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-CV-490-OLG-JES-XR [Consolidated case]
MARAGARITA V. QUESADA, et al., Plaintiffs, v. RICK PERRY, et al.,	CIVIL ACTION NO. SA-11-CA-592-OLG-JES-XR [Consolidated case]

Defendants.	)	
_____	)	
	)	
JOHN T. MORRIS,	)	CIVL 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.	)	

JOINT NOTICE OF FILING OF PROPOSED CONGRESSIONAL DISTRICTS FOR USE IN AN INTERIM PLAN BY PLAINTIFF-INTERVENORS TEXAS STATE CONFERENCE OF NAACP BRANCHES, JUANITA WALLACE, REV. BILL LAWSON, HOWARD JEFFERSON AND AFRICAN-AMERICAN CONGRESSIONAL INTERVENORS

Plaintiff-Intervenors Congresspersons Alexander Green, Sheila Jackson-Lee, Eddie Bernice Johnson, NAACP, Howard Jefferson, Bill Lawson, and Juanita Wallace, ("hereinafter, "Plaintiff Intervenors") respectfully file this joint notice of and would show the Court the following:

JOINT SUBMISSION

1. The Plaintiff Intervenors all support the districts that are included in the partial map that we tendered to the court in C193. As we have mentioned on several occasions

to this court C193 closely follows the current lines in districts 9, 18 and 30 and will not be too disruptive to election authorities in terms of changing numerous precinct boundaries.

2. We would like the Court to include the districts provided in C193 in any map that is adopted. As there are many groups that are representing the Hispanic community that are different and will be presenting separate maps we thought that it would be important for them to tender specific plans regarding those areas. The map we propose for inclusion is C193. It provides for new Latino and African-American opportunity seats in the Dallas-Fort Worth Metroplex. We have tendered a strong and viable Latino opportunity district to show that it could be done and it could be done without unnecessarily infringing on CD30 or eliminating the possibility of a 2nd African-American opportunity Congressional district for the DFW Area.

3. It is the Plaintiff Intervenors' request to this court that it not adopt any plan that undermines the ability of African-Americans in CDs 9, 18 and 30 and that no plan that is a less effective plan than C193 be adopted for those districts. African-Americans and Latinos are a recognized coalition at the Legislature, in Congress, in the Dallas and Fort Worth Metroplex and in the Greater Houston area, so pains should be taken not to tender districts that may in the future cause tension between the two or that will cause either to lose an existing effective district completely or to one that is less effective. Importantly Anthony Fairfax has testified that the districts in C193 are all drawn in accordance with law in terms of traditional redistricting principals. Dr. Vernon Burton also supported these districts and Dr. Richard Murray said they were clear minority opportunity districts.

The well respected expert George Korbel acknowledged the viability of the plan we have tendered in Dallas and Harris counties.

AFRICAN-AMERICAN CONGRESSIONAL INTERVENORS

4. The African-American Congressional Intervenors have engaged in discussions with a number of different parties in regards to agreeing on a specific Congressional map to represent to this court. However, even though those attempts have been made it has become clear that at this point it is not possible for us to reach an agreement with most other parties though we have joined with the NAACP. The African-American Congressional Intervenors will continue to review the other proposals and update the court as soon as possible to the extent that any agreements can be reached from now until the close of the hearing scheduled to begin at the end of this month.

5. We would submit that there should be 9 Latino opportunity districts and 4 African-American opportunity districts and 1 minority influence seat in any interim plan so that it would not be retrogressive or unfair to racial and ethnic minorities. This would be the fairest way to draft such a map. Dr. Richard Murray concluded in his report that it was possible to draw a new Latino opportunity district in Harris County without changing the districts in Harris County in C193. We should note that since there is currently a crossover district that exists as an influence district that this should be continued in an interim map. We are not tendering any specific maps for Latino districts except in the DFW area because it coincides with our proposed African-American opportunity district.

NAACP

6. The NAACP Intervenors support the House Plans that were drawn and tendered by the Texas Legislative Black Caucus, H202 and H214, for this Court's consideration as an interim plan for use given the 2012 election deadlines rapidly approaching. These plans comply with Sections 2 and 5 of the Voting Rights Act. Its districts are contiguous and reasonably compact. These plans could appropriately be adopted by this Court for use as an interim plan. The details for these plans, H202 and H214, were already submitted to this Court—they can be found in the Joint Maps and Data binder. The NAACP Intervenors will continue to visit with other parties on this issue as they do along with the African-American Congressional Intervenors on the Congressional Plan. The NAACP Intervenors will continue to review the other proposals and update the court as soon as possible to the extent that any agreements can be reached from now until the close of the hearing scheduled to begin at the end of this month.

7. The NAACP Intervenors believe that there should be 9 Hispanic opportunity districts, 4 African-American opportunity districts and 1 minority influence seat in any interim plan so that it would not be retrogressive or unfair to racial and ethnic minorities. The NAACP recognizes that the seat the State has proffered that reaches from Bexar County to Travis County, CD35, can be configured without dividing Travis County unnecessarily. C164 tendered by MALC does just that. We are not endorsing C164 overall but simply are suggesting that in the Travis County area it has a more realistic solution in terms of how to draw a map. Racial minorities in Austin should not lose their

rights or have them diminished because of a political battle that they have nothing to do with.

8. The NAACP also point out to the Court that C201 shows alternatives for Travis County that do not unnecessarily trample upon the rights of minority communities of interest--especially African-Americans.

9. Due to time constraints, this Court has taken the unusual step of hearing a trial on the merits of a claim under Section 2 of the Voting Rights Act on redistricting plans that are, as yet, a nullity. Under the clear language of Section 5 of the Act, 42 USC 119973c, the proposed plans are legally unenforceable unless the State of Texas has obtained administrative preclearance from the Attorney General, a course it has chosen not to pursue, or until the State obtains a declaratory judgment that the proposed plans are free of any racially discriminatory purpose or effect. *Id*., *City of Rome v. United States*, 446 U.S. 156(1980) Section 5 does not provide, as the State suggests, that a plan can be used unless and until an adverse finding has been made. The burden of proof is on the state.

10. The State of Texas has not received section 5 preclearance of its redistricting plans, and they remain unenforceable and incapable of administration. It is the understanding of the import of the lack of Section 5 preclearance, of course, that has led the Court to request possible interim plans. The legal standards under Sections 2 and 5 are substantially different. See *Reno v. Bossier Parish School Board*, 520 US 471 (1997) Accordingly, unless and until one or more elements of the House and Congressional

plans are found by the District of Columbia District Court to satisfy the requirements of Section 5, the court has requested possible alternative plans. Such plans, in addition to correcting all violations of Section 2 found by this Court, should take care to ensure that a remedy is available in the event there is an adverse finding respecting aspects of the plan in the District of Columbia action. Accordingly, the court should have at hand an alternative available for each element of each plan that is in dispute. The parties in the DC case have identified all of the issues that are in dispute in the attached document. The Court will note that there is considerable overlap with the Section 2 claims raised before this Court.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via the Court's electronic notification system or email to the following on October 17, 2011:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA and ERIC H. HOLDER, JR., in his official capacity as Attorney General of the United States, Defendants, WENDY DAVIS *et al.*, Defendant-Intervenors, MEXICAN AMERICAN LEGISLATIVE CAUCUS, Defendant-Intervenor, GREG GONZALES *et al.*, Defendant-Intervenors, TEXAS LEGISLATIVE BLACK CAUCUS, Defendant-Intervenor, TEXAS LATINO REDISTRICTING TASK FORCE, Defendant-Intervenor, TEXAS STATE CONFERENCE OF NAACP BRANCHES *et al.*, Defendant-Intervenors.	Civil Action No. 1:11-cv-1303 (RMC-TBG-BAH) Three-Judge Court

UNITED STATES AND DEFENDANT-INTERVENORS IDENTIFICATION OF ISSUES

Pursuant to the Court's Order dated September 22, 2011, the United States, Defendant Eric H. Holder, Jr., Attorney General of the United States ("the Attorney General"), and Defendant-Intervenors hereby identify those aspects of the proposed redistricting plans for the Texas House of Representatives and Texas Congressional delegation that the Defendants and Defendant-Intervenors contend violate of Section 5 of the Voting Rights Act.

I. Position of the United States

A. State House Plan

On November 28, 2001, in *Balderas v. Texas*, 2001 WL 34104833, Civ. No. 6:01CV158 (E.D. Tex. Nov. 28, 2001) (per curiam), a three-judge district court adopted a court-ordered redistricting plan for the Texas House of Representatives, based on the 2000 Census. As a court-ordered plan, that plan was not subject to preclearance under Section 5 of the Voting Rights Act. That plan was the last plan in force or effect and is therefore the benchmark plan for purposes of this case. Ten years later, the Texas Legislature passed House Bill 150, containing a new redistricting plan for the Texas House of Representatives, based on the 2010 Census, and the Governor signed it on June 17, 2011. Under Texas law, that plan was to become effective on August 29, 2011. The plan contained in House Bill 150 is the proposed plan for purposes of this case.

The proposed redistricting plan for the Texas House of Representatives is a "standard, practice, or procedure with respect to voting" within the meaning of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c. The United States contends that the Plaintiff's proposed redistricting plan for the Texas State House of Representatives has a purpose and will have a retrogressive effect that is prohibited by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c(a).

1. Effect

When compared to the benchmark plan, the proposed House plan will have a retrogressive effect that violates Section 5 of the Voting Rights Act in that it will diminish the ability of citizens of the United States, on account of race, color or membership in a language minority group, to elect their preferred candidates of choice to the Texas House of Representatives. See Department of Justice's Guidance Concerning Redistricting under Section 5 of the Voting Rights Act, 76 Federal Register 7470 (February 9, 2011); Department of Justice's Revision of Procedures for Administration of Section 5 of the Voting Rights Act of 1965, 76 Fed. Reg. 21239 (April 15, 2011). The United States will address the legal standard concerning retrogressive effect in its brief in opposition to the State of Texas' Motion for Summary Judgment [Docket #41]. The retrogression from the benchmark to the proposed plan stems from changes to as many as five districts: 33, 35, 41, 117, and 149.

Hispanic citizens have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 33 benchmark districts: 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90, 103, 104, 116, 117, 118, 119, 123, 124, 125, 140, 143, 145, and 148. Black citizens have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 12 benchmark districts: 22, 95, 100, 109, 110, 111, 131, 139, 141, 142, 146, and 147. Minority citizens (black and/or Hispanic) have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following four benchmark districts: 27, 46, 120, and 137. No further determination is necessary with respect to these districts because these districts are not at issue. Minority citizens may also have the ability to elect their preferred candidates of choice to the Texas House of Representatives in 149, but as noted below, our analysis has not been completed. In total, there

are 50 districts in the benchmark plan in which minority citizens have or may have the ability to elect their preferred candidates of choice to the Texas House of Representatives.

Hispanic citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 29 proposed districts: 31, 34, 36, 37, 38, 39, 40, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90, 103, 104, 116, 118, 119, 123, 124, 125, 140, 143, 145, and 148. Black citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 13 proposed districts: 22, 27, 95, 100, 109, 110, 111, 131, 139, 141, 142, 146, and 147. Minority citizens (black and/or Hispanic) will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following three proposed districts: 46, 120, and 137. No further determination is necessary with respect to these districts because these districts are not at issue. In total, there are 45 districts in the proposed plan in which minority citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives.

The United States contends that the proposed House plan will not change the ability of any citizens, on account of race, color or membership in a language minority group, to elect their preferred candidates of choice in any of the remaining 145 districts. To the extent that such citizens in those districts have the ability to elect under the existing plan, they will have the ability to do so under the proposed plan. To the extent that such citizens in those districts do not have the ability to elect under the existing plan, they will not have the ability to do so under the proposed plan.

Regarding the five districts at issue, the United States claims the following:

House District 33: Under the existing plan, House District 33 is located in Nueces County and encompasses most of Corpus Christi, Texas. Hispanic citizens are currently able to elect

their preferred candidate of choice to the House in this district despite the presence of racially polarized voting. Under the proposed plan, House District 33 will be moved to Collin and Rockwall counties near Dallas, and most of the existing district's population will be reallocated to proposed House District 32. Hispanic citizens will not be able to elect candidates of their choice in proposed House District 32 or proposed House District 33 because of the persistence of racially polarized voting. This will result in a net loss of Hispanic citizens' ability to elect one candidate of choice to the House.

House District 35: Under the existing plan, House District 35 is located in south Texas and includes all of Atascosa, Bee, Goliad, Jim Wells, Karnes, Live Oak, and McMullen counties. Hispanic citizens are currently able to elect their preferred candidates of choice to the House in this district despite the presence of racially polarized voting. Under the proposed plan, House District 35 will be substantially reconfigured to remove Goliad, Jim Wells and Karnes counties and to add Duval, La Salle, and San Patricio counties. Hispanic citizens who will remain in proposed House District 35 will not be able to elect candidates of their choice because of the persistence of racially polarized voting. This will result in a net loss of Hispanic citizens' ability to elect one candidate of choice to the House.

House District 41: Under the existing plan, House District 41 is located in Hidalgo County in south Texas. Hispanic citizens are currently able to elect their preferred candidates of choice to the House in this district despite the presence of racially polarized voting. Under the proposed plan, House District 41 will remain in Hidalgo County but will be substantially reconfigured. The proposed district has a large number of VTD splits, which has an impact on the accuracy of election results allocated to the proposed district. Hispanic citizens who will remain in proposed House District 41 will not be able to elect candidates of their choice because

of the persistence of racially polarized voting. This will result in a net loss of Hispanic citizens' ability to elect one candidate of choice to the House.

House District 117: Under the existing plan, House District 117 is located in western Bexar County near San Antonio, Texas. Hispanic citizens are currently able to elect their preferred candidates of choice to the House in this district despite the presence of racially polarized voting. Under the proposed plan, House District 117 will be reconfigured only moderately, but enough to change the district's performance. Hispanic citizens who remain in proposed House District 117 will not be able to elect candidates of their choice because of the persistence of racially polarized voting. This will result in a net loss of Hispanic citizens' ability to elect one candidate of choice to the House.

House District 149: Under the existing plan, House District 149 is located in Harris County and encompasses the Alief community in the City of Houston, Texas. The district has a combined minority-citizen voting-age population of 61.3 percent and has elected a Vietnamese-American legislator, Hubert Vo, since 2004 despite the presence of racially polarized voting. In the proposed plan, House District 149 will move to Williamson County in central Texas, and it will have a combined minority-citizen voting-age population of less than 23 percent.

The United States has not yet reached any conclusion about this district's performance, and its investigation is on-going. As a result, District 149 remains at issue, and there is the potential for a net loss of the ability to elect one additional candidate of choice to the House on account of race or color or membership in a language minority group.

2. Purpose

The proposed House plan has a prohibited purpose that violates Section 5 of the Voting Rights Act in that it was adopted, at least in part, for the purpose of diminishing the ability of

citizens of the United States, on account of race, color, or membership in a language minority group, to elect their preferred candidates of choice to the Texas House of Representatives. *See* Department of Justice's Guidance Concerning Redistricting under Section 5 of the Voting Rights Act, 76 Federal Register 7470 (February 9, 2011); Department of Justice's Revision of Procedures for Administration of Section 5 of the Voting Rights Act of 1965, 76 Fed. Reg. 21239 (April 15, 2011). The United States disagrees with the legal standard proposed by the State of Texas and will address the proper standard in its brief in opposition to the State of Texas' Motion for Summary Judgment [Docket #41]. The evidentiary basis for this contention is not limited to any particular district or districts but rather extends to the kinds of direct and circumstantial evidence that the Supreme Court identified as probative of discriminatory purpose in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). The United States has, however, identified the boundaries of proposed House Districts 32, 41, 93, 105, 117, and the elimination of Districts 33 and 149 in the benchmark as among the areas of particular concern. In addition, the United States has not yet determined whether the proposed plan has any other areas of concern or any other purpose or purposes that are prohibited by Section 5, and its investigation is on-going.

B. Congressional Plan

The United States House of Representatives consists of 435 members apportioned among the States according to population after each decennial census. After the 2000 Census, the State of Texas was entitled to 32 representatives, and federal law then required the State to redistrict. On August 4, 2006, a three-judge district court, in *LULAC v. Perry*, 2006 WL 3069542, Civ. No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006) (per curiam), adopted a redistricting plan for Texas' congressional delegation, based on the 2000 Census. As a court-ordered plan, that plan was not

subject to preclearance under Section 5 of the Voting Rights Act. That plan was the last plan in force or effect and is therefore the benchmark plan for purposes of this case.

After the 2010 Census, the State of Texas was entitled to four new representatives in Congress, for a total of 36 representatives, and federal law once again required the State to redistrict. The Texas Legislature then passed Senate Bill 4, containing a new congressional redistricting plan, based on the 2010 Census, and the Governor signed it on July 18, 2011. The plan contained in Senate Bill 4 is the proposed plan for purposes of this case.

The proposed redistricting plan for the Texas delegation to the United States House of Representatives is a "standard, practice, or procedure with respect to voting" within the meaning of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c. The United States contends that the Plaintiff's proposed redistricting plan for the United States House of Representatives (Congressional plan) will have an effect that is prohibited by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c(a). The United States does not have sufficient knowledge to make a determination whether the proposed Congressional plan was enacted with a discriminatory purpose in violation of Section 5, and thus seeks discovery concerning this issue.

1. Effect

When compared to the existing plan, the proposed Congressional plan will have a retrogressive effect in that it will diminish the ability of citizens of the United States, on account of race, color or membership in a language minority group, to elect their preferred candidates of choice to the United States House of Representatives. The United States will address the legal standard in its brief in opposition to the State of Texas' Motion for Summary Judgment [Docket #41]. The retrogression from the benchmark to the proposed plan stems in part from changes to Districts 23 and 27, which provide Hispanic citizens with the ability to elect candidates of their

choice in the benchmark plan but not the proposed; and the addition of new Districts 34 and 35 as districts in which Hispanic citizens have the ability to elect candidates of their choice, in light of the increase in the total number of Texas Congressional districts following the release of the 2010 Census.

Hispanic citizens have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following seven benchmark districts: 15, 16, 20, 23, 27, 28, and 29. Black citizens have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following three benchmark districts: 9, 18 and 30.

Hispanic citizens will have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following seven proposed districts: 15, 16, 20, 28, 29, 34 and 35. Black citizens will have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following three proposed districts: 9, 18 and 30.

The United States contends that the proposed Congressional plan will not change the ability of any citizens, on account of race, color or membership in a language minority, to elect their preferred candidates of choice in any of the remaining 30 benchmark districts, with the exception of Districts 23 and 27 as discussed below. To the extent that such citizens in those districts have the ability to elect under the existing plan, they will have the ability to do so under the proposed plan. To the extent that such citizens in those districts do not have the ability to elect under the existing plan, they will not have the ability to do so under the proposed plan. With regard to new districts in the proposed plan, as indicated, new Districts 34 and 35 in the proposed plan are districts in which Hispanic citizens have the ability to elect candidates of their

choice. New Districts 33 and 36 in the proposed plan are districts in which minority citizens do not have the ability to elect their preferred candidates of choice.

The United States believes that benchmark Congressional District 23 may also be the subject of dispute. Under the existing plan, Congressional District 23 is located in southwest Texas and encompasses seventeen whole counties and parts of three other counties. Hispanic citizens are currently able to elect their preferred candidate of choice to Congress in Congressional District 23 despite the presence of racially polarized voting. Under the proposed plan, Congressional District 23, while located in the same general area in Texas, will encompass twenty-five whole counties and parts of five other counties. Hispanic citizens will not be able to elect candidates of their choice in proposed Congressional District 23 because of the persistence of racially polarized voting.

Based on information currently available to the United States, the State's position is unclear concerning whether benchmark District 23 is a district in which Hispanic citizens have or do not have the ability to elect candidates of their choice. On page 6 of the State's Memorandum in Support of its Motion for Summary Judgment filed September 14, 2011 [Docket #41], the State indicates that benchmark District 23 is an "Hispanic opportunity district." This appears inconsistent with the expert report of the State's own expert in the *Perez v. Perry* redistricting litigation recently tried in the United States District Court for the Western District of Texas (C.A. No. Sa-11-CA-360-OLG-JES-XR), in which Dr. John Alford wrote that benchmark District 23 is not an opportunity district for Hispanic voters. In deposition and at trial, Dr. Alford's opinion is more equivocal about the performance of District 23 in the benchmark, noting that the district elected a Hispanic candidate of choice in 2006 and 2008, and he states that District 23 in the proposed plan performs worse than in the benchmark plan. Thus, there remains an issue between

the United States and the State concerning District 23, and whether the State's changes to this District in the proposed plan result in a loss of Hispanic citizens' ability to elect one candidate of choice to Congress.

The United States believes that benchmark Congressional District 27 may also be the subject of dispute. Under the existing plan, Congressional District 27 is located in extreme southeast Texas, bordering on both Mexico and the Gulf of Mexico. It includes all of Kenedy, Kleberg, Nueces and Willacy counties, and parts of Cameron and San Patricio counties. Hispanic citizens are currently able to elect their preferred candidates of choice to Congress in this District despite the presence of racially polarized voting. Under the proposed plan, House District 27 will be substantially reconfigured and moved north to remove Kenedy, Kleberg and Willacy counties, as well as its previous Cameron County population, and to add the whole counties of Aransas, Calhoun, Jackson. Lavaca, Matagorda, Refugio, Victoria and Wharton, and parts of Bastrop, Caldwell and Gonzales counties. All of Nueces County and a slightly larger portion of San Patricio County remain in proposed District 27. Hispanic citizens will not be able to elect candidates of their choice in proposed District 27 because of the persistence of racially polarized voting.

Based on information currently available to the United States, the State's position is unclear concerning whether benchmark District 27 is a district in which Hispanic citizens have or do not have the ability to elect candidates of their choice. On page 6 of the State's Memorandum in Support of its Motion for Summary Judgment filed September 14, 2011 [Docket #41], the State indicates that benchmark District 27 is an "Hispanic opportunity district." This appears inconsistent with the expert report of the State's own expert in the *Perez v. Perry* redistricting litigation recently tried in the United States District Court for the Western District of Texas (C.A.

No. Sa-11-CA-360-OLG-JES-XR), in which Dr. John Alford wrote that benchmark District 27 is not an opportunity district for Hispanic voters. At deposition and trial, Dr. Alford counts District 27 in the benchmark as an opportunity district, and he stated that the proposed District 27 does not provide that opportunity because it has flipped from majority Hispanic to majority Anglo. Thus, there remains an issue between the United States and the State concerning District 27, and whether the State's changes to this District in the proposed plan result in a loss of Hispanic citizens' ability to elect one candidate of choice to Congress.

2. Purpose

The United States has not yet determined whether the proposed plan has any purpose or purposes that are prohibited by Section 5, and its investigation is on-going. Based on our preliminary investigation, it appears that the proposed plan may have a prohibited purpose in that it was adopted, at least in part, for the purpose of diminishing the ability of citizens of the United States, on account of race, color, or membership in a language minority group, to elect their preferred candidates of choice to Congress. The evidentiary basis for this contention is not limited to any particular district or districts but rather extends to the kinds of direct and circumstantial evidence that the Supreme Court identified as probative of discriminatory purpose in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977).

II. Positions of Defendant-Intervenors

A. Davis Intervenors

The closed redistricting process through which state legislative leaders in Texas shut out input from minority communities and the leaders who represent them, including but not limited to the failure to adopt proposed alternatives that would have reflected the rapid and concentrated

growth in minority communities, resulted in a discriminatory (retrogressive) effect and also evidence a discriminatory purpose in violation of Section 5. See 28 C.F.R. §§ 51.54 (referencing the Arlington Heights factors to determine discriminatory purpose and the Beer standard to determine discriminatory effect) 51.57 (applying the Arlington Heights framework among other factors to determine discriminatory purpose), 51.59 (laying out a multi-factor test for whether a plan is retrogressive); DOJ Redistricting Guidance at 7471-72 (same). Like the Department of Justice, the Davis-Veasey Defendant-Intervenors believe that the changes made to existing congressional districts 23 and 27 will retrogress minority voting strength in violation of Section 5, and further take the position that these changes, and Plan C185, were adopted with a racially discriminatory purpose. The Davis-Veasey Intervenors also challenge the state's rejection of alternative plans that created two new minority opportunity congressional districts in the Dallas-Fort Worth area, where the state has "packed" minority population into district 30 and otherwise "cracked" or fragmented minority voters among six Anglo-controlled districts. Such alternatives would have more fairly reflected the dramatic growth in minority population that resulted in the state's additional congressional seats in the Dallas and Tarrant County region of North Texas and in South Texas.1 Given the dramatic minority population growth over the last decade, the Texas Congressional redistricting plan should have included approximately 14 districts (out of 36) in which minority voters could have elected the candidate of their choice and effectively participated in the political process: three in the Dallas and Tarrant County region;

[1] Dallas and Tarrant Counties contain over 2.1 million African-American and Hispanic residents, yet only one of the 8 congressional districts that enter the two counties provide minority voters with an opportunity to elect their candidate of choice. Over the decade, the Anglo population in Dallas and Tarrant counties combined fell by 156,472 while the African-American population increased by 152,825 and the Hispanic population increased by 440,898.

three in Harris County region; and eight in the area that extends from Travis County to and including South and West Texas.

The failure to create any new minority opportunity congressional districts in the 2011 proposed plan despite rapid growth in minority communities and the addition of four Congressional seats retrogresses racial and language minorities with respect to their effective exercise of the electoral franchise. In the 2006 Amendments, Congress intended to prohibit covered jurisdictions from keeping minority voters "in their place" by perpetuating unconstitutional conditions or making them worse, H. Rep. No. 109-478, at 68 (2006); see also S. Rep. No. 109-295, at 16 (2006). The failure to do so is a factor in the discriminatory purpose test and also is clearly relevant to the discriminatory effect test. See 28 C.F.R. §§ 51.54, 51.59(b), 51.57(e). In Texas, minority voters had realistic opportunities to effectively participate and elect candidates of choice in eleven districts (CD 9, 15, 16, 18, 20, 23, 25, 27, 28, 29, 30) under the benchmark map (out of 32 districts, or 34.4%), and under the State's proposed 2011 plan (C185), minority voters have realistic opportunities to elect candidates of choice in only 10 congressional districts (Districts 9, 15, 16, 18, 20, 28, 29, 30, 34, 35) (out of 36 districts, or 27.8%). Thus, the proposed plan reduces the number of congressional districts where minority voters have an effective opportunity to participate in the political process and to elect candidates of their choice from 11 to 10, even though the congressional delegation has been expanded from 32 to 36. That Texas state legislators chose to decrease the number of effective minority districts even though the minority share of the population increased relative to that of Anglos evidences discriminatory intent, among other factors.

B. Mexican American Legislative Caucus Intervenors

As stated in the September 21, 2011 status conference, MALC will focus its participation in this litigation on opposing the State of Texas' request for Section 5 preclearance of the redistricting plans for the state House and the United States Congress. MALC further will principally focus on the purpose and effect of these two plans insofar as they relate to the electoral opportunities of the Hispanic citizens of the State of Texas.

MALC agrees with the United States' identification of the benchmark and proposed plans for the state House and Congress, and the United States' statement that redistricting plans constitute a covered voting change within the meaning of Section 5. Like the United States, MALC will set forth the governing Section 5 legal standards as to discriminatory purpose and discriminatory effect in its brief in opposition to Texas' Motion for Summary Judgment.

1. State House Plan

a. Effect

As to the state House plan's impermissible retrogressive effect, MALC agrees with the United States' statement as to the state House districts at issue with the following qualifications.

First, MALC notes that the retrogression analysis ultimately rests on a determination of whether the electoral opportunity provided by the proposed plan as a whole is less than, the same as, or more than the electoral opportunity provided by the existing plan as a whole. As the United States indicates, this necessarily requires an evaluation of the electoral opportunities in specific House districts, but the ultimate retrogression determination is made on a plan-wide basis, not a district-by-district basis.

Second, it is MALC's position that, in evaluating whether the proposed House plan is retrogressive, the losses of minority opportunity districts identified by the United States, and the

additional loss set forth below, are not compensated for in the proposed House plan by any new House districts in which Hispanic citizens will have the opportunity to elect candidates of choice.

Third, as to the district-specific analysis provided by the United States, MALC sets forth the following additional district at issue:

District 144: The United States' position is that Hispanic citizens do not have an opportunity to elect a candidate of choice in either existing District 144 or proposed District 144. District 144 is located in Harris County. MALC contends that, in the context of polarized voting, Hispanic citizens in existing District 144 have been steadily gaining electoral strength such that this district is one in which Hispanic citizens are nearing the opportunity to elect their preferred candidate. Proposed District 144 has been significantly reconfigured to eliminate the emerging Hispanic electoral opportunity in this district, which will result a loss of Hispanic citizens' opportunity to elect candidates of choice to the House.

b. Purpose

MALC agrees with the United States that the state House plan was enacted with a prohibited discriminatory purpose. MALC's purpose analysis will focus on the manipulation of district boundaries to fragment minority population concentrations and unnecessarily pack other minority voters into particular districts. The analysis will encompass, in part, the districts identified by the United States and MALC with regard to the discriminatory effect analysis. In addition, the manipulation of other district boundaries is relevant to the purpose analysis, and this includes the proposed alterations to existing Districts 32, 40, 77, 78, 90, 93, 104, 105, 137, 144, and 148. Furthermore, the proposed plan manipulates population variances between districts to advance the State's goal of minimizing the electoral opportunity of Hispanic citizens, which also constitutes indicia of the State's discriminatory purpose in enacting the proposed House plan.

2. Congressional Plan

a. Effect

As to the congressional plan's impermissible retrogressive effect, MALC agrees with the United States' statement as to the congressional districts at issue with the following qualifications.

MALC again notes that the retrogression determination turns on a plan-wide comparison of the existing and proposed plans. In this regard, a circumstance that must be taken into account is that the proposed plan includes four more total districts (36) than the existing plan (32). Thus, while MALC's position is that both the proposed plan and the existing plan include seven districts in which Hispanic citizens have the opportunity to elect candidates of choice, MALC asserts that Hispanic citizens' opportunity to elect candidates of choice in seven districts in the proposed 36-district plan is significantly less than the opportunity to elect candidates of choice in seven districts in the existing 32-district plan, thus rendering the proposed plan retrogressive, in violation of Section 5.

b. Purpose

MALC contends that the proposed congressional redistricting plan was enacted with a discriminatory purpose, in violation of Section 5. MALC contends that, in particular, the configurations selected for existing Districts 6, 12, 23, 26, 27, and 33 exhibit characteristics indicative of discriminatory purpose (including fragmentation of minority population concentrations and packing of other minority citizens into particular districts).

C. Gonzales Intervenors

The Gonzalez Intervenors contend that Hispanic citizens have the ability to elect their preferred candidates of choice to the United States House of Representatives in benchmark

Congressional District 25 in addition to the seven benchmark districts identified by the United States as districts in which Hispanic citizens have the ability to elect their preferred candidates of choice. Hispanic citizens will not be able to elect candidates of their choice in proposed Congressional District 25 because of the State's fracturing of the benchmark district's minority and Anglo voters who collectively enabled Hispanic citizens to elect candidates of their choice.

The Gonzalez Intervenors concur with the United States that districts 23 and 27 are also the subject of dispute. The Gonzalez Intervenors further contend that the State's proposed Congressional Plan demonstrates statewide retrogression based on both the number and the percentage of districts in which minority citizens have the ability to elect their preferred candidates of choice in the benchmark versus the proposed plan.

The Gonzalez Intervenors further contend that the State's proposed Congressional Plan has a prohibited purpose in that it was adopted for the purpose of diminishing the ability of citizens of the United States, on account of race, color, or membership in a language minority group, to elect their preferred candidates of choice to Congress. The evidentiary basis for this contention is not limited to any particular district or districts but rather extends to the kinds of direct and circumstantial evidence that the Supreme Court identified as probative of discriminatory purpose in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977).

The Gonzalez Intervenors' allegations regarding retrogression within and among specific districts, statewide retrogression, and discriminatory purpose are subject to modification based on additional discovery.

The Gonzalez Intervenors take no position with respect to the Texas House of Representatives, Texas Senate, or Texas State Board of Education districts.

D. The Texas Legislative Black Caucus, the NAACP, and League of United Latin American Citizens (LULAC-proposed defendant intervenor)

The above Defendant-Intervenors would add that the Voting Rights Act protects minority voters from retrogression of voting practices and procedures involving districts in which minority voters have an established record of winning office, but also voting practices and procedures that will inhibit future minority political success, that diminish gains in electoral influence achieved by minority voters, and changes that add disproportionate burdens to minority participation generally. Like the United States, we will elaborate on legal issues in response to plaintiff's Motion for Summary Judgment.

The existing districts currently disputed by these Intervenors are described below.

1. Congress

Like the Department of Justice, the above Defendant-Intervenors take issue with the manner in which existing congressional districts 23 and 27 were redrawn, and believe that these changes are retrogressive and were adopted with a racially discriminatory purpose. These Intervenors also challenge the state's rejection of alternative plans that created two new minority congressional districts in the Dallas-Fort Worth area, where the state has "packed" minority population into district 30 and otherwise "cracked" or fragmented minority voters among six Anglo controlled districts. Such alternatives would have more fairly reflected the dramatic growth in minority population that resulted in the state's additional congressional seats. As it is, under the proposed plan the minority proportion of seats in the expanded Texas congressional delegation is reduced from its current proportion. The state also rejected an alternative that would have maintained and enhanced the growing minority population in existing district 2 in the oil refinery areas of the southeastern corner of the state. In addition, we note that, in light of the testimony of plaintiffs' expert (Dr. Alford) and its fragmentation of existing political alliances and cohesive neighborhoods, district 35 (Austin-San Antonio) should not be seen as an additional minority district for purposes of the Voting Rights Act.

Existing district 25 in Travis County (Austin) involves a rare but effective and long-standing cross-coalition between minority voters and like-minded Anglo voters. Minority voters have enjoyed decisive influence in this district. The state plan fragments this coalition and

separates the Travis County Anglo voters from minority voters with whom they might coalesce into separate districts. The plan reorients the district completely so that it runs northward to the fringe of Fort Worth, and reduces the minority percentage of total population from 50.2 percent to 29.7 percent. The change is retrogressive and was adopted with a racial purpose.

2. Senate

Senate District 10 in Tarrant County, (Fort Worth) was identified by the State in 2001 as a district which would increase in minority population and in time offer minority voters an opportunity to elect a senator of their choice. The minority percentage in the district increased from 43.4 percent to 52.4 percent, and minority voters were able to elect a candidate of their choice in 2008. The proposed plan lowers the minority population to 45.5 percent. In doing so the plan most notably removes an 80.2 percent minority area and submerges it in district 22 (38.6% minority), and moves a large part of an established minority community in northwest Fort Worth to district 12 (38.9% minority). The plan replaces these areas with heavily Anglo areas. The plan disrupts long-established and cohesive minority political communities and under the new plan minority voters will no longer be able to elect a representative of their choice. Alternatives were available that enhanced the minority share of district population, but these were rejected by the state. The change is retrogressive and was adopted with a racially discriminatory purpose.

In District 15 in Harris County (Houston), the black and Hispanic percentage of total population dropped from 72.3 percent to only 66.7 percent, a level which the experience of other Texas districts is tenuous at best for minority voters. There was no need for such a reduction, as shown by a plan supported by the TLBC with a 71.5 percent black/Hispanic district 15. The reduction in minority voting strength flowed from the State's choice of transferring an Anglo area from adjacent district 13 in Harris County, in which was under-populated (needed to add rather than remove population) and increasing the combined minority percentage to over 90 percent of the total. The change will have a retrogressive effect and it was adopted with a racial purpose.

3. House

These Intervenors challenge the House districts noted by the Department of Justice. LULAC also objects to the districts to which MALC objected. Finally, TLBC, NAACP, and LULAC also object to these following additional districts:

Bell County

Existing district 54 in Bell, Burnet and Lampasas Counties changed from a 55.4 percent Anglo majority in 2000 to a 51.5 percent minority majority in 2010. The district split the minority population of the City of Killeen with district 55 (which increased over five percentage points from 2000 to 2010). Rather than unite Killeen into a single district consistent with its guidelines, the state chose to continue the fragmentation with altered lines within Killeen. The state rejected a compact alternative district centered on Killeen with a minority population over 60 percent for a racially discriminatory purpose.

Dallas County

Dallas County had increased from 54.2 percent minority in 2000 to 65.5 percent minority in 2010. The state plan packs the bulk of the minority population into districts ranging up to 91 percent minority, and fragments the remainder among Anglo-controlled districts so that. The plan also creates bizarrely shaped districts, fragments a large number of minority voting precincts, unnecessarily alters existing district boundaries, and breaks up existing get-out-the-vote and other political arrangements. These changes will increase costs to minority candidates and organizations and will have a depressing effect on overall minority participation in elections beyond the districts at issue in this case. The most egregious examples of such districts include proposed districts 103, 104, 105, 110, and 111.

Existing district 101 in eastern Dallas County was one of two districts eliminated in the state plan. The district was only 2.41 percent below the ideal population. The minority population had increased from 36 percent in 2000 to 59.7 percent minority in 2010, and minority voters came close to electing a candidate of their choice in 2008. The state selected district 101 as one of two Dallas County districts to eliminate. Alternative plans maintained district 101

virtually intact, and eliminated instead two predominantly Anglo districts that were badly under-populated (-24.49% and (-15.97%).

Existing district 106 in western Dallas County was the second of two districts eliminated in the state plan. The district was only 4.73 percent below the ideal population. The minority population had increased from 51.9 percent in 2000 to 70.0 percent in 2010. The state selected district 106 as one of two Dallas County districts to eliminate. Alternative plans maintained district 101 substantially untouched and with a 67.7 percent minority population and eliminated instead two districts predominantly Anglo districts that were badly under-populated. The elimination of this district is retrogressive and infected with a racially discriminatory purpose.

The north-northeastern area of Dallas County (existing districts 102, 107, 112) divides a growing minority concentration. The state's plan further fragments the concentration among proposed Anglo dominated districts 102, 107, 112, 113 and 114. The state rejected alternative plans that avoided this fragmentation and create a district in which minority voters would have an opportunity to elect a representative of their choice from that area.

Fort Bend County

Existing district 26, situated in Fort Bend County to the southwest of Houston, increased from 44 percent minority in 2010 to 60.6 percent minority in 2010; the Asian American population increased from 22.6 percent to 33.6 percent during that period. The proposed plan reduced the minority percentage to 54.7 percent and the Asian percentage to27.5 percent. The state rejected available alternative plan that would avoid that retrogression with a racially discriminatory purpose.

Harris County

Like Dallas County, Harris County increased significantly in minority population. In a change from the formula for district assignments used in 2000, the state removed one district in Harris County. The state selected district 149 (89.3% minority in total population in 2010 with a black plurality) as discussed by the United States. As in Dallas County, the state packed minority districts beyond levels necessary to maintain existing minority districts up to 92.3

percent minority and fragmented the remaining minority areas and submerged them in Anglo-controlled districts. Similarly, the state unnecessarily reconfigured and contorted minority districts with the negative effects on minority districts discussed in Dallas County. See especially districts 139, 145 and 146. The Intervenors challenge this state's action as retrogressive and racially motivated.

Existing district 144 in eastern Harris County increased from 48.5 percent minority n total population in 2000 to 69.3 percent minority in 2010. The proposed plan lowers the minority percentage by six percentage points and retrogresses minority opportunities. Predominantly minority precincts are adjacent to district 144 whose inclusion in the district would have avoided retrogression.

Tarrant County

Tarrant County increased substantially in minority population between 2000 and 2010, and gained one house seat. Tarrant County has been marked by exceptionally and unnecessarily contorted districts as the state systematically fragmented minority concentrations. See especially congressional districts 6, 12, 26, and 33; senate districts 9, 10, 12 and 22; and house districts 90, 93 and 95. The unnecessary redrawing of minority districts and the layered fragmentation of minority concentrations combine seriously to undermine minority political opportunities and participation by minority citizens in the electoral process, as discussed above in reference to Dallas County.

E. Texas Latino Redistricting Task Force Intervenors

The Latino Task Force Defendant Intervenors join the United States and add as follows: the State House plan, H238, and the congressional plan, C185, intentionally discriminate against Latino voters in violation of Section 5 of the Voting Rights Act of 1965.

Date: September 23, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2011, I served a true and correct copy of the foregoing via the Court's ECF filing system on the following counsel of record:

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