UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DICKINSON BAY AREA BRANCH NAACP, et al., *Plaintiffs*, v. GALVESTON COUNTY, TEXAS, et al., *Defendants*.	§ § § § § § § § § §	Civil Action No. 3:22-cv-117- JVB
TERRY PETTEWAY, et al., *Plaintiffs*, v. GALVESTON COUNTY, TEXAS, et al., *Defendants.*	§ § § § § § § § § §	Civil Action No. 3:22-cv-57-JVB [Lead Consolidated Case]
UNITED STATES OF AMERICA, *Plaintiff*, v. GALVESTON COUNTY, TEXAS, et al., *Defendants*.	§ § § § § § § § § §	Civil Action No. 3:22-cv-93-JVB

NAACP/LULAC PLAINTIFFS' RESPONSE TO DEFENDANTS' CLOSING STATEMENT

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Defendants provide an unreliable account of the record in their Closing Statement ("Defs.' Br.") and Proposed Findings of Fact and Conclusions of Law ("Defs.' PFOFCOL"), and the Court should not credit their fundamentally flawed portrayal.

For example, in their "sequence of events" chart, Defs.' Br. at 24−25; *see also* Defs.' PFOFCOL at 60−61, Defendants tellingly omit Judge Henry's communications with Commissioners Apffel and Giusti and other communications within the series of meetings held in violation of the Texas Open Meetings Act ("TOMA"). *See generally* Dkt. 239, Pls.' Proposed Findings of Fact ("PFOF") ¶¶ 320−32 and Conclusions of Law ("PCOL") at ¶¶ 133−40. Defendants' timeline also omits other key events, including that the 2020 Census data was released in an industry-standard and thus "usable" format on August 12, 2021, and that proposed commissioners precinct lines were set at least one week before they were publicly disclosed. Trial Tr. vol. 8, 298:3−15, vol. 9, 43:22–44:1 (Bryan).

Defendants also allude to partisan gerrymandering as a defense, *see* Defs.' Br. at 11−12, 15−16, 29−30, even though the trial record clearly shows that Judge Henry and the commissioners disclaimed such intent: Henry testified that politics was "not his primary concern," Trial Tr. vol. 7, 197:18–25, 304:3–6 (Henry), consistent with Commissioners Apffel and Giusti's testimony indicating they did not consider partisanship. Trial Tr. vol. 9, 88:3–15; 98:9–11 (Giusti); 355:25–356:6 (Apffel). And when Dale Oldham described Judge Henry's design of what became the Enacted Plan, he was clear the purpose was *not* to "create four Republican commissioner precincts." Trial Tr. vol. 8 153:10−154:4 (Oldham). The Court should therefore ignore these post-hoc fabrications.

It is further ironic that Defendants briefly suggest that the Enacted Plan's adoption

resulted from a conspiracy by the League of Women Voters of Texas (though they did not call any League members at trial to substantiate this), *see* Defs.' Br. at 10–11, given Defendants could have resolved this case in the last year and a half by passing alternative maps they claim to not oppose (e.g. Map 1). Their brief instead again indicates Defendants are the ones engaged in this litigation to upend Section 2 jurisprudence. *Id.* at 35, 59–60.

Defendants' submissions also improperly include a misleading summary of online public comments, Dkt. 245-1, and lists of alleged minority officials that are riddled with errors and propose facts neither offered nor admitted at trial, Defs.' PFOFCOL ¶¶ 595–98. Several of the individuals they claim are "currently serving" are listed with no record citation at all and others, upon information and belief, are former officeholders from the 1970s (e.g. Lynn Ellison) and individuals (e.g. Fidencio Leija) who do not appear on their municipality's website. The Court already refused to admit exhibits substantially similar to these at trial, *see* Trial Tr. vol. 10, 223:4–226:15, 256:14–257:16, and Plaintiffs renew their objections to this information on the same grounds. They fail to meet evidentiary standards, are not properly in evidence, and should not be considered by the Court.

In short, Defendants' mischaracterization of the evidence does nothing to deflect from the essentially undisputed reality that they violated Section 2 and intentionally dismantled the historic sole majority-minority commissioner precinct in violation of the Fourteenth and Fifteenth Amendments. Plaintiffs address specific arguments below.

I. Defendants cannot justify the intentionally discriminatory impact of the Enacted Plan by claiming that Benchmark Precinct 3 is a racial gerrymander.

In designing and adopting the Enacted Plan, the commissioners court dismantled

the sole majority-minority commissioners precinct by executing a textbook four-way cracking of Galveston's Latino and Black population. *See* PFOF ¶¶ 187−95. Consistent with their trial presentation, Defendants do not deny *some* racial intent in the Plan's design, but rather seem to argue they were obligated to proactively retrogress Precinct 3 on the basis of race. *See* Defs.' Br. at 15 ("The 2011 Map's Precinct 3 required a redraw and reduction in minority CVAP to create a legally defensible map."). Even if it were true that race was considered at some point in Benchmark 3's design, this would not justify Defendants' later intentionally taking a racially adverse action to offset that consideration.

To start, even the County's redistricting counsel concedes that a least-change plan drafted using race-neutral criteria would have maintained a semblance of the historic Precinct 3 and been legally defensible. *See, e.g.*, Trial Tr. vol. 8, 122:18–123:2, 183:18–25 (Oldham).[1] And two of William Cooper's illustrative plans equalized populations in the Benchmark Plan by eliminating a municipal split and increasing compactness (Cooper Map 1), and alternatively by creating a coastal precinct (Cooper Map 2). Pls.' Ex. 386 at 26−34 (Cooper Expert Report). Using this approach, it "wasn't hard because [he] wasn't even trying" to achieve a majority Black and Latino precinct. Trial Tr. vol. 3, 59:3−11 (Cooper).

But even assuming *arguendo* a least-change approach were somehow problematic here, the county is 38% Black and Latino, Stipulated Facts ¶ 6, and thus there are "a multitude" of other potential plans "adhering to traditional redistricting principles that would result in maps that maintain a majority B+L CVAP Commissioners Precinct." Pls.'

[1] This also even assumes the County did not have a strong basis in evidence for ensuring Section 2 compliance; the facts show that it did. *See* PCOL ¶¶ 163−89.

Ex. 386 at 37 (Cooper Expert Report); *see also* Trial Tr. vol. 3, 52:12–15 (Cooper) ("There are many, many different ways to draw a majority Black plus Latino precinct. You can make few changes. You can make lots of changes. It can look a lot of different ways."). Other map configurations include coastal precincts and otherwise shift the Benchmark lines. *See* Pls.' Ex. 386 at 34−37 (Cooper Map 3); Pls.' Ex. 438 at 11−13 (Cooper Map 3A); Pls.' Ex. 485 at 30–53 (Rush Supp. Decl., Alternative Coastal Maps 1-4). To the extent Defendants contend the County was between a rock and a hard place in balancing the Fourteenth Amendment and the Voting Rights Act, the many race-neutral maps that maintain a majority-minority precinct instead reveal an ocean of possibility.

The bevy of alternative maps also undermines the baseless claim that "cleaning up boundary lines and forming a coastal precinct would largely change old precinct boundaries." Defs.' Br. at 5 (citing no evidence). The Enacted Plan's textbook cracking of Galveston's minority population was instead the result of Judge Henry's very specific geographic instructions and design, which went beyond merely requesting some arbitrary coastal precinct. *See* PFOF ¶¶ 242−43. In fact, Judge Henry's specific instructions resulted in a plan that evenly divides the longstanding historic core of Precinct 3. *Compare* Joint Ex. 45 at 24 (2001 Plan, attached as App'x A) *with* Pls.' Ex. 197 at 6 ("Draft Optimal D Plan"). Defendants do not explain this, nor do they argue that the pre-2012 historic Precinct 3's location in the center of the county was the result of racial gerrymandering.

Instead, Defendants' continued focus on Benchmark Precinct 3 as a racial gerrymander that required undoing discredits their assertion that race was not considered. *Compare* Defs.' Br. at 7, n.11 *with id.* at 5, 15, 25. Not only does Judge Henry and

Commissioner Apffel's testimony confirm this focus, *see* Trial Tr. vol. 7, 302:5−22 (Henry), Trial Tr. vol. 9, 356:7–14 (Apffel), but: (1) Judge Henry's first substantive question this redistricting cycle was whether the County "had to" draw majority-minority districts, *see* Pls.' Ex. 144; (2) his subsequent geographic instructions dismantled the sole majority-minority precinct; and (3) the racial data shown to him and the commissioners confirmed that the Enacted Plan evenly distributed Galveston's minority population across all four districts. *See* PFOF at p. 85 (Pls' Ex. 528, Maps 1 and 2 Analytics Spreadsheet). The evidence shows that race was not just considered, but that a "reduction in minority CVAP," Defs.' Br. at 15, predominated or was at least one motivating factor for the Enacted Plan.

Finally, to the extent Defendants now argue they were *required* to actively dismantle Precinct 3 on the basis of race, they have no support. The Supreme Court in *Shelby County* in no way implied that governing bodies are now obligated to actively retrogress or destroy majority-minority districts simply because race may have historically played some role in their design. *See generally Shelby County v. Holder,* 570 U.S. 529 (2013). To Plaintiffs' knowledge, no court has ever suggested that there is a compelling governmental interest in intentionally racially discriminating against historically discriminated-against groups to racially countervail some previous lawful remedial action.

II. Map 1 supports a finding of discriminatory intent.

Rather than eliminating inferences of discriminatory intent as Defendants contend, *see* Defs.' Br. at 26, Map 1's rejection strongly supports such a finding. Map 1 shows that commissioners were told a least-change approach with a majority-minority precinct was

defensible, and its rejection proves they intentionally chose *not* to maintain one in the Enacted Plan. The improper process by which individual commissioners were swayed from initially favoring Map 1, *see* Trial Tr. vol. 8, 190:16–20 (Oldham), to voting for Map 2, Pls.' Ex. 591 at 81, further supports finding discriminatory intent. The commissioners court reached its result through a series of private meetings in which a majority of the body deliberated on map proposals (to ultimately agree upon Map 2), violating TOMA. PFOF ¶¶ 320−32; PCOL ¶¶ 133−40. Their failure to hold more than one public meeting to consider and vote on maps also deviated sharply from prior redistricting cycles, *see* PFOF ¶¶ 217, 310−19, and underscores Judge Henry's efforts to present only "final" map proposals publicly. Trial Tr. vol. 7, 310:13–23, 334:1–8, 337:8–12 (Henry).

Nor does the evidence here "suffer from the same deficiencies as those in *Abbott I*"; instead, it easily overcomes them. *See* Defs.' Br. at 30 (quoting *LULAC v. Abbott*, 601 F. Supp. 3d 147, 175 (W.D. Tex. 2022)). In *Abbott I,* the court held that plaintiffs "pointed to nothing—no stray remark, secret correspondence or suspicious omission—that would tend to indicate [bill supporters] acted even partially because of the racial impact." 601 F. Supp. 3d at 175−76. Here, many "suspicious omissions" exist: the failure to adopt criteria, publicly disclose redistricting counsel before hiring them, hold more than one meeting on redistricting, or consider anything resembling the many straightforward map configurations with a coastal precinct, geographically compact districts, and a majority-minority precinct. *See generally* PFOF ¶¶ 275−363. These failures come paired with Judge Henry's "stray remark" at trial that he "would not have asked for" a map with a coastal precinct that kept the historic core of Precinct 3, Trial Tr. vol. 7, 305:6−18 (Henry), and

the private exchange in April 2021 asking Mr. Oldham whether the County "had to" draw majority-minority precincts. Pls.' Ex. 144 (Apr. 20, 2021 email). These factors along with others set out in Plaintiffs' submissions, and Defendants' own arguments, show Defendants acted at least in part to achieve some "reduction in minority CVAP." Defs.' Br. at 15.

III. Defendants' failure to offer a credible explanation for the deficient process that suppressed minority input underscores their discriminatory intent.

Defendants blame the bulk of their procedural deficiencies on COVID and the Census delay, but the cases and evidence they rely on only underscore the baselessness of this argument. For example, they rely on *Cooper v. Raffensperger*, 472 F. Supp. 3d 1282, 1292 (N.D. Ga. 2020), to assert that "COVID wrecked the time table [sic] for redistricting." Defs.' Br. at 29. But this decision was issued a *year before* the Census release and does not concern redistricting. Ironically, Defendants elsewhere frequently cite the statewide redistricting matter in which Texas (under the same time constraints) achieved more public involvement than the County did in the three months between the Census release and its own deadline. *See, e.g.*, Defs.' Br. at 14−17, 29 (citing *Abbot I*, 601 F. Supp. 3d 147).

Defendants never address, much less rebut, Dr. Burch's "apples to apples" comparison of the two weeks before adopting maps in 2011 compared to 2021: In the same span of time, the commissioners court held "five meetings across the county" in 2011 but only "one meeting right at the same time that the map was adopted" in 2021. Trial Tr. vol. 2, 191:7–23 (Burch). Defendants were aware of the Census delay (and thus modified timeline) as early as April, *see* Pls.' Ex. 144; Trial Tr. vol. 7, 290:14–18 (Henry), but still offer no explanation for waiting to hire a demographer until mid-October, *three weeks* after

first privately discussing maps, and *two months* after the Census release. Trial Tr. vol. 8, 225:20–21, 297:6–20 (Bryan); PFOF ¶¶ 236, 303–05. Defendants likewise still have no explanation for failing to present the "preliminary demographic report" or "preliminary redistricting proposals," as they did in 2011, Joint Ex. 45 at 9, even though Mr. Oldham had privately presented that demographic information to the commissioners court in September and draft maps existed as early as October 17. *See* PFOF ¶¶ 242, 297. Given the other procedural deviations which ensured the process unfolded behind closed doors, the conclusion is inescapable: Defendants' intent to limit transparency and public input to enact a discriminatory map—not COVID-19—caused the deficient process.

Defendants otherwise appear to blame their redistricting counsel for procedural deficiencies. *See, e.g.*, Defs.' Br. at 21 ("[H]ad counsel told the County to adopt criteria, the County would have."). But nothing in the record suggests that Judge Henry asked his counsel about criteria at all in 2021 despite having every opportunity to do so and understanding the County had adopted criteria in the past. *See* Trial Tr. vol. 7, 275:10−13 (Henry). Judge Henry was never advised providing more transparency would be unlawful, and he admitted he must exercise his *own* judgment in executing the duties of his office. Trial Tr. vol. 7, 339:13−341:16. He and the commissioners cannot be considered mere "tools" of their counsel, barred from providing a transparent redistricting process as in prior cycles, when they "have a duty to exercise their judgment and to represent their constituents." *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2350 (2021).

Accordingly, it is key to review Judge Henry and the commissioners' *own* conduct to properly assess *their* intent during the 2021 redistricting process. And here, the evidence

shows Judge Henry chose not to publicly adopt criteria again in 2021 based on a belief it would "tie [their] hands" during the process, not that it would be illegal. Pls.' Ex. 23.

Likewise, Defendants' assertions that they "repeatedly, and fervently, sought to speed up the process," Defs.' Br. at 21, carry little weight in light of the evidence. While they may have wanted to speed up the process at the eleventh hour for *themselves*, the underlying communications Defendants cite do not reflect an interest in doing so to ensure transparency and public participation for their *constituents*. *Id.* (citing email exhibits). None of the cited exchanges indicates Defendants desired to hold more than one meeting (much less multiple hearings throughout the county), publicly debate draft maps, or revise them based on public comment. Instead, these exchanges make clear Defendants intended to withhold proposed maps until they were "final," and to consider and adopt the Enacted Plan in a single special meeting (at the Annex) rather than a regular meeting (at the County seat). *See, e.g.*, Defs.' Ex. 98. This underscores how Defendants designed the redistricting process to shield the Enacted Plan from public scrutiny and prevent the introduction of alternative maps meeting their purported criteria during the process.

IV. Plaintiffs have proven the Enacted Plan violates the Voting Rights Act.

1. Defendants' *Gingles* I arguments reflect a misunderstanding of both law and fact. Legally, their contention that Plaintiffs must "establish adequate geographic, historic, or other interests beyond politics or socioeconomic status to join Black and Hispanic voters," Defs.' Br. at 38, contradicts the standard just affirmed in *Allen v. Milligan*. 143 S. Ct. 1487, 1503 (2023) (*Gingles* I satisfied by showing a "reasonably configured" majority-minority district that "comports with traditional districting criteria, such as being contiguous and

reasonably compact") (internal citations omitted). Even Defendants' own expert conceded that Galveston's Black and Latino CVAP fits within reasonably compact plans produced by Plaintiffs. Trial Tr. vol. 9, 249:25−250:14 (Owens). Arguments (strikingly similar to Defendants') that more is required were rightfully rejected by the statewide redistricting panel in June and should be likewise rejected here. *See LULAC v. Abbott*, No. 3:21-CV-259-DCG-JES-JVB, 2023 U.S. Dist. LEXIS 104838, at *30−31 (W.D. Tex. June 16, 2023).

Defendants' continued reliance on the 18-mile distance between communities in *Sensley* has no relevance here given the easily distinguishable facts. *See* Defs.' Br. at 36 (citing *Sensley v. Albritton*, 385 F.3d 591 (5th Cir. 2004)). As made clear during Dr. Owens' examination, in *Sensley* the Parish at issue had 22,803 people as opposed to Galveston's 350,000+, concerned nine districts compared to Galveston's four precincts, and considered plaintiff illustrative plans that were problematic because they ignored traditional boundaries by "disrupting the core of preexisting electoral district," *i.e.*, exactly what the Enacted Plan did here. 385 F.3d at 593, 598; Trial Tr. vol. 9, 230:22−232:9 (Owens). If anything, *Sensley* further supports that the Enacted Plan predominated racial considerations over traditional redistricting criteria, including the County's past criterion of preserving existing boundaries as much as possible. *See* Pls.' Ex. 539 (2001 criteria).[2]

2. Defendants' racially polarized voting arguments fundamentally misconstrue the evidence and are contradicted by their own expert. *First*, Defendants vaguely contend that "Hispanic Confidence Intervals are Problematic," Defs.' Br. at 40, but they never actually

[2] Defendants' other arguments about socioeconomic and community interests are further unsupported in the record for the reasons set forth in Plaintiffs' Proposed Findings of Fact. *See* PFOF ¶¶ 99−107.

claim that Dr. Oskooii's analysis falls short of proving minority cohesion. In criticizing Dr. Barreto, Defendants fail to acknowledge he found a *consistent pattern* across a robust series of elections and that the vote estimates closer to the center of an interval are more likely to reflect the true value than those at the edges, providing a high degree of confidence overall. Trial Tr. vol. 3, 289:8–290:12 (Barreto); Trial Tr. vol. 4, 339:19–25 (Oskooii). Defendants also fail to address the more precise Latino vote estimates that Drs. Oskooii and Barreto independently produced using BISG methods. PFOF ¶¶ 111–15, 118. When looking at separate demographic groups, even Dr. Alford admitted "I don't think you could see a more classic pattern of what polarization looks like . . . ." Trial Tr. vol. 10, 17:11–18:3 (Alford).

This is all putting aside that Defendants' focus on Latinos in isolation contradicts Fifth Circuit direction that the appropriate inquiry is whether a significant number of minority voters "as a whole" vote for the same candidate based in part on statistical considerations that remain relevant today. *Campos v. City of Baytown*, 840 F.2d 1240, 1245 & n.6 (5th Cir. 1988).[3] Such considerations are also among the reasons that both parties' experts, and courts, correctly conclude there is "no simple doctrinal test" for determining legally significant racially polarized voting, PFOF ¶ 116, which instead requires a "practical evaluation" as set forth in *Thornburg v. Gingles*, 478 U.S. 30, 58, 65−67 (1986).

Second, Defendant's understanding of primaries, *see* Defs.' Br. at 41−54, is

[3] Ecological inference ("EI") evidence infers information based on aggregate demographic and voting data. Trial Tr. vol. 3, 216:18–24 (Barreto). Thus, relying on limited data (e.g. low turnout or few precincts) divided across too many variables (e.g. demographic groups and candidates), "introduc[es] lots of instability into the model, and you are asking the model to do more than the model can do." Trial Tr. vol. 4, 294:12–14 (Oskooii). Although a person could still plug deficient data into a model and get some sort of an output, that output might at some point not reflect reality. Trial Tr. vol. 4, 326:6–11 (Oskooii).

misguided. All experts agreed general elections are most probative here and that Anglos do not meaningfully participate in Democratic primaries and minority voters do not meaningfully participate in Republican primaries. PFOF ¶¶ 126, 173−74; Defs.' Ex. 305 at 6−7. These limitations, and specifically the low Anglo participation in Democratic primaries, are why Democratic primary results might warrant *some* consideration when determining Latino/Black cohesion, as Dr. Oskooii does in his analysis, but they say nothing meaningful about *Anglo* voting patterns in Galveston, as Defendants attempt to argue. *See* PFOF ¶ 135; *see also id.* at ¶¶ 132−34 (Drs. Oskooii and Alford showing Black and Latino voters share candidates of choice in 92% of Democratic primaries analyzed).

Third, there is simply insufficient information for the court to assign weight to the small and arbitrary set of nonpartisan local elections that were analyzed. *See* Defs.' Br at 44. Neither Dr. Alford nor Dr. Trounstine: (i) included credible intervals in their results; (ii) included vote totals for the nonpartisan elections; (iii) included the number of election precincts involved in each contest; (iv) included a demographic analysis for the nonpartisan election districts; (v) or showed the overlap between the local districts and county commissioner precincts. Trial Tr. vol. 10, 143:20–144:2, 164:10–165:9 (Alford). And the two experts' results were not consistent with each other. Defs.' Ex. 305 at Table 5. In contrast to this inconsistent and uncertain evidence, undisputed testimony shows that Black and Spanish-surnamed candidates for nonpartisan local offices have tended to emerge only from majority Black and Latino districts or municipalities, which is what one would expect if there were racially polarized voting patterns in the area. *See* PFOF ¶¶ 141, 431.

Fourth, to support their partisanship without race argument, Defendants focus on

the race of candidates. Defs.' Br. at 48. Setting aside that the word "racially" in racially polarized voting refers to *voters* and not candidates, Plaintiffs specifically analyzed racially-contested elections: Dr. Oskooii, unlike Dr. Alford, actually quantified the results of racially contested elections, and found that in 13 out of 14 (93%) racially contested elections, Anglo voters were cohesive behind the Anglo-presenting candidate against a minority-presenting candidate. Trial Tr. vol. 4, 298:17–300:10 (Oskooii); PFOF ¶ 171.

Fifth, Defendants next focus on George P. Bush, a candidate their own expert did not identify as Latino or discuss in his Report or testimony (nor did Defendants offer evidence to otherwise establish his Latino identity). Even assuming *arguendo* that Mr. Bush identifies as Latino, it actually cuts *against* Defendants that Anglos were cohesive behind Anglo-named candidate George Bush against Spanish-named Miguel Suazo. *See* Pls.' Ex. 356 at Table 1 (Oskooii Expert Report). Similarly, Defendants were only able to identify successful county-level Republican Latino candidates with Anglo first and last names. PFOF ¶¶ 177, 430. Such evidence that Anglo voters are more likely to support Anglo-named Latinos than Spanish-named Latinos is indicative of racially polarized voting. *See Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 711–12 (S.D. Tex. 2017).

Finally, Defendants' only other citation is to problematic data their own expert undermined. *See* Defs.' Br. at 49 (citing Dr. Alford's analysis of Dr. Trounstine's general elections). Dr. Alford did not replicate these general election results despite disputing the accuracy of Dr. Trounstine's EI. Trial Tr. vol. 10, 169:7–180:17 (Alford). And Trounstine's general election results show internal contradictions. *See, e.g.,* Pls.' Ex. 476 at A-20 (one EI method shows 62% of Latinos voting for Judge Henry while another shows

73% voting against). On the other hand, Dr. Barreto's undisputed BISG and EI methods show Latinos voted cohesively against Judge Henry. Pls.' Ex. 465 at 18 (Barreto Rebuttal).

At base, if voting patterns were attributable to partisanship with no connection to race, then both political parties would be nominating and electing minority candidates at equivalent rates, a factor focused on by the Fifth Circuit. *See generally* Dkt. 242 at 9−10. The level of success of county-level minority candidates in each party and the analysis of exogenous racially contested elections do not support Defendants' position.

3. As for the totality of the circumstances, Defendants largely ignore the substantial evidence of recent barriers to voting, PFOF ¶¶ 402−13, and the demonstrated connection between ongoing disparities and continued low participation, PFOF ¶¶ 396−401, 452−500. As noted above, they include a facially erroneous tally of minority elected officials that is not established in the trial record. And importantly, when meaningful participation by minority groups is foreclosed by a districting scheme that entirely eliminates the possibility of electing minority representatives of choice (as the Enacted Plan does), this alone will "cancel out or minimize the voting strength of [the] racial grou[p]" in violation of Section 2. *Gingles*, 478 U.S. at 99−100 (O'Connor, J. concurring) (quoting *White*, 412 U.S. at 765).

4. Finally, Defendants' "temporal" arguments against Section 2, Defs.' Br. at 59−60, underscore the importance of reaching the Section 2 intent and the constitutional claims that Plaintiffs have proven. Under the current binding Section 2 framework, Defendants' arguments are "not persuasive in light of the [Supreme] Court's precedents." *Milligan*, 143 S. Ct. at 1519 (Kavanaugh, J., concurring). Even still, what happened in Galveston County during the first post-*Shelby* redistricting of commissioners precincts underscores why

Section 2 is absolutely still needed to protect against *current* harms. The commissioners court indisputably dismantled the sole majority-minority commissioners district in a textbook cracking of the County's Latino and Black community, leaving them zero chance of electing a candidate of choice despite comprising 38% of the population. Plaintiffs do not seek maximal, much less proportional, representation, and Defendants cannot argue protections for these voters are no longer required when Defendants targeted them with near surgical precision in redistricting.

V. The evidence overcomes any presumption of good faith.

In a tacit admission that the plain facts do not weigh in their favor, Defendants contend that the presumption of good faith requires they prevail. *See* Defs.' Br. at 1, 31–32. But in the very case they cite for this proposition, *Miller v. Johnson*, the Supreme Court held that the presumption of good faith was overcome when—as here—plaintiffs showed district configurations were "unexplainable other than by race." 515 U.S. 900, 916−20 (1995). There is no evidence to support a partisan intent in the design and adoption of the Enacted Plan, and no other race-neutral criteria can explain its textbook cracking. *See generally* PFOF ¶¶ 364−95. Instead, the only reasonable explanation is that Defendants adopted the Enacted Plan—instead of the multitude of other acceptable configurations meeting their supposed wishes and maintaining a majority-minority precinct—because they intended to dismantle the sole majority-minority commissioners precinct, and that this racial consideration predominated. When, as here, there is proof that a discriminatory purpose was a motivating factor, "judicial deference is no longer justified." *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265−66 (1977).

Respectfully submitted, this the 18th day of September, 2023.

/s/ *Hilary Harris Klein*

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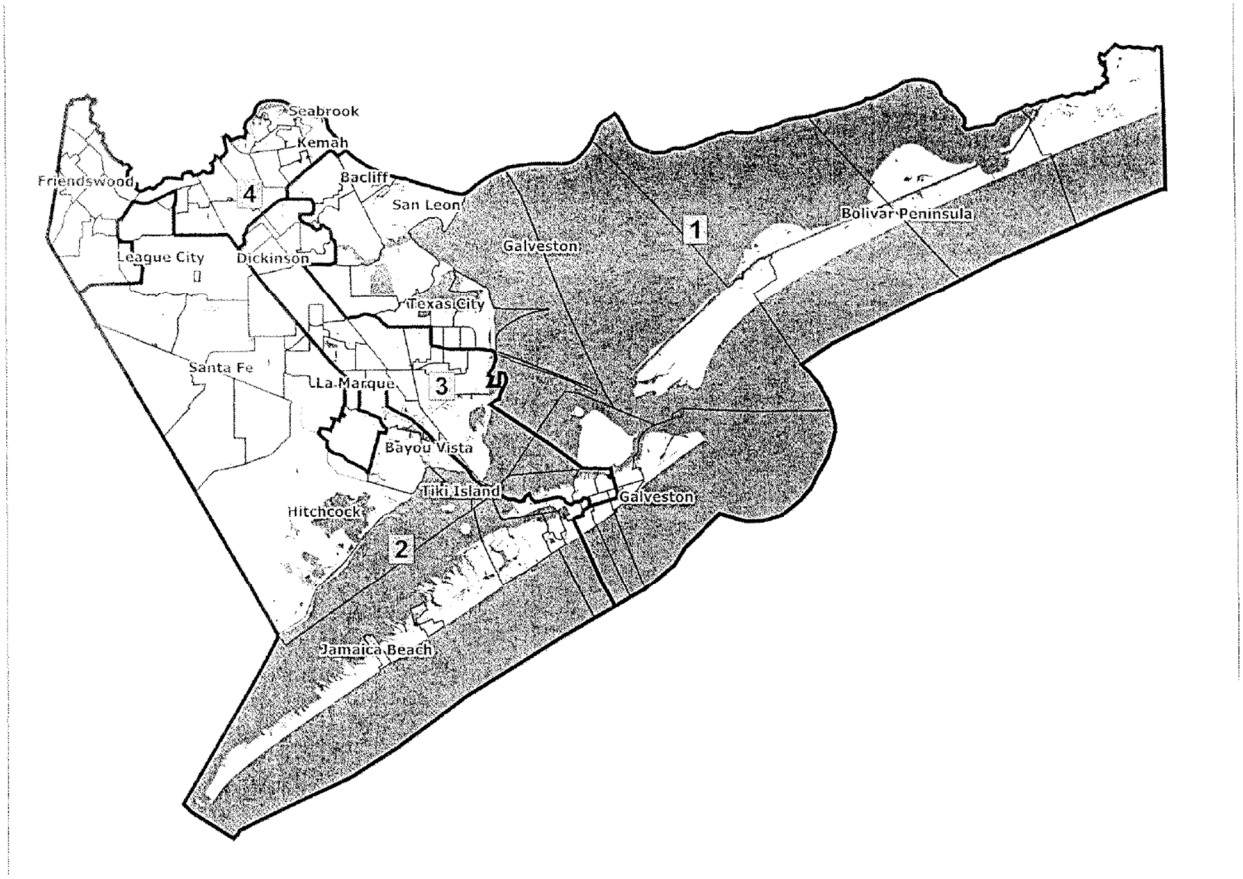
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 18, 2023, the foregoing document and its Appendix was filed electronically (via CM/ECF), and that all counsel of record were served by CM/ECF.

/s/ *Hilary Harris Klein*

Appendix A

APPENDIX A: 2001 Commissioners Precincts



Joint Ex. 45 at 24 (Exhibit D to 2011 Preclearance Submission)