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

TERRY PETTEWAY, *et al.*, *Plaintiffs*, v. GALVESTON, TEXAS, *et al.*, *Defendants.*	§ § § § § § § § § § §	Civil Action No. 3:22-cv-57

PETTEWAY PLAINTIFFS' RESPONSE TO
DEFENDANTS' WRITTEN CLOSING

Table of Contents

Table of Authorities

I. Introduction

The Court should reject Defendants' grab bag of contradictory theories to explain the adoption of a racially discriminatory map. Perhaps most absurd (and galling) is their central theory—seemingly conjured during trial—that it is Commissioner Holmes's fault that a racially discriminatory map was adopted; that if he had only asked politely enough, then the County would have resisted the urge to dilute the votes of the minority population. The evidence contradicts each of Defendants' theories of the case.

II. Plaintiffs Have Proven, and Defendants Have Not Refuted, that the 2021 Enacted Plan Has a Discriminatory Impact on Black and Latino Voters

In response to Plaintiffs' irrefutable evidence that the *Gingles* preconditions have been met, Defendants offer unsupported legal assertions and mischaracterize facts to support their misconstruction of the law.[1]

First, despite Defendants' contentions, "cultural compactness" is not a standalone element of Section 2 liability nor a standalone component of the *Gingles* I precondition. *See* COL ¶¶ 31–32; Order at 30, *League of United Latin American Citizens v. Abbott*, No. 3:21-CV-259-DCG-JES-JVB (W.D. Tex. June 16, 2023), ECF No. 705 ("We do not interpret *LULAC v. Perry* to require a plaintiff to show cultural compactness *per se.* Rather, cultural compactness is a consideration relevant to whether a plaintiff's proposed district

[1] The Fifth Circuit has long recognized that, to prove a results claim under Section 2, multiple racial minority groups may show that they vote cohesively, and that white voters consistently vote as a bloc to defeat the minority candidates of choice. *See Campos v. City of Baytown, Tex.,* 840 F.2d 1240, 1244 (5th Cir. 1988)*; League of United Latin American Citizens, Council No. 4386 v. Midland Indep. Sch. Dist.,* 812 F.2d 1494 (5th Cir. 1987); *see also League of United Latin American Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993). Defendants' elaboration of Section 2 would require a wholesale rejection of existing case law.

is consistent with traditional redistricting principles, such as maintaining communities of interest and traditional boundaries."). In any event, witness testimony supports a finding of cultural compactness. *See, e.g.*, FOF ¶¶ 104–06 (testimony about the cultural ties between minority residents in League City and Texas City). Moreover, the Enacted Plan itself contains two precincts—Precincts 1 and 4—that combine portions of Texas City and League City. *See* Joint Ex. 29 (Galveston County redistricting website including Map 2). Defendants cannot *themselves* combine these jurisdictions and simultaneously contend that Plaintiffs offend traditional redistricting principles and split communities of interest by doing the *same thing.*

Second, Defendants fail to dispute any of Petteway Plaintiffs' factual support that Latino and Black voters vote cohesively. Rather, Defendants mischaracterize the testimony of Plaintiffs' expert, Dr. Barreto, falsely stating that "Dr. Barreto agreed that Hispanic voter cohesion levels were not consistently above 75% in his analysis." Defs.' Closing Brief ("Defs.' Br."), Dkt. 244 at 40 (internal quotation marks omitted). In fact, Dr. Baretto testified that he observed "many instances where the Hispanic numbers are 75, 80. I think in some instances as high as 85 percent." Trial Tr. vol. 3, 228:23–25 (Baretto).[2] And Dr. Alford testified that he had no disagreement with Dr. Baretto's (or Dr. Oskooii's) numerical calculations. Trial Tr. vol. 10, 100:3–6 (Alford). Crucially, Dr. Alford emphatically

[2] Defendants also falsely quote the Court's opinion in *LULAC II,* which actually "[found] the factual testimony of Plaintiffs' expert, Dr. Barreto, credible. Dr. Barreto is well-versed in conducting Ecological Inference Analysis to analyze racially polarized voting." *League of United Latin Am. Citizens v. Abbott*, 601 F. Supp. 3d 147, 164 (W.D. Tex. 2022) ("*LULAC II*").

rejected Defendants' attempts to create a bright-line 75 percent threshold for cohesion, testifying that he is "not a fan" because cohesion is "a continuum." Trial Tr. vol. 10, 100:25–101:6 (Alford). With respect to primaries, Dr. Alford agreed that focusing on primary election results misses a large swath of the voting population who only vote in the general election. Trial Tr. vol. 10, 110:4–15 (Alford). Nonetheless, Dr. Alford agreed with Dr. Oskooii's analysis that, in 9 out of 10 Democratic primary elections, Black and Latino voters voted cohesively. Trial Tr. vol. 10, 120:2–7 (Alford).

Third, Defendants do not dispute that white voters vote as a bloc and that the white voting bloc consistently defeats the candidate of choice of Black and Latino voters. *See, e.g.*, Defs.' Br. at 48.[3] To quote Defendants, in Galveston County, "[w]here Black and Latino voters support the same candidate, Anglo voters generally support the same candidate." Defs.' Br. at 45. Defendants try to falsely attribute this polarization to partisanship rather than race, but even Dr. Alford, who admitted that he is "not an expert" on the intersection of race and partisan politics, Trial Tr. vol. 10, 84:6–17 (Alford), nevertheless agreed that "it's possible" for political affiliation to be motivated by race. *Id.* at 110:23–25. More to the point, Defendants simply misconstrue the legal requirement under *Gingles* and *Clements* by attempting to conflate racial *motivation* with racial *polarization*. *See LULAC, Council No. 4434 v. Clements*, 999 F.2d 860–61 (5th Cir. 1993)

[3] In their argument regarding discriminatory intent, Defendants seemingly concede that Galveston's minority voters are cohesive—and that race and partisanship in the County are inextricably intertwined—arguing that "any Republican partisan gerrymandering that occurs during a redraw will tend to lessen the voting strength of minorities." Defs.' Br. at 15–16.

("[C]ourts should not summarily dismiss vote dilution claims in cases where racially divergent voting patterns correspond with partisan affiliation.").

Finally, Defendants' efforts to undermine the vast, largely uncontested evidence supporting the presence of the Senate Factors falls flat. First, "there is no requirement that any particular number of [Senate] factors be proved, or that a majority of them point one way or the other." *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 713 (S.D. Tex. 2017) (internal quotation marks omitted). "But it will be only the very unusual case in which the plaintiffs can establish the existence of the three Gingles factors but still have failed to establish a violation of § 2 under the totality of the circumstances." *Id.* (citing *Clark v. Calhoun Cnty., Miss.*, 21 F.3d 92, 97 (5th Cir. 1994)) (internal quotation marks omitted). Second, Plaintiffs have demonstrated through both lay and expert testimony that nearly every Senate Factor is present in Galveston County. *See* FOF ¶¶ 396–500. In sum, Defendants provide no answer to Plaintiffs' overwhelming evidence supporting their claim that the Galveston County commissioners court map has a discriminatory impact on Black and Latino voters in violation of Section 2. Plaintiffs' claims should prevail.

III. Plaintiffs Have Proven, and Defendants Have Not Refuted, that the 2021 Enacted Plan Was Passed with Discriminatory Intent

As Plaintiffs anticipated, Defendants are seeking the reversal of the Fifth Circuit's precedent finding coalition claims viable for purposes of Section 2. *See* Defs.' Br. at 33–34. But this challenge, even if it were to be successful, would not bear on Plaintiffs' claims alleging discriminatory intent, which can be met regardless of whether Defendants' discriminatory actions targeted Black and Latino voters alike or individually. *See Petteway*

Pls.' Closing Statement ("Pls.' Br."), Dkt. 240 at 6–7. It is, therefore, imperative that this Court—situated most closely to the facts—assess the evidence before it and reach the question of intent. *Id*. The sum of that evidence makes clear that Plaintiffs have, indeed, met their burden to prove that the 2021 commissioners court map was passed with discriminatory intent in violation of both Section 2 of the VRA and the U.S. Constitution.

A. The Fifteenth Amendment Provides a Cause of Action for Intentional Vote Dilution

Contrary to Defendants' assertions, it is axiomatic that the Fifteenth Amendment, which by its terms prohibits racial discrimination in voting, prohibits state action which denies voters of color the equal opportunity to elect their candidates of choice. That is why the Supreme Court and Fifth Circuit—and this Court, *see* Dkt. 125 at 20–21—have long recognized that an "election practice violates Section 2 and the Fourteenth and Fifteenth Amendments if it is undertaken and maintained for a discriminatory purpose," *Fusilier v. Landry*, 963 F.3d 447, 463 (5th Cir. 2020); *see also, e.g.*, *Rice v. Cayetano*, 528 U.S. 495 (2000); *City of Mobile v. Bolden*, 446 U.S. 55 (1980) (plurality opinion); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Veasey v. Abbott*, 830 F.3d 216, 229 (5th Cir. 2016) (en banc); *Perez v. Abbott*, 390 F. Supp. 3d 803, 814 (W.D. Tex. 2019) (three-judge court). Indeed, the Supreme Court has specified that, if "a State intentionally drew district lines in order to destroy otherwise [performing] districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments." *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (plurality opinion). Defendants' assertions misconstrue *Voinovich v. Quilter,* which only denied a vote dilution claim under the Fifteenth Amendment because the plaintiffs

failed to prove the "intentional discrimination" element of the claim. 507 U.S. 146, 159 (1993). Put simply, it would repudiate the text, history, and purpose of the Fifteenth Amendment to conclude that the Amendment granting minority voting rights permits intentional racial discrimination in a government's electoral practices. Defendants ask this Court, once again, to ignore settled precedent and first-order legal principles to rule in their favor.

B. The Adoption of the Enacted Plan Cannot be Explained by Mere Politicking or a Failure Thereof

Defendants provide a series of scattershot political- and partisan-themed arguments in an attempt to refute their discriminatory intent. They claim that partisan gerrymandering explains the configuration and adoption of the Enacted Plan while simultaneously asserting that the commissioners would have supported Map 1, and that said assertion evinces Defendants' lack of racial intent. Unfortunately for Defendants, the evidence surrounding each of these arguments, in fact, supports *Plaintiffs'* claims of discriminatory intent.

i. The Evidence Does Not Support Defendants' Post Hoc Contention that the Enacted Plan was Adopted for Partisan Purposes

With Plaintiffs having thoroughly discounted the coastal precinct justification for the Enacted Plan, *see infra* Sec. II.C; Pls.' Br. at 19–21, Defendants pivot to justifying the Enacted Plan as the result of partisan rather than racial intent.[4] The record does not support,

[4] The very fact that Defendants' primary justification for the Enacted Plan's configuration has shifted from the creation of a coastal precinct to the unsupported contention that partisan purposes controlled is probative of discriminatory intent. *See Veasey*, 830 F.3d at 240–41 ("It is also probative that many rationales were given . . . which shifted as they were challenged or disproven by opponents.") (*citing generally Foster v. Chatman*, 578 U.S. 488, 507 (2016) (reasoning that the fact that the government's "principal reasons" for

and indeed directly contradicts, this contention. *See* FOF ¶ 387; COL ¶ 170. Defendants can cite every precedent regarding partisan gerrymandering, but doing so does not equate evidentiary support that partisanship, rather than race, drove the commissioners' decisionmaking in *this* case. Defendants fail to provide that evidence because that evidence simply does not exist. The commissioners themselves have clearly testified that partisanship was *not* the driving force behind their decisionmaking. Judge Henry testified that the partisan makeup of the map "was not a primary concern," Trial Tr. vol. 7, 197:18–25 (Henry), and indeed that he never even asked his redistricting counsel to run a political analysis on the precincts, *id.* at 304:3–6. Commissioner Apffel explicitly disclaimed partisanship as a motivation, testifying that he "wasn't considering it." Trial Tr. vol. 9, 355:25–356:6 (Apffel).[5] And Commissioner Giusti's testimony makes clear that he was not acting with partisan benefit as a driving force for his plan selection; despite having voted for Map 2, he agreed that *Map 1* would have been better for his political performance. Trial Tr. vol. 9 at 131:9–18 (Giusti). The commissioners, then, did not have predominant partisan intent.

---

its action "shifted over time . . . suggest[ed] that those reasons may [have been] pretextual")).

[5] As evidence of the commissioners' alleged partisan intent, Defendants present Commissioner Apffel's statement, which they point out he denies making, arguing instead that he voted for Map 2 "'because he wanted to be County Judge.'" Defs.' Br. at 29. *First*, this statement is not antithetical to a racial motivation; pursuing political success by knowingly and intentionally harming minority voters does not absolve a politician of that knowing and intentional harm. *Second*, it is worth noting that Defendants' greatest proffered evidence of partisan intent is a statement which they claim *was not actually made* by a witness whose other testimony *explicitly* disclaims partisan intent.

The testimony of the court's redistricting attorney and mapdrawer further undermine the alleged partisan motivation. Defendants highlight Mr. Oldham referring to the redistricting process as political, Defs.' Br. at 7, but Mr. Oldham articulated that viewpoint only as it related to the choice between Maps 1 and 2 after they were already developed. *See* Trial Tr. vol. 8, 79:23–80:5 (Oldham).[6] Regarding the *formation* of those maps, Mr. Oldham explicitly denied any partisan motivation, s*ee* FOF ¶ 387; COL ¶ 170; Trial Tr. vol. 8, 153:10–154:4 (Oldham). And Mr. Bryan likewise denied knowledge of any partisan motivation in his mapdrawing. Trial Tr. vol. 9, 29:13–20 (Bryan). Indeed, Mr. Bryan *had* originally created a plan using partisanship, *i.e.*, the creation of four Republican precincts, as the predominant motivating consideration, but Mr. Bryan testified that they "quickly changed gears away from" that configuration and agreed that it "went to the wastepaper basket" after he began receiving instructions from Mr. Oldham about how the maps should look. Trial Tr. vol. 8 290:13–292:3 (Bryan); *see also* Trial Tr. vol. 9 28:16–29:20 (Bryan). The evidence is, therefore, clear that, to the extent some of the commissioners considered partisanship at all, it was not a predominant motivating factor.

ii. The Creation and Consideration of Map 1—and the Court's Failure to Adopt It—Provides Additional Evidence of Racially Discriminatory Intent

Defendants, grasping at straws, astonishingly attempt to thrust responsibility for the court's adoption of the Enacted Plan onto the only commissioner who voted *against* it—

[6] Once again, Defendants proffer evidence that is not antithetical to Plaintiffs' claims. Defendants conflate a *political* process with a *partisan* motivation. There is no reason why a political process cannot be driven by discriminatory intent, indeed as the political process of redistricting was here.

Commissioner Holmes, the candidate of choice of and champion for the minority community—for evidently failing to advocate for Map 1. But "the creation and consideration of Map 1, which by all accounts maintained Precinct 3 as a majority-minority precinct," Defs.' Br. at 26, along with the Court's rejection of that proposal in favor of the Enacted Plan, instead provide significant evidence of Defendants' discriminatory intent.

First, commissioners' assertions at trial that they would have supported Map 1 if only Commissioner Holmes had asked them to, *see* Defs.' Br. at 26–27, proves that no one actually thought it would be an unconstitutional racial gerrymander to decline to fragment apart the County's minority population, as Map 2 does. Pls.' Br. at 24–25 (regarding Oldham's advice that Map 1 was not a racial gerrymander); *see also* Trial Tr. vol. 7, 332:20–25 (Henry); Trial Tr. vol. 9, 336:18–337:1 (Apffel); Trial Tr. vol. 9, 89:3–11 (Giusti). The Enacted Plan's elimination of Precinct 3 as a majority-minority district and fracturing of the minority community across all four commissioners court precincts, therefore, cannot be justified by a misplaced belief that doing so was required to avoid racial gerrymandering. What remains then from Commissioner Apffel and Judge Henry's statements that the Enacted Plan sought to eliminate the majority-minority precinct in order to avoid a racial gerrymander, *see* Pls.' Br. at 24; see also Defs.' Br. at 3, is *just* that the Enacted Plan sought to eliminate the majority-minority precinct. Those statements amount to evidence of express, unjustified racial intent.

Second, the commissioners who voted for the Enacted Plan cannot be absolved of their intent by now asserting that they may have supported Map 1 if Commissioner Holmes

had only asked them to do so in the right way, at the right time.[7] Defendants' arguments about what they believe Commissioner Holmes should have done do not erase the commissioners' admissions that they were aware of the impact that Map 2 would have on Galveston's minority community when they voted to enact it. *See* Pls.' Br. at 11–19; *see also, generally,* FOF ¶¶ 193, 230; COL ¶¶ 105–118; Pls.' Ex. 414 at 4–8 (Burch Expert Report). Nor does it provide a credible alternative justification for the configuration of the Enacted Plan, *see* Pls.' Br. at 19–22; offering one possible reason why commissioners did *not* support Map 1 is not the same as offering a reason for why they *did* support Map 2.

Third, the fact is that Map 1 was not enacted. Neither were the alternative maps that Commissioner Holmes presented at the November 12 special meeting. Nor were any other maps including a majority-minority commissioners court precinct. What *was* adopted is Map 2—a plan which fractures historic Precinct 3 and the County's minority population across all four precincts and thus ensures that they cannot elect a *single* candidate of their choice to the commissioners court. That there were alternatives before the court which would *not* have had this known, deleterious impact on minority voting power—and that

[7] Notably, the evidence makes clear that the passage of Map 2 was a forgone conclusion by the time of the November 12 special meeting, and Commissioner Holmes knew it. *See* Pls.' Br. at 11; FOF ¶ 271. And although there were efforts made seemingly designed to give the *appearance* that Commissioner Holmes was included in the process prior to that point, *see, e.g.,* Defs.' Ex. 156 (November 30, 2021 Email from Tyler Drummond to himself re: Holmes), the record lays bare that Commissioner Holmes was in fact excluded from any *meaningful* participation in redistricting. *See, e.g.*, FOF ¶¶ 357–363. Moreover, Commissioner Holmes' exclusion is just one element of the woefully deficient redistricting process that excluded the *entire* minority community from meaningful participation and consideration. *See, infra*, Sec. III.D.

one of those alternatives was proposed by the commissioners themselves—makes even clearer their discriminatory intent in choosing the Enacted Plan instead.

C. Defendants Have Provided No Response to Plaintiffs' Numerous Alternative Commissioners Court Map Configurations

Critically, Defendants' closing statement fails even to acknowledge Plaintiffs' five alternative maps that prove it is possible to create a commissioners court plan that meets Defendants' purported redistricting goals *without* dismantling the County's sole majority-minority commissioners precinct. *See* Pls.' Br. at 20–21; FOF ¶¶ 75, 79, 247, 364–395; COL ¶¶ 107–111, 163–174; Pls.' Exs. 415 (Rush Alternative Map 1), 416 (Rush Alternative Map 2), 417 (Rush Alternative Map 3), 418 (Rush Alternative Map 4); Pls.' Ex. 386 at 32–34 (Cooper Expert Report) (Cooper Map 2); Pls.' Ex. 486 at 6–9 (Rush Rebuttal Report) (providing analyses for Rush Alternative Maps 1–4).[8] Alternative districting plans like those Plaintiffs have presented "can serve as key evidence in a race-versus-politics dispute," as a "highly persuasive way" to disprove other justifications by showing that the governing entity "had the capacity to accomplish all its partisan goals without moving so many members of a minority group . . .." *Cooper*, 581 U.S. at 317; *see also LULAC II*, 601 F. Supp. 3d at 177. Yet Defendants entirely ignore Plaintiffs' alternative maps, likely

[8] Defendants' only acknowledgment of Plaintiffs' alternative plans is a cursory statement in their conclusions of law that "Plaintiffs' alternative plans cannot be deemed 'reasonably configured,' when they 'segregate races for purposes of voting.'" Defs.' COL ¶ 101 (citations omitted); *see also id.* ¶ 107 (arguing that Plaintiffs are required to show that the commissioners court "could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles") (quoting *Easley v. Cromartie*, 532 U.S. 234, 258 (2001)). *But see Cooper v. Harris*, 581 U.S. 285, 317 (2017) (stressing that alternative maps "are hardly the *only* means to disprove . . . that [a legitimate justification] drove a district's lines.") (emphasis in original).

because these maps betray that Defendants' purported rationales for the Enacted Plan—creation of a coastal precinct, partisan motivations, the placement of commissioners' homes, equalizing population across precincts, and "even[ing] out . . . squiggly boundaries," *see* Defs.' Br. at 2, 5, 15–16, 21, 29–30, 58–59—could all have been accomplished without fracturing the core of historic Precinct 3 and, thus, are nothing more than pretext for racial discrimination.

D. The Historical Context of and Procedural Deficiencies with Galveston County's 2021 Redistricting Process Provide Significant Evidence of Racial Intent

The historical—and recent—background of discrimination in voting in Galveston County, and the obvious and abundant procedural deficiencies with the 2021 commissioners court redistricting process provide significant evidence of racial intent motivating adoption of the Enacted Plan. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266–28 (1977); *see also* FOF ¶¶ 196–221, 275–363; COL ¶¶ 119–148; Pls.' Ex. 414 at 8–21 (Burch Expert Report); Pls.' Ex. 412 (Krochmal Expert Report); Trial Tr. vol. 2, 146:24–147:13 (Burch); Trial Tr. vol. 5, 36:6–19, 75:1–15 (Krochmal). Defendants' arguments to the contrary are simply wrong.

Defendants insist that "[w]hen measured against appropriate case guidance," the historical record favors the County, because: (1) evidence of racial discrimination "over 20 or 30 years ago is not sufficiently 'current' to be probative"; (2) Department of Justice ("DOJ") objection letters and a 2007 consent decree over the County's failure to provide bilingual voting materials are not proof of discriminatory intent; and (3) "an apples-to-apples comparison between 2011 and 2021 [is] impossible." Defs.' Br. at 16–29.

First, Defendants are wrong on the law: historical discrimination from "over 20 or 30 years ago" that—as here—establishes a pattern of behavior *is* relevant to discriminatory intent. *See, e.g.*, *United States v. Fordice*, 505 U.S. 717, 746–47 (1992); *Arlington Heights*, 429 U.S. at 267 (historical background is relevant "particularly if it reveals a series of official actions taken for invidious purposes"); *Chen v. City of Houston*, 206 F.3d 502, 518 (5th Cir. 2000) ("The mere passage of time cannot extinguish entirely the taint of racial discrimination."); *see also Veasey*, 830 F.3d at 240 (considering history from 1970 onward as evidence of discriminatory intent); *LULAC II*, 601 F.3d at 170 (considering history from 1965 onward as "reasonably contemporaneous" evidence of intent) (citation omitted). So too are past DOJ objections letters relevant evidence of intent. *See Veasey*, 830 F.3d at 240 (citing DOJ objection letters "for each period between 1980 and the present" as evidence of discriminatory intent).[9]

Second, Defendants are wrong on the facts: the record is replete with far more evidence of historical—and ongoing—discrimination in voting in Galveston County than just a 2007 consent decree. *See* FOF ¶¶ 196–210, 396–420; Pls.' Ex. 414 at 8–10 (Burch Expert Report); Pls.' Ex. 412 at 19–22, 27–33, 39–45 (Krochmal Expert Report).

[9] Defendants further decry the relevance of DOJ objection letters from past redistricting cycles because "Section 5 preclearance arose under a completely different standard and framework." *See* Defs.' Br. at 17 (citing *LULAC II*, 601 F. Supp. 3d at 170). But the *LULAC II* court considered and *rejected* a similar argument, holding that a past finding of discriminatory intent remains historically significant, even though it was decided under Section 5's "now-defunct legal framework." *LULAC II*, 601 F.3d at 170 ("while . . . the burden of proof was the opposite of what it is now before this Court, that does not undo the historical significance of that . . . decision).

Defendants seize on one case as proof of a lack of evidence,[10] without even trying to engage the broader history—which situates the 2021 redistricting process as the latest in a long line of attempts to retrogress minority voting rights in Galveston County.

Third, and most significantly, a direct comparison between the 2011 and 2021 redistricting cycles is not "impossible" as Defendants contend; instead, the 2011 redistricting process lays bare the even greater procedural deficiencies that occurred in 2021 and proves that the County was on notice as early as 2012 that eliminating the sole majority-minority commissioners precinct was legally problematic. *See generally* FOF ¶¶ 208–210, 214–221, 275–363; COL ¶¶ 120–124; *see also* Trial Tr. vol. 2, 191:2–23 (Burch) (testifying to an "apples-to-apples comparison" between 2011 and 2021: "in that same two weeks before the maps were adopted in 2011, they held five meetings across the county; whereas, in the two weeks before in 2021, . . . they held the one meeting right at the same time that the map was adopted.").[11] Defendants nevertheless insist that an "extreme delay"

[10] Defendants insist that the 2007 consent decree is not evidence of intent because it "expired in 2010" and "[e]ven though not required to, the County continues policies under the decree." Defs.' Br. at 18. But the fact that the County was required to enter a consent decree within the last 15 years over its failure to provide bilingual voting materials at polling locations is still historically significant evidence of a pattern of discrimination against minority voters in Galveston County.

[11] It is also historically relevant evidence of intent that "the principal personalities" during the 2011 and 2021 redistricting cycles "were not entirely different." *LULAC II*, 601 F. Supp. 3d at 170. Judge Henry and Commissioner Clark were on the commissioners court in 2011, and were thus "clearly aware that the [County's] specific actions [in 2011] had resulted in a finding of discriminatory intent." Mem. Op. & Order, Dkt. 123 at 40. Likewise, the County hired the same redistricting counsel—Dale Oldham—in 2021 as it had in 2011, indeed with hopes of a "repeat performance." Trial Tr. vol. 8, 8:10–13, 29:22–30:1 (Oldham); *see generally* Pls.' Br. at 22–23.

in the release of Census data, the November 13 deadline for counties to adopt commissioner court plans, and COVID "wrecked the time table for redistricting" in 2021. Defs.' Br. at 20–21, 28–29.[12] But record evidence refutes all these claims. *See* FOF ¶¶ 269–270, 302–309, 313–316; COL ¶¶ 127–132. Moreover, Defendants' excuses are belied by evidence that other Texas jurisdictions, including the State itself—which all faced the same delay in Census data, November 13 deadline, and pandemic conditions—were able to complete redistricting weeks before Galveston County. *See, e.g.*, FOF ¶ 130; *In re Khanoyan*, 637 S.W.3d 762, 765 n.3 (Tex. 2022) (noting Harris County's failure to adopt a redistricting plan by October 28, 2021—15 days before Defendants—when the Texas Legislature was able to redistrict federal congressional seats, both houses of the legislature, and other districts by October 19). In sum, Defendants' justifications fail to explain the numerous procedural deficiencies that occurred during the County's 2021 redistricting process. Such deficiencies, as well as the historical and recent background of discrimination in voting in Galveston County—including during the 2011 redistricting cycle—are further evidence that adoption of the Enacted Plan was motivated by racially discriminatory intent.

IV. Conclusion

For the foregoing reasons, this Court should find in Plaintiffs' favor on all Counts.

[12] Defendants further insist that the Census data was "unusable" when it was released in August 2021, such that Defendants' redistricting counsel Mr. Oldham could only "obtain some useful information in September." Defs.' Br. at 6. This claim is refuted by testimony from the County's own witness and hired demographer Mr. Bryan, who testified that he was able to use the Census data "as soon as the Bureau made it available" in August and that, "for some clients and in other cases and projects I was working on . . . it was virtually a go from the minute that happened." Trial Tr. vol. 8, 297:6–20 (Bryan).

Dated: September 18th, 2023

Respectfully submitted,

/s/ Valencia Richardson

Chad W. Dunn (Tex. Bar No. 24036507)
Brazil & Dunn
1900 Pearl Street
Austin, TX 78705
(512) 717-9822
chad@brazilanddunn.com

Bernadette Reyes*
Sonni Waknin*
UCLA Voting Rights Project
3250 Public Affairs Building
Los Angeles, CA 90095
Telephone: 310-400-6019
bernadette@uclavrp.org
sonni@uclavrp.org

Neil G. Baron
Law Office of Neil G. Baron
1010 E Main Street, Ste. A
League City, TX 77573
(281) 534-2748
neil@ngbaronlaw.com

Valencia Richardson*
Mark P. Gaber*
Simone Leeper*
Alexandra Copper*
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
(202) 736-2200
mgaber@campaignlegal.org
sleeper@campaignlegal.org
vrichardson@campaignlegal.org
acopper@campaignlegal.org

*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I certify that on September 18, 2023, the foregoing document was filed electronically and served on all parties of record via CM/ECF, and that the document complies with the page limitations set out by the Court.

/s/Valencia Richardson
Valencia Richardson