursuant to the Fifteenth Amendment, which confers upon Congress the power to enforce its guarantees by "appropriate legislation." U.S. CONST. amend. XV, § 2. In *Bolden*, the Court construed the Fifteenth Amendment to reach deliberate racial discrimination and no further. 446 U.S. at 61–65. The Supreme Court has since made clear that Congress must exercise its enforcement power under the Civil War Amendments to remedy constitutional violations, and the means chosen must be proportional and congruent to the harm sought to be remedied. In *City of Boerne v. Flores*, 521 U.S. 507, 532 (1997), the Court held that the Religious Freedom Restoration Act, passed to reverse the Court's interpretation of the Free Exercise Clause in *Employment Division, Dep't. of Human Res. v. Smith*, 494 U.S. 872 (1990),[5] was not appropriate legislation under § 5 of the Fourteenth Amendment because its substantive reach was "so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior." Having settled the reach of the Free Exercise Clause in *Smith*, the Court had not left room for Congress to simply usurp it. A reading of section 2 that expands the Fifteenth Amendment beyond the limits indentified in *Bolden* raises equal concerns.

[5] The parallel between *Smith's* rejection of disparate impact as a basis for a free exercise claim and *Bolden's* like rejection of a dilution claim in the absence of intent is unmistakable.

The Court has raised but avoided these constitutional problems repeatedly since *Shaw*, where it "express[ed] no view as to whether 'the intentional creation of majority-minority districts, without more,' always gives rise to an equal protection claim," even as it loudly warned that "[r]acial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions." *Shaw I*, 509 U.S. at 649, 657 (citation omitted). Likewise, in *Miller*, Justice Kennedy highlighted the awkward interplay between Congress's exercise of its Fifteenth Amendment enforcement power and the equal protection guarantee:

> [T]he Justice Department's implicit command that States engage in presumptively unconstitutional race-based districting brings the Act, once upheld as a proper exercise of Congress' authority under . . . the Fifteenth Amendment into tension with the Fourteenth Amendment. As we recalled in *Katzenbach* . . . Congress' exercise of its Fifteenth Amendment authority even when otherwise proper still must [be] "consist[ent] with the letter and spirit of the constitution."

515 U.S. at 927 (citations omitted). For all of these reasons, this Court should read both section 2 and *Gingles*, under the rule of constitutional avoidance. That rule favors a construction that calls for race-based districting only where it is necessary to remedy invidious discrimination or something that very much looks like it. *E.g.*, *Bartlett*, 129 S. Ct. at 1246–47 (applying avoidance canon and warning against overreliance on *Gingles* factors).

IV. Plaintiffs' Section 2 Claims Asserted Against The Enacted Congressional Plan Fail As A Matter Of Law.

To prove their section 2 claims under even the *Gingles* plurality, the Plaintiffs must first prove both the ability to draw an additional compact district in which a minority population could form a majority capable of controlling the result of the election and the existence of racially polarized voting. *Shaw II*, 517 U.S. at 916 n.8. As revealed by Plaintiffs' own proposed demonstration plans, they have not demonstrated an ability to draw an additional, constitutionally permissible minority-majority district. While they and others could draw

additional Democratic majority districts, the state has no obligation to draw a district unless "the minority group [is] able to demonstrate that it is sufficiently large and geographically compact to constitute a majority." *Gingles*, 478 U.S. at 50. As detailed in the summary judgment motion and shown at trial, no demonstration map proposes a district in which a single minority group is sufficiently large and geographically compact to require the drawing of an additional majority-minority district. *See* Appendix, Tables 1–2.

In fact, each of Plaintiffs' alternatives either fails to create an effective minority opportunity district or proposes an alternative that would itself violate the Constitution because it would require wholesale subordination of traditional redistricting principles—like protection of incumbents, compactness, or the use of arithmetic or the U.S. census—to the goal of separating the voters on account of race. Indeed, it is beyond ironic that the State's effort to draw a new, reasonably compact Latino opportunity congressional district that *is* likely to perform,[6] has caused some of the Plaintiffs to contend that the State violated *Shaw* by relying excessively on race to successfully draw that new Latino opportunity district. In reality, the State's district is superior on any measure of compactness to Plaintiffs' proposed Dallas-Fort Worth Latino opportunity district.

A. Plaintiffs Failed to Satisfy the First *Gingles* Precondition.

1. Plaintiffs Have Not Demonstrated That A Compact Latino Opportunity Congressional District Can Be Created In Dallas-Fort Worth.

[6] As Dr. Alford testified, Texas came into the census with 7 literal "opportunity" congressional districts in which Latino voters constituted a majority of the citizen voting age population. If Plaintiffs' claims of voting cohesion were correct all of them would have been "effective" or "performing" opportunity districts. Two were not performing and had elected Republicans. Exhibit E-17, Alford Expert Report, at 4-6. In addition to adding district 35, the Legislature also created District 34 in the physical place of former non-performing but literal opportunity district 27, netting two more "performing" (i.e., 7 where there had been 5) and one more (8 versus 7) opportunity districts. To be sure, if one hypothesizes that districts 23 and 37 were performing, despite the elections, and eschews the need to protect the elected incumbents in those districts, then the addition of *performing* districts would go from two to none on a net basis and the result would be a swap of two better performing districts.

Even under their broad interpretation of section 2, Plaintiffs must first prove that the Legislature could have drawn "more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *De Grandy*, 512 U.S. at 1008; *see Bartlett*, 129 S. Ct. at 1242–45 (holding that the affected group must, at a minimum, constitute a numeric majority). To satisfy *Gingles*, any proposed district must contain a majority of voting-age citizens. *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997); *see also Session v. Perry*, 298 F. Supp. 2d 451, 494 n.133 (E.D. Tex. 2004) ("This circuit, along with every other circuit to consider the question, has concluded that the relevant voting population for Latinos is citizen voting age population."), *rev'd on other grounds sub nom. LULAC v. Perry*, 548 U.S. 399, 429 (2006) (commenting that using CVAP to determine Latino electoral opportunity "fits the language of § 2 because only eligible voters affect a group's opportunity to elect candidates"). It must also be reasonably compact. *Bush*, 517 U.S. at 979 ("If, because of the dispersion of the minority population, a reasonably compact majority-minority district cannot be created, § 2 does not require a majority-minority district."). The choice between divergent plans that create the same number of minority opportunity districts belongs to the state, not Plaintiffs or the courts. *Perry*, 548 U.S. at 430.

None of Plaintiffs' proposed districts in the Dallas-Fort Worth region satisfy the first *Gingles* precondition. Most do not contain a majority Latino citizen voting age population.

Plan	AVAP	BVAP	HCVAP	SSVR[7]
Plan 121 – CD 34 (Quesada Plaintiffs)	20.1%	11.4%	**45.6%**	**41.8%**
Plan 122 – CD 35 (Latino Task Force)	20.5%	12.8%	**45.0%**	**41.5%**
Plan 166 – CD 35 (Rodriguez Plaintiffs)	20.1%	11.4%	**45.6%**	**41.8%**

[7]*See* Exhibit J-2, Plan C121, Red 106 Report, Red 202 Report; Exhibit J-3, Plan C122, Red 106 Report, Red 202 Report; Exhibit J-7, Plan C166, Red 106 Report, Red 202 Report; Exhibit J-13, Plan C192, Red 106 Report, Red 202 Report; Exhibit J-14, Plan C193, Red 106 Report, Red 202 Report.

Plan C192 – CD34 (Quesada Plaintiffs)	20.1%	11.4%	**45.6%**	**41.8%**
Plan C193 – CD 35 (NAACP Plaintiffs)	22.1%	11.2%	**44.6%**	**40.3%**

Only the Latino Task Force Plaintiffs were able to draw a district with HCVAP (barely) above 50%. As a result, Plaintiffs cannot establish that a new Latino opportunity district consisting of a majority Latino citizen age voting population should be drawn in Dallas-Fort Worth.

Plan	AVAP	BVAP	HCVAP	SSVR[8]
Plan C190 – CD 6 (Latino Task Force)	19.7%	11.1%	**50.4%**	**43.6%**

Like the other proposed Dallas-Fort Worth districts, however, the Latino Task Force's district is not reasonably compact as required by *Gingles*. *See* Appendix, Figure 1. Indeed, CD6 in Plan C190 has the worst compactness scores of any district among Plaintiffs' demonstration plans.[9] Had the State created this district, it would have violated *Shaw*'s prohibition on racial gerrymandering. *See Shaw I*, 509 U.S. at 657.

Like Plaintiffs, the Legislature tried but failed to draw a legal and effective Latino-majority opportunity district in Dallas-Fort Worth. This proved impossible despite the area's high Latino population because the number of voting-age citizens is too low, and the population is too spread out. Exhibit D-51; Exhibit D-44; Exhibit J-62, Deposition of Ryan Downton at 127:8-128:6; Exhibit J-58, Deposition of Doug Davis, at 59:10-15; Trial Tr. at 906:14-17. Plaintiffs have not proven that the Legislature could have drawn additional congressional districts with a Latino or African-American voting majority. They cannot establish an injury as a matter of law, and the Court cannot provide a remedy.

2. Plaintiffs Have Not Demonstrated That Additional Latino Opportunity Congressional Districts Can Be Created In Other Regions Of The State.

[8] *See* Exhibit J-11, Plan C190, Red106 Report, Red202 Report.
[9] *See* Exhibit E-18, Giberson Expert Report at 6–7 ((1) perimeter to area score of 54.4; (2) area to rubber band score of 3.3; and (3) area to smallest circle score of 9.5); *see also* Exhibit J-11, Plan C190, Red 315 Report.

The majority of the Plaintiffs' demonstration plans—Plans C121, C163, C164, C166, C187, and C192—create an equal or lesser number of Latino opportunity districts as Plan C185. *See* Appendix, Table 1. Only two demonstration plans purport to create additional Latino opportunity districts, but neither plan satisfies the first *Gingles* precondition because the additional districts are not reasonably compact and, in some instances, create substantial legal problems under section 5 and the Fourteenth Amendment.[10]

The Latino Task Force's demonstration map, Plan C190, attempts to create 9 Latino opportunity districts, but the districts it creates do not fit *Gingles I* and are constitutionally suspect. In addition to a non-compact district in Dallas-Fort Worth, Plan C190 creates a Latino-majority district in Harris County that retrogresses District 29, a protected Latino opportunity district currently held by Congressman Gene Green. *See* Exhibit D-23, at S-9. In the benchmark plan, District 29 has 56.0% HCVAP and 52.6% SSVR. *See* Exhibit J-1, Plan C100, Red 109 Report. In Plan C190, District 29 would drop to 35.7% HCVAP and 31.0% SSVR, and is no longer a Latino opportunity district. *See* Exhibit J-11, Plan C190, Red 109 Report. The same plan also proposes to redraw District 23 to unseat the incumbent. As detailed below, that effort creates a non-compact district that would threaten District 28, which is also a protected Latino opportunity district. Thus any apparent gains in Plan C190 are offset by the destruction of existing Latino opportunity districts.

Similarly, while proposed Plan C188 purports to create 9 Latino opportunity districts, at least one of those districts appears to establish a prima facie violation of section 2. Not only

[10] While it is unclear the Legislature could now be compelled to draw or maintain them after *Bartlett*, Plan C185 creates three African-American performing districts—Districts 9, 18, and 30. None of the alternative demonstration plans either submitted to the Legislature or as evidence at trial propose to create more than three African-American majority opportunity districts. *See* Appendix, Table 2. Accordingly, given that none of the Plaintiffs offered any evidence that the Legislature could have created additional African-American congressional opportunity districts, they have failed to prove a violation of section 2.

does this plan fail to satisfy *Gingles*; it actually redraws the district found to be unlawful in *LULAC v. Perry*, not once but twice. Proposed District 28 begins at the Texas-Mexico border in Webb County and goes all the way to Travis County. *See* Exhibit J-10, Plan C188. Proposed District 10 parallels District 28, traveling south from Northern Travis County, but continues farther to Hidalgo County in the Rio Grande Valley. These districts are not reasonably compact; they were likely drawn predominately on the basis of race; and they do not adhere to traditional redistricting principles. Instead, these districts attempt to combine communities across more than 300 miles that have little in common except Latino residents. These are not valid districts under *Gingles*.

B. Plaintiffs' Attempts to Create Coalition Districts Out Of Cohesive Voting Among Combinations of White, Black and Hispanic Voters Fails.

Because Plaintiffs cannot demonstrate a *Gingles I* district, they are forced to argue for the creation of so-called "coalition districts" or what some Plaintiffs more accurately label as "tension" districts in which one ostensible minority group uses the votes of another to elect its candidate of choice in the general election despite a lack of cohesion in the Democratic primary. This argument fails for both legal and factual reasons, as detailed below.

1. Plaintiffs' Argument Misreads Both Section 2 and the Cases Applying it.

Plaintiffs' assertion that section 2 requires the creation of districts in where a minority-preferred candidate can be elected by an alleged coalition of voters of two or even three[11]

[11] The tri-ethnic coalition is put forward by the Rodriguez Plaintiffs in connection with Congressional District 25. In the benchmark plan (Plan C100), District 25 contains 25.3% Latino citizen voting age population, 9.0% African-American voting age population, and 63.1% Anglo voting age population. *See* J-1, Plan C100, Red 106 Report, Red 109 Report, Red 202 Report. In the Rodriguez Plaintiffs' proposed plan (Plan C166), District 25 contains 24.0% Latino citizen voting age population; 9.5% African-American voting age population; and 49.6% Anglo voting age population. *See* Exhibit J-7, Plan C166, Red 106 Report, Red 109 Report, and Red 202 Report. A cursory glance at the population reveals that District 25 does not satisfy *Gingles'* first prong. In both the benchmark district and the proposed district, neither African-Americans nor Latinos form a majority of the voting age population. Even if the voting strength of the two minority groups is combined, they would still not form a majority of the voting

different racial ethnicities—*i.e.*, for Democratic candidates regardless of their race—confirms the political motives underlying this case, and is fundamentally at odds with any logical understanding of the language of the VRA or *Gingles*. If accepted, it would essentially compel the drawing of every existing and potential Democratic district in Texas, and would make redistricting so unmanageable as to preclude any hope of the Legislature drawing its own plans in the future.

To be sure, nothing in the text of section 2 can be read to compel protection of minority-supported coalitions defined solely by a common political party affiliation. *See Bartlett*, 129 S. Ct. at 1243 (2009) ("Nothing in section 2 grants special protection to a minority group's right to form political coalitions."). The VRA "is a balm for racial minorities, not political ones-even though the two often coincide." *Baird v. Consol. City of Indianapolis*, 976 F.2d 357, 361 (7th Cir. 1992). Under section 2, a plaintiff must demonstrate that a redistricting plan results in a disadvantage, relative to non-minorities, "on account of race or color." 42 U.S.C. § 1973(a). Thus, "a violation of" section 2 is established only if "the political processes leading to nomination or election . . . are not equally open to participation." *Id*. § 1973(b). A redistricting plan that fails to account for a common partisan preference, shared by people of two, three or more ethnicities, to vote for candidates of one political party does not deprive anyone of the right to vote "on account of race or color."

Under the plain language of the *Gingles* plurality, unless "***the*** minority group" has the potential to constitute a majority in a single member district, then it is demography, not the redistricting plan, that has deprived it of the potential to elect a representative of its choice. *See Gingles*, 478 U.S. at 49-50 n.17 (emphasis added). Other, more recent decisions similarly

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population. Thus the "tri-ethnic" coalition is nothing more than an alleged influence or crossover district, both of which were rejected in *Perry* and *Bartlett.*

recognize that only in a majority-minority district can "***the*** minority group" elect a representative of "its own choice," *Growe*, 507 U.S. at 40 (emphasis added), because only then can it "dictate electoral outcomes independently." *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993). By contrast, a smaller minority group that is merely part of a winning bi- or tri-ethnic coalition merely "influences" electoral outcomes. *Gingles*, 478 U.S. at 46 n.12.

While plaintiffs cite to early Fifth Circuit panel authority holding that "nothing in the law prevents" coalition claims, they ignore both the subsequent history in that same case and later cases from the Fifth Circuit and elsewhere that have asked and answered the question whether the VRA *actually requires* the drawing of coalition districts. *Campos v. City of Baytown*, 840 F.2d 1240 (5th Cir.), *reh'g denied*, 849 F.2d 943 (1988). For example, Judge Higginbotham's dissent from the denial of rehearing *en banc* in *Campos*, which was joined by a majority of the judges voting on rehearing, observed that the panel opinion offered "a disturbing reading of a uniquely important statute" because to assume "that a group composed of both minorities is itself a protected minority is an unwarranted extension of congressional intent. A group tied by overlapping political agendas but not tied by the same statutory disability is no more than a political alliance or coalition." *Id*. at 945.[12]

The Fifth Circuit faced the issue of coalition districts again in *LULAC v. Clements*, 999 F.2d 831, 894 (5th Cir. 1993) (en banc); however, the court resolved the dispute on alternative grounds, including the same lack of factual evidence of cohesion among minorities that would doom the claim here. *See id*. at 864-65; *see also id.* at 894 & n.2 (Jones, J., concurring) (urging

[12] In *League of United Latin American Citizens v. Midland Independent School District*, 812 F.2d 1494, 1503 (5th Cir.) (en banc) (Higginbotham, J., dissenting), *vacated and rev'd on state law grounds*, 829 F.2d 546 (5th Cir. 1987), which preceded *Campos*, the panel affirmed a district court's treatment of African-American and Hispanic-American voters as a cohesive voting unit despite Judge Higginbotham's protest. *See* 812 F.2d at 1504 ("The risks include the reality that diluting the requirement of cohesion expands the mission of the Act beyond the treatment of present-day manifestations of chronic bigotry to a more general device for accommodating majority government and plural constituents—thereby revealing a distrust of the ability of our republican government to do so.").

the en banc court to "lay to rest the minority coalition theory of vote dilution claims" and endorsing Judge Higginbotham's dissents in *Campos* and *LULAC*); *Valdespino v. Alamo Heights Independent School Dist.*, 168 F.3d 848, 852-53 (5th Cir. 1999) (stressing *Gingles* 50% requirement).

Meanwhile, neither the Supreme Court nor courts across the rest of the country have stood still. In *Georgia v. Ashcroft*, a section 5 case, the Supreme Court addressed the states' ability to avoid retrogression by substituting coalition or influence districts for safe majority-minority districts while acknowledging that minorities in such districts might not elect a candidate of choice—the *sine qua non* of *Gingles* obligation to draw such districts in the first instance. 539 U.S. 461 (2003). The Court simply cited *De Grandy* and its observation that minority voters could not be guaranteed electoral success under section 2, but were obliged to "pull, haul, and trade" to achieve it. That same year the Court also summarily affirmed a three-judge panel's rejection of the claimed right of a non-numeric majority to coalesce with other voters to elect a candidate of choice in *Parker v. Ohio*, 263 F. Supp. 2d 1100, 1104 (S.D. Ohio), *aff'd*, 540 U.S. 1013 (2003).

By 2004, then, "[f]ederal courts [had] nearly unanimously interpreted the first *Gingles* precondition strictly and have rejected any claim where the minority group does not constitute a majority of the relevant population in the proposed district." *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 383 (S.D.N.Y. 2004) (three judge panel); *see also Hall v. Virginia*, 385 F.3d 421, 427-30 (4th Cir. 2004); *Nixon v. Kent County*, 76 F.3d 1381, 1387 (6th Cir. 1996); *Cousin v. Sundquist*, 145 F.3d 818, 828-29 (6th Cir. 1998); *Sanchez v. Colorado*, 97 F.3d 1303, 1311-12 (10th Cir. 1996); *Romero v. Pomona*, 883 F.2d 1418, 1424, n.7, 1425-26 (9th Cir. 1989), *overruled on other grounds*, 914 F.2d 1136, 1141 (9th Cir. 1990). The lower courts have now consistently

rejected this effort to enlist the federal judiciary to rearrange districts "to make the congressional races more competitive for [D]emocratic candidates" because the "Voting Rights Act does not guarantee that the nominee of the Democratic party will be elected, even if black voters are likely to favor that party's candidates." *Smith v. Clark*, 189 F. Supp. 2d 529, 537 (S.D. Miss. 2002); *Baird v. City of Indianapolis*, 976 F.2d 357, 361 (7th Cir. 1992); *see also Hall*, 385 F.3d at 430-32 & n. 13; *Nixon*, 76 F.3d at 1392; *Colleton County Council v. McConnell*, 201 F. Supp. 2d 618, 643-44 (D.S.C. 2002).

Thus, by the time of the last round of Texas congressional redistricting, the district court expressly rejected the coalition theory:

> [T]he contention that § 2 protects District 24 from redrawing asks us to extend § 2's protection of Blacks and Latinos from vote dilution to the protection of groups whose cementing force is membership and loyalty to a political party. *Gingles* and the cases that followed it have been keenly aware that the defining concepts of *Gingles*—numbers and cohesion—are critical to its studied effort to confine the limits of the Act to those situations that dilute minorities' opportunity to vote without protecting coalitions that may be helpful or even essential to the leveraging of their strength. Properly confined, the Act implements the fundamentals of factions. Unconfined it reaches into the political market and supports persons joined, not by race, but by common view. Serious constitutional questions loom at that juncture.

Session, 298 F. Supp. 2d at 483 (footnote omitted), *rev'd and remanded on other grounds sub nom. LULAC v. Perry*, 548 U.S. 399 (2006).

In fact, coalition districts have now been rejected in logic, if not by name, by the Supreme Court itself. In *LULAC v. Perry*, the Court addressed the so-called "influence" district, holding "that African-Americans had influence in the district . . . does not suffice to state a section 2 claim. The opportunity to elect representatives of their choice . . . requires more than the ability to influence the outcome between some candidates, none of whom is their candidate of choice. . . . If section 2 were interpreted to protect this kind of influence, it would

unnecessarily infuse race into virtually every redistricting, raising serious constitutional problems." 548 U.S. at 446; *see also id.* at 490 n.8 (Souter, J., concurring in part) ("All aspects of our established analysis for majority-minority districts in *Gingles* and its progeny may have to be rethought in analyzing ostensible coalition districts.").

Thereafter, in *Bartlett*, the Court confronted coalition districts, though it now narrowed its discussion to so-called "crossover" form of coalitions wherein an ethnic minority is said to coalesce with a portion of the white vote to elect its candidate of choice. Once again, the Court cited constitutional concerns and rejected the claim: "the statute requires a showing that minorities have less opportunity than other members of the electorate to . . . elect a candidate of choice." 129 S.Ct. at 1243. While the Court confined its holding to crossover claims, its language and reasoning are broad and clear:

> African American [voters] in District 18 have the opportunity to join other voters—***including other racial minorities***, or whites, or both—to reach a majority and elect their preferred candidate. They cannot, however, elect that candidate based on their own votes and without assistance from others. Recognizing a § 2 claim in this circumstance would grant minority voters "a right to preserve their strength for the purposes of forging an advantageous political alliance." ***Nothing in § 2 grants special protection to a minority group's right to form political coalitions***.

Id. (emphasis added, citation omitted). The Court cited *Hall*, 385 F.3d at 431 in support of this conclusion. The Fourth Circuit in *Hall* involved a claim precisely of the type advanced here—of multiple ethnic groups alleged to be cohesive in forming a majority—and rejected it flatly, noting the overwhelming majority of lower federal courts have done the same. *Hall*, 385 F.3d at 430-41 (citing Judge Higginbotham's dissent in *Campos*).

Indeed, as Judge Jones aptly observed in *Clements*, there is simply no logical stopping point to Plaintiffs' coalition theory and no judicially manageable standard to govern vote-dilution claims by minority groups that make up only a small fraction of voters, particularly in a state as

large and as diverse as Texas. This concern was echoed in *Bartlett*: "We find support for the majority-minority requirement in the need for workable standards and sound judicial and legislative administration." 129 S. Ct. at 1244; *see also Holder v. Hall*, 512 U.S. 874, 885 (1994) (plurality) (declining section 2 claim to the size of a governing authority in view of lack of an objective, workable standard).

At bottom, Plaintiffs' theory cheapens the VRA and raises still further Fourteenth Amendment concerns, because it would require courts and legislatures to become fixated on race in drawing virtually every district, a situation that raises obvious constitutional concerns. *See Georgia v. Ashcroft*, 539 U.S. 461, 490–91 (2003) ("[T]he Voting Rights Act, as properly interpreted, should encourage the transition to a society where race no longer matters: a society where integration and color-blindness are not just qualities to be proud of, but are simple facts of life."). Indeed, if the states must draw districts with minority percentages between 15% and 40% to avoid liability, then race will be the "predominant factor" in virtually every redistricting decision. *See Miller*, 515 U.S. at 916. The VRA was intended "to hasten the waning of racism in American politics," *De Grandy*, 512 U.S. at 1020, not to ensure that "race predominates in the redistricting process." *Miller*, 515 U.S. at 916.

2. The Evidence Fatally Undermines Plaintiffs' Theory of Coalition Districts.

Even if coalition districts were potentially protected, the evidence conclusively disproves cohesion within the ostensible coalitions in this case. The Supreme Court has explained that, "[a]ssuming (without deciding) that it [is] permissible . . . to combine distinct ethnic and language minority groups for purposes of assessing compliance with section 2, when dilution of the power of such an agglomerated political bloc is the basis for an alleged violation, *proof of minority political cohesion is all the more essential*" and must meet a "higher-than-usual"

standard. *Growe*, 507 U.S. at 41 (emphasis added). Plaintiffs, however, have not only failed to demonstrate a "higher than usual" level of cohesion between African-American and Latino voters in any of their proposed coalition districts, they fail to show *any* cohesion between these minority groups whatsoever. *See* Trial Tr. at 265:15-18 (testimony of Dr. Morgan Kousser stating that Latinos and African Americans are not cohesive in the Democratic primary elections); *id*. at 506:3-508:5 (testimony of Dr. Richard Engstrom stating in the statewide elections he analyzed, African-Americans were the "least likely group to support Latinos in a Democratic primary" in various counties throughout the state); *id*. at 1061:13-1063:9 (testimony of Dr. Richard Murray stating that "people tend to vote for some of their own group, particularly in a primary or a non-partisan election" and that there is no consistent cohesion between African-Americans and Latinos in primary elections); *id*. at 1184:4-7 (testimony of David Butts noting that even in Travis County where there is an alleged tri-ethnic coalition, African-Americans and Latinos are not cohesive in the Democratic primaries); *id*. at 1807:20-22 (testimony of Dr. Alford finding no cohesion between African-Americans and Latinos in the Democratic primaries). The same thing was true in 1993. *Session*, 298 F. Supp. 2d at 484 ("That there is no cohesion between Black and Latino voters in the primary contests is beyond serious dispute.").

Indeed, the testimony of legislators who represent ethnically diverse districts confirmed not cohesion, but conflict in districts drawn on the basis of race. Congressman Al Green testified, for example, that Latinos and African-Americans work well together in a single district, but only to the extent that one population segment understands that it is subordinated to the other. When the two groups reach equal population within a certain district, there is what he described as "tension":

> When a plurality exists, you work together to further the opportunities for persons who represent your views, that can come from a plurality. When equilibrium

> exists, then it could easily be the case that each party wants to have the same opportunity. So that's when you have unnecessary tension.

Trial Tr. at 1367:2-8; *see also id*. at 1365:5-14, 1367:9-1368:13. Congresswoman Eddie Bernice Johnson also confirmed that coalitions consisting of African-Americans and Latinos are problematic because "when you have a large number of people and you unfairly pile them together, then it creates tension, because everybody wants representation. They want to be able to identify some of the people that look like them, . . . to represent them." Trial Tr. at 1290:16-20.

These concerns tend to mirror the Supreme Court's observations about race-based redistricting under the auspices of section 2. It perpetuates stereotypes, may actually "exacerbate the pattern of racial bloc voting that it is said to counteract," and sends a "pernicious message to the elected officials" selected from such districts who "are more likely to believe that their primary obligation is to represent only the voters of that [ethnic] group." *Shaw I*, 509 U.S. at 648. Plaintiffs' argument for recognition of coalition districts on this record would serve only to exacerbate those concerns by creating bi- or tri-ethnic districts with an uncertain understanding of who is meant to control them.

C. Section 2 Does Not Require the State to Alter the Boundaries of Congressional District 23.

1. Congressional District 23 is Consistent with the Voting Rights Act.

Plaintiffs have produced no evidence that CD23 in Plan C185 will deny or abridge the rights of Latino voters on account of their membership in a racial or language minority. Latinos constitute a clear majority of registered voters in the district. If Latinos are in fact politically cohesive, and if they turn out at the same rate as non-Latino voters, they will control elections in the district. Thus, any failure to elect Latino candidates of choice does not result from bloc

voting but rather from lack of cohesion or low turnout. The VRA does not require the State to "cure" a lack of cohesion by putting different Latinos in District 23 (*i.e.*, urban and reliably Democratic). Nor does the VRA require the State or this Court to compensate for low Latino turnout. *See Salas v. Sw. Tex. Jr. Coll. Dist.*, 964 F.2d 1542, 1556 (5th Cir. 1992) ("Obviously, a protected class is not entitled to § 2 relief merely because it turns out in a lower percentage than whites to vote."). For rates of turnout to be significant under section 2, the plaintiff must prove that low turnout is caused by official discrimination. *See id.* There is no evidence whatsoever that the varying levels of turnout in District 23 are caused by past official discrimination.

2. The Evidence Does Not Support Attempts to Portray the Creation of District 23 as a Reenactment of 2003 Redistricting.

In an effort to create the appearance of vote dilution in Congressional District 23, Plaintiffs attempt to draw parallels between Plan C185 and the 2003 Texas congressional redistricting plan. Plaintiffs' strained analogy does not survive even passing scrutiny because Plan C185's District 23 is nothing like the district that was redrawn after *LULAC v. Perry*. In 2003, the Legislature took a district with majority-Latino CVAP and SSVR and made it a majority-Anglo district in order to protect a Republican incumbent whom everyone believed would be defeated by a Latino-supported candidate. *See LULAC v. Perry*, 548 U.S. at 423. In 2006, the federal court reconfigured District 23, in an effort to make it a performing majority-Latino district, by raising both HCVAP and SSVR above 50%. This district, which is part of the plan referred to as Plan C100, had 58.4% HCVAP and 52.6% SSVR. *See* Exhibit J-1, Plan C100, Red 106 Report, Red 109 Report. While the district clearly presented an opportunity to perform, the rural voters, Anglo and Latino alike, regularly elected Republicans, including, ultimately, the incumbent Republican Congressman Francisco Canseco. *See* Exhibit J-1, Plan C100, Red 225 Report, OAG Reconstituted Election Data.

In fact, District 23 is indistinguishable in every material respect from its predecessor in the LRB-drawn map of 2001 and in the court-drawn map of 2006. In 2011, the Legislature maintained District 23's status as a majority-Latino CVAP and SSVR district—even increasing the percentage of HCVAP and SSVR slightly. The only difference between District 23 in Plan C185 and the benchmark plan is that the Legislature attempted to protect the incumbent, Congressman Francisco Canseco, by including Republican-leaning areas. Plaintiffs have seized on the Legislature's effort as evidence of vote dilution. But the fact remains that Latinos constitute a greater majority in the district under Plan C185 than under the benchmark plan. Unlike the 2003 map, which took away Latino voters' "opportunity" to elect their candidate of choice by making them a minority, Plan C185 preserves and in fact improves Latino voters' opportunity—if they vote cohesively for a candidate—to elect that candidate regardless of how the Anglo minority votes.

The Evolution of Congressional District 23[13]			
Plan	**HCVAP**	**SSVR**	**Reconstituted Election Analysis**
1151C (court-drawn upon failure of 77th Legislature to enact a plan)	57.5%	55.3%	N/A
1374C (struck down in *LULAC v. Perry*)	**46%**	**44%**	N/A
C100 (court-drawn on remand from *LULAC v. Perry*)	58.4%	52.6%	3 of 10
C185 (enacted by the 82nd Legislature)	58.5%	54.8%	1 of 10

[13] *See* Exhibit J-1, Plan C100, Red 106 Report, Red 202 Report; Exhibit J-8, Plan C185, Red 106 Report, Red 202 Report; *Session v. Perry*, 298 F. Supp. 2d 451, 496 (E.D. Tex. 2004), *rev'd sub nom. LULAC v. Perry*, 548 U.S. 399 (2006).

The Latino Task Force attempts to establish improper intent by mischaracterizing the testimony of House Redistricting Committee Counsel, Ryan Downton. Mr. Downton testified that in drawing District 23, he tried to find Latino-majority precincts that voted for McCain. The Latino Task Force suggests that the higher McCain numbers *could have* resulted from lower Latino turnout. Mr. Downton said that was a possible explanation, but he did not have turnout data when he was drawing the map. *See* Trial Tr. at 1005:23–24. Accordingly, Mr. Downton's testimony does not support the inference that the Latino Task Force Plaintiffs ask this Court to draw. Mr. Downton could not deny the possibility that turnout contributed to precinct results—he had no information on turnout—but there is no evidence whatsoever that Mr. Downton (or anyone else) chose to include precincts in District 23 *because* of lower Latino turnout. And, more to the point, if Plaintiffs' own contentions about Latino vote cohesion in the district are to be credited, it should be impossible to create a district that would deny the "opportunity" to perform by increasing the Latino population, recalling that minority voters are not immune from the obligation to "pull, haul and trade" to achieve electoral success. *See De Grandy*, 512 U.S. at 1020.

3. Changing the Composition of District 23 to Alter the Outcome of The Most Recent Election is Unwarranted and Unlawful.

The only problem with CD 23 Plaintiffs have identified is that the voters refuse to behave as expected by consistently electing Democrats. The fact is that CD 23 was a competitive but rural Latino-majority district under the benchmark plan, and it is a competitive Latino-majority district under Plan C185. This is not a legal defect under section 2. There is no evidence of any device, practice, or procedure in CD 23 that will deprive the Latino voting majority of an equal opportunity to elect its candidate of choice, particularly if they "pull, haul, and trade" to achieve the desired electoral result.

Plaintiffs essentially argue that section 2 requires the Court to reconfigure CD23, on the basis of race, in order to submerge the votes of rural Latino and Anglo voters in the district to ensure that Democrat candidates are elected. Judicial scrutiny of voting behavior, undertaken for the purpose of correcting the results through redistricting, is not consistent with a republican form of government or the freedom to vote whenever and however one chooses. Redistricting for the purpose of avoiding dilution based on a review of voting patterns is already problematic, even where it is arguably done to combat racism. *See* U.S. CONST. amend. IX. Extending the practice to protect political parties and to undo the results of an election in a district already drawn by courts would stretch section 2 beyond all constitutional limits.

The racial gerrymander proposed Plaintiffs propose in order to reverse Congressman Canseco's election is itself constitutionally suspect. The Latino Task Force proposes an alternative plan, Plan C190, which would alter CD 23 to increase HVAP to 80.5%, HCVAP to 75.4%, and SSVR to 71.7%. It does so by binding rural voters to urban populations in San Antonio, Laredo, and then all the way to downtown El Paso. *See* Exhibit J-12, Plan C190, Red 109 Report, Red 202 Report. The Latino Task Force's proposal for CD 23 is untenable because it subordinates all competing redistricting principles to race. Indeed, under this proposed revision, the Task Force's own reconstituted election analysis shows that the district would have elected a preferred candidate in 13 of 13 races—ensuring the electoral guarantee that the Supreme Court has eschewed. *See De Grandy*, 512 U.S. at 1014 n.11. Packing District 23 with Latino voters from far-flung regions of the State creates the very same problems that led the Supreme Court to strike down Texas Congressional District 25 in *LULAC v. Perry*. Worse still, Plan C190 creates problems in adjacent districts, specifically CD 28 and CD 16. The Task Force's own expert, Dr. Engstrom, shows that Plan C190 may weaken Democratic candidates in

CD28. *See* Engstrom Expert Report (Doc. 335.1a). Furthermore, by moving Webb County (Laredo) to District 23, the plan deprives District 28 of its anchor county and moves the incumbent in CD 28, Representative Henry Cuellar, into a completely new district. The principal legal defect of Plan C190's CD 23, however, is that it alters the boundaries of the district for an exclusively race-based purpose—to dramatically increase the percentage of HCVAP and SSVR beyond benchmark levels in order to create a Latino supermajority district. If drawn by the State, such a district would be an open invitation to a constitutional challenge as a racial gerrymander.

D. Plaintiffs Have Not Proven a Section 2 Violation in Congressional District 27.

Congressional District 27 was drawn to serve legitimate redistricting principles. The reconfiguration of CD 27 does not deprive any voter of an equal opportunity to participate in the political process; and the creation of new District 34 maintains the core of an existing Latino opportunity district in South Texas.

Plaintiffs object to the reconfiguration of CD 27 on the ground that it deprives Latino voters in Nueces County of the opportunity to elect their candidates of choice. This is an odd argument in view of the fact that Nueces County elected three Republicans to fill all three of the county's seats in the Texas of House of Representatives in 2010. Indeed, as formerly configured, CD 27 elected a Republican, Congressman Blake Farenthold, and regularly favored Republicans in reconstituted election analyses. Exhibit D-2, Plan C100, CD 27, Racially Polarized Voting Analysis at 629-40. At a minimum, the election history shows that both Nueces County and former CD 27 have been competitive. Dr. Alford testified at trial that CD 27, under Plan C100, had "trended Republican," Trial Tr. at 1836:20–21, and was "trending in the direction that would make [it] less likely to perform [for Democrats]." *Id.* at 1837:2–3. The tendency of Nueces

County to elect Republicans challenges Plaintiffs' apparent assumption that the anticipated electoral outcomes in CD 27 under Plan C185 will cause any actual injury to Latino voters in Nueces County. There is simply no evidence in the record to suggest that the totality of the circumstances demands a race-based remedy.

In all events, Dr. Alford testified that CD 34, under Plan C185, was likely to be "more secure" than the former CD 27 in terms of electing Latino candidates of choice. Trial Tr. at 1921:8–9. The elections data in the record confirm that opinion. *See* Exhibit D-2, Plan C185, CD 34, Racially Polarized Voting Analysis, at 797-808. Thus, the net result of the reconfiguration of CD 27 and the creation of District 34 is to preserve the core of former CD 27 *and* make it more likely to perform for Latino voters (assuming cohesive voting).

Moreover, CD 27 and CD 34 were both drawn, at least in part, in direct response to requests from representatives from Nueces and Cameron County, respectively. Mr. Downton testified that the Legislature had two goals with respect to Districts 27 and 34: (1) create a congressional district anchored in Cameron County; and (2) create a district in which Representative Farenthold could be re-elected. Trial Tr. at 1022:10–4; *see also* Exhibit J-58, Deposition of Doug Davis at 90:10–21 (stating that Legislature's goals were to create a Nueces County-based district for Congressman Farenthold and to "have the Valley be able to elect another Congressman"). Mr. Downton testified that Senator Lucio (D-Brownsville), Representative Lucio (D-Brownsville), and Representative Oliveira (D-Brownsville)—Democratic legislators from Cameron County—requested a congressional district anchored in Cameron County. Trial Tr. at 1022:17–18. The redistricting advisor to the Speaker of the Texas House of Representatives, Gerardo Interiano, testified that Nueces County was put into a new district based upon public testimony at a Redistricting Committee Hearing, where Nueces

County officials requested that their county anchor districts separate from the counties to the south. Trial Tr. at 1461:25–1462:7; *see also* Exhibit J-61, Deposition of Gerardo Interiano I, at 113:20–22.

E. Section 2 Provides a Remedy for Vote Dilution Only Where Voting is Polarized Because of Race and Not Because of Partisan Preference.

To prove racially polarized voting under *Gingles*' second and third preconditions, the Plaintiffs must produce more than statistics showing that different racial and ethnic groups tend to support different candidates. In *LULAC v. Clements*, the *en banc* Fifth Circuit held unequivocally:

> Unless the tendency among minorities and whites to support different candidates, and the accompanying losses by minority groups at the polls, are somehow tied to race, . . . plaintiffs' attempt to establish legally significant white bloc voting, and thus their vote dilution claim under § 2, must fail.

999 F.2d 831, 850 (5th Cir. 1993) (en banc). Thus, Plaintiffs must prove that voting patterns are actually caused by race and not by other factors such as party preference and that the difference amounts to polarization that justifies the extreme racially driven remedy they seek. Instead, just as in *Clements*, these plaintiffs "have not even attempted to establish proof of racial bloc voting by demonstrating that 'race,' not, as defendants contend, partisan affiliation, 'is the predominant determinant of political preference.' They have instead maintained, in the very teeth of the Senate Report, that such a showing is unnecessary." *Id.* at 855.

While several plaintiffs attempted to dismiss this holding during closing arguments, the Fifth Circuit is hardly alone in refusing to fashion a section 2 claim out of disparate partisan affiliation rates. *Uno v. City of Holyoke*, 72 F.3d 973 (1st Cir. 1995); *Nipper v. Smith*, 39 F.3d 1394 (11th Cir. 1994) (en banc); *Mallory v. Ohio*, 38 F. Supp. 2d 525 (S.D. Ohio 1997); *Reed v. Town of Babylon*, 914 F. Supp. 843 (E.D.N.Y. 1996). In fact, the Supreme Court in *Gingles* and

numerous cases before and after viewed record evidence of polarization in terms of voters' willingness to cast votes for candidates of the same or a different race, not a willingness to vote for a political party. *See Gingles*, 478 U.S. at 60; *Beer*, 425 U.S. at 136; *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *see also Abrams v. Johnson*, 521 U.S. 74, 91–94 (1997) (evaluating racially polarized voting under the second *Gingles* factor by considering the rate at which white voters supported African-American candidates). And while the Supreme Court found relevant polarization in *LULAC v. Perry*, 548 U.S. 399 (2006), as Judge Smith has noted, the Court did not find or even suggest that racial polarization was present in Texas. Rather, the Court found that, on the record before it, legally relevant polarization had been shown in former congressional District 23. No party raised the issue of cause of that polarization, even with respect to that one district.

Clements is not just consistent with *Gingles*, it adheres to the text of section 2, which is intended to prevent "denial or abridgement of the right of any citizen of the United States to vote *on account of race or color*" and to ensure that the political process is "equally open to participation" by all citizens. 42 U.S.C. § 1973(a), (b) (emphasis added).

The purpose of racially polarized voting analysis under *Gingles* is not merely to determine whether different groups tend to prefer different candidates. Rather, the purpose is to identify racial discrimination in the electorate that combines with electoral procedures to dilute the vote of minority citizens. The point, in other words, is to determine whether minority voters are being shut out of the political system "on account of" their race or ethnicity. *See, e.g.*, *Bolden*, 446 U.S. at 104 (Marshall, J., dissenting) (describing the effect of vote dilution on minorities who can only "cast meaningless ballots"). To maintain fidelity to the statutory text and the Constitution, the racially polarized voting analysis under *Gingles* must be directed at

race-based injury, not mere preference for different candidates.[14] Indeed in *Gingles* itself, *a majority* of Justices rejected Justice Brennan's view that the race of the candidate is *irrelevant* to the racially polarized voting analysis. *See Gingles*, 478 U.S at 83 (White, J., concurring) (explaining that a rule finding racially polarized voting analysis based on a preference for different candidates, regardless of the reason, amounts to "interest-group politics rather than a rule hedging against racial discrimination.").

The *sine qua non* of legally significant racially polarized voting is race-based injury, which requires proof that voting patterns are caused by racial considerations. Without a specific inquiry into the reasons underlying voting patterns, "the courts lack the tools to discern results that are in any sense 'discriminatory,' and any distinction between deprivation and mere losses at the polls becomes untenable." *LULAC v. Clements*, 999 F.2d at 850.

1. The Evidence Leaves No Doubt that Voting Patterns Are Explained By Partisan Preference, Not Racial Animosity In the Electorate.

Plaintiffs' own experts proved, that to the extent racially polarized voting patterns exist in Texas, they are explained entirely by partisan affiliation. The experts uniformly found that Latino and African-American voters generally preferred Democratic candidates "regardless of the candidate's race." Plaintiffs' expert Dr. Allan Lichtman, for example, stated that he did not consider primary elections important because "Latino and African-American voters overwhelmingly favored Democratic candidates in the general election regardless of race." Lichtman Rep. at 1; *cf.* Trial Tr. 1225 (noting that Latino voters preferred Anglo Democrats to Latino Republicans). Dr. Lichtman testified that "it doesn't seem to matter to Latinos and

[14] The limited probative value of racially polarized voting without regard to cause is illustrated by the testimony of Plaintiffs' expert Dr. Morgan Kousser, who defined racially polarized voting as any divergence in voting patterns between different groups, however slight. Dr. Kousser testified, for instance, that racially polarized voting would exist if a candidate attracted the votes of 51% of one group but only 49% of another. *See* Trial Tr. at 211:19–212:11; 261:7–262:13 (Testimony of J. Morgan Kousser).

African-Americans who comes out in the primary on the Democratic side. The race doesn't matter. Nothing else seems to matter. Whoever they are, they get the Latino and African-American votes . . . ." Trial Tr. 1260. Similarly, Plaintiffs' Expert Dr. J. Morgan Kousser found, in his report, that "Latino voters in Texas overwhelmingly favor Democratic nominees, even when Republican nominees have Spanish surnames." Kousser Rep. at 1. A careful analysis of all of the expert reports and underlying data reveals that partisan preference remains essentially unaffected by reversing the race of the candidates and the voters. Thus, in Professor Engstrom's analysis of selected counties, white voters appeared to support the alternative to a Latino-surname Democrat at essentially the same rate across contests—and to maintain that rate in the one race he studied where the Republican was herself Latino. Conversely, Latino voters supported the anglo Democrat in that same race at essentially the same rate they supported Democratic candidates with Latino surnames.

The State's expert, Dr. John Alford, concluded from his own analysis and the reports of the Plaintiffs' experts that election data reveals "not just evidence that partisanship is important, but evidence that where there's a choice between partisanship and race or ethnicity, there simply isn't any discernible impact left for ethnicity in general election voting." Trial Tr. 1790:22–25. With regard to the relative importance of race and political affiliation, Dr. Alford testified that "in Texas elections today the—if you get two signals about a person, one signal—a clear and unambiguous signal about partisanship, which you get on a Texas ballot, then also know something about the race or ethnicity of the candidate, your preference for partisanship is so strong that it overrides any preference you might have otherwise." Trial Tr. at 1797:18–23.

Anglo voters support the Republican candidate at essentially the same rate (70–80%) in general elections regardless of whether the candidate is African-American,[15] Anglo,[16] or Latino.[17] Conversely, the experts agree that Latinos support the Democratic candidate in general elections at the same rate regardless of whether the candidate is Anglo (even where the Republican opponent is Latino),[18] African-American,[19] or Latino.[20] The same consistency is shown for African-American voters. In other words, however one looks at the data, one thing is clear: Texas voters do not base their electoral decisions upon a candidate's race; voters base their decisions on a candidate's political party. *See* Exhibit D-55, Supplemental Report of John Alford, at 4. And, this inclination toward party preference is illustrated in a variety of ways, including rates of participation in primaries, as studied by Professor Lichtman, rates of straight party voting as studied by Plaintiff's expert Dr. Murray, and the near constant margins of victory of those running for the same office. *E.g.*, Exhibit D-35, D-38. There is simply no evidence to support the conclusion that voting patterns stem from racial bias or preferences among the voters.

2. The Evidence Is Also Not Sufficient to Prove that Legally Significant Racially Polarized Voting Exists in Texas.

Plaintiffs also grossly misperceive the level of polarization necessary to reconfigure districts on the basis of race. Their experts largely agree that African Americans and Latinos are not cohesive and actually vote against each other in the Democratic primary. Yet, they assert that the tendency among Latinos to support the Democrats, regardless of race, falls between

[15] *See* Exhibit D-36.
[16] *See* Exhibit D-55, Alford Supplemental Report; Exhibit E-2, Kousser Report at Table 6.
[17] *See* Exhibit E-2, Kousser Report at Table 10; Exhibit E-7, Engstrom Report at 31; Exhibit E-4, Murray Report at 11.
[18] *See* Exhibit E-2, Kousser Report at Table 6.
[19] *See* Exhibit E-4, Murray Report at 11.
[20] *See* Exhibit E-2, Kousser Report at Table 6.

60%[21] or 75% in the general election. Despite the fraction of the Latino electorate stipulated by Plaintiffs, they nevertheless argue that those proportions compel a race-based remedy. Further, Plaintiffs fail to account for the fact that somewhere between 25% and 30% of Anglos vote in a similar manner. Together, these preferences simply do not support the conclusion that there is legally relevant racial polarization even if voting were based on race of the candidate.

In *Miller*, for example, the Court deemed as evidence against the existence of racial bloc voting a lower court finding that "[t]he average percentage of whites voting for black candidates [across Georgia] ranged from 22% to 38%; and the average percentage of blacks voting for white candidates ranged from 20%–23%." *Johnson v. Miller*, 864 F. Supp. 1354, 1390 (S.D. Ga. 1994), *aff'd sub nom. Abrams v. Johnson*, 521 U.S. 74 (1997). The polarization cited in *LULAC v. Perry* to justify the *only* instance where the Court relied upon section 2 to overturn a single-member district was, as the Court described it, "severe: 92% of Latinos voted against [the Republican incumbent] . . . while 88% of non-Latinos voted for him." 548 U.S. at 427.

V. Plaintiffs Have Failed To Prove Vote Dilution Under Section 2 With Respect the Texas House of Representatives.

Plaintiffs section 2 claim as applied to the House fails at the outset for the same reasons as their claims directed to Congress—a lack of proof of legally relevant or sufficient bloc voting. *See infra.* But, as applied to the House, Plaintiffs are also forced to contend that the State violated section 2 by refusing to subordinate traditional redistricting principles—including the Texas Constitution's county-line rule, and its directive to employ the U.S. census and arithmetic to apportion districts—to the goal of maximizing race-based districts. Plaintiffs have it backward. The Legislature's adherence to the Texas Constitution was not only a rational exercise of race-neutral policy; it was essential to avoid a violation of the Equal Protection

[21] Tr. Trans. at 1782 (Pls' Experts Ansolabehere & Murray).

Clause. Plaintiffs' effort to set up a conflict between the VRA and the Texas Constitution, suggesting that the statute compels subordination of traditional redistricting principles to race, would simply redirect the strict scrutiny analysis to section 2 itself—scrutiny it could not hope to survive on this record.

A. The VRA Does Not Compel States to Subordinate Neutral Constitutional Redistricting Principles to the Goal of Maximizing Race-Based Districts.

Under Article III, § 26 of the Texas Constitution, electoral districts for the Texas House of Representatives must contain whole counties whenever possible. The Texas Supreme Court has interpreted this provision to require that "apportionment be by county" and that "the district lines shall follow county boundaries." *Smith v. Craddick*, 471 S.W.2d 375, 378 (Tex. 1971). Where a county's population is too great to form a single district but not great enough to form multiple districts wholly within the county, the "surplus" must be assigned to a single contiguous district. TEX. CONST. art. III, § 26 ("[F]or any surplus of population it may be joined in a Representative District with any other contiguous county or counties."). Thus the county-line rule permits counties to be divided between two districts, but only when necessary to comply with the Equal Protection Clause's one-person, one-vote mandate. *See Smith*, 471 S.W.3d at 378; *cf. Clements v. Valles*, 620 S.W.2d 112, 114 (Tex. 1981) ("[The] state constitution requires that a county constitute a separate district if the population of the county is slightly under or over the ideal population but within constitutional limits of variation.").

The Texas county-line rule plainly qualifies as a traditional districting principle. *E.g.*, *Perry*, 548 U.S. at 463 n.5 (2006) (observing that "traditional redistricting criteria" include "compactness" and "preserving county lines"); *Bush*, 517 U.S. at 963 (observing that "[t]raditional districting criteria" include "maintain[ing] the integrity of county lines"). The Supreme Court has established beyond question that traditional redistricting principles cannot be

subordinated to race without running afoul of the Fourteenth Amendment. *E.g.*, *Hunt v. Cromartie*, 526 U.S. 541, 547 (1999) (explaining that "an impermissible racial motive" exists if "the legislature subordinated traditional race-neutral districting principles . . . to racial considerations") (quoting *Miller*, 515 U.S. at 916); *Bush*, 517 U.S. at 978 ("The constitutional problem arises only from the subordination of [traditional districting] principles to race.").

Plaintiffs contend, nevertheless, that when adherence to traditional, race-neutral redistricting principles interferes with the creation of a potential race-based district, the legislature must disregard the traditional redistricting principle. This argument is problematic, to say the least, because it elevates racial considerations above traditional, race-neutral principles. In other words, Plaintiffs urge a rule that requires states to consider race *first*, without regard to the existence of discrimination or vote dilution. The duty Plaintiffs ask the Court to impose would effectively require the State to violate the Fourteenth Amendment. A reading of section 2 to compel that result would simply subject it, rather than the State's plan, to that same strict scrutiny and is unsurprisingly one the Supreme Court has never endorsed.[22] *See Miller*, 515 U.S. at 927.

B. As Applied in the House Redistricting Plan, the Texas County-Line Rule Does Not Conflict with the VRA Because It Did Not Prevent the Creation of Any District Required by Section 2.

To prove a violation of section 2 under *Gingles*, Plaintiffs must show that the Legislature could have created "more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *De Grandy*, 512 U.S. at 1008. The Plaintiffs' proposed House plans showed, however, that Plaintiffs could not create

[22] Oddly, Plaintiffs perceive (Tr. at 1983) an "inference" in *Bartlett* that the Court would have subordinated North Carolina's County line rule to the objective of drawing an additional majority-minority district despite the Court's "reject[ing] that claim" by reading section 2 narrowly so as to "avoid serious constitutional concerns," and as it observed "[o]ur holding also should not be interpreted to entrench majority-minority districts by statutory command, for that too could pose constitutional concerns." 129 S. Ct. at 1247-48.

additional Latino opportunity districts without repeated violations of the county-line rule.[23] *See* Trial Tr. at 1433 (discussing three county-line cuts in H201); *id.* at 1435:11-25; 1436:1-12 (discussing seven county-line cuts in H202); *id.* at 1436:15-25 (discussing 25-35 cuts in H205). The Texas Legislature is free to apply its traditional redistricting principles unless the resulting electoral districts violate federal law. *E.g.*, *Voinovich*, 507 U.S. at 156 ("[T]he federal courts are bound to respect the States' apportionment choices unless those choices contravene federal requirements."). Thus to overcome the Texas county-line rule and show that the Legislature could have drawn more Latino-majority districts, Plaintiffs would have to prove, at a minimum, that the Legislature's adherence to that rule violated federal law. Because the Plaintiffs failed to prove vote dilution in any of the targeted regions of the House redistricting plan, they cannot overcome the county-line rule, and they cannot establish even the first *Gingles* precondition. Moreover, the "circumstances" that obtain in their "totality" as to each of the challenged counties could hardly support the conclusion that Latino voters there have been denied at least an "equal opportunity" to elect a candidate of choice. In fact, just the opposite is true: a searching examination of the facts reveals awkward questions about the application of section 2 in a state with no literal majority population and cannot support the race-based revisions Plaintiffs urge.

1. El Paso County

El Paso County's citizen voting age population is 75% Latino. Defs' Ex. 51. It contains five House seats, four of which are currently held by Democrats. Plaintiffs claim that the Legislature's failure to create a fifth (i.e., five of five) Latino opportunity district in El Paso County violates section 2. HD 78, which is currently held by a Republican and has been, with the exception of one election, for at least the past fifteen years. *See* Trial Tr. at 406:3–407:1

[23] The only demonstration plan that minimizes violations of the county-line rule, Plan H232, contains only 28 Latino-majority districts, two less than the enacted plan, H283. *See* Trial Tr at 1437:7-15; 1439:7-25; 1440:1-6.

(Testimony of Ed Martin). The entire County plan was drawn by the County's own delegation—4/5ths of which are Democrats. Under that plan, Latinos make up a majority (55.2%) of the citizen voting age population in HD 78 and 47.1% of its registered voters (Exhibit J-29, Red106, Red202).[24] Nonetheless, Plaintiffs contend that section 2 required the Legislature to increase the SSVR percentage in HD78 in order to ensure that the district would also elect a Democrat.

Plaintiffs have not proven vote dilution in HD78 because there is no evidence that the configuration of HD78 deprives any Latino voter in El Paso County of an "equal opportunity" to participate in the political process or to elect candidates of their choice. Even if Plaintiffs could satisfy all three *Gingles* preconditions (which they cannot), they have failed to prove that the totality of the circumstances requires the State to restructure HD78 to unseat the incumbent.

Latinos are more than proportionally represented in El Paso County's House delegation. The only possible basis for Plaintiffs' claim is the Legislature's failure to maximize Latino representation. Section 2 "is not concerned with maximizing minority voting strength." *See, e.g.*, *Bartlett*, 129 S. Ct. at 1248. The Legislature's decision to maintain existing Latino population levels in the district, presumably offering some protection to the incumbent, does not support a finding of vote dilution. *See Shaw II*, 517 U.S. 913 ("We have recognized that a State's policy of adhering to other districting principles instead of creating as many majority-minority districts as possible does not support an inference that the plan so discriminates on the basis of race or color so as to violate the Constitution.").

2. Nueces County

Plaintiffs have not proven that the Legislature's failure to create an additional Latino opportunity district in Nueces County violates section 2. Because Nueces County lost

[24] Under the benchmark plan, H100, Latinos made up 56.2% of the citizen voting age population in HD78 and 47.5% of registered voters (Exhibit J-21, Red106, Red202).

population, the Legislature needed to reduce the number of House districts in the county from three to two. Dividing Nueces County's total population, 340,223, by the ideal district population size, 167,637, yields 2.02 districts. *See* Trial Tr. at 1429:17–21. According to the only population data available at the time the Texas House map was drawn,[25] Nueces County's total SSVR percentage was 49.5%. *See* Trial Tr. at 1449:19-23. Creating two SSVR-majority districts within Nueces County was therefore impossible. *Id.*; Trial Tr. at 1452:10-14, 1498:14–18. The three existing districts had all elected Republican house members, and the State's new plan resolves the issue by pairing two of those Republicans and creating a district that is very likely to elect a Latino candidate of choice.

Plaintiffs offered Plan H201 to prove that the Legislature could have created an additional Latino opportunity district in Nueces County. To create a third Latino district, however, Plaintiffs had to split Nueces County three ways, *see* Trial Tr. at 1987:12-16, removing 6% of Nueces County's population (roughly 75% of which is Anglo) into a district with six smaller counties and forcing violations of the county-line rule all the way down to Galveston County. Plaintiffs offered no justification for these violations of the county-line rule other than the creation of an additional Latino-controlled district in Nueces County, nor did they offer any evidence that the totality of circumstances in Nueces County could justify the creation of a remedial race-based district. Plaintiffs thus failed to prove that Plan H283 violates section 2 in Nueces County, much less that Plan H201's subordination of traditional redistricting principles to race could survive strict scrutiny under the Fourteenth Amendment.

[25] *See* Trial Transcript at 925:10–13 (Testimony of Ryan Downton) (explaining that only SSVR data, rather than HCVAP data, was available at the time that the state House districts were being drawn).

3. Hidalgo County and Cameron County

Cameron County's citizen voting age population in approximately 78%; Hildago's is 83%. The Legislature protected the incumbency of all members from both counties, Republican and Democrat alike. Plaintiffs complain, however, that the Legislature protected the incumbency of Representative Pena in HD 41 by drawing a district with 72.1% HCVAP population. The two counties send a combined 8 representatives to the House. Seven are currently Democrats. The eighth sits in a district with better than 72% of its eligible voters Latino. No Latino voter is denied an equal opportunity to vote in either of these counties.

Plaintiffs also complain that the State violated section 2 by failing to combine surplus population from Cameron County and Hidalgo County to create an additional Latino-majority district. The undisputed evidence at trial showed, however, that creating a new district in Hidalgo and Cameron would have required the Legislature to violate the county-line rule in other parts of the State. *See* Trial Tr. at 1429:5–8 (Testimony of Gerardo Interiano) ("Inevitably when you take the population of Cameron and Hidalgo out of the rest of the districts going north you're forced to have a county cut almost always around Nueces County."). Plaintiffs offered no justification for the proposed Hidalgo-Cameron district other than the creation of an additional Latino-majority district. They presented no evidence that racially polarized voting in Hidalgo and Cameron counties prevented Latino voters from electing their candidates of choice, nor did they offer any evidence that the totality of circumstances required the State to create a remedial race-based district. Because the proposed Hidalgo-Cameron district is based exclusively on race and subordinates traditional redistricting principles, it is neither required by section 2 nor consistent with the Fourteenth Amendment.

C. The Legislature's Apportionment of 24 House Seats to Harris County Did Not Prevent the Creation of an Additional Minority-Majority District.

Plaintiffs' claim that the Legislature should have drawn 25 districts in Harris County finds no support in the Texas Constitution. Plaintiffs have failed to direct this Court to any legal authority that would compel the Legislature to apportion 25 districts to Harris County based on its population. Article III, section 26 of the Texas Constitution provides that "members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, ***as nearly as may be***, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census." TEX. CONST. art. III, § 26 (emphasis added). The population of Harris County, divided by the ideal district size, entitled it to 24.41 districts. The Legislature thus apportioned it 24 districts. 24.41 is closer to 24 than 25. Exhibit D-13, at S-124-S-127.

Even if the Texas Constitution required the Legislature to draw 25 Harris County districts, Plaintiffs have not demonstrated that the addition of another district in Harris County would have resulted in an additional minority opportunity district. Plan H283, the plan enacted by the Texas Legislature, creates 9 minority opportunity districts. None of the proposed demonstration plans that have 25 districts in Harris County create more than 9 minority opportunity districts. In fact, several of the proposed plans, such as Plans H115, H205, and H214 create fewer minority opportunity districts. Only one proposed demonstration plan, Plan H292 creates 9 minority opportunity districts—the same number as in the enacted plan—with 25 districts in Harris County. *See* Appendix, Table 4.

Furthermore, Plaintiffs contend that the Legislature's decision to pair two incumbent Democrats resulted in the loss of a minority opportunity seat. Because the Legislature apportioned Harris County 24 seats instead of 25 seats, the elimination of a district necessitated

the pairing of two Democratic incumbents—Representatives Scott Hochberg (District 137) and Hubert Vo (District 149)—in Harris County. *See* Exhibit D-13, at S-124-S-125. Under the benchmark plan, District 137 contained 25.8% HCVAP, 13.7% Anglo VAP, 14.6% BVAP, and 13% Other VAP. *See* Exhibit J-1, Plan C100, Red 106 Report, Red 202 Report. Under the benchmark plan, District 149 contained 19.0% HCVAP, 26.6% Anglo VAP, 16.2% BVAP and 6.2% Other VAP. *See id*. Neither of these districts were minority opportunity districts by any measure. Thus, Plaintiffs have failed to show how the elimination of a coalition district in Harris County resulted in a violation of section 2.

D. Plaintiffs Have Not Proven That The State's Failure To Account For An Alleged Undercount In The Census Resulted In A Violation of Section 2.

MALC and LULAC claim that the 2010 Census undercounted Latinos in the border region of Texas and that the State violated section 2 by using census population data – in accordance with the plain language of Article III § 26 -- without accommodating for the alleged undercount. But federal courts have consistently recognized that the census data is presumptively correct. *Fairley v. Hattiesburg*, 584 F.3d 660, 674 (5th Cir. 2009) (noting that "[t]he Census is presumptively correct and typically must be rebutted with clear and convincing evidence"). Plaintiffs offer no evidence to rebut that presumption and propose no viable alternative to the census numbers.

MALC's expert, Jorge Chapa, asserted without any concrete evidentiary support that minorities were undercounted in the 2010 Census in colonias in Hidalgo and Cameron Counties. Trial Tr. at 194:24-195:3. Nevertheless, other than expressing an unsupported opinion that an undercount existed, Chapa offered nothing more than his own speculation. *See* Joint Exhibit E-1, Chapa Expert Report, at 15. Similarly, LULAC's expert George Korbel testified that minorities were undercounted in the census, but he conceded that "nobody can agree on how

much of an undercount and there is also an overcount." Trial Tr. at 649:13-24. Korbel stated that one of the ways the State could have created additional minority districts was to under-populate these districts and overpopulate the Anglo districts within the ten-percent deviation. Trial Tr. at 650:10-651:16, 720:2-20. But neither MALC nor LULAC offered any evidence to show how many people were not counted, where these individuals allegedly live, or how intentionally under-populating any specific districts on the basis of race would result in more Latino opportunity districts. Instead, the testimony of the State's demography expert, Dr. Norfleet Rives, confirmed that there are not any methods for making adjustments to Latino population counts that would be more accurate than the census data. Trial Tr. at 1667:10-1668-7.[26] Given the presumption of accuracy that attaches to the Census, Plaintiffs speculative, unsupported undercount allegations must be rejected.

E. The Legislature Could Not Have Created Additional African-American Opportunity Districts for the Texas House of Representatives.

Plaintiffs have not identified any additional African-American opportunity districts that could have been drawn in the House plan. All of the demonstration plans submitted to the Legislature or in this lawsuit create an equal or lesser number of African-American districts as Plan H283. *See* Appendix, Table 5.

VI. Plaintiffs Cannot Prove Vote Dilution Under the Totality of the Circumstances.

Even if Plaintiffs could establish the three *Gingles* threshold factors as to Congress or the Texas House, they cannot prove that under the totality of circumstances, Latino and African-American voters "have less opportunity than other members of the electorate to participate in the

[26] MALC's evidence that an undercount exists rests on testimony from its designated representatives that the Census Bureau "advertised they were going to do a mail out/mail in system" and then individuals did not receive anything by mail. Exhibit D-68, Deposition of Veronica Gonzales and Trey Martinez-Fischer at 37:13-38:6; *see also id*. at 38:10-39:3 (noting that an undercount existed because Representative Gonzales heard from a county judge that "he never got anything").

political process and elect representatives of their choice." 42 U.S.C. § 1973(b). The "totality of the circumstances" directs the Court to consider the following factors listed in the Senate Report on the 1982 amendments to the VRA:

> the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group . . . ; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. The Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous may have probative value.

Gingles, 478 U.S. at 44-45 (citing S. Rep. No. 97-417 at 28–29, 1982 U.S.C.C.A.N. 177, 206). Another relevant consideration is whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population. *De Grandy*, 512 U.S. at 1000. The Supreme Court has stated that "the most important Senate Report factors bearing on § 2 challenges . . . are the 'extent to which minority group members have been elected to public office in the jurisdiction' and the 'extent to which voting in the elections of the state or political subdivision is racially polarized.'" *Gingles*, 478 U.S. at 48 n.15 (citing S. Rep. No. 97-417 at 28–29, 1982 U.S.C.C.A.N. 206).

Plaintiffs have not proven that Latino and African-American voters lack equal access to the political process. Even if proportionality were required—which it is not in this case—Plaintiffs have failed to demonstrate that Plan C185 is not proportional. Proportionality is examined on a statewide basis. *Perry*, 548 U.S. at 437. Of 36 congressional districts, Plan C185 creates 8 reasonably compact Latino opportunity districts with at least 50% Latino citizen voting

age population—roughly 22% of the total. Appendix, Table 1. Latinos make up 24.7% of Texas' citizen voting age population. *See* Exhibit D-2; Defendants' Answer to Latino Task Force Second Amended Complaint ¶ 24. Plan C185 creates 3 African-American opportunity districts with at least 37% black voting age population—roughly 8.3%. Appendix, Table 2. African-Americans make up 11.4% of the population in Texas. *See* Defendants' Answer to NAACP's Amended Complaint ¶ 16. Plan H283 creates 30 reasonably compact Latino opportunity districts—roughly 20% of House districts. *See* Exhibit J-29, Plan H283, Red 106 Report. Plan H283 creates 12 African-American districts (all of which have at least a 40% black voting age population)—roughly 8% of the total. *See* Appendix, Table 5. Thus both plans provide roughly proportional representation. *See De Grandy*, 512 U.S. at 1017 n.14, 1023 (finding that there is no "magic parameter" and "rough proportionality" must allow for some deviations).

Moreover, the evidence confirmed that minority group members are elected to office in statewide as well as local and county contests. *See* Exhibit D-28 (showing, for example, that the majority of county-wide elected officials in El Paso County are Latino); D-65 (showing that both the Texas House and Senate have become more diverse racially and ethnically; percentage of Latinos in the Texas House is at 20.7% and percentage of African-Americans rose to 12%; membership in the Texas Senate is 22.6% for Latinos and 6.5% for African-Americans). Indeed, Texas now sends 8 Latinos and 3 African-Americans to represent it in the United States House of Representatives. In the most recent 2010 statewide election, Texas elected 17 African-Americans (two of whom were Republicans) and 31 Latinos to the state House, adding 6 Latino Republicans where there had been zero before. The Texas Supreme Court, which is elected on a

statewide basis, is now one of the most diverse terminal courts in the country. Four of its 9 members are African-American or Latino, including its Chief Justice.

Plaintiffs also failed to offer evidence that the State used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group. Instead, Plaintiffs offered anecdotal accounts of discrimination by non-State actors or local officials. *See, e.g.*, Expert Report of Dr. Orville Vernon Burton, Exhibit E-12, at 60–63 (describing various instances of alleged voter suppression but conceding that they "were not officially sanctioned"). Plaintiffs offered scant evidence, at best, of overt or subtle racial appeals in political campaigns.[27]

Finally, Plaintiffs failed to demonstrate that minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinders their ability to participate effectively in the political process. Although Plaintiffs offered testimony showing that Latinos have lower economic and educational attainment in comparison to non-minorities, they failed to prove that these factors cause lower voting and participation in the political system. *See, e.g.*, Trial Tr. at 190:14-191:15, 192:1-5, 597:4-6. To the contrary, the State has instead created initiatives aimed at improving the educational gap between minorities and non-minorities. *See, e.g.*, Exhibits D-56, D-57; Joint Exhibit E-20, Expert Report of David Gardner; Trial Tr. at 1695:4-1699:5. Accordingly, Plaintiffs have not demonstrated that under

[27] In fact, the NAACP Plaintiffs were able to direct this Court to only one instance, in a Tarrant County state house campaign, where a candidate's facial characteristics were allegedly altered. Trial Tr. at 1148:21-1149:10. Yet, Plaintiffs failed to prove that such evidence constituted any evidence of racial undertones in the election process given that the very image they claimed was "race-based" was the same image displayed on the candidate's website. Trial Tr. at 1153:11-1154:9; Exhibit D-66. Moreover, none of the facial characteristics that were allegedly altered suggest that they are based on race. *See, e.g.*, Declaration of Chris Turner ¶¶ 16-20 (Doc. 317.1). And, while other Plaintiffs attempt to rely on allegedly racial statements by specific legislators during prior legislative sessions, none of this evidence relates to the use of overt or subtle racial appeals *in political campaigns*, which is the relevant factor under a totality of the circumstances analysis.

the totality of the circumstances, Latino and African-American voters in Texas lack an equal opportunity to participate in the political process and elect candidates of their choice.

VII. Plaintiffs Have Not Established a Violation of the Equal Protection Clause.

A. Plaintiffs Have Failed to Prove a Violation of One-Person, One-Vote in Plan H283.

1. The Equal Protection Clause Does Not Require Strict Population Equality in State Legislative Districts.

The Perez Plaintiffs and MALC complain that the redistricting plan for the Texas House of Representatives violates the Equal Protection Clause because the Legislature targeted a 10% total deviation from ideal district population, resulting in "unjustified" deviations among the districts. Plaintiffs also complain that the deviations in the House plan demonstrate a deliberate, systematic effort to overpopulate Democratic districts, particularly districts represented by African-American and Latino legislators, and a corresponding effort to underpopulate Republican districts. Plaintiffs' Equal Protection claim thus has two components: (1) a claim that the lack of effort to minimize deviation proves intentional discrimination; and (2) a claim that the pattern of deviation among House districts shows intentional discrimination. Neither claim is supported by the evidence or the law.

Plaintiffs' allegation that the Legislature failed to justify the deviations in the House plan implies that state legislative districts must have exactly the same population unless the state can provide a satisfactory reason for any difference. This is directly contrary to basic Fourteenth Amendment doctrine. The State's constitutional obligation is to "make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable," *Reynolds v. Sims*, 377 U.S. 533, 577 (1964), does not require that House districts contain exactly the same number of persons. The Supreme Court has expressly rejected the

proposition "that *any* deviations from absolute [population] equality, however small, must be justified to the satisfaction of the judiciary to avoid invalidation under the Equal Protection Clause." *White v. Regester*, 412 U.S. 755, 763 (1973) (emphasis added).

A deviation of less than 10% is considered to be *de minimis* and consistent with the Constitution. *See, e.g.*, *Brown v. Thomson*, 462 U.S. 835, 842–43 (1983) ("Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations."); *see also Fairley v. Hattiesburg*, 584 F.3d 660, 675 (5th Cir. 2009) (confirming that a total population deviation of less than 10% "is considered minor and does not suffice, alone, to make out a *prima facie* case of discrimination"); *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 363–64 (S.D.N.Y.), *summarily aff'd*, 543 U.S. 997 (2004) ("Thus, a redistricting plan with a maximum deviation below ten percent is prima facie constitutional and there is no burden on the State to justify that deviation.") (quoting *Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F. Supp. 1022, 1031 (D. Md. 1994) (three-judge court)). "[F]or deviations below 10%, the state is entitled to a presumption that the apportionment plan was the result of an 'honest and good faith effort to construct districts . . . as nearly of equal population as practicable.'" *Daly v. Hunt*, 93 F.3d 1212, 1220 (4th Cir. 1996) (quoting *Reynolds v. Sims*, 377 U.S. at 577)). Plan H283 is entitled to a presumption of good faith and compliance with the Equal Protection Clause because the total deviation does not exceed ten percent.

Plaintiffs attempt to avoid the impact of the Supreme Court's consistent holdings by implying that the Supreme Court's summary affirmance in *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga.), *summarily aff'd sub nom. Georgia v. Larios*, 542 U.S. 947 (2004), somehow changed the landscape. In fact, *Larios* reaffirms the basic ten percent threshold. The district court

acknowledged that legislative plans with a total deviation of less than 10% "are presumptively constitutional, and the burden lies on the plaintiffs to rebut that presumption." *Larios*, 300 F. Supp. 2d at 1341. The Court merely found that the plaintiffs in that case successfully carried their burden. The fact that the Supreme Court summarily affirmed the judgment of the three-judge court has no impact on the underlying one-person, one-vote doctrine. *See, e.g.*, *Fusari v. Steinberg*, 419 U.S. 379, 391–92 (1975) (Burger, C.J., concurring) ("An unexplicated summary affirmance settles the issues for the parties, and is not to be read as a renunciation by this Court of doctrines previously announced in our opinions after full argument.")

Because the ten percent threshold is intended to provide leeway for the exercise of state policy in drawing state legislative districts, plaintiffs bear a heavy burden to overcome the presumption of constitutionality that attaches to a plan with minimal deviation. Specifically, a plaintiff must prove:

> that the deviation in the plan results *solely* from the promotion of an unconstitutional or irrational state policy. . . . In addition, the plaintiff must prove that the minor population deviation is not caused by the promotion of legitimate state policies.

Rodriguez, 308 F. Supp. 2d at 365 (quoting *Marylanders*, 849 F. Supp. at 1032 (emphasis added)). The district court in *Rodriguez v. Pataki* explained that this heavy burden is necessary to preserve the ten percent threshold and protect the legislature's prerogative to draw electoral districts:

> If the burden on the plaintiffs in minor-deviation cases were anything less than this substantial showing, then the plaintiffs would be able to challenge any minimally deviant redistricting scheme based upon scant evidence of ill will by district planners, thereby creating costly trials and frustrating the purpose of *Brown*'s "ten percent rule."

Id. at 365. The Plaintiffs have utterly failed to carry this heavy burden. They have identified no policy or pattern of overpopulating certain districts to favor members of one party or residents of

certain regions. They have identified no improper purpose underlying the creation of any House districts. Accordingly, they have failed to shift the burden to the State to justify the deviations from equal population in the House map.

2. The Plaintiffs Have Not Proven that Deviations from Ideal District Size in Plan H283 Resulted from Arbitrary or Discriminatory Considerations.

Plaintiffs rely primarily on *Larios*, in which the three-judge court struck down Georgia's state legislative redistricting plans based on unequivocal evidence that the legislature "systematically and intentionally create[d] population deviations among districts in order to favor one geographic region of a state over another." 300 F. Supp. 2d at 1347. In addition to the Legislature's expressed intent to favor certain regions, the court found "no evidence that the population deviations in the plans were driven by the neutral and consistent application of any traditional redistricting principles." *Id.* at 1349. In fact, the evidence proved that the drafters of the plans

> did not consider such traditional redistricting criteria as district compactness, contiguity, protecting communities of interest, and keeping counties intact. . . . Rather, they had two expressly enumerated objectives: the protection of rural Georgia and inner-city Atlanta against a relative decline in their populations compared with that of the rest of the state and the protection of Democratic incumbents.

Id. at 1325. In addition to the lack of traditional redistricting principles, the Democratically controlled Georgia Legislature used the redistricting plan to systematically eliminate Republicans. The Georgia House plan paired 50% of Republican incumbents; the Senate plan paired 42%. *See id.* at 1326–27.

Unlike the plaintiffs in *Larios*, Plaintiffs in this case have not established a failure by the Legislature to consider traditional redistricting principles, much less an improper purpose underlying the deviations in the House plan. The undisputed evidence shows, to the contrary,

that the House plan approved by the Legislature was drawn with specific, legitimate goals: "to make sure that it was a member-driven process and that we paired the least number of members, while abiding with both state and federal law"; to maintain compactness and contiguity; to keep counties whole; and to preserve communities of interest. Trial Tr. at 1499:15–1500:3. In fact, Plaintiffs' own experts testified that they were not aware of any policy regarding deviation from ideal district population. The Perez Plaintiffs' expert, Ed Martin, testified that he did not identify a unifying purpose behind the relative overpopulation and underpopulation of districts in Plan H283. Trial Tr. at 412:2–5. Nor had he heard any statement of intent by the Legislature to overpopulate Latino and African-American majority districts. *See* Trial Tr. 412:6–16. These statements are consistent with the evidence, which shows that some deviations favor Democratic incumbents, and some favor Republicans; some favor voters in Anglo districts, and some favor voters in Latino and African-American districts. *See* Appendix, Tables 6–12. There is no pattern of deviation that disadvantages Democrats or a particular region of the State.

Unlike the Georgia legislature's plans in *Larios*, Plan H283 does not target incumbents from the minority party. MALC's expert, Dr. Morgan Kousser, testified that Plan H283 does not show the same pattern of incumbent pairing as the plans at issue in *Larios*. Trial Tr. at 273:21. Ed Martin testified that he was not aware of any intent to systematically pair Democratic incumbents. Trial Tr. at 403:2–18. In fact, of the fourteen incumbents paired in Plan H283, only two are Democrats. *See* Exhibit D-13 at S-99.

Given the total absence of proof of intent, Plaintiffs' claim reduces to outrage at the Legislature's failure to try for precise population equality. But a legislature's adherences to the presumptively valid ten percent threshold provides a safe harbor does not itself establish a violation of one-person, one-vote. The relevant inquiry is whether the deviations resulted from

illegitimate goals. In *Larios*, for instance, the district court noted the drafters "believed there was a 'safe harbor' of [plus or minus] 5% in the reapportionment of state legislative districts and, therefore, that population deviations not rising to that level did not have to be supported by any legitimate state interest." 300 F. Supp. 2d at 1325 (internal citation omitted). The problem in *Larios*, however, was that the Georgia Legislature acted on that belief by creating deviations that were not, in fact, supported by any legitimate state interest. This case is nothing like *Larios*.

3. Plaintiffs' Focus on Multidistrict Counties Begs the Basic Legal Question and Ignores Legitimate Causes of Population Deviation.

Plaintiffs maintain that the map is flawed because population deviations were not necessary in counties containing multiple districts, but they fail to identify any legal principle that would require the State to eliminate all population deviation within counties.[28] More importantly, they fail to consider any of the competing policies or interests that might lead to population deviations. Neither of Plaintiffs' experts, for example, took incumbent pairings into account. J. Morgan Kousser, MALC's expert on population equality, testified that he did not consider incumbency protection in his one-person, one-vote analysis. *See* Trial Tr. at 272:23 ("I did not consider incumbent protection."). Ed Martin, the Perez Plaintiffs' expert, obviously failed to consider incumbent protection in his single-county demonstration maps, which pair substantially more incumbents that the enacted plan. *See* Trial Tr. at 399:17–403:19. This highlights the fact that in their haste to show that population deviations could have been avoided, Plaintiffs failed to consider legitimate redistricting policies, other than the whole county-line rule, that might result in deviations. The Perez Plaintiffs' single-county demonstration maps

[28] To carry their burden and rebut the presumption of constitutionality, however, the plaintiffs must do more than show that the State could have drawn a plan with a lower deviation. *See, e.g.*, *Gaffney v. Cummings*, 412 U.S. 740–41 (1973) (holding that a total deviation of 7.83% did not state a prima facie claim, even if a smaller deviation were possible).

prove only that it is possible to reduce the deviation among districts in certain urban counties if that is the only goal.

Oddly, however, Plaintiffs' own plans appear to violate the zero-deviation principle that animates their claim. Mr. Martin's single-county demonstration districts do not reduce the deviation to zero, and there is no explanation for this apparent failure. *See* Exhibit J-28, Plan H232, Red 100 Report. Even more telling is the Perez Plaintiffs' own statewide demonstration map, Plan H232, which has population deviations similar to Plan H283, even in multi-district counties. *Compare* Appendix, Tables 13–14 *with* Appendix, Tables 6–7.

B. Congressional District 35 Is Within the State's Discretion to Create, But It Is Not Required by Section 2.

The Rodriguez Plaintiffs, the Quesada Plaintiffs, and LULAC allege that Texas violated the Fourteenth Amendment by creating District 35 because it was drawn predominately on the basis of race. This argument lacks merit. The State was within its rights to create District 35, even if it was not compelled to draw a Latino-majority district.

In *Shaw v. Reno*, the Supreme Court held that a plaintiff can challenge "a reapportionment statute . . . by alleging that the legislation, though race-neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification." 509 U.S. at 649. A plaintiff raising a *Shaw* claim bears the significant burden of proving that racial considerations were "the 'predominant factor' motivating the legislature's districting decision," *Hunt v. Cromartie*, 526 U.S. 541, 551 (1999) (citations omitted), not simply *a* "motivation for the drawing of a majority-minority district." *Bush v. Vera*, 517 U.S. 952, 959 (1996). The plaintiff's burden is a "demanding one." *Miller v. Johnson*, 515 U.S. 900, 928 (1995) (O'Connor, concurring). Indeed, "[t]o invoke strict scrutiny, a plaintiff must show that the State

has relied on race in *substantial* disregard of customary and traditional districting practices. *Chen v. City of Houston*, 206 F.3d 502, 506 (5th Cir. 2000) (*citing Miller*, 515 U.S. at 928). "[T]he Supreme Court does not believe that the mere presence of race in the mix of decision making factors, and even the desire to craft majority-minority districts, . . . alone automatically trigger[s] strict scrutiny." *Id*. at 514. A plaintiff's heavy burden of establishing the predominance of race can be met either through direct evidence of the legislature's purpose or through circumstantial evidence, including, among other things, a district's demographics or shape. *See Shaw v. Hunt*, 517 U.S. 899, 905 (1996); *Miller*, 515 U.S. at 916.

If a plaintiff meets its heavy burden of proving racial "predominance," the challenged district is subject to "strict scrutiny," which means that the district must be "narrowly tailored to further a compelling state interest." *Vera*, 517 U.S. at 976; *see id*. at 977 ("A § 2 district that is *reasonably* compact and regular, taking into account traditional districting principles . . . may pass strict scrutiny without having to defeat rival compact districts designed by plaintiffs' experts in endless 'beauty contests.'"). It is well-established that legislatures are afforded the benefit of a presumption of good faith when they conduct redistricting. *See Chen*, 206 F.3d at 505 ("The [Supreme] Court has clearly indicated that th[e] presumption [of good faith] may impact the assessment of the propriety of summary judgment in a suit challenging districts as racial gerrymanders."); *see also Miller*, 515 U.S. at 916 ("The distinction between being aware of racial considerations and being motivated by them may be difficult to make. This evidentiary difficulty, together with the sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments, requires courts to exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race.").

Plaintiffs have not demonstrated that the Legislature drew District 35 predominately on the basis of race. District 35 is a new Latino opportunity district and is very likely to elect Latino voters' candidate of choice. This district joins communities from Travis and Bexar Counties and results in a district that contains 58.3% Latino voting age population, 51.9% Latino citizen voting age population, and 45.0% Spanish surname voter registration. Exhibit J-8, Plan C185, Red 109 Report. The reconstituted election analysis shows that this district is likely to elect the Latino candidate of choice consistently. Exhibit D-2, Plan C185, District 35, Racially Polarized Voting Analysis, at 821-32.

As was stated on the record during public redistricting committee hearings and the floor debate, the concept of this district was originally presented to the Legislature by the Mexican American Legal Defense and Educational Fund ("MALDEF ") in Public Plan C122. *See* Exhibit D-22 at A-2; Exhibit J-62, Deposition of Ryan Downton at 114:17-24. In determining where the four new congressional districts should be drawn, the Legislature took into consideration where the population growth had been throughout the state. Downton testified that there was significant population growth in Central Texas that would support the creation of a new congressional district. Trial Tr. at 915:17-22; *see also* D-43; Exhibit J-58, Deposition of Doug Davis, 17:4-14 (explaining that the Legislature drew the new congressional districts based on population growth). In fact, the growth in the Latino community was so significant within Central Texas that the Legislature concluded the Latino population was sufficiently large and geographically compact such that it could create a Latino opportunity district that met the 50% citizen voting age population threshold. *See* Exhibit D-44; Exhibit D-43.

Testimony at trial confirmed that District 35 comports with the traditional redistricting principle of maintaining communities of interest. Former Texas Senator Joe Bernal testified on

behalf of the Latino Task Force Plaintiffs that Southeast Austin and the Southside and Westside of San Antonio—all of which are major urban areas included in District 35—share common interests that would allow the two areas to be combined in a congressional district. Trial Tr. at 557:7-559:3. Further, Mr. Downton's testimony showed that it is not unusual for areas in San Antonio and Austin to be combined in a congressional district. Trial Tr. at 944:11-22. San Antonio and Williamson County were combined in Congressional District 21 for the 1996 special and general elections, the 1998 general election, the 2000 general election, the court-ordered map that was used for the 2002 election, and the legislatively drawn map used for the 2004 elections and the 2006 primaries. Exhibit 305; Exhibit 306. Additionally, Mr. Downton testified that certain areas in Travis and Bexar Counties were included within District 35 in order to keep Latino communities of interest together. *See* Exhibit J-62, Deposition of Ryan Downton at 114-25-116:7, 118:13-119:4, 121:22-25.

The evidence reveals that rather than drawing District 35 solely on the basis of race, the Legislature considered the requirements of the VRA in creating this new district. *See Robertson v. Bartels*, 148 F. Supp. 2d 443, 458 (D.N.J. 2001) (finding that strict scrutiny did not apply because the districting plan "was drawn utilizing traditional redistricting principles while seeking to comply with the Voting Rights Act by giving minority candidates the opportunity to be elected to political office"). Mr. Downton testified that when drafting the new congressional plan he looked at possibilities for expanding minority representation. Trial Tr. at 906:13-23, 907:1-12. Both Downton and Davis, his counterpart in the Senate, testified that compliance with the Voting Rights Acts was an important goal in creating the congressional plan. Exhibit J-58, Deposition of Doug Davis, at 12:22-13:12; Exhibit J-62, Deposition of Ryan Downton I, at 31:6-16. Nevertheless, even if Mr. Downton considered the racial composition of District 35, it is

clear the Legislature considered many factors other than race. As the Court recognized in *Shaw*, mere consciousness of race in redistricting is an insufficient basis on which to trigger strict scrutiny where it is considered along with traditional redistricting principles. *See Shaw*, 517 U.S. at 905.

Despite the adherence to these traditional districting principles, Plaintiffs point to the non-compact shape of District 35 to support their claim that District 35 was drawn predominately on the basis of race in disregard of traditional districting principles. While the contours of District 35 are not perfect, its shape is relevant only for any light it may shed on the claim that "race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines." *Miller*, 515 U.S. at 913. Plaintiffs, however, offered no direct evidence that the Legislature's purposes in drawing District 35 were improperly dominated by race. Instead, the evidence demonstrated that the Legislature drew District 35 based on the population growth in Central Texas and the large amount of Latino citizens who resided in that area.

Nor have Plaintiffs demonstrated that the compactness measures for District 35 serve as circumstantial evidence of racial predominance. District 35 has the following compactness scores: (1) perimeter to area score of 18.4; (2) area to rubber band score of 2.7; and (3) area to smallest circle score of 10.5. *See* Exhibit E-18, Expert Report of Todd Giberson. While it is the least compact district in the enacted plan, District 35 is not the least compact district among the many demonstration districts proposed by the Plaintiffs. *See* Exhibit J-8, Plan C185, Red 315 Report; Exhibit J-18, Expert Report of Todd Giberson, Appendix Plan C185. District 35 is only slightly less compact than other districts in Plan C185. *See id.*; *compare* Exhibit J-8, Plan C185, Red 315 Report *with* J-2 & J-11, Plans C190 and C121, Red 315 Reports. Additionally, there

was no evidence at trial—either by Plaintiffs' experts or Defendants' experts—that District 35's shape suggests that race predominated over traditional redistricting principles. Finally, While Plaintiffs point to the splitting of precincts as evidence that race predominated the drawing of District 35, Plaintiffs never offered any evidence how this practice proves that any decisions made by the Legislature were done predominately on the basis of race. *See* Trial Tr. at 675:9-14, 1197:22-1198:21.

Accordingly, Plaintiffs have not carried their burden to support a finding that race predominated over traditional districting principles. *See Chen*, 206 F.3d at 521. Rather, the evidence reflects that District 35 comports with several traditional (non-racial) districting principles. In addition to complying with equal population requirement for congressional districts, the Legislature took into account joining communities of interest, drawing a new district where significant population growth had occurred in the state, and compliance with the Voting Rights Act. The Legislature was therefore well within its right to reach out and create a district in which Latino voters would have an opportunity to elect a candidate of their choice. This Court should therefore reject Plaintiffs' claims that District 35 is an unconstitutional racial gerrymander.

1. Plaintiffs Have Failed to Establish Intentional Discrimination Based on Race or Ethnicity.

To prove a violation of the Fourteenth Amendment, Plaintiffs must show that the State Defendants acted with the purpose of discriminating on the basis of race, ethnicity, or national origin. *See, e.g.*, *Rogers v. Lodge*, 458 U.S. 613, 617 (1982) ("[I]n order for the Equal Protection Clause to be violated, 'the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose.'") (quoting *Washington v. Davis*, 426 U.S. 229, 240 (1976)). Proof that a state failed to avoid a law's potentially disparate impact will

not establish discriminatory purpose. *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977). This is true even if the state was aware that a potentially disparate impact might follow from enactment of the law. *See Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (citation omitted) ("'Discriminatory purpose' . . . implies more than intent as volition or intent as awareness of consequences."). Discriminatory purpose "implies that the decisionmaker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part '*because of*,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Id.* (footnote and citation omitted; emphasis added). The focus on purposeful discrimination, rather than mere disparate impact, means that a law does not violate the Equal Protection clause "simply because it may affect a greater proportion of one race than another." *Rogers*, 458 U.S. at 618.

Proof that a racial or ethnic minority group cannot elect a number of representatives proportional to its share of the population falls short of establishing discriminatory purpose. "The Equal Protection Clause of the Fourteenth Amendment does not require proportional representation as an imperative of political organization." *Bolden*, 446 U.S. at 75–76; *see also id.* at 86 (Stevens, J., concurring) ("Neither *Gomillion* [*v. Lightfoot*, 364 U.S. 339 (1960)] nor any other case decided by this Court establishes a constitutional right to proportional representation for racial minorities.").

Discriminatory purpose under the Fourteenth Amendment contemplates discrimination on the basis of race—not race neutral criteria such as political affiliation. *See Hunt v. Cromartie*, 526 U.S. 541, 551 (1999). Even if race and political affiliation overlap, redistricting on the basis of political affiliation will not equate to discriminatory purpose. *See id*. ("Our prior decisions have made clear that a jurisdiction may engage in constitutional political gerrymandering, even if

it so happens that the most loyal Democrats happen to be black Democrats and even if the State were *conscious* of that fact.") (citing *Bush*, 517 U.S. at 968).

Although the Supreme Court has identified the *Arlington Heights* factors as pertinent to determining discriminatory purpose, it rarely applies these factors to resolve redistricting cases. *See, e.g.*, *Shaw*, 509 U.S. at 643-44 (citing *Arlington Heights* but not applying the *Arlington Heights* factors); *Bush*, 517 U.S. at 1012 n.9 (Stevens, J., dissenting) (same). The *Arlington Heights* factors include: "(1) the historical background of the decision, (2) the specific sequence of events leading up to the decision, (3) departures from the normal procedural sequence, (4) substantive departures, and (5) legislative history, especially where there are contemporary statements by members of the decision-making body." *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989) (citing *Arlington Heights*, 429 U.S. at 267–68). A procedural sequence that impacts all groups equally lies beyond the reach of the Equal Protection Clause. *Cf. Palmer v. Thompson*, 403 U.S. 217, 226 (1971).

While "[i]t is difficult or impossible for any court to determine the 'sole' or 'dominant' motivation behind the choices of a group of legislators,"[29] the record in this case is clear. Defendants did not adopt plans C185 and H283 "'because of,' . . . [their] adverse effects" on any racial or ethnic minority group. *Feeney*, 442 U.S. at 279. The evidence makes plain that traditional redistricting principles, political considerations, and the legislature's good faith understanding of its legal obligations dictated the creation of plans C185 and H283.

Plaintiffs' experts and fact witnesses uniformly infer discriminatory purpose from factual predicates that the Supreme Court has deemed insufficient to establish purposeful, invidious discrimination. They cite Defendants' alleged awareness of consequences, the alleged lack of proportionality in Defendants' plans, and Defendants' consciousness of race during the

[29] *Palmer v. Thompson*, 403 U.S. 217, 225 (1971)

redistricting process. Even if true, these facts merely reflect a legislature discharging its constitutional duties. They do not show a discriminatory purpose. Nor do they overcome the presumption of Defendants' good faith. To the extent plans C185 and H283 visit any adverse effect on any racial group—a tenuous conclusion on the record before this Court—Defendants adopted these plans in spite of, not because of, these effects.

2. **Plaintiffs General Allegations of Discriminatory Purpose Rely on Inferences that the Supreme Court Has Deemed Unsound as a Matter of Law**

Plaintiffs' expert and fact witnesses readily admitted that they had no direct evidence of Defendants' purposeful, invidious intent to injure minority voters. *See, e.g.*, Trial Tr. 121:25-122:1 ("I can't get into those members' heads and understand what it is [that motivates their votes]…") (testimony of Trey Martinez Fischer); *id.* at 414:9-12 ("Q. But you are not aware of the actual motive of anyone in the legislature in passing this map, are you? A. No one -- I had no first person conversation about that, no.") (Testimony of Ed Martin). Indeed, MALC's expert Dr. Jorge Chapa could not identify any purposefully discriminatory Texas laws that have been in effect since 1973. *See id.* at 192:3-5. For instance, Perez Plaintiff Harold Dutton, Jr., a member of the Texas House of Representatives, admitted in his response to the Defendants' Requests for Admission that he knows of no communication evincing discriminatory legislative intent.[30] Defendants' depositions of Task Force witnesses, Celeste Villareal, Lydia Camarillo, and Joey Cardenas, also make clear that those witnesses' allegations of intent rest on nothing more than circumstantial inferences.[31]

[30] *See* Response of Plaintiff Dutton to Request for Admission No. 20, Defendants' Exhibit D-30; *see also id.* Response of Plaintiffs Tamez, Salinas, Ortiz, Rodriguez, Hall, and DeBose to Request for Admission No. 20, Defendants' Exhibit D-30.

[31] *See, e.g.*, Joint Exhibit J-56, Deposition of Celeste Villareal, at 68:1–22 ("So looking at the totality of the circumstances, the fact that Latino legislators on the House and Senate side were not included, and those they have expressed on the record during the committee hearing, and expressed their objection to not being included, and those fell on deaf ears. Looking at the totality of those circumstances, we find intent to discriminate and not include input

This conspicuous failure to offer any direct evidence of discriminatory purpose mirrors Plaintiffs' earlier refusal to supply Defendants with "intent" evidence in response to pretrial discovery requests. Exhibit D-30, Latino Task Force Interrogatory Responses at 23-26. Instead of offering direct evidence of purposeful, invidious discrimination, Defendants rely on legally incompetent and factually inaccurate disparate impact theories to support their claims. These theories focus on proportionality and alleged population disparities among districts. *See, e.g.,* Trial Tr. at 235:18-237:3; 257:1-8. As discussed above, Defendants have not systematically under-populated and over-populated any districts on the basis of race. Plaintiffs' proportionality arguments are similarly faulty. As discussed above, Plans C185 and H283 are substantially proportional when compared to the citizen voting age population of Latinos, Anglos, and African Americans in Texas. *See* C185 Hispanic Population Profile, Defendants' Exhibit D-2 (Latinos make up 24.7% of the citizen voting age population in Texas, and 22.2% of Texas congressional districts are majority HCVAP); H283 Hispanic Population Profile Defendant's Exhibit D-2 (20.7% of Texas House districts are majority HCVAP). Even assuming the existence of a disparate impact, Plaintiffs cannot establish that race, rather than political affiliation, caused the alleged disparities. Trial Tr. at 257:22-24; Trial Tr. at 677:10-19; Joint Exhibit E-8, Expert Report of Henry Flores at 8-10.

Plaintiffs make much of allegedly misshapen districts, but they have not explained how any of the irregular shapes in the districts they identify evidence an intent to discrimination on the basis of race as opposed to political affiliation or other non-suspect redistricting considerations. Indeed, the shapes of at least some of the districts that Plaintiffs challenge constitute nothing more than minor variations of preexisting districts in the benchmark plans.

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from the Latino community."); Deposition of Joey Cardenas at 99:14–20, 101:3–8 ("Well, I've already said that if it has a negative effect it is discriminatory and it's equal to intent."); Deposition of Lydia Camarillo at 47:13–48:5.

See Trial Tr. 908:25-915:15. In short, Plaintiffs have failed to show that race offers the only, or even the most plausible, explanation for Defendants' allegedly misshapen districts. For every district they identify, political considerations, legal considerations, geographic boundaries, political subdivision boundaries and the benchmark district shape explain the allegedly irregular district more credibly than any theory of invidious, purposeful discrimination on the basis of race. The testimony of Mr. Downton and Mr. Interiano further illustrates that the motives underpinning plan H283 were many but did not include discrimination on the basis of race. Similar to plan C185, race was a consideration in plan H283 only the extent necessary to comply with the State's legal obligations.

CONCLUSION

For the reasons stated above, Defendants respectfully request that the Court deny all relief requested by Plaintiffs and enter judgment in favor of Defendants.

Dated: October 7, 2011

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APPENDIX

TABLE 1

COMPARISON OF LATINO OPPORTUNITY CONGRESSIONAL DISTRICTS IN PLAN C185 AND PLAINTIFFS' DEMONSTRATION PLANS

CONGRESSIONAL PLAN	LATINO OPPORTUNITY DISTRICTS	TOTAL
Plan C185	CD15 (71.0% HCVAP) CD16 (72.7% HCVAP) CD20 (62.9% HCVAP) CD23 (58.5% HCVAP) CD28 (65.9% HCVAP) CD29 (56.3% HCVAP) CD34 (71.7% HCVAP) CD35 (51.9% HCVAP)	**8**
Plan C121	CD15 (73.0% HCVAP) CD16 (74.0% HCVAP) CD20 (58.2% HCVAP) CD23 (52.9% HCVAP) CD27 (69.2% HCVAP) CD28 (72.7% HCVAP) CD29 (57.1% HCVAP) CD33 (69.4% HCVAP)	**8**
Plan C163	CD15 (65.5% HCVAP) CD16 (72.7% HCVAP) CD20 (64.8% HCVAP) CD23 (65.1% HCVAP) CD27 (69.9% HCVAP) CD28 (56.5% HCVAP) CD29 (55.4% HCVAP) CD33 (63.9% HCVAP)	**8**
Plan C164	CD15 (67.7% HCVAP) CD16 (74.8% HCVAP) CD20 (58.1% HCVAP) CD23 (70.8% HCVAP) CD28 (70.5% HCVAP) CD29 (55.4% HCVAP) CD33 (71.5% HCVAP) CD34 (56.2% HCVAP)	**8**
Plan C166	CD15 (66.1% HCVAP) CD16 (76.5% HCVAP) CD20 (64.9% HCVAP) CD23 (57.9% HCVAP) CD27 (69.2% HCVAP) CD28 (57.5% HCVAP) CD33 (63.3% HCVAP)	**7**

CONGRESSIONAL PLAN	LATINO OPPORTUNITY DISTRICTS	TOTAL
Plan C187	CD15 (67.7% HCVAP) CD16 (74.8% HCVAP) CD20 (58.1% HCVAP) CD23 (70.8% HCVAP) CD28 (70.5% HCVAP) CD29 (57.2% HCVAP) CD33 (71.5% HCVAP) CD34 (56.2% HCVAP)	**8**
Plan C188	CD10 (56.1% HCVAP) CD15 (67.6% HCVAP) CD16 (67.8% HCVAP) CD20 (59.7% HCVAP) CD23 (61.2% HCVAP) CD28 (51.6% HCVAP) CD29 (55.4% HCVAP) CD33 (71.5% HCVAP) CD34 (55.4% HCVAP)	**9**
Plan C190	CD6 (50.4% HCVAP) CD15 (61.7% HCVAP) CD16 (72.7% HCVAP) CD20 (66.0% HCVAP) CD23 (75.4% HCVAP) CD28 (65.1% HCVAP) CD34 (72.4% HCVAP) CD35 (51.9% HCVAP) CD36 (50.1% HCVAP)	**9**
Plan C192	CD15 (67.7% HCVAP) CD16 (74.8% HCVAP) CD20 (58.1% HCVAP) CD23 (70.8% HCVAP) CD27 (71.6% HCVAP) CD28 (70.5% HCVAP) CD33 (56.2% HCVAP)	**7**

Source: Exhibit J-8, Plan C185, Red 106 Report; Exhibit J-2, Plan C121, Red 109 Report; Exhibit J-5, Plan C163, Red 109 Report; Exhibit J-6, Plan C164, Red 109 Report; Exhibit J-7, Plan C166, Red 109 Report; Exhibit J-9, Plan C187, Red 109 Report; Exhibit J-10, Plan C188, Red 109 Report; Exhibit J-11, Plan C190, Red 109 Report; Exhibit J-12, Plan C192, Red 109 Report.

TABLE 2

COMPARISON OF AFRICAN-AMERICAN CONGRESSIONAL DISTRICTS IN PLAN C185 AND PLAINTIFFS' DEMONSTRATION PLANS

CONGRESSIONAL PLAN	AFRICAN-AMERICAN DISTRICTS	TOTAL
Plan C185	9 (37.6% BVAP) 18 (40.5% BVAP) 30 (46.5% BVAP)	**3**
Plan C121	9 (39.9% BVAP) 18 (40.9% BVAP) 30 (40.4% BVAP)	**3**
Plan C163	9 (37.9% BVAP) 18 (38.0% BVAP) 30 (43.0% BVAP)	**3**
Plan C164	9 (37.9% BVAP) 18 (38.0% BVAP) 30 (43.0% BVAP)	**3**
Plan C166	9 (35.2% BVAP) 18 (39.4% BVAP) 30 (45.4% BVAP)	**3**
Plan C187	9 (39.1% BVAP) 18 (38.1% BVAP) 30 (45.1% BVAP)	**3**
Plan C188	9 (37.9% BVAP) 18 (38.0% BVAP) 30 (39.9% BVAP)	**3**
Plan C190	9 (36.1% BVAP) 18 (37.9% BVAP) 30 (47.3% BVAP)	**3**
Plan C192	9 (39.9% BVAP) 18 (40.9% BVAP) 30 (40.4% BVAP)	**3**

Source: Exhibit J-8, Plan C185, Red 202 Report; Exhibit J-2, Plan C121, Red 202 Report; Exhibit 5, Plan C163, Red 202 Report; Exhibit J-5, Plan C163, Red 202 Report; Exhibit J-6, Plan C164, Red 202 Report; Exhibit J-9, Plan C187, Red 202 Report; Exhibit J-10, Plan C188, Red 202 Report; Exhibit J-11, Plan C190, Red 202 Report; Exhibit J-12, Plan C192, Red 202 Report.

TABLE 3

ANALYSIS OF PROPOSED HOUSE PLANS UNDER COUNTY-LINE RULE

HOUSE PLAN	MANDATORY COUNTY LINE SPLITS	UNNECESSARY COUNTY LINE VIOLATIONS	MAJORITY HCVAP DISTRICTS	TRIAL TESTIMONY OF INTERIANO
Plan H100 (Benchmark)	1	0	30	1421:8-11
Plan H283 (Enacted)	1	0	30	1424:8-10
Plan H201	1	2	31	1433:4-10
Plan H202	1	6	31	1435:18-1436:9
Plan H205	1	25+	34	1436:16-1437:6
Plan H232	1	0	28	1437:7-15
Plan H292	1	5	32	1440:7-11

TABLE 4

COMPARISON OF PLAN H283 WITH HARRIS COUNTY DEMONSTRATION PLANS THAT APPORTION 25 HOUSE DISTRICTS

HOUSE PLAN	NUMBER OF HARRIS COUNTY DISTRICTS	MINORITY DISTRICTS (50%+ CVAP)	TOTAL MINORITY OPPORTUNITY DISTRICTS
Plan H283	24	131 (53.2% BCVAP) 139 (50.0% BCVAP) 140 (58.5% HCVAP) 141 (61.9% BCVAP) 142 (55.9% BCVAP) 143 (57.0% HCVAP) 145 (56.2% HCVAP) 146 (54.0% BCVAP) 148 (51.4% HCVAP)	9
Plan H115	25	131 (53.9% BCVAP) 140 (57.3% HCVAP) 141 (53.8% BCVAP) 142 (56.8% BCVAP) 143 (62.6% HCVAP) 145 (65.4% HCVAP) 146 (55.5% BCVAP) 148 (55.4% HCVAP)	8
Plan H205	25	139 (59.8% BCVAP) 140 (55.7% HCVAP) 143 (52.6% HCVAP) 144 (53.0% HCVAP) 145 (53.8% HCVAP) 147 (58.0% BCVAP)	6
Plan H214	25	131 (54.6% BCVAP) 139 (60.6% BCVAP) 140 (64.4% HCVAP) 141 (58.7% BCVAP) 142 (52.4% BCVAP) 143 (58.3% HCVAP) 145 (58.4% HCVAP)	7
Plan H292	25	131 (53.9% BCVAP) 139 (59.6% BCVAP) 140 (57.3% HCVAP) 141 (53.8% BCVAP) 142 (56.8% BCVAP) 143 (62.6% HCVAP) 145 (65.4% HCVAP) 146 (55.5% BCVAP) 148 (55.4% HCVAP)	9

Source: Exhibit J-29, Plan H283, Red 106 Report, Red 202 Report; Exhibit J-23, Plan H115, Red 106 Report, Red 202 Report; Exhibit J-26, Plan H205, Red 106 Report, Red 202 Report; Exhibit J-27, Plan H214, Red 106 Report, Red 202 Report; Exhibit J-37, Plan H292, Red 106 Report, Red 202 Report.

TABLE 5

COMPARISON OF AFRICAN-AMERICAN HOUSE DISTRICTS IN PLAN H283 AND PLAINTIFFS' DEMONSTRATION PLANS

HOUSE PLAN	AFRICAN-AMERICAN DISTRICTS[1]	TOTAL
Plan H283	22 (47.3% BVAP) 27 (42.9% BVAP) 95 (45.1% BVAP) 100 (40.8% BVAP) 109 (57.4% BVAP) 110 (42.5% BVAP) 111 (50.4% BVAP) 131 (42.4% BVAP) 139 (42.1% BVAP) 141 (50.0% BVAP) 142 (44.8% BVAP) 146 (43.7% BVAP)	**12**
Plan H111	22 (47.4% BVAP) 95 (47.2% BVAP) 109 (60.4% BVAP) 110 (44.0% BVAP) 111 (51.8% BVAP) 131 (44.3% BVAP) 139 (46.8% BVAP) 141 (48.3% BVAP) 142 (42.6% BVAP) 146 (43.9% BVAP) 147 (40.5% BVAP)	**11**
Plan H115	22 (47.8% BVAP) 27 (41.5% BVAP) 95 (46.1% BVAP) 100 (40.7% BVAP) 109 (55.6% BVAP) 110 (46.4% BVAP) 111 (52.2% BVAP) 131 (44.0% BVAP) 139 (46.6% BVAP) 141 (45.4% BVAP) 142 (46.0% BVAP) 146 (47.7% BVAP)	**12**

[1] For purposes of this chart, African-American districts are identified as those districts that have at least 40% Black voting age population.

HOUSE PLAN	AFRICAN-AMERICAN DISTRICTS[1]	TOTAL
Plan H201	22 (47.3% BVAP) 27 (43.9% BVAP) 95 (45.1% BVAP) 109 (62.8% BVAP) 110 (41.8% BVAP) 111 (50.4% BVAP) 131 (44.0% BVAP) 139 (45.1% BVAP) 141 (51.1% BVAP) 142 (42.4% BVAP) 146 (45.4% BVAP)	**11**
Plan H202	22 (47.3% BVAP) 27 (43.0% BVAP) 95 (47.1% BVAP) 109 (66.1% BVAP) 110 (41.5% BVAP) 111 (49.3% BVAP) 131 (45.7% BVAP) 139 (48.2% BVAP) 141 (47.5% BVAP) 142 (41.4% BVAP) 146 (43.1% BVAP)	**11**
Plan H205	22 (47.4% BVAP) 95 (45.7% BVAP) 109 (62.8% BVAP) 110 (44.0% BVAP) 111 (50.8% BVAP) 131 (41.4% BVAP) 139 (49.1% BVAP) 141 (43.2% BVAP) 142 (40.3% BVAP) 147 (50.8% BVAP)	**10**
Plan H214	22 (47.3% BVAP) 27 (42.9% BVAP) 95 (47.1% BVAP) 109 (66.1% BVAP) 110 (41.5% BVAP) 111 (49.3% BVAP) 131 (45.7% BVAP) 139 (48.3% BVAP) 141 (47.5% BVAP) 142 (41.4% BVAP) 146 (43.1% BVAP)	**11**

HOUSE PLAN	AFRICAN-AMERICAN DISTRICTS[1]	TOTAL
Plan H232	22 (47.3% BVAP) 27 (42.0% BVAP) 95 (44.9% BVAP) 100 (43.3% BVAP) 109 (56.4% BVAP) 110 (48.4% BVAP) 111 (47.4% BVAP) 131 (46.1% BVAP) 139 (47.1% BVAP) 141 (47.0% BVAP) 142 (42.2% BVAP) 146 (43.9% BVAP)	**12**
Plan H292	22 (43.% BVAP) 27 (41.1% BVAP) 95 (45.1% BVAP) 100 (40.8% BVAP) 109 (57.5% BVAP) 110 (42.4% BVAP) 111 (50.4% BVAP) 131 (44.0% BVAP) 139 (46.6% BVAP) 141 (45.4% BVAP) 142 (46.0% BVAP) 146 (47.7% BVAP)	**12**

Source: Exhibit J-29, Plan H283, Red 202 Report; Exhibit J-22, Plan H111, Red 202 Report; Exhibit J-23, Plan H115, Red 202 Report; Exhibit J-24, Plan H201, Red 202 Report; Exhibit J-25, Plan H202, Red 202 Report; Exhibit J-26, Plan H205, Red 202 Report; Exhibit J-27, Plan H214, Red 202 Report; Exhibit J-28, Plan H232, Red 202 Report; Exhibit J-37, Plan H292, Red 202 Report.

TABLE 6

POPULATION DEVIATIONS WITHIN HARRIS COUNTY IN PLAN H283[2]

District	Member	%Deviation	%Anglo VAP	%HCVAP	%BVAP
147	Coleman - D	4.91%	25.1%	18.4%	38.2%
139	Turner - D	4.83%	17.1%	19.0%	42.1%
130	Fletcher - R	4.71%	67.8%	11.6%	7.7%
148	Farrar - D	4.59%	22.5%	51.4%	7.1%
131	Allen - D	4.53%	9.5%	24.0%	42.4%
146	Miles - D	4.09%	19.3%	11.2%	43.7%
134	Davis, S - R	4.05%	70.1%	11.0%	5.2%
137	Hocherg/Vo - D	3.56%	10.9%	26.3%	16.8%
138	Bohac - R	3.23%	39.7%	22.3%	8.9%
133	Murphy - R	3.22%	45.8%	12.5%	17.8%
132	Callegari - R	3.18%	46.8%	20.6%	13.1%
135	Elkins - R	2.85%	44.7%	18.2%	15.1%
129	Davis, J. - R	2.45%	57.7%	14.7%	9.2%
145	Alvarado - D	1.90%	21.4%	56.2%	6.1%
140	Walle - D	1.85%	11.3%	58.5%	11.3%
126	Harless - R	0.97%	47.7%	17.0%	14.4%
150	Riddle - R	0.65%	59.7%	12.3%	12.8%
128	Smith, W - R	0.55%	57.8%	19.4%	10.6%
136	Woolley - R	-0.65%	48.1%	12.0%	17.0%
141	Thompson - D	-0.68%	10.6%	18.2%	50.0%
127	Huberty - R	-2.18%	65.3%	12.4%	12.8%
143	Hernandez Luna - D	-3.08%	14.5%	57.0%	11.2%
144	Legler - R	-3.44%	42.8%	31.2%	5.2%
142	Dutton - D	-4.83%	18.4%	21.3%	44.8%

Source: Exhibit J-29, Plan H283, Red 100 Report, Red 106 Report, Red 202 Report.

[2] Latino opportunity districts (50%+ Latino citizen voting age population) are highlighted in yellow.

TABLE 7

POPULATION DEVIATIONS WITHIN DALLAS COUNTY IN PLAN H283[3]

District	Member	%Deviation	%Anglo VAP	%HCVAP	%BVAP
103	Anchia - D	5.00%	21.1%	44.6%	8.4%
105	Anderson/Harper Brown -R	4.83%	41.0%	24.1%	11.9%
109	Giddings - D	3.90%	21.6%	11.4%	57.4%
104	Alonzo - D	3.07%	15.2%	51.7%	13.4%
114	Hartnett - R	2.80%	54.9%	11.0%	16.1%
107	Sheets - R	2.53%	52.1%	15.6%	14.8%
113	Burkett/Driver - R	2.25%	48.8%	15.3%	17.9%
110	Caraway - D	-0.05%	11.6%	24.9%	42.5%
112	Button - R	-0.35%	47.3%	14.8%	14.4%
111	Davis, Y - D	-0.39%	21.6%	15.1%	50.4%
115	Jackson - R	-0.54%	48.2%	14.9%	11.2%
108	Branch - R	-2.63%	68.7%	13.6%	6.7%
100	Johnson - D	-3.87%	24.6%	18.3%	40.8%
102	Carter - R	-3.88%	51.8%	11.3%	13.5%

Source: Exhibit J-29, Plan H283, Red 100 Report, Red 106 Report, Red 202 Report.

[3] Latino opportunity districts (50%+ Latino citizen voting age population) are highlighted in yellow.

TABLE 8

POPULATION DEVIATIONS WITHIN BEXAR COUNTY IN PLAN H283[4]

District	Member	%Deviation	%Anglo VAP	%HCVAP	%BVAP
123	Villarreal - D	4.79%	27.4%	62.3%	4.5%
122	Larson - R	4.50%	62.5%	23.4%	3.8%
120	McClendon - D	4.47%	28.3%	34.1%	26.8%
121	Straus - R	4.31%	58.8%	26.7%	6.2%
124	Menedez - D	4.29%	22.9%	62.4%	8.4%
125	Castro - D	4.12%	23.3%	64.3%	4.9%
116	Martinez-Fischer - D	2.28%	28.2%	57.1%	6.2%
117	Garza - R	2.15%	29.3%	63.8%	5.5%
118	Farias - D	-3.45%	29.0%	64.7%	4.4%
119	Guitierrez - D	-4.57%	26.6%	58.3%	9.4%

Source: Exhibit J-29, Plan H283, Red 100 Report, Red 106 Report, Red 202 Report.

[4] Latino opportunity districts (50%+ Latino citizen voting age population) are highlighted in yellow.

TABLE 9

POPULATION DEVIATIONS WITHIN HIDALGO COUNTY IN PLAN H283[5]

District	Member	%Deviation	%Anglo VAP	%HCVAP	%BVAP
39	Martinez - D	4.62%	10.9%	82.4%	0.4%
40	Gonzales, V - D	3.49%	5.3%	89.0%	0.7%
36	Munoz - D	2.61%	6.8%	88.7%	0.4%
31	Guillen - D	0.60%	5.2%	88.9%	0.7%
41	Pena - R	-4.41%	19.7%	72.1%	1.0%

Source: Exhibit J-29, Plan H283, Red 100 Report, Red 106 Report, Red 202 Report.

[5] Latino opportunity districts (50%+ Latino citizen voting age population) are highlighted in yellow.

TABLE 10

POPULATION DEVIATIONS WITHIN EL PASO COUNTY IN PLAN H283[6]

District	Member	%Deviation	%Anglo VAP	%HCVAP	%BVAP
79	Pickett - D	-4.16%	14.9%	76.7%	4.0%
78	Margo - R	-4.20%	29.5%	55.2%	4.9%
77	Marquez - D	-4.59%	15.7%	73.4%	4.4%
76	Gonzales - D	-4.70%	9.7%	83.5%	2.3%
75	Quintanilla - D	-4.74%	6.1%	89.0%	1.4%

Source: Exhibit J-29, Plan H283, Red 100 Report, Red 106 Report, Red 202 Report.

[6] Latino opportunity districts (50%+ Latino citizen voting age population) are highlighted in yellow.

TABLE 11

POPULATION DEVIATIONS WITHIN TARRANT COUNTY IN PLAN H283

District	Member	%Deviation	%Anglo VAP	%HCVAP	%BVAP
99	Geren - R	1.83%	70.0%	14.2%	6.4%
97	Shelton - R	0.75%	68.2%	9.8%	12.1%
94	Patrick - R	-0.16%	64.5%	10.2%	12.4%
96	Zedler - R	-1.61%	62.0%	10.1%	18.0%
101	N/A	-1.77%	29.5%	19.7%	27.0%
98	Truitt - R	-2.12%	80.9%	6.7%	3.4%
91	Hancock - R	-2.86%	70.0%	10.9%	4.9%
92	Smith, T - R	-3.17%	65.4%	9.6%	11.5%
93	Nash - R	-3.27%	57.8%	14.8%	21.1%
95	Veasey - D	-3.58%	27.9%	12.9%	45.1%
90	Burnam - D	-4.90%	17.4%	49.7%	10.1%

Source: Exhibit J-29, Plan H283, Red 100 Report, Red 106 Report, Red 202 Report.

TABLE 12

POPULATION DEVIATIONS WITHIN TRAVIS COUNTY IN PLAN H283

District	Member	%Deviation	%Anglo VAP	%HCVAP	%BVAP
51	Rodriguez (D)	4.82%	31.0%	44.0%	10.0%
47	Workman (R)	4.58%	78.0%	12.3%	2.0%
48	Howard (D)	3.20%	69.5%	16.7%	3.7%
49	Naishtat (D)	-0.20%	64.6%	14.3%	4.7%
50	Strama (D)	-0.67%	52.0%	17.7%	11.7%
46	Dukes (D)	-0.73%	32.1%	24.6%	21.7%

Source: Exhibit J-29, Plan H283, Red 100 Report, Red 106 Report, Red 202 Report.

TABLE 13

POPULATION DEVIATIONS WITHIN HARRIS COUNTY FOR PLAN H232[7]

District	Member	%Deviation	%Anglo VAP	%HCVAP	%BVAP
128	Smith, W. - R	4.94%	57.0%	21.9%	8.1%
129	Davis, J. - R	4.93%	56.9%	15.1%	7.8%
132	Callegari - R	4.90%	32.7%	25.9%	17.8%
145	Alvarado - D/ Legler - R	4.89%	15.5%	61.0%	6.7%
139	Turner - D	4.88%	8.6%	29.7%	47.1%
133	Murphy - R	4.84%	56.4%	13.9%	11.7%
127	Huberty-R	4.78%	69.4%	10.0%	8.9%
135	Elkins - R	4.56%	46.6%	17.9%	13.6%
130	Fletcher - R	4.20%	68.3%	11.5%	7.6%
144	Harless - R	4.01%	57.3%	11.8%	12.7%
136	Woolley - R	3.90%	62.3%	11.8%	6.2%
150	Riddle - R	3.77%	53.6%	15.4%	17.0%
147	Coleman - D	2.80%	23.1%	19.8%	39.0%
143	Hernandez-Luna - D	2.19%	19.1%	58.2%	4.0%
149	Vo - D	2.05%	16.0%	19.8%	28.5%
141	Thompson - D	1.70%	18.9%	17.2%	47.0%
134	Davis, S. - R	1.45%	68.1%	10.1%	5.9%
148	Farrar - D	0.01%	30.9%	42.3%	10.5%
138	Bohac - R	-0.95%	28.8%	35.0%	10.3%
137	Hochberg - D	-4.31%	13.9%	24.9%	16.3%
140	Walle - D	-4.33%	11.2%	55.3%	12.7%
142	Dutton - D	-4.35%	15.0%	24.7%	42.2%
131	Allen - D	-4.71%	10.1%	19.9%	46.1%
146	Miles - D	-4.88%	21.9%	11.3%	43.9%

Source: Exhibit J-28, Plan H232, Red 100 Report, Red, 202 Report, Red 109 Report, Red 350 Report.

[7] Latino opportunity districts (50%+ Latino citizen voting age population) are highlighted in yellow.

TABLE 14

POPULATION DEVIATIONS WITHIN DALLAS COUNTY FOR PLAN H232

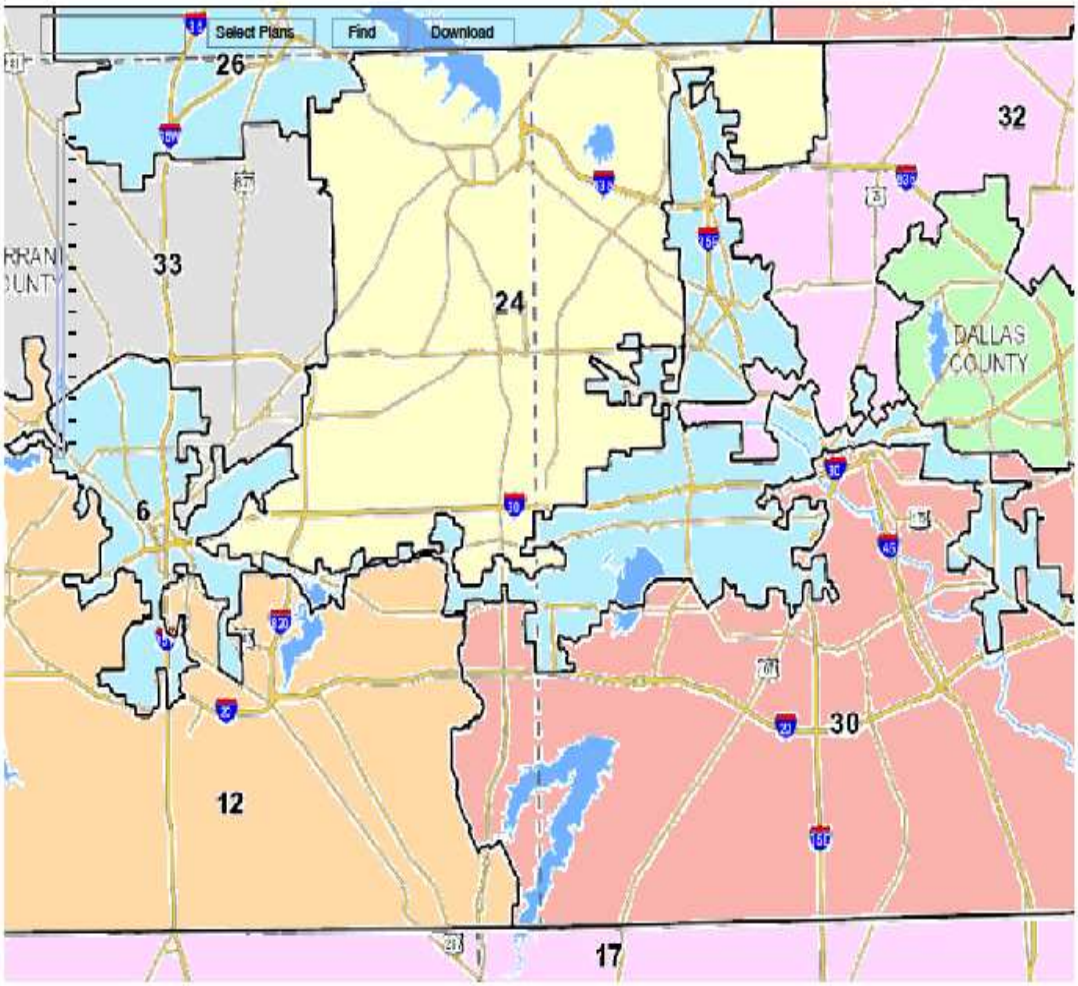
District	Member	%Deviation	%Anglo VAP	%HCVAP	%BVAP
115	Jackson - R	4.81%	48.2%	13.2%	12.4%
104	Alonzo - D	4.74%	17.9%	49.2%	14.6%
112	Button - R/Carter - R	4.48%	63.0%	10.1%	9.9%
101	Burkett - R	4.44%	45.8%	16.0%	20.5%
105	Harper-Brown - R	4.42%	27.7%	34.1%	7.7%
113	Driver - R	2.36%	53.5%	13.0%	15.1%
103	Anchia - D	2.34%	24.5%	45.2%	21.6%
111	Anderson - R/ Davis, Y. - D	0.86%	23.6%	16.3%	47.4%
114	Hartnett - R	0.19%	64.0%	10.3%	10.2%
108	Branch - R/Sheets - R	-1.12%	70.0%	10.6%	7.8%
102	N/A	-1.24%	24.5%	24.3%	21.6%
106	N/A	-2.03%	29.3%	19.6%	26.2%
110	Mallory Caraway -D	-4.14%	13.3%	20.3%	48.4%
100	Johnson - D	-4.45%	21.9%	18.1%	43.3%
109	Giddings - D	-4.64%	25.1%	10.8%	56.4%
107	N/A	-4.82%	70.6%	8.9%	8.0%

Source: Exhibit J-28, Plan H232, Red 100 Report, Red, 202 Report, Red 109 Report, Red 350 Report.

FIGURE 1

PLAN C190 – PROPOSED DALLAS-FORT WORTH CONGRESSIONAL DISTRICT BY LATINO TASK FORCE

DistrictViewer - Texas Legislative Council Page 1 of 1



http://gis1.tlc.state.tx.us/ 9/14/2011

Source: Exhibit J-11, Plan C190