IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL., *Plaintiffs*, v. GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS SUED IN HIS OFFICIAL CAPACITY; AND JOHN SCOTT, SECRETARY OF STATE OF TEXAS OF TEXAS SUED IN HIS OFFICIAL CAPACITY, *Defendants*.	§ § § § § § § § § § § § § § §	Case No. 3:21-cv-259-DCG-JES-JVB

DEFENDANTS' PARTIALLY OPPOSED MOTION TO CONSOLIDATE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTRODUCTION

There are five federal-court redistricting cases filed in the Western District challenging the new districts for the Texas House of Representatives, Senate, congressional delegation, and State Board of Education ("SBOE"). The cases overlap significantly and present a real risk of inconsistent injunctions. For these reasons and those that follow, the four actions listed below should be consolidated into this action pursuant to the first-to-file rule and Federal Rule of Civil Procedure 42.

Defendants Greg Abbott and John Scott[1] recently moved to consolidate these cases into a case pending in the Austin Division of the Western District of Texas, *Gutierrez v. Abbott*.[2] That motion was denied because *Gutierrez* case was "not the proper anchor for any redistricting cases that have been brought in regard to the Texas Legislature's 2021 statewide redistricting." *Gutierrez*, No. 1:21-cv-769-RP-JES-JVB, ECF 27 at 1 (W.D. Tex. Nov. 9, 2021) (Ex. A). Unlike the other redistricting plaintiffs, the *Gutierrez* plaintiffs challenge the *old* electoral districts and allege that the new maps are unlawful because the Texas Legislature lacked authority to pass them.[3] For this reason, the court explained, the *Gutierrez* complaint "is not a typical redistricting complaint addressing newly-enacted lines for an upcoming election cycle." *Id.* The court specifically noted, however, that its ruling was "without prejudice to any party in this or any other of the pending three-judge redistricting cases, to seek or suggest consolidation" or other appropriate relief. *Id.* at 2.

In light of the *Gutierrez* panel's ruling, this case is "the proper anchor for any redistricting cases that have been brought in regard to the Texas Legislature's 2021 statewide redistricting." *Id.* at 1. It includes challenges to each of the State's four new maps, and it is the first-filed case to challenge any of the new maps under federal law.

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[1] The Secretary of State is automatically substituted for the Deputy Secretary of State pursuant to Rule 25(d).

[2] Defendants recently learned of a seventh federal redistricting lawsuit filed in the Southern District, *John T. Morris v. Texas*, No. 4:21-cv-3456, ECF 1 (S.D. Tex. Oct. 20, 2021) (Ex. B). Defendants intend to seek consolidation of that case, but do not include it in this motion because they must first seek transfer from the Southern District.

[3] *See* Original Complaint, *Gutierrez*, No. 1:21-cv-769-RP-JES-JVB, ECF 1 at ¶¶ 12–36 (W.D. Tex. Sept. 1, 2021) (Ex. C).

Because redistricting plaintiffs ask for court-drawn maps, the risk of inconsistent relief is too great to allow cases attacking the same maps to proceed independently. These cases must be consolidated in some fashion, and consolidation into this case is the most practical option on the table.

BACKGROUND

As demonstrated below, the five Western District redistricting cases are substantially similar.

Table 1. Summary of Current Federal Redistricting Lawsuits.

Case	Number	Date Field	District	Division
LULAC v. Abbott	No. 3:21-cv-259	10/18/21	Western	El Paso
Wilson v. Texas	No. 1:21-cv-943	10/18/21	Western	Austin
Voto Latino v. Scott	No. 1:21-cv-965	10/25/21	Western	Austin
MALC v. Texas	No. 1:21-cv-988	11/03/21	Western	Austin
Brooks v. Abbott	No. 1:21-cv-991	11/03/21	Western	Austin

LULAC v. Abbott. LULAC and other organizations and individuals sue Governor Abbott and Secretary Scott, challenging Texas's House, Senate, congressional, and SBOE maps. They allege that those maps discriminate against Latino Texans and are malapportioned in violation of the Fourteenth Amendment and that they dilute Latino voting strength in violation of Section 2 of the Voting Rights Act ("VRA"). They ask the Court to prohibit operation of those maps, "set a reasonable deadline" for the Legislature to pass new maps, and if it does not, implement court-drawn maps. *See* ECF 1 ¶¶ 105–12, 115. This case is assigned to Judges Guaderrama, Smith, and Brown.

Wilson v. Texas.[4] Damon James Wilson sues the State of Texas, Governor Abbott, Secretary Scott, Speaker Phelan, and Lieutenant Governor Patrick, challenging Texas's congressional map. He alleges that the map designates state prisoners, like himself, as residents of the district where they are

[4] Original Complaint, No. 1:21-cv-943-RP-JES-JVB, ECF 1 (W.D. Tex. Oct. 18, 2021) (Ex. D).

incarcerated. He contends that state prisoners are entitled to be designated as residents of the district they lived in prior to incarceration, and that Texas's policy denies him equal representation in violation of the Fourteenth Amendment, and that the congressional districts are malapportioned. Wilson asks the court to prohibit operation of the congressional map, for the Legislature to pass new maps, and if it does not, for the panel to implement court-drawn maps. See Ex. D at 5–12, 18–19. This case is assigned to Judges Pitman, Smith, and Brown.

Voto Latino v. Scott.[5] Voto Latino and several individuals sue Secretary Scott and Governor Abbott, challenging Texas's congressional map. Specifying several districts, they allege those districts dilute the voting strength of Black and Latino Texans in violation of Section 2 of the Voting Rights Act. They request that the congressional map be prohibited from operating and replaced with a court-drawn map. Ex. E at ¶¶ 127–36, pp. 32–33. This case is assigned to Judges Pitman, Smith, and Brown.

MALC v. Texas.[6] MALC sues the State of Texas, Governor Abbott, and Secretary Scott, challenging Texas's House, congressional, and SBOE maps. Specifying districts in those maps, MALC alleges that they discriminate against Latinos. They bring claims for racial gerrymandering, intentional discrimination, and malapportionment in violation of the Fourteenth and Fifteenth Amendments, and vote dilution under Section 2 of the VRA. They ask the court to prohibit operation of those maps, "set a reasonable deadline" for the Legislature to pass new maps, and if it does not, implement court-drawn maps. Ex. F at ¶¶ 231–41, pp. 52–54. This case is assigned to Judges Pitman, Smith, and Brown.

Brooks v. Abbott.[7] Roy Brooks and other individuals sue Governor Abbott and Secretary Scott, challenging the Senate map. They allege SD 10 discriminates against Black and Latino Texans and constitutes intentional discrimination in violation of the Fourteenth and Fifteenth Amendments, and

[5] Original Complaint, No. 1:21-cv-965-RP-JES-JVB, ECF 1 (W.D. Tex. Oct. 25, 2021) (Ex. E).
[6] Original Complaint, No. 1:21-cv-988-RP-JES-JVB, ECF 1 (W.D. Tex. Nov. 3, 2021) (Ex. F).
[7] Original Complaint, No. 1:21-cv-991-LY-JES-JVB, ECF 1 (W.D. Tex. Nov. 3, 2021) (Ex. G).

Section 2 of the VRA, and vote dilution under Section 2. They ask the court to prohibit operation of that map, "set a reasonable deadline" for the Legislature to redraw it, and if not, implement court-drawn maps. Ex. G at ¶¶ 94–109, pp. 27–29. This case is assigned to Judges Yeakel, Smith, and Brown.

ARGUMENT

The litigation of the 2021 reapportionment of Texas's electoral districts is just beginning but accelerating rapidly. These cases require uniformity. Otherwise, Defendants could be forced to defend the same redistricting maps, involving similar challenges in multiple courts with different panels. Further, based on the remedies sought by the various plaintiffs, Defendants could face conflicting injunctions implementing conflicting court-drawn maps. And these five lawsuits are not likely to be the last ones filed in federal court. To avoid this dilemma, Defendants respectfully request that the Court grant their Motion to Consolidate and allow all five redistricting cases to proceed together.

I. The First-to-File-Rule Supports Consolidation in This Court

As explained above, and as informed by the *Gutierrez* court's decision, this case is the first-filed case "for purposes of deciding questions of consolidation and transfer" for the traditional redistricting lawsuits pending in federal court. Ex. A at 2. Of the federal cases that challenge Texas's new electoral districts, this case was filed first.[8] It thus falls to this Court to determine to proper course of action.

The Fifth Circuit's first-to-file rule applies when parties file substantially similar lawsuits. *See Yeti-Coolers, LLC v. Beavertail Prods., LLC*, No. 1:15-cv-415, 2015 WL 4759297, at *1–2 (W.D. Tex. Aug. 12, 2015). The rule is designed "to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result." *Sutter Corp. v. P&P Indus., Inc.*, 125 F.3d 914, 917 (5th Cir. 1997) (quotation omitted).

For the rule to apply, the cases need only "overlap on the substantive issues," and do not need

[8] To avoid confusion, Defendants note that this case and *Wilson v. Texas* were filed on the same day. But examination of the filing-fee-receipt numbers in each case demonstrates that this case (receipt number 0542-15344799) was filed before *Wilson* (receipt number 0542-15346532).

to be identical. *See Mann Mfg. Inc. v. Hortex, Inc.*, 429 F.2d 403, 408 n.6 (5th Cir. 1971). If "the overlap between two suits is less than complete, the judgment is made case by case, based on such factors as the extent of overlap," and the "likelihood of conflict." *Save Power Ltd. v. Syntek Fin. Corp.*, 121 F.3d 947, 948 (5th Cir. 1997) (quoting *TPM Holdings, Inc. v. Intra-Gold Indus., Inc.*, 91 F.3d 1, 4 (1st Cir.1996)).

The first-to-file rule "not only determines which court may decide the merits of substantially similar cases, but also establishes which court may decide whether the second suit filed must be dismissed, stayed or transferred and consolidated." *Sutter*, 125 F.3d at 917. Thus, the consolidation issue is properly before this Court, not the courts presiding over the other actions.

These cases overlap on all pertinent issues. Most importantly, they ask for the same relief: for the court to prohibit operation of the current electoral maps and implement court-drawn ones. ECF 1 at 24–25; Ex. D at 18–19; Ex. E at 32–33; Ex. F at 52–53; Ex. G at 27–28. Thus, allowing the cases to proceed separately could result in five panels drawing three different congressional, and two House, Senate, and SBOE maps. That would impermissibly subject Defendants to inconsistent obligations. Consolidation is particularly appropriate where "a conflicting ruling could arise." *Hart v. Donostia LLC*, 290 F. Supp. 3d 627, 632 (W.D. Tex. 2018). Only then can the first-to-file rule serve its purpose: to "avoid piecemeal resolution of issues that call for a uniform result." *Sutter*, 125 F.3d at 917.

Moreover, the substantive legal challenges in each case are closely related because they all bring redistricting claims. *See* ECF 1 ¶¶ 105–12; Ex. D at 10–14; Ex. E ¶¶ 127–36; Ex. F ¶¶ 231–41; Ex. G ¶¶ 94–109. Regardless of whether a redistricting claim is based on vote dilution, intentional race discrimination, or malapportionment, the essence is the same: that a State drew its electoral maps such they violate an individual's voting rights. As explained by the Fourth Circuit, "it is clear that questions regarding the legitimacy of an apportionment scheme, whether under the Constitution or under the Voting Rights Act of 1965, are intimately related." *Page v. Bartels*, 248 F.3d 175, 190 (4th Cir. 2001).

These cases also involve similar parties. In each, the plaintiffs are individuals challenging the

apportionment of their districts or organizations purporting to bring the same challenge on behalf of their constituents. And in all five cases, Governor Abbott and Secretary Scott are named as defendants. *See* ECF 1 ¶¶ 10–29; Ex. D at 2–5; Ex. E ¶¶ 14–30; Ex. F ¶¶ 1–5; Ex. G ¶¶ 8–17.

Because these five "cases are . . . very similar, efficiency concerns dictate that only one court decide both cases." *Netlist, Inc. v. SK Hynix Inc.*, No. 6:20-cv-194, 2021 WL 2954095, at *2 (W.D. Tex. Feb. 2, 2021) (quotation omitted). True, they are not literally identical, but consolidation under the first-to-file rule "does not . . . require that cases be identical." *Save Power Ltd.,* 121 F.3d at 950. "The crucial inquiry is one of substantial overlap." *Id.* Defendants have met that standard here.

In short, the first-to-file rule provides that where two cases "overlap on the substantive issues," they should "typically" be "consolidated in . . . the jurisdiction first seized of the issues." *Sutter*, 125 F.3d at 917 (quoting *Mann*, 439 F.2d at 408 n.6). In that circumstance, consolidation in "the first-filed action is preferred." *Intertrust Techs. Corp. v. Cinemark Holdings, Inc.*, No. 2:19-cv-266, 2020 WL 6479562, at *7 (E.D. Tex. Sept. 30, 2020) (quotation omitted). These cases overlap on all meaningful substantive issues, and should therefore be consolidated in this Court under the first-to-file rule.

II. Rule 42 Supports Consolidation in This Court

Rule 42(a) of the Federal Rules of Civil Procedure gives an additional basis for consolidation. It provides that a court may consolidate two or more related actions if they involve "a common question of law or fact." These cases satisfy that threshold requirement. Most notably, they involve the exact same remedial question: If, in fact, a court *should* draw an interim remedial map, *how* should it do so? There are numerous other overlapping issues, including the effect of the population growth from 2010 to 2020 on Texas demographics and redistricting and whether the four new maps are valid.

Once that threshold condition is satisfied, consolidation is discretionary, but "[i]n this Circuit, district judges have been urged to make good use of Rule 42(a) . . . to expedite the trial and eliminate unnecessary repetition." *Gentry v. Smith*, 487 F.2d 571, 581 (5th Cir. 1973) (quotation omitted).

Whether to consolidate is guided by five factors:

> (1) [W]hether the actions are pending in the same court; (2) whether there are common parties; (3) whether there are common questions of law or fact; (4) whether there is risk of prejudice or confusion versus a risk of inconsistent adjudications if the cases are tried separately; and (5) whether consolidation will promote judicial economy.

Holmes v. City of San Antonio, No. 5:21-cv-274, 2021 WL 2878551, at *1 (W.D. Tex. Mar. 30, 2021) (citing *Frazier v. Garrison Indep. Sch. Dist.*, 980 F.2d 1514, 1531–32 (5th Cir. 1993)). Courts also consider whether the cases are at "different stages of preparedness for trial." *Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 762 (5th Cir. 1989). Here, each factor favors consolidation.

A. The Actions Were Filed in the Same Court

The first factor asks whether the actions were filed before the same court. Cases from different districts may not be consolidated, but instead must first be transferred to the home district. *See* Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2382 (5th ed. 2019); *Wion v. Dretke*, No. 7:05-cv-146, 2006 WL 8441507, at *2 (W.D. Tex. July 14, 2006); *Mann*, 429 F.2d at 408.

This factor weighs in favor of consolidation because all five cases were filed in the Western District of Texas. That this case was filed in a different division makes no difference because the rule requires only that the cases be before the same *district*, not the same *division*. *See Wion*, 2006 WL 8441507, at *2; *Texas v. United States*, No. 6:21-cv-16, 2021 WL 3171958, at *2 (S.D. Tex. July 26, 2021).

B. The Actions Involve Substantially Similar Parties

The second factor asks whether and to what extent the actions involve similar parties. As party overlap increases, so too does the efficiency gained by consolidation. *Compare Samarto v. Keller Williams Realty, Inc.*, No. 1:21-cv-76, 2021 WL 3596303, at *2–3 (W.D. Tex. Apr. 27, 2021), *with Brown v. Fort Hood Fam. Hous. LP*, No. 5:20-cv-704, 2020 WL 10758046, at *2 (W.D. Tex. Sept. 25, 2020).

This factor favors consolidation because the actions involve substantially similar parties. Each case includes Governor Abbott and Secretary Scott as defendants. True, there are different plaintiffs, but, as explained above, they are similar insofar as they are concerned with similar interests. *See* ECF

1 ¶¶ 10–29; Ex. D at 2–5; Ex. E ¶¶ 14–30; Ex. F ¶¶ 1–5; Ex. G ¶¶ 8–17.

C. The Actions Involve Nearly Identical Issues

The third factor asks whether and to what extent the actions involve similar questions of fact or law. If substantially similar cases are not consolidated, discovery and motion practice are "likely to be highly duplicative, which risks unnecessary costs and delay." *Dryshod Int'l, LLC v. Haas Outdoors, Inc.*, No. 1:18-cv-596, 2019 WL 5149860, at *2 (W.D. Tex. Jan. 18, 2019).

This factor weighs heavily in favor of consolidation because the five actions present nearly identical issues. Fundamentally, each case challenges the apportionment of Texas's electoral districts. *See* ECF 1 ¶¶ 105–12; Ex. D at 10–14; Ex. E ¶¶ 127–36; Ex. F ¶¶ 231–41; Ex. G ¶¶ 94–109. While an apportionment claim may be based on the Fourteenth Amendment, Section 2 of the VRA, or some other provision, at their core, all such claims are "closely similar, albeit not perfectly identical, challenges to the same state government action." *Page*, 248 F.3d at 191. This fundamental similarity is illustrated by the fact that all five cases will involve the same type of evidence, including demographic data related to the maps. *See Armour v. Ohio*, 925 F.2d 987, 988 (6th Cir. 1991) (en banc) ("The theories of liability and the proof underlying both the constitutional and statutory [redistricting] claims are intimately related.") And each case presents questions about whether the Court can and should order Governor Abbott and Secretary Scott to use court-drawn maps, and if so, *how* it ought to do so.

D. There is Little Risk of Confusion if the Cases are Consolidated, but Great Risk of Prejudice from Inconsistent Adjudications if They are Not

The fourth factor asks the Court to weigh the risk of confusion if the cases are consolidated against the risk and prejudice of inconsistent adjudications if they are not. *See, e.g.*, *Lay v. Spectrum Clubs, Inc.*, No. 5:12-cv-754, 2013 WL 788080, at *2–3 (W.D. Tex. Mar. 1, 2013).

This factor weighs heavily in favor of consolidation because inconsistent adjudications would be especially prejudicial in these circumstances. Each set of plaintiffs asks for court-drawn maps. *See* ECF 1 at 24–25; Ex. D at 18–19; Ex. E at 32–33; Ex. F at 52–53; Ex. G at 27–28. Needless to say,

having at least three separate sets of congressional, and two sets of House, Senate, and SBOE maps would place Defendants in an untenable position. Courts impose such maps through injunctive relief, so Defendants would face inconsistent obligations on pain of contempt. This reason alone suffices to justify consolidation. *Compare Jine v. OTA Corp.*, No. 8:20-cv-1152, 2020 WL 7129374, at *13–14 (C.D. Cal. Sept. 11, 2020) (contrasting requests for injunctive relief), *with LeGrand v. N.Y. Transit Auth.*, No. 1:95-cv-333, 1999 WL 342286, at *5 (E.D.N.Y. May 26, 1999) (opposite); *see Dupont v. S. Pac. Co.*, 366 F.2d 193, 196 (5th Cir. 1966) (court commits reversible error "[w]here prejudice to rights of the parties obviously results from the order of consolidation").

Similarly, each case is likely to include similar discovery. Inconsistent resolution of privilege issues, for example, would be especially harmful. If the first court sustained a privilege objection while the second court overruled the same objection, the disclosure required by the other courts' rulings would effectively undermine the first court's ruling. The increasing number of redistricting cases only compounds these issues. Perhaps as much as any other type of case, statewide redistricting cases "call for a uniform result." *Yeti Coolers*, 2015 WL 4759297, at *1 (quotation omitted).

On the other side of the scale, consolidation poses no risk of confusion or prejudice. These cases raise only equitable claims, so there will be no jury to confuse the issues. And if consolidation would pose any procedural confusion, it would be far outweighed by the parties' uniformity interests.

E. Consolidation Will Conserve Judicial Resources

The fifth factor asks whether consolidation will conserve resources and promote judicial economy. Judicial economy is promoted where the related actions will draw from the same witnesses or sources of discovery, involve similar legal briefing, turn on similar issues of fact or law, or are otherwise able to efficiently proceed together. *Frazier*, 980 F.2d at 1532.

Consolidation is required here because it will prevent unnecessary litigation. There is no need for the parties to go through five rounds of discovery. And there is no need for five different panels

to decide the same redistricting issues, especially given that there is substantial, but incomplete, overlap of panel membership. In short, consolidation would conserve judicial resources because having the same judges decide the same issues on the same relief in a piecemeal fashion would be inefficient.

F. The Actions are at an Early Stage of Development

Courts also consider whether actions are at similar stages of development. In this regard, it is efficient to consolidate cases that are each newly filed, or ready for trial. Likewise, it is inefficient to consolidate cases that are at different stages in the litigation process. *See Lay*, 2013 WL 788080, at *3.

This factor weighs in favor of consolidation because all five actions are at very early stages of development and were filed only two weeks apart. No discovery has been exchanged nor has an initial conference been held. Consolidation does not delay any action or impose any logistical concerns.

* * *

The cases should be consolidated in this action because the "common practice" in the Western District is "for cases to be consolidated into the first-filed case." *Holmes*, 2021 WL 2878551, at *2; *Settles v. United States*, No. 17-cv-1272, 2018 WL 5733195, at *2 (W.D. Tex. May 18, 2018).

Consolidation is the norm for redistricting litigation. Indeed, many different parties and claims were consolidated before the same three-judge panel during the 2010 litigation. *See Perez v. Texas*, No. 5:11-cv-360-OLG-JES-XR, ECF 23 (W.D. Tex. July 6, 2011); *see also id.* ECF 63, 72, 76 (adding further parties and claims). It is simply impractical to have each redistricting case proceed separately, especially when so many sets of plaintiffs want each court to impose a unique map. There must be one forum that ensures consistency. Under the first-to-file rule and Rule 42, this Court should be that forum.[9]

CONCLUSION

Defendants respectfully request that the Court grant their Motion to Consolidate.

[9] To the extent the Court prefers consolidation into a different case, Defendants note that "[a] district court is permitted to order consolidation pursuant to Federal Rule of Civil Procedure 42(a) *sua sponte*." *Lester v. Exxon Mobil Corp.*, 879 F.3d 582, 592 (5th Cir. 2018). *That* the cases are consolidated is more important to Defendants than *where* the cases are consolidated.

Date: November 10, 2021

Respectfully submitted.

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

I certify that on November 10, 2021, counsel for the Defendants conferred with counsel for Plaintiffs about the foregoing motion. Plaintiffs are unopposed to the relief sought. Defendants also conferred with counsel for *Wilson*, *Voto Latino*, and *Brooks*. The *Brooks* Plaintiffs believe their case "should be consolidated with whichever of the earlier filed cases is deemed the lead case," and "take no position as to which case that should be." *Wilson* and *Voto Latino* are opposed. Defendants emailed counsel for *MALC* in the morning of November 10 to confer. At the time of this motion's filing, the *MALC* Plaintiffs had not responded.

/s/Patrick K. Sweeten
PATRICK K. SWEETEN

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on November 10, 2021, and that all counsel of record were served by CM/ECF.

/s/Patrick K. Sweeten
PATRICK K. SWEETEN

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL., *Plaintiffs*, v. GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS SUED IN HIS OFFICIAL CAPACITY; AND JOHN SCOTT, SECRETARY OF STATE OF TEXAS OF TEXAS SUED IN HIS OFFICIAL CAPACITY, *Defendants*.	§ § § § § § § § § § § § § § §	Case No. 3:21-cv-259-DCG-JES-JVB

EXHIBIT A

ORDER DENYING CONSOLIDATION, *GUTIERREZ V. ABBOTT*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ROLAND GUTIERREZ, SARAH ECKHARDT, and TEJANO DEMOCRATS, Plaintiffs, v. GREG ABBOTT, *Governor of the State of Texas, in his official capacity*, and JOSE A. ESPARZA, *Deputy Secretary of State of Texas, in his official capacity*, Defendants.	§	1:21-CV-769-RP-JES-JVB

ORDER

Defendants Greg Abbott, in his official capacity as Governor of the State of Texas, and Jose A. Esparza, in his official capacity as Deputy Secretary of State of Texas ("Defendants") filed an Opposed Motion to Consolidate, (Dkt. 20), on October 20, 2021, and a Partially Opposed Second Motion to Consolidate, (Dkt. 26), on November 4, 2021. For the reasons that follow, both motions will be denied.

Despite the first-to-file rule, this case is not the proper anchor for any redistricting cases that have been brought in regard to the Texas Legislature's 2021 statewide redistricting. This is not a typical redistricting complaint addressing newly-enacted lines for an upcoming election cycle. Instead, as Plaintiffs Roland Gutierrez, Sarah Eckhardt, and Tejano Democrats' ("Plaintiffs") response explains, their complaint "nowhere addresses the newly-enacted maps plans." (Resp., Dkt. 22, at 4). Plaintiffs "challenge[ ] only malapportionment in the 2020 redistricting plans" and "argue[ ] that the Texas Legislature lacks the authority to enact redistricting legislation during a special session." (*Id.*).

It is not even certain that this action should be considered the "first-filed" redistricting case for purposes of deciding questions of consolidation and transfer. This matter was initiated before the Legislature acted upon, and the Governor signed, redistricting legislation. The complaint even questioned whether the Legislature would adopt new lines at all. And, in a Joint Advisory on October 26, Plaintiffs announced that they "now intend to pursue similar claims in state court, the resolution of which may impact the issues before [this] Court." (Dkt. 23, at 2). Both sides agreed that there is no need for this three-judge court to address, immediately, the requested relief, including an injunction or dismissal. (*Id.*).

There is no reasonable chance that anything decided in the instant matter will conflict with potential rulings in the other pending cases as to which the state requests consolidation into this case. Accordingly, the first motion to consolidate, (Dkt. 20), and the second motion to consolidate, (Dkt. 26), are **DENIED**. This ruling is without prejudice to any party, in this or any other of the pending three-judge redistricting cases, to seek or suggest consolidation, transfer, abatement, or other appropriate relief.

SIGNED on November 9, 2021 on behalf of the Three-Judge Panel.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL., *Plaintiffs*, v. GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS SUED IN HIS OFFICIAL CAPACITY; AND JOHN SCOTT, SECRETARY OF STATE OF TEXAS OF TEXAS SUED IN HIS OFFICIAL CAPACITY, *Defendants*.	§ § § § § § § § § § § § § § §	Case No. 3:21-cv-259-DCG-JES-JVB

EXHIBIT 3

ORIGINAL COMPLAINT, *MORRIS V. TEXAS*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

JOHN T MORRIS

Plaintiff

v.

STATE OF TEXAS; GREG ABBOTT,
in his official capacity as Governor
of the State of Texas;
RUTH RUGGERO HUGHS,
in her official capacity as Secretary of State
of the State of Texas

Defendants

CIVIL ACTION NO.
4:21CV3456

PLAINTIFF'S ORIGINAL COMPLAINT FOR DECARATORY AND INJUNCTIVE RELIEF AND REQUEST FOR DESIGNATION OF THREE-JUDGE COURT

COME NOW John T. Morris, Plaintiff, brings this action in respect to the 2021 redistricting of the State of Texas and the plaintiff's first and fourteenth amendment rights guaranteed by the United States Constitution, and Article 1, Section 2, Clause 1 of the U.S. Constitution.

I. JURISDICTION & VENUE

1. Plaintiff's complaint raises questions arising under the United States Constitution and state and federal law.

2. This court has original jurisdiction pursuant to 28 U.S.C. Sections 1331, 1343 (a)(3) and (4); and 42 U.S.C. Section 1983 and 1988.
3. This courts jurisdiction is invoked pursuant to 28 U.S.C. Section 1391 (b).
4. Plaintiff's claim for declaratory and injunctive relief is authorized by 28 U.S.C. Sections 2201 and 2202.
5. Plaintiff requests a three-judge panel pursuant to 28 U.S.C. Section 2284.

II. PARTIES

6. Plaintiff John T Morris is a naturalized citizen of the United States and registered voter and resides in Harris County of the State of Texas within the jurisdiction of the U.S. District Court – Southern District of Texas, and has standing to bring this action under 42 U.S.C. Section 1983.
7. Defendants are the State of Texas and the officials thereof who have duties and responsibilities under the laws of the state to redistrict congressional districts following the decennial census.
8. Defendant Greg Abbott is the Governor of the State of Texas and under Article IV, Section 1, of the Constitution of the State of Texas, is the chief executive officer of the Defendant State of Texas. He is sued in his official capacity.
9. Defendant Ruth Ruggero Hughs is the Secretary of State for the State of Texas and is responsible under the laws of the state to oversee the conduct of elections. She is sued in her official capacity.

III. FACTS

10. After the decennial census, which is used to provide for the reapportionment of the U.S. House of Representatives the State of Texas, as well as the other 50 states, must redraw district boundaries in accordance with changes in population densities and/or increases or decreases in the number of apportioned representatives.
11. The State of Texas, being apportioned two new representatives had to "redistrict" in

the 2021 regular session though due to the virus pandemic the census data was delayed and the redistricting was undertaken this October 2021. The maps are being challenged in federal court for violations of the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983 & 1988 and Article 1, Section 4, Clause 1 of the U.S. Constitution.

12. The plaintiff, John T. Morris, is a citizen and registered voter in the 2nd Congressional district and resides and is domiciled in Harris County, Texas and his home address is 5703 Caldicote St., Humble, Texas 77346.

13. The new congressional map, SB6, has altered the plaintiff's 2nd Congressional District drastically. Whereas the 2nd district previously included a large area in Harris County Northeast of the city of Houston and then Eastward and to the South in a band that first narrowed and then widened and in effect surrounding three-quarters of the way around the city. The new iteration of the 2nd District now retains that same large area Northeast of the city but now extends towards the East narrowly into the Northern area of Harris County and also into a relatively large area South but also extends North into a large section of Southeast Montgomery County. Now only one quarter (the large area Northeast of the city) of the new district remains from the previous district. To drive from one extent to the other is roughly a 50 mile journey.

14. Article I, Section 2 of the United States Constitution calls for representatives to be"composed of Members to be chosen every Second year by the people...". The original purpose of having elections every two years (a compromise from one year preferred by the colonists) as clearly stated by James Madison in the Federalist papers, and numerous colonists who took part in the ratification of the Constitution, was to provide the people with "frequent elections" in order to allow their constituents to appraise the performance of their representatives and ascertain *sooner than later* whether they wished to vote for them once again. Partisan gerrymandering that moves a candidate out of a district, or by altering the district boundaries, disallows most of his or

her previous constituents from voting for or against the candidate in the present election and thus violates the original meaning of this constitutional provision.

15. Due to the manner in which the 2nd district is politically gerrymandered it does not even nominally conform to recognized Supreme Court redistricting criteria. Criteria "such as natural geographical boundaries, contiguity, compactness, and conformity to political subdivisions" Bush v. Vera, 517 U.S. 952 at 959-960. For these reasons it creates logistical, geographical, political interests, and informational complications which place burdens on the citizens and the plaintiff and consequently curtails and inhibits their freedom of speech. This curtailment and inhibition of political expression which encompasses speech, assembly and association is a clear and obvious violation of the First and Fourteenth Amendment.

16. It is a fact that geography in respect to rivers and valleys, the lack of compaction and diverse interests within a district can impede communication and consequently burden First Amendment rights. It is a fact also that incomplete and erroneous media information is likewise a burden that needlessly complicates communication and as such should also be considered a violation of the First Amendment. A district configured to lessen burdens on the constituents political communications must require also that media facts be documented and verifiable, and separate from opinion, whereas if they are not they are also a burden. Hence honest media information must be considered the true basis of a functional district based on the First Amendment that fosters efficient and effective elective decisions by the voters. And in so far as it is the function of government to do what is largely impossible for the individual, the state must use its collective legislative prerogative to compel the media to provide, documented and verifiable, factual information that is separate from press or public opinion - a requirement that would not in effect be an abridgement of freedom of the press - that will allow the citizens to intelligently exercise their right to vote.

17. The plaintiff asks the Court to intervene in the redistricting process and prevent the the Texas legislature and governor from changing the plaintiff's district boundaries as little as possible and only to the extent necessary to accommodate the two new districts apportioned to the state of Texas in accordance with the 2020 census. And in so doing prevent the Republican controlled government of Texas from undermining the original purpose of Article I, Section 2, Clause 1 of the U.S. Constitution requiring frequent elections and in effect abridging the plaintiff's right to an effective political voice in respect to his representative's candidacy for a new term in the U.S. House of Representatives. And require the state to ensure that the voter's First Amendment right to factual information separate from opinion is provided by the media.

IV CAUSES OF ACTION

First Cause of Action:

18. Plaintiff realleges and incorporates paragraphs 1-17.
19. Plaintiff claims a violation of his First Amendment right to political speech as guaranteed by the 14th Amendment.

Second Cause of Action:

20. Plaintiff realleges and incorporates paragraphs 1-17.
21. Plaintiff claims a violation of his First Amendment right to a fair and effective vote as guaranteed by the 14th Amendment.

Third Cause of Action:

22. Plaintiff realleges and incorporates paragraphs 1-17.
23. Plaintiff claims that facts set forth above demonstrate a violation of the intent of Section 2, of Article I of the United States Constitution.

Fourth Cause of Action:

24. Plaintiff realleges and incorporates paragraph 1-17

25. Plaintiff claims that accurate media facts that are documented and verifiable and separate from opinion are an essential element of a district based on the First Amendment the omission of which is a violation of the First Amendment.

V PRAYER FOR RELIEF

In light of the foregoing facts and claims, the plaintiff respectfully requests the following relief:

A. That the court request the convening of a three-judge court pursuant to 28 U.S.C. Section 2284.

B. Declare the current plan for the Texas Congressional districts to be unconstitutional and enjoin their use in any further elections.

C. Grant plaintiff reasonable fees and costs pursuant to 28 U.S.C. Section 2412..

D. Grant such other relief as may be necessary and proper.

John T. Morris
Plaintiff Pro se
5703 Caldicote St.
Humble, TX 77346
281-852-6388

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

OCT 20 2021

Nathan Ochsner, Clerk of Court

JOHN T MORRIS

Plaintiff

v.

STATE OF TEXAS; GREG ABBOTT,
in his official capacity as Governor
of the State of Texas;
RUTH RUGGERO HUGHS,
in her official capacity as Secretary of State
of the State of Texas

Defendants

CIVIL ACTION NO.

4:21cv3456

STATEMENT OF JOHN T MORRIS
Pursuant to 28 U.S.C. Par. 1846, declare that:

VIOLATION OF FREQUENT ELECTION OBJECTIVE

1. Article I, Section 2 of the United States Constitution states that "The House of Representatives shall be composed of Members to be chosen every Second year by the people." Having elections every two years was reluctantly agreed to by the colonists who ratified the Constitution since one year was nearly universal throughout the colonies and considered a fundamental element of democracy - they "were familiar with the Whig maxim, 'Where ANNUAL ELECTIONS end, Tyranny begins.'"(1) The demand for "frequent elections" was a common phrase used during this period and was explicitly an element in the constitutions of Virginia, Delaware, Maryland and North Carolina.(2) And

the often stated purpose of having frequent elections,

as clearly stated by the framers of the Constitution in the Federalist papers and elsewhere, is to allow the citizens to appraise the performance of their representatives from the previous two years in order to determine *sooner than later* whether they wished to vote for them once again. When "their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were raised; there forever to remain unless a faithful discharge of their trust shall have established their title to a renewal of it," James Madison, The Federalist Papers No. 57. "The genius of republican liberty seems to demand on one side not only that all power should be derived from the people, but that those entrusted with it should be kept in dependence on the people by a short duration of their appointments." id, Madison No. 37. The purpose of a frequent election, though not explicit in the words of Madison, it is in the words of Fisher Ames, who was elected to the First Congress, and stated during the Massachusetts ratification debate that "[t]he term of election must be so long that the representative may understand the interests of the people, and yet so limited, that his fidelity may be secured by a dependance upon their approbation" and that "[t]he people will be proportionally attentive to the merits of a candidate. Two years will afford opportunity to the members to deserve well of them, and they will require that he has done it."(3) And "that he has done it" can only mean that if he has not he will lose the people's vote in a subsequent election. In a pamphlet by Mercy Warren, the sister of James Otis, whose argument against British imposed Writs of Assistance initiated the first tendencies of the colonists towards independence, explicitly stated that the "annual election is the basis of responsibility...a frequent return to the bar of their Constituents is the strongest check against the corruption to which men are liable."(4) This can only mean that the people who voted in a previous election must have the opportunity to vote for the same representative in a subsequent election.

2. These above comments by participants in the adoption of the Constitution should

leave little doubt that the objective of a frequent election was not simply a matter of custom or practicality but truly based on the insistence by the colonists that they keep a tight reign on their representatives by using their knowledge of, and experiences with them, to determine their future in office. Unfortunately gerrymandering that effectively prevents any voter who voted in a previous election from using his or her accumulated knowledge, and experiences, with an incumbent and/or candidates, without good cause is obviously a violation of the frequent election objective embedded in Article 1, Section 2, of the U.S. Constitution and more importantly an obvious abridgement of the First and 14th Amendment rights of the voters since freedom of speech and of the press are so essential in respect to the citizen's effort to select their representative.

3. Gerrymandering will allow the representative to return to the 2nd District after new district lines have been drawn and effectively be appraised, to a large extent, by a new majority of sympathetic partisan voters who will be largely unfamiliar with the representative and his or her performance during the previous term and swamp out the political voices of those who, now in the minority, and the plaintiff being one of them, who have knowledge of the candidate from previous elections and violate their First and Fourteenth Amendment and Article 1, Section 2 Constitutional voting rights.

RECOGNIZED REDISTRICTING CRITERIA REQUIRED
TO PROTECT FIRST AMENDMENT RIGHTS

4. It's the plaintiff's contention that because the 2nd district is politically gerrymandered and clearly does not follow recognized Supreme Court redistricting criteria "such as natural geographical boundaries, contiguity, compactness, and conformity to political subdivisions" Bush v. Vera, 517 U.S. 952 at 959-960, it creates burdens on the citizens and the plaintiff's rights in terms of political expression guaranteed by the First Amendment in respect to speech, press, assembly and association. Districts that are not compact, that are miles long and narrow in width, are more likely to include remote

communities that have diverse or even conflicting interests. A district that stretches for many miles in length as does the new 2nd District will undoubtedly create travel and time restrictions for party activists in their efforts to form a politically uniform district. In this respect communication will be burdened and certainly curtailed when, as usual, it is necessary to communicate in person and certainly represent a diminishment of First and Fourteenth Amendment rights. In addition the refashioned district will discourage travel to political gatherings that are again necessary to forge a politically uniform district and inadvertently create separate political communities that will tend to lose sight of the other's interests and in addition lessen the advantage of their combined energy.

5. Being in a district that is dominated by one party will inevitably discourage political activism since one party will be assured of the representative of its choice and the other party will not. Under these large majority small minority circumstances it will be unlikely that citizens holding diverse opinions will find it necessary or even attempt to find a consensus. This can also be considered a constraint on the citizen's of the district and the plaintiff's speech rights when there is little reason to debate in respect to an election that is not in doubt, issues that need to be discussed and debated are not resolved and deny those who wish to express there concerns the opportunity to do so.

6. The new 2nd District drawn now drawn in a manner which does not follow accepted proper redistricting criteria has created logistical and geographic distortions and informational complications that place a burden on this plaintiff's speech, press and assembly rights and are consequently an obvious violation of the plaintiff's First and Fourteenth Amendment rights.

MEDIA THAT SEPARATES DOCUMENTED AND VERIFIABLE FACTS FROM OPINION IS A NECESSARY ELEMENT OF A PROPER DISTRICT

7. When there is an effort to design a district based on accepted criteria that mitigates, to

the extent possible, physical and communication burdens and for this reason comply with First and Fourteenth Amendment objectives, media information that is erroneous, incomplete and where opinion is made to appear factual will essentially nullify the result. In a district lacking honest media it matters little how the district is designed since the citizens will be unable to convey credible concerns to their representatives..

8. The purpose of a properly designed district based on accepted Supreme Court criteria is to establish representation that efficiently reflects the primary interests and genuine political views of the majority of the district's residents. If this is to occur and not burden, in any aspect, the First Amendment rights of the citizens, it is essential that they be provided with honest information. The First Amendment, in respect to freedom of the press, implies that media information is essential in the execution of the democratic process the purpose of which is to benefit and protect the people of the nation. It is an essential requirement that the information provided to the public, which is the basis of their political activity, be genuine and where anything to the contrary is, in no uncertain terms, a logical violation of the ultimate objective of the amendment. And in this respect false or misleading information is a burden and subsequent violation of the citizen's First Amendment rights.

9. "[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the *facts* of those operations. Great responsibility is accordingly placed upon the news media to report *fully and accurately* the proceedings of government...Without the information provided by the press, most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally." (emphasis added) Cox Broadcasting Corp. V. Cohn, 420 U.S. 469 (1975). Information required for the citizens and the plaintiff to communicate and ultimately vote intelligently cannot be incomplete,

distorted or erroneous, and in addition this factual information must be documented and verifiable, and separate from opinion - opinions from the public or the press. Misleading and opinionated information available to the citizens and the plaintiff will only tend to be a distraction at best or a source of confusion or at worst lead the citizens to faulty conclusions. And though publishers may occasionally be deceived, and certainly only temporally, into believing they are providing the public with factual information, what is provided must be clearly divided between what is factual and what is a matter of opinion. *Incomplete, distorted and erroneous media information is a burden on the citizen's right to know and ability to communicate and consequently a violation of the citizen's and the plaintiff's First and Fourteenth Amendment rights.*

10. In order to establish a constitutionally legitimate district based on Court accepted criteria and the citizen's and the plaintiff's First and Fourteenth Amendment rights an essential element must include truthful media information that is documented and verifiable. And it is clear that this can be accomplished without an abridgement of the press when merely requiring fact to be separate from opinion. And since individuals have no means by which to require the media to provide this information the responsibility falls on the state with its collective constitutional power given it by the sovereign citizens.

11. In 1947, A Free and Responsible Press was published with grants from Time, Inc., and Encyclopedia Britannica, Inc.. This report was the work of the Commission on Freedom of the Press, administered by the University of Chicago. The commission was chaired by Robert M. Hutchins the chancellor of the university of Chicago and included Harold Lasswell (professor of law at Yale), Reinhold Neibuhr (professor of ethics and philosophy at Union Theological Seminary), Beardsley Ruml (chairman of the Federal Reserve Bank of New York), and the leading *First Amendment scholar* of the 19th Century, Zechariah Chafee, Jr., who served as vice-chairman. The commission was formed in 1943 to study "the role of the agencies of mass communication in the education of the people in public affairs," and consisted of 225 interviews with members of

institutions concerning the press and 176 documents prepared by members or staff. As a guide, what the commission considered was needed from the press was, first of all "*a truthful, comprehensive, and intelligent account of the day's events* in a context that gives them meaning; second, a forum for the exchange of comment and criticism; and third, *a means of projecting the opinions and attitudes* of the groups in the society to one another." In addition to the recommendation that truthful information be provided to the public there is an insinuation also that there be a delineation between fact and opinion. And finally in order to put this on a firm constitutional foundation in respect to a "truthful, comprehensive, and intelligent account of the day's events," in the Federalists Papers No. 84 it was Alexander Hamilton's expectation that "[t]he public papers will be expeditious messengers of intelligence,"; and a distribution "'of a proper knowledge on the part of the constituent of the conduct of the representative body.'" And in a reply in 1787 by "Cincinnatus" [Arthur Lee] I, during the constitutional ratification process and printed in the New York Journal wrote that should "[t]he freedom of the press, the sacred palladium of public liberty ...be pulled down; - all useful knowledge on the conduct of government would be withheld from the people - the press would become subservient to the purpose of bad and arbitrary rulers, and imposition not information, would be its object." (5) And how could it be that anything other than truthful knowledge, separated from opinion, be useful.

NOTES:

(1) The Creation of the American Republic 1776-1787
Gordon S. Wood, 1996, p. 166

(2) Source Of Our Liberties, Ed. R. L. Perry & J. C. Cooper
New York University Press, 1972, p. 311, 338, 356

(3) Debate on the Constitution (DOTC), Part One
The Library of America, Fourth Printing, 1993, p. 892, 895

(4) Documentary History of the Ratification of the Constitution Vol. XVI, Commentaries, Vol. 4, p 278

(5) DOTC, Supra, p. 95

John T. Morris
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4:21CV3456

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

John T. Morris (Pro se)

(b) County of Residence of First Listed Plaintiff Harris
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

John T. Morris (Pro se) 5703 Caldicote St.
Humble, TX 77346 832-978-8943

DEFENDANTS

State of Texas et al

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		INTELLECTUAL PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	LABOR	☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 710 Fair Labor Standards Act	☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 720 Labor/Management Relations	☐ 840 Trademark	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 740 Railway Labor Act	☐ 880 Defend Trade Secrets Act of 2016	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 751 Family and Medical Leave Act	SOCIAL SECURITY	☐ 480 Consumer Credit (15 USC 1681 or 1692)
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 790 Other Labor Litigation	☐ 861 HIA (1395ff)	☐ 485 Telephone Consumer Protection Act
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 791 Employee Retirement Income Security Act	☐ 862 Black Lung (923)	☐ 490 Cable/Sat TV
☐ 196 Franchise				☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	☐ 864 SSID Title XVI	☐ 890 Other Statutory Actions
☐ 210 Land Condemnation	☒ 440 Other Civil Rights	Habeas Corpus:	☐ 462 Naturalization Application	☐ 865 RSI (405(g))	☐ 891 Agricultural Acts
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee	☐ 465 Other Immigration Actions	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence		☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 895 Freedom of Information Act
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General		☐ 871 IRS—Third Party 26 USC 7609	☐ 896 Arbitration
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty			☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	Other:			☐ 950 Constitutionality of State Statutes
	☐ 448 Education	☐ 540 Mandamus & Other			
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE
10/19/2021

SIGNATURE OF ATTORNEY OF RECORD
John T. Morris /s/

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL., *Plaintiffs*, v. GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS SUED IN HIS OFFICIAL CAPACITY; AND JOHN SCOTT, SECRETARY OF STATE OF TEXAS OF TEXAS SUED IN HIS OFFICIAL CAPACITY, *Defendants*.	§ § § § § § § § § § § § § § §	Case No. 3:21-cv-259-DCG-JES-JVB

EXHIBIT C

ORIGINAL COMPLAINT, *GUTIERREZ V. ABBOTT*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ROLAND GUTIERREZ; SARAH ECKHARDT; and the TEJANO DEMOCRATS, *Plaintiffs*, v. GREG ABBOTT, Governor of the State of Texas sued in his official capacity; and, JOSE A. ESPARZA, Deputy Secretary of State of Texas and acting Secretary of State of Texas sued in his official capacity. *Defendants.*	§ § § § § § § § § § § § § § § § §	CIVIL ACTION NO. 1:21-CV-00769 Complaint for Declaratory Judgment and Injunctive Relief

PLAINTIFFS' ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This is a redistricting lawsuit challenging the existing maps for the Texas House of Representatives and Texas Senate districts because they violate the 14th Amendment's "one person, one vote" principle. The current maps, which undisputedly violate that principle, must be reapportioned before the 2022 election cycle. However, the Texas Legislature cannot accomplish that reapportionment. As a matter of Texas constitutional law, the Legislature cannot reapportion until the first regular session after the census, which does not convene until January, 2023. Thus, for the 2022 election cycle, this Court has the exclusive obligation to create interim maps.

2. The Legislature's first valid opportunity to apportion State House and State Senate legislative districts commences "at its first regular session after the publication of each United

States decennial census." Tex. Const. art. III § 28. Only once that regular session ends, and then only if the Legislative Redistricting Board fails to act, may the Legislature apportion during a special session. The Census was not published before or during the 87th Regular Session in 2021; thus, the Legislature's first opportunity for apportionment is not until the 88th Regular Session in 2023. The plain text of the Texas Constitution prevents the Legislature from apportioning its State House or State Senate districts in a special session at this time. Therefore, this Court faces the necessary duty of ensuring a constitutional administration of the 2022 Texas election cycle by drawing an interim map.

II. PARTIES

3. Plaintiff Roland Gutierrez is a Texas State Senator, Texas citizen, and Texas registered voter. He lives in San Antonio and is a registered voter in Texas Senate District 19 and Texas House District 119. He is a minority voter who has consistently voted in elections and was elected State Senator for SD 19. He was sworn into office as a State Senator in January of 2021. He resides in and represents an overpopulated senate district and a malapportioned house district.

4. Plaintiff Sarah Eckhardt is a Texas State Senator, Texas citizen and Texas registered voter. Senator Eckhardt lives in Austin, Texas and is a registered voter in Texas Senate District 14 and Texas House District 49. She is the former County Judge for Travis County. She has consistently voted in elections and was first elected in a special election in July of 2020. She resides and votes in an overpopulated State Senate district and State House district.

5. Plaintiff Tejano Democrats is a statewide political organization of 2,100 members. They expend resources to educate voters about candidates for office and have a special focus on the needs of Mexican American voters and candidates. Tejano Democrats' members are registered

voters who vote consistently in Texas elections. Most of their members are minority voters. The Tejano Democrats have members in overpopulated State House and State Senate districts.

6. Defendant Greg Abbott, the 48th Governor of Texas, is the only elected official in the state of Texas that may order the Legislature into a special session. *See* TEX. CONST. art. IV, § 8. He is the chief executive officer of this State and issues executive orders and proclamations concerning election-related matters and election administration by and through the executive department of the Texas state government. The Governor is sued in his official capacity. He may be served at Office of the Governor, State Insurance Building, 1100 San Jacinto, Austin, Texas 78701.

7. Defendant Jose A. Esparza is the current Deputy Secretary of State and is acting as the current Texas Secretary of State until the Governor appoints a new Secretary of State. The Secretary of State is the chief election officer of this state. He supervises elections and has constitutional and statutory duties associated with redistricting and apportionment, including advising election authorities on boundaries of districts, election deadlines for new districts, and enforcement of certain election rules and laws. He may be served at 1019 Brazos St., Austin, TX 78701.

III. JURISDICTION AND VENUE

8. Plaintiff's complaint arises under the United States Constitution and federal law. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) & (4), and 42 U.S.C. §§ 1983, 1988.

9. Venue is proper in the Western District of Texas. 28 U.S.C. § 1391(b)(1) because all defendants reside in this district.

10. Plaintiff seeks declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

11. This is a constitutional challenge against the apportionment plans for statewide legislative bodies. The plaintiffs demand a three-judge panel pursuant to 28 U.S.C. § 2284.

IV. FACTS

TEXAS LAW ON THE SCHEDULE FOR APPORTIONMENT

12. The Texas Constitution outlines the schedule for apportionment of legislative districts:

> "Sec. 28. TIME FOR APPORTIONMENT; APPORTIONMENT BY LEGISLATIVE REDISTRICTING BOARD. The Legislature shall, at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts...." Tex. Const. art. III, § 28

13. This provision prohibits the Legislature from apportioning districts until "the first *regular* session *after* the publication of each United States decennial census." *Id*.

14. This provision was adopted in 1947 by the 50th Texas Legislature. It was filed that year as Senate Joint Resolution 2 ("SJR 2") and, once enacted and ratified by the people, it amended the Texas Constitution.

15. SJR 2 was read for the first time and referred to the Committee on Constitutional Amendments on January 16, 1947. As introduced, SJR 2 did not differentiate between a regular and special session, but mandated that "the Legislature shall, at its first *Session* after the publication of each decennial census, apportion the state into senatorial and representative districts…" It also provided for the creation of a Legislative Redistricting Board should the Legislature fail to adopt apportionment plans.

16. But the Committee on Constitutional Amendments in the Senate substantively altered the provision, requiring that the Legislature apportion only after the first *regular* session after the decennial census. Acts 1947, 50th R.S., SJR 2.

17. The Texas Legislature passed the revised SJR 2 by a two-thirds vote in each chamber, and the amendment was sent to the voters for ratification.

18. On November 2, 1948, the voters of Texas overwhelmingly ratified SJR 2 by a greater than 3 to 1 margin — 528,158 votes for adoption compared to 153,704 votes against.

19. Timely legislative apportionments followed for three decades, until the 1970s. In 1971, the census was published during the pendency of the 62nd Regular Session.

20. During that Session, the Texas House adopted an apportionment plan, but the Texas Senate failed to do so, triggering the LRB's duty to apportion under Texas Constitution. Before the LRB met to adopt a Senate apportionment plan, Representative Tom Craddick successfully challenged the State House apportionment for violating the Texas whole county line rule (TEX. CONST. art. III, § 26), and the State House map's implementation was enjoined. When the LRB declined to apportion the House, a Senator sued, and the Texas Supreme Court compelled the LRB to apportion both the State House and the State Senate map.

21. In its opinion, the Texas Supreme Court construed the Constitution's limitations on the Legislature's power to apportion. The Court held: "[w]e are convinced that the overriding intent of the people in adopting Sec. 28 was to permit apportionment of the state into legislative districts at the *regular* session of the Legislature which is convened in January following the taking of the census if the publication is either *before* or *during the session*." *Mauzy v. Legis. Redistricting Bd.*, 471 S.W.2d 570, 573 (Tex. 1971) (orig. proceeding) (emphasis added).

22. Subsequent rulings in apportionment cases confirm the schedule of apportionment *Mauzy* outlined. In *Terrazas v. Ramirez*, the Supreme Court observed that "[a]lthough article III, section 28 of the Texas Constitution explicitly requires the Legislature to reapportion legislative districts in the first regular session after each United States decennial census is published, neither that

section nor any other constitutional provision prohibits the Legislature from acting in *later* special or regular sessions *after* the constitutional authority of the Legislative Redistricting Board has expired." *Terrazas v. Ramirez*, 829 S.W.2d 712, 726 (Tex. 1991) (emphasis added) (Hecht, J.).

23. Thus, a plain reading of Article III, § 28, its history, and Texas Supreme Court precedent create a specific schedule for apportionment. First, the census is published. Second, the Legislature must apportion at its next regular session after the census is published (or, if the census is published *during* the regular session, at that session). If the Legislature fails to act, the LRB can then act to apportion. Finally, after the expiration of the LRB's authority, the Legislature is free to act at either a regular or special session. *See Terrazas*, 829 S.W.2d at 726.

CENSUS DELAYED

24. Since the ratification of Article III, § 28 in 1951, the Census has been published during or before the immediate regular session following the census year.

25. That consistent and reliable streak of timely Census data ended in 2020. As a result, partial publication of the census was delayed until August 12, 2021 — after the regular session concluded and approximately 16 months before the next regular session would convene.

GOVERNOR SUGGESTS A *SPECIAL* SESSION FOR APPORTIONMENT

26. Notwithstanding the constitutional limitation on the Legislature's apportionment power, Governor Abbott has stated that he intends to call a *special* session after publication of the U.S. Census to apportion the state legislative districts.

27. Legislative committees have begun taking testimony of the demographic and population shifts in this last decade and have stated their intention to act swiftly to apportion legislative districts once called to do so by the Governor.

28. Legislative leaders in the Texas Senate have stated that they will begin hearings on state apportionment on September 6 and that a special session for apportionment will be called by the Governor on or about September 16, 2021.

29. The Texas Legislative Council, a support agency for the Legislature, has stated that, once the census is published, it will take two weeks to fully integrate the data into the proprietary redistricting software known as RedApl. By September 1, 2021, the data will be fully integrated, and mapping will begin.

30. Election deadlines for the 2022 election cycle are imminent. September 14, 2021 is the first day to file for a place on the primary ballot as a precinct chair. Other deadlines that will determine the scope of the next election are also swiftly approaching, including the state candidate filing period opening in mid-November and closing on December 13, 2021.

MALAPPORTIONMENT

31. The current statewide districting map for the State House and State Senate districts are malapportioned beyond what is permissible under federal and state law.

32. Plaintiff Roland Gutierrez resides in and votes in a State Senate district and State House district that are overpopulated or malapportioned.

33. Plaintiff Sarah Eckhardt resides in and votes in a State Senate district and State House district that are overpopulated or malapportioned.

34. Tejano Democrats has members in overpopulated State Senate and State House districts.

35. The Texas Senate map is malapportioned. The ideal population for a Texas State Senate district according to the 2020 Census is 940,178. Currently, SD 25 has 1,103,479 people and is overpopulated by 163,301 people or 17.37%. SD 28 is severely underpopulated and contains 796,007 people and is 144,171 people or -15.33% below the ideal Senate district population. This

is a "top to bottom" population deviation of 32.7%, far exceeding the 10% deviation allowable under law.

36. The Texas House map is also malapportioned. The ideal State House district is 194,303. HD 28 contains 297,064 people, which is 52.89% overpopulated. HD 76 is substantially underpopulated and is -24.71% below the ideal population. This is a "top to bottom" deviation of 77.6%, far exceeding what is allowable under law.

INJURY

37. The plaintiffs are injured because they are in malapportioned districts in violation of the U.S. Constitutional law.

V. CAUSES OF ACTION & CLAIMS FOR RELIEF

MALAPPORTIONMENT

38. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

39. Currently, redistricting plans for the Texas House of Representatives and Texas Senate exceed permissible population variances between the least populated district and the most populated district. The implementation of such variances or deviations from ideal population violate the rights of all voters and persons as guaranteed by the "one person, one vote" guarantee of the Fourteenth Amendment of the United States Constitution and protected by 42 U.S.C. § 1983. This is an action for declaratory judgment and preliminary and permanent injunctive relief to prevent the use of malapportioned plans.

VI. REQUEST FOR INJUNCTIVE RELIEF

40. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

41. Plaintiffs will likely succeed on the merits, because the Texas Constitution requires that the first opportunity for the Legislature to apportion is the *next* **regular** session *after* the publication

of the census, which will not convene until January 2023. Allowing the Legislature to apportion at a special session before that time upends the constitutional "time for apportionment" prescribed by Article III, § 28 of the Texas Constitution. Yet, the constitutional injuries of the districts must be remedied before the commencement of the 2022 election cycle. This Court must, therefore, adopt interim maps that comply with federal and state law for the 2022 election cycle for the State House and State Senate.

42. Plaintiffs will suffer immediate and irreparable injury by being forced to vote and reside in malapportioned districts for the State House and State Senate.

43. There is no harm to the State in ensuring that the districts that are currently up for election 2022 are apportioned pursuant to Texas and federal law.

44. The injunction is in the public interest, because without action by this court the plaintiffs will be forced to vote in malapportioned districts in violation of the "one person, one vote" guarantee.

45. Plaintiffs have no adequate, plain, or complete remedy other than seeking the adoption of an interim map in advance of the 2022 election cycle.

46. Plaintiffs request that the Court enter a mandatory injunction creating an interim map that complies with state and federal law in order to hold the 2022 elections in constitutionally sound State House and State Senate districts.

VII. PRAYER

For the foregoing reasons, Plaintiffs respectfully request that Defendants be cited to appear and answer and that the Court take the following actions and grant the following relief:

A. Appropriate preliminary and permanent injunctive relief to which plaintiffs show themselves entitled;

B. Entry of a declaratory judgment as described above;

C. Attorneys' fees and court costs; and,

D. Any other or further relief in law or equity that the Court determines that plaintiffs are entitled to receive.

DATED: September 1, 2021

Respectfully,

By: /s/ *Martin Golando*

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL., *Plaintiffs*, v. GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS SUED IN HIS OFFICIAL CAPACITY; AND JOHN SCOTT, SECRETARY OF STATE OF TEXAS OF TEXAS SUED IN HIS OFFICIAL CAPACITY, *Defendants*.	§ § § § § § § § § § § § § § §	Case No. 3:21-cv-259-DCG-JES-JVB

EXHIBIT D

ORIGINAL COMPLAINT, *WILSON V. TEXAS*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DAMON JAMES WILSON, for himself
and on behalf of all others similarly situated,

Plaintiff,

V.

THE STATE OF TEXAS;

No. 1:21-cv-943

GREG ABBOTT, in his Official Capacity
as Governor of the State of Texas;

DADE PHELAN, in his Official Capacity
as Speaker of the Texas House of Representatives;

DAN PATRICK, in his Official Capacity
as Lieutenant Governor and Presiding Officer
Of the Texas Senate; and,

JOSE A. ESPARZA, in his Official Capacity
as Acting Texas Secretary of State;

Defendants

PLAINTIFF'S ORIGINAL COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, REQUEST FOR DESIGNATION OF THREE-JUDGE COURT, AND REQUEST FOR CERTIFICATION OF CLASS ACTION

TO THE HONORABLE OF SAID COURT:

COMES NOW Damon James Wilson, Plaintiff in the above captioned and numbered cause and, pursuant to Article I, Section 2 of the U.S. Constitution; Section 2 of the Fourteenth Amendment to the U.S. Constitution; the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; 28 U.S.C. Sections 2201, 2202 and

2284; 42 U.S.C. Sections 1983 and 1988; and, Rule 23 of the Federal Rules of Civil Procedure; files this *Original Complaint for Declaratory and Injunctive Relief, Request for Designation of Three-Judge Court*, *and Request for Certification of Class Action*, and in this connection would respectfully show unto the Court as follows:

I.

JURISDICTION

The Plaintiff's complaint raises questions arising under the United States Constitution and federal law, and this Court has "federal question" jurisdiction pursuant to 28 U.S.C. §1331. Additionally, the Plaintiff's complaint challenges the constitutionality of the apportionment of congressional districts enacted by the Third Called Session of the 87th Texas Legislature on October 18, 2021, which has been designated as Senate Bill 6 ("Plan C2193"), so this Court possesses jurisdiction on that basis as well pursuant to 42 U.S.C. §1983, 28 U.S.C. §1343(a) and §2284(a).

II.

REQUEST FOR DESIGNATION OF THREE-JUDGE PANEL

The Plaintiff requests designation of a three-judge panel in this case pursuant to 28 U.S.C. §2284(a).

III.

PARTIES

(1)

Plaintiff Damon James Wilson ("**Plaintiff Wilson**") resides in the 1400 block of Independence Trail, in the City of Grand Prairie, Dallas County, Texas. On "Census Day" (as designated by federal law, April 1, 2020), Plaintiff was an inmate confined by

the Defendant State of Texas in the William P. Clements Unit of the Correctional Institutional Division of the Texas Department of Criminal Justice, and Plaintiff has been assigned "TDCJ" No. 01865939 by the State of Texas. The Clements Unit is located at 9601 Spur 591, in the City of Amarillo, Potter County, Texas. The Plaintiff is currently being confined by Defendant State of Texas in the Jester III Unit of the Correctional Institutional Division of the Texas Department of Criminal Justice which is located at 3 Jester Rd., in the City of Richmond, Fort Bend County, Texas. Since he commenced serving the current term of his institutional confinement, Plaintiff has continuously maintained an intention to return to his permanent residence in the City of Grand Prairie, Dallas County, Texas, for the purpose of continuing his domicile there unabated.

(2)

Defendant Greg Abbott ("**Defendant Abbott**") is the duly elected Governor of Texas, and is the Chief Executive Officer of the State of Texas under Article IV, Section 1, of the Constitution of the State of Texas. Pursuant to Rule 4 (e)(1) of the Federal Rules of Civil Procedure, and in accordance with Sections 17.026 (a) and 101.102 of the Texas Civil Practice and Remedies Code, Plaintiff intends to provide Defendant Abbott with legal notice of this suit by service of summons on the Texas Secretary of State, on Defendant Abbott's behalf, *via* U.S. certified mail, with return receipt requested. In the alternative, Plaintiff may serve Defendant Abbott with legal notice of this suit by service of summons on Kevin Morehead, Assistant General Counsel for the Governor of Texas, as Mr. Morehead is designated by law to accept service of process on behalf of Defendant Abbott in his official capacity as Governor of the State of Texas.

(3)

Defendant Dade Phelan ("**Defendant Phelan**") is the duly elected Speaker and Presiding Officer of the Texas House of Representatives under Article III, Section 9 (b), of the Constitution of the State of Texas. Pursuant to Rule 4 (e)(1) of the Federal Rules of Civil Procedure, and in accordance with Sections 17.026 (a) and 101.102 of the Texas Civil Practice and Remedies Code, Plaintiff intends to provide Defendant Phelan with legal notice of this suit by service of summons on the Texas Secretary of State, on Defendant Phelan's behalf, *via* U.S. certified mail, with return receipt requested.

(4)

Defendant Dan Patrick ("**Defendant Patrick**") is the duly elected Lieutenant Governor of Texas, and is the Presiding Officer of the Texas Senate under Article IV, Section 16, of the Constitution of the State of Texas. Pursuant to Rule 4 (e)(1) of the Federal Rules of Civil Procedure, and in accordance with Sections 17.026 (a) and 101.102 of the Texas Civil Practice and Remedies Code, Plaintiff intends to provide Defendant Patrick with legal notice of this suit by service of summons on the Texas Secretary of State, on Defendant Patrick's behalf, *via* U.S. certified mail, with return receipt requested.

(5)

Defendant Jose A. Esparza ("**Defendant Esparza**") is the acting Secretary of State of the State of Texas, is an Executive Officer of the State of Texas under Article IV, Section 1, is appointed by the Governor of Texas by and with the advice of the Texas Senate under Article IV, Section 21, of the Constitution of the State of Texas, and is the Chief Election Officer for the State of Texas. Pursuant to Rule 4 (e)(1) of the Federal

Rules of Civil Procedure, and in accordance with Sections 17.026 (a) and 101.102 of the Texas Civil Practice and Remedies Code, Plaintiff intends to provide Defendant Esparza with legal notice of this suit by service of summons on the Office of the Texas Secretary of State, on Defendant Esparza's behalf, *via* U.S. certified mail, with return receipt requested.

V.

FACTS

(1)

On February 8, 2018, the U.S. Department of Commerce (through the U.S. Census Bureau) published a final rule whereby, for purposes of apportionment of U.S. Representatives among the several States, it concluded it would classify inmates who are confined in correctional facilities as "residents" and "inhabitants" of their respective correctional facilities. When reaching this decision the Department of Commerce expressly declined to classify these inmates as persons domiciled at locations where they had resided prior to their confinement and at which they continued to maintained their domiciles on "Census Day" (April 1, 2020). As stated by the U.S. Census Bureau ("Bureau") when explaining this decision:

> "The practice of counting prisoners at the correctional facility is consistent with the concept of usual residence, as established by the Census Act of 1790…. '[U]usual residence' is defined as the place where a person lives and sleeps most of the time, which is not always the same as their legal residence, voting residence, or where they prefer to be counted. Therefore, counting prisoners anywhere other than the facility would be less consistent with the concept of usual residence, since the majority of people in prisons live and sleep most of the time at the prison."

(2)

In January of 2021, the Bureau created a "Census Geocoder" computer program designed for use with 2020 census data and intended for the expressed purpose of allowing "[o]fficial state redistricting liaisons and technical staff to use the Census Geocoder" to locate "the census geography associated with a specific address." The "Census Geocoder" program is designed to allow state officials to "reallocate group quarters populations" (including persons confined in prison) to support valid congressional redistricting. Upon release of the final census for 2020 by the Bureau on August 12, 2021, the Bureau confirmed the Census Geocoder enabled states to reallocate where prison inmates were deemed inhabitants within a state for purposes of congressional redistricting and the election of Texas' Representatives in the United States House of Representatives.

(3)

Upon arrival at a Texas prison unit all inmates are required to provide the true location of where they resided before being confined; and the Defendants, through their agents, have consistently followed this official practice before, on, and after, April 1, 2020. The Plaintiff provided to the State of Texas the true location of where he permanently resided before being confined, both before and at the time of the current term of his institutional confinement. The Plaintiff was (and is) an inhabitant and permanent resident of a location other than where he was confined on April 1, 2020; and the location where he is an inhabitant and permanent resident, which is not the location where he was confined on April 1, 2020, remains and at all times relevant to this proceeding has remained his permanent residence and domicile.

(4)

On October 18, 2021, the Third Called Session of the 87th Texas Legislature adopted "Plan C2193" which, on the basis of population data provided by the Bureau, assigned Plaintiff the status of a person residing in, and an "inhabitant" of, Texas Congressional District 13 ("CD13"). As devised by Plan C2193, CD13 encompasses the location where Plaintiff was confined on Census Day (April 1, 2020), but it does not encompass the location of his permanent domicile where he is and was an inhabitant on April 1, 2020. Under applicable federal constitutional law Plaintiff is domiciled in, and is an "inhabitant" and permanent resident of, Texas Congressional District 30 ("CD30") as devised by Plan C2193.

(5)

The Plaintiff presently intends, and did intend on April 1, 2020, to return to and permanently reside at the location where he was an inhabitant on April 1, 2020, and where he maintained a residence and domicile prior to his current term of confinement, in the City of Grand Prairie, Texas. The Plaintiff has never had the intention of establishing a permanent residence or domicile at the prison unit wherein he was confined on April 1, 2020, or at any other prison. The Plaintiff will be discharged from his current sentence to confinement by Defendants not later than February 1, 2031.

(6)

Notwithstanding the ready accessibility of the "Census Geocoder" program provided to Defendant State of Texas by the Bureau, the Defendant State of Texas has deliberately assigned Plaintiff to a congressional district within which it knew Plaintiff does not (and did not on April 1, 2020) permanently reside or have a domicile.

Application of this policy by the Defendant State of Texas, which essentially operates as a "legal fiction" that Plaintiff permanently resides at a location other than where he is an "inhabitant" and has established and maintained his domicile, has adversely affected (and will adversely affect) the responsivity of the U.S. Representative who would otherwise serve as Plaintiff's duly elected Member of Congress. Furthermore, application of the State of Texas' legal fiction, as described above, has adversely affected (and will adversely affect) the federal representational interests shared by Plaintiff with the local community in which he is an actual inhabitant. Application of this policy by the Defendant State of Texas has thus caused (and will cause) "representational harm" to Plaintiff without the Court's intervention.

(7)

The Framers of Article I, §2 of the U.S. Constitution; the Framers of § 2 of the Fourteenth Amendment to the U.S. Constitution; the Framers of the Equal Protection Clause of the Fourteenth Amendment; and the first Congress that enacted of the U.S. Census Act of 1790; all understood the words "usual place of abode," "inhabitant" and "usual residence" to be qualified by what has been known since antiquity as the "*animo manendi*" doctrine (which John Adams referred to as the "*animus habitandi*" doctrine in November of 1784).

(8)

Since ancient times, and continuing through the adoption and ratification of Article I, §2 of the U.S. Constitution; and the adoption and ratification of § 2 of the Fourteenth Amendment to the U.S. Constitution; and the adoption and ratification of the Equal Protection Clause of the Fourteenth Amendment; and at the time of the enactment

of the U.S. Census Act by the first Congress in 1790; the "*animo manendi*" doctrine, as it would apply to "prisoners," was settled law in the United States. This doctrine has consistently provided since antiquity, as it does now, that a "prisoner" who is involuntarily confined for a term less than life is not deemed an "inhabitant" of the location where he is confined, but is instead an "inhabitant" of the location where he was domiciled prior to his confinement.

(9)

The "*animo manendi*" doctrine, as it would apply to "prisoners," expressed the consensus of all legal writers whose works were published prior to 1787. Furthermore, no legal authority published since 1787 has questioned application of the "*animo manendi*" doctrine with regard to a determination of the residence, "habitation" or domicile of prisoners; and this doctrine, as settled law, has continued to be consistently applied in the United States through adoption and ratification of the Fourteenth Amendment and thereafter.

(10)

The consensus among all legal authorities, concerning the "*animo manendi*" doctrine and determination of the residence or domicile of prisoners, is plainly illustrated by the writings of numerous highly regarded legal authorities. These legal authorities include Domitius Ulpianus, Flavius Petrus Sabbatius Iustinianus, Johannis Voet, Jean Domat, Jean-Batiste Denisart, Jean-Jacques Burlamaqui, Emerich de Vattel, Philippe-Antione Merlin, Joseph Story and James Kent. With the exception of the latter two legal authorities (Joseph Story and James Kent), the Framers of Article I, §2 of the U.S. Constitution, and the Congress that enacted the U.S. Census Act of 1790, would have

been (or were) personally familiar with some if not all of these legal authorities in 1787. Neither the Framers of the constitutional provisions cited above, nor the Members of the first Congress that enacted the U.S. Census Act of 1790, intended "prisoners" confined for a term less than life to be deemed "inhabitants" of the location where they were confined for purposes of enumeration and allocation of representation in the U.S. House of Representatives. Rather, the Framers intended the words "usual place of abode," "inhabitant" and "usual residence" to be qualified by the "*animo manendi*" doctrine.

(11)

Although the Director of the U.S. Census Bureau seems to be unfamiliar with the "*animo manendi*" doctrine and the Framers' intentions related to that doctrine, in this suit Plaintiff brings no claim in this complaint against the United States, the U.S. Department of Commerce, or against any other federal agency of the United States government. However, Plaintiff does present claims against the State of Texas by his inclusion of the named Defendants (Abbott, Phelan, Patrick and Esparza) as parties to this suit in their official capacities.

VI.

PLAINTIFF' LEGAL CLAIMS

(1)

Federal statutory law requires the State of Texas to enact new congressional districts each decennial following its receipt of the certified apportionment of U.S. Representative provided by the Clerk of the U.S. House of Representatives, along with its receipt of population data provided by the Bureau.

(2)

In the present case Plaintiff contends the Defendant State of Texas' "legal fiction," as described above and as applied to him for the purpose of congressional redistricting after the 2020 decennial census, violates his constitutional right to "equal representation" as guaranteed by Article I, §2 of the U.S. Constitution and §2 of the Fourteenth Amendment to the U.S. Constitution. The Plaintiff also contends the Defendant State of Texas' legal fiction violates his constitutional right to Equal Protection of the Law under the Fourteenth Amendment.

(3)

The Framers of Article I, §2 of the U.S. Constitution, the Framers of the U.S. Census Act of 1790, the Framers of § 2 of the Fourteenth Amendment to the U.S. Constitution, and the Framers of the Equal Protection Clause of the Fourteenth Amendment, all intended the words "usual place of abode," "inhabitant" and "usual residence" to be qualified by the "*animo manendi*" doctrine. In accordance with that doctrine, the Framers of those constitutional provisions, and the Congress that enacted the U.S. Census Act of 1790, did not intend a person confined in prison for a term of confinement less than life to be deemed, merely on the basis of the person's confinement alone, to have established a "residence," an "abode" or a "domicile," at the location of the person's confinement for purposes of congressional representation.

(4)

Article I, §2 of the U.S. Constitution, § 2 of the Fourteenth Amendment to the U.S. Constitution, and the Equal Protection Clause of the Fourteenth Amendment, each require states, including Defendant State of Texas, to make "a good-faith effort" to

provide "as "nearly as practical" equal representation to all persons enumerated in a federal decennial census regardless of whether the persons are legally qualified to vote under state law. These constitutional requirements condemn state congressional redistricting plans that provide unequal representation in the U.S. House of Representatives unless departures from equal representation "as nearly as practical" are shown to have resulted despite such a "good faith effort" by a state, and the state must justify each variance from equal representation "no matter how small."

(5)

The Plaintiff submits the Defendant State of Texas cannot constitutionally justify application of its legal fiction, as described herein, because it cannot satisfy the "as nearly as practicable" and "good faith effort" requirements that are applicable to the Plaintiff' claims. Here, there is no uncertainty concerning where Plaintiff was an "inhabitant" on April 1, 2020, within the meaning of the aforementioned constitutional provisions; and the Defendant State of Texas cannot persuasively assert it was "impractical" for it to utilize that knowledge or acquire that information, if necessary, pertaining to Plaintiff's permanent residence or domicile on Census Day (April 1, 2020). In other words, due to the Defendant State of Texas' knowledge of where Plaintiff last permanently resided before his current term of incarceration, and due to Defendant State of Texas' ready access to the "Census Geocoder" program that would easily have allowed it to place Plaintiff within the congressional district of his permanent domicile and where he is was an "inhabitant" on Census Day (April 1, 2020), the State of Texas cannot satisfy the aforementioned constitutional test.

(6)

When treating Plaintiff differently from others by declaring him for federal representational purposes as an inhabitant of where he was confined on April 1, 2020, rather than recognizing him as an inhabitant of the location where he had established and continued to maintain a permanent residence in the City of Grand Prairie, Texas both before, on and after April 1, 2020, Defendants have violated the Equal Protection Clause of the Fourteenth Amendment. In this regard, other persons, including military personnel, have not been subjected to this legal fiction which has been applied to Plaintiff by Defendants, but they have instead been treated by Defendants as inhabitants and permanent residents in accordance with the *animo manendi* doctrine.

(7)

No assertion by Defendants that Plaintiff has failed to "exhaust" his "administrative remedies" before filing this suit would have merit. Under Texas law inmates confined in a state prison may seek "administrative remedies" through a "grievance" process. The substantive and procedural rules that govern Texas' inmate grievance process are contained in Texas' "Offender Grievance Operations Manuel" (last revised Jan. 2011)("OGOM").

(8)

While under the OGOM prison officials employed by the Defendant State of Texas are ethically bound to "[u]phold all federal, state and local laws, and adhere to the agency's policies, procedures, rules and regulations," the OGOM has repeatedly informed (and continues to inform) Texas' prison inmates that their challenges to "[s]tate and federal court decisions, laws, and regulations" are "Non-Grievable Issues." Thus,

because Texas' congressional redistricting plan constitutes a "state law" that is "non-grievable," and because there is no "administrative remedy" that is "available" to Plaintiff on that basis within the meaning of 42 U.S.C. §1997e (a), no legal obstacle to the District Court's jurisdiction is presented in this case.

VII.

REQUEST FOR CERTIFICATION OF CLASS ACTION

(1)

This action is brought by Plaintiffs as a class action, on his own behalf and on behalf of all others similarly situated, under the provisions of Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"). The Plaintiff hereby moves the Court, either before or after designation of a Three-Judge Panel, to certify this case as a class action pursuant to Rule 23.

(2)

In this suit Plaintiff seeks a declaratory judgment and a permanent injunction predicated on claims that his federal constitutional right to equal representation in the U.S. House of Representatives has been violated by the Defendants' legal fiction that has unconstitutionally designated him as an "inhabitant" of a location at which he was confined on April 1, 2020, rather than where he was, as a constitutional matter, an "inhabitant" on that date. In this suit Plaintiff does not seek compensatory damages.

(3)

The class to be represented by Plaintiff in this action, and of which Plaintiff is himself a member, consists of all inmates: a) who are involuntarily confined by the Defendant State of Texas in its prisons for a term of confinement less than life; b) who

have been designated by Defendants for purposes of federal representation in the U.S. House of Representatives as "inhabitants" of the location where they were confined on April 1, 2020; and, c) who have not been designated by Defendants as inhabitants, for congressional representational purposes, at the location of the domiciles that they maintained immediately prior to their terms of confinement, to which they intend to return after release from confinement.

(4)

The exact number of members of the class, as identified and described, is not known, but it is estimated that there are not less than 50,000 members. The class is so numerous that joinder of individual members is impracticable.

(5)

As disclosed by federal litigation commenced in Texas after the 2010 decennial census, the State of Texas in 2011, as it has in the present case, unconstitutionally moved the location of inmate-residences from where they were domiciled, to locations at which they were confined on "Census Day" (April 1, 2020). As a result, and as was shown by uncontroverted evidence in the record of that litigation, under Texas' former congressional redistricting plan (Plan C185, as enacted in 2011) inmates domiciled in the densely populated urban areas of Dallas and Harris Counties were displaced by the State of Texas' decision to draw electoral districts that did not recognize 49,437 inmates to be "inhabitants" of those two counties alone. *Perez v. Texas*, No. 5:11-cv-00360-OLG (W. D. Tex.), *Plaintiff's Response in Opposition to State's Motion to Dismiss*, 6-7, and Exhibits 7 and 8 (State's Written Admissions)(filed Aug. 23, 2011)(ECM Dkt.# 226, 226-7, and 226-8 Although more than a decade has elapsed since the decennial census of

2010, these figures support Plaintiff's estimation that the class certified in the present case would consist of not less than 50,000 members.

(6)

There are common questions of law and fact in this action that relate to, and affect, the rights of each member of the class; and the relief sought by Plaintiff is common to the entire class. Namely, the common questions of law involve whether the federal constitutional rights of the class members to equal representation in the U.S. Congress have been violated by the Defendants' allocation of class members to a location at which they were confined on April 1, 2020, rather than where they are inhabitants.

(7)

The claims of Plaintiff, who is representative of the class, are typical of the claims of the class, in that the claims of all members of the class, including Plaintiff, depend on a showing of the acts and omissions of Defendants giving rise to the constitutional rights of Plaintiff to the relief sought. There is no conflict between Plaintiff and other members of the class with respect to this action, or with respect to the claims for relief set forth in this complaint.

(8)

This action should be certified as a class action, for the reason that the prosecution of separate actions by individual members of the class would create a risk of varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendants, all of whom oppose the interests of the class.

(9)

This action would be properly maintained as a class action, in that the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications. Additionally, separate actions by individual members of the class would substantially impair or impede the ability of class members to protect their respective interests.

(10)

This action would be properly maintained as a class action inasmuch as the Defendants, all of whom oppose the class, have acted or refused to act, as more specifically alleged in this complaint on grounds which are applicable to the class, and have by reason of such conduct made appropriate final injunctive relief and corresponding declaratory relief with respect to the entire class, as sought in this action.

(11)

The Plaintiff, as the representative party for the class, is able to, and will, fairly and adequately protect the interests of the class. The Attorney-in-Charge for the Plaintiff in the present case, Richard Gladden, is experienced with complex federal litigation and has shown himself capable of providing excellent representation in numerous cases before this Court, as well as before other federal courts including the U. S. Supreme Court, particularly in area of litigation arising under 42 U.S.C. §1983. With regard to litigation involving the right to federal representation in the U.S. Congress, Mr. Gladden served as Attorney-in-Charge for plaintiffs Walter Session, Frenchie Henderson, and

others (the "Cherokee County Plaintiffs"), arising from the State of Texas' re-redistricting of its congressional districts in 2003. *Session v. Perry*, 298 F. Supp. 2d 451 (E.D. Tex. 2004), *on remand sub. nom*., *Henderson v. Perry*, 399 F. Supp. 756 (E. D. Tex. 2005). The nature of the federal constitutional claim presented by Mr. Gladden on behalf of the plaintiffs in *Session v. Perry*, *supra,* was the subject of a subsequently published law review article, Gladden, *The Federal Constitutional Prohibition Against "Mid-Decade" Congressional Redistricting: Its State Constitutional Origins, Subsequent Development, and Tenuous Future*, 37 Rutgers L.J. 1133 (2005-2006). Should he be appointed as Attorney-in-Charge for the class in the present case, Mr. Gladden would actively conduct and be directly responsible for the litigation. For these reasons, Plaintiff moves the Court to appoint Mr. Gladden as class counsel pursuant to Rule 23(g).

RELIEF REQUESTED

In light of the foregoing facts and claims, the Plaintiff moves the Court to:

a) Immediately notify the Chief Circuit Judge of the United States Court of Appeals for the Fifth Circuit of Plaintiff's request for the designation of a Three-Judge Panel to hear this case pursuant to 28 U.S.C.§2284(b)(1); and, after notice to and designation of a Three-Judge Panel by the Chief Circuit Judge of the United States Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C.§2284(b)(1),

b) Certify this case as a class action pursuant to Rule 23;

c) Set an early hearing on any pretrial motion for relief filed by Plaintiff, including but not limited to a motion for summary judgment;

d) Set an early date for a trial on the merits of this case, if a trial be necessary; and, after full consideration of the merits of Plaintiff's claims at trial,

e) Issue a declaratory judgment, pursuant to 28 U.S.C. §2201, which declares Plan C2193, as applied to Plaintiff and to others similarly situated, to be in violation of Article I, §2 of the U.S. Constitution, § 2 of the Fourteenth Amendment to the U.S. Constitution, and the Equal Protection Clause of the Fourteenth Amendment;

f) Issue a permanent injunction, pursuant to 28 U.S.C. §2202, prohibiting the Defendants, their agents, successors, assigns, or anyone acting in concert with them, from engaging in any actions for the purpose electing, at any primary or general election, any person to serve as a Member of the United States House of Representatives from the State of Texas under Plan C2193;

g) Award the Plaintiff's counsel reasonable costs and reasonable attorney's fees pursuant to 42 U.S.C. §1988, which are shown to be necessary to the prosecution of this matter; and

h) Grant such other and further relief to which the Plaintiff and others similarly situated may show themselves entitled.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that process will issue requiring all Defendants identified herein to appear and answer Plaintiff's Original Complaint; that the Court will certify this case as a class action as requested herein; that the Court will grant the relief requested by Plaintiff for himself and on behalf of others similarly situated; and that the Court will grant such further or additional relief to which Plaintiff and others similarly situated may show themselves entitled.

Respectfully submitted,

/s/ Richard Gladden
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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL., *Plaintiffs*, v. GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS SUED IN HIS OFFICIAL CAPACITY; AND JOHN SCOTT, SECRETARY OF STATE OF TEXAS OF TEXAS SUED IN HIS OFFICIAL CAPACITY, *Defendants*.	§ § § § § § § § § § § § § § §	Case No. 3:21-cv-259-DCG-JES-JVB

EXHIBIT E

ORIGINAL COMPLAINT, *VOTO LATINO V. SCOTT*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

VOTO LATINO, ROSALINDA RAMOS ABUABARA, AKILAH BACY, ORLANDO FLORES, MARILENA GARZA, CECILIA GONZALES, AGUSTIN LOREDO, CINIA MONTOYA, ANA RAMÓN, JANA LYNNE SANCHEZ, JERRY SHAFER, DEBBIE LYNN SOLIS, ANGEL ULLOA, and MARY URIBE; Plaintiffs, v. JOHN SCOTT, in his official capacity as Texas Secretary of State, and GREGORY WAYNE ABBOTT, in his official capacity as the Governor of Texas; Defendants.	Civil Action Case No. 1:21-cv-00965

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Voto Latino, Rosalinda Ramos Abuabara, Akilah Bacy, Orlando Flores, Marilena Garza, Cecilia Gonzales, Agustin Loredo, Cinia Montoya, Ana Ramón, Jana Lynne Sanchez, Jerry Schafer, Debbie Lynn Solis, Angel Ulloa, and Mary Uribe file this Complaint for Declaratory and Injunctive Relief against Defendant John Scott in his capacity as Texas Secretary of State and Gregory Wayne Abbott in his capacity as Governor of the State of Texas, and allege as follows:

1. Plaintiffs bring this voting rights action to challenge Texas Senate Bill 6, which establishes new congressional districts for Texas based on the 2020 census, on the grounds that it violates Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, because it strategically cracks and packs Texas communities of color. Senate Bill 6 particularly dilutes the voting power of Texas's Latino and Black communities to ensure that white Texans, who now make up less than 40 percent

of Texas's population, nevertheless form a majority of eligible voters in more than 60 percent of Texas's congressional districts.

2. Ninety-five percent of Texas's population growth between 2010 and 2020 came from communities of color. Black, Latino, and Asian communities all grew far faster than Texas's white population, with the Latino community growing fastest of all. As a direct result of this growth, Texas was apportioned two additional congressional seats.

3. Yet Senate Bill 6 appropriates those additional districts—and more—for white Texans. The plan actually *reduces* the number of districts in which Texas's communities of color have a reasonable opportunity to elect their preferred candidates, and it *increases* the number of districts in which a majority of voting-age residents are white. By doing so, Senate Bill 6 allows white Texans to choose representatives for congressional seats that exist only because of population growth in communities of color. Senate Bill 6 does so by packing and cracking communities of color along racial lines to ensure that those groups' growing populations will not translate to increased political influence.

4. Section 2 of the Voting Rights Act prohibits this absurd result. There is widespread racially polarized voting in Texas. Latino and Black Voters across the state consistently and cohesively favor particular candidates for office, but those candidates are repeatedly defeated as a result of bloc voting by white Texans.

5. Latino communities in south and west Texas, from the border region north to Bexar County and south to the Gulf of Mexico (hereinafter "South and West Texas"), are sufficiently numerous and geographically compact to form a majority of eligible voters in at least eight congressional districts in the region—two more than Senate Bill 6 provides in that region. And this may be done without reducing the number of other districts in the region or statewide in which

Latino communities are able to elect their representatives of choice. Senate Bill 6 also strategically draws at least one of the Latino-majority districts—CD23—to ensure that Latino Texans, despite their numerical majority, will rarely if ever succeed in electing their representatives of choice.

6. Moreover, Senate Bill 6 improperly cracks and packs Latino and Black voters in convoluted districts in the Dallas–Fort Worth and Houston metropolitan areas, to avoid creating either an additional district in each metropolitan area in which a majority of eligible voters are Latino or an additional, more compact district in each metropolitan area in which coalitions of Latino and Black voters would have the opportunity to elect their representatives of choice.

7. Latino and Black voters in Texas have suffered from a long history of marginalization and discrimination, including, as here, the dilution of their voting strength through redistricting. Latino Texans now make up almost as large a proportion of Texas's population as white Texans, yet they have been systematically denied an equal opportunity to elect representatives of their choice. The result is a persistent neglect of their needs and concerns. As evidenced by an array of factors, such as the history of racial discrimination in voting, the perpetuation of racial appeals in Texas elections, and the socio-economic effects of decades of discrimination against Latino and Black Texans that hinder their ability to participate effectively in the political process, Texas's failure to create at least eight performing majority-Latino congressional districts in South and West Texas, plus additional districts in Dallas–Fort Worth and Houston in which either a majority of eligible voters are Latino or coalitions of Latino and Black Texans would have a reasonable opportunity to elect their representatives of choice, has resulted in the dilution of Latino and Black voting strength in violation of Section 2.

8. Accordingly, Plaintiffs seek an order (i) declaring that Senate Bill 6 violates Section 2 of the Voting Rights Act; (ii) enjoining Defendants from conducting future elections under

Senate Bill 6; (iii) ordering a congressional redistricting plan that includes eight majority-Latino congressional districts in South and West Texas in which Latino voters have a reasonable opportunity to elect their candidate of choice, without reducing the number of other districts in which Latino voters may already do so, plus additional districts in Dallas–Fort Worth and Houston either in which a majority of eligible voters are Latino or in which Latino and Black Texans together may elect their representatives of choice; and (iv) providing such additional relief as is appropriate.

JURISDICTION AND VENUE

9. Plaintiffs bring this action under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

10. This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the laws of the United States and involve the assertion of deprivation, under color of state law, of rights under federal law.

11. This Court has personal jurisdiction over Defendants, who reside in Texas and are sued in their official capacities, pursuant to Fed. R. Civ. P. 4(k)(1)(A).

12. Venue is proper in this Court and this Division under 28 U.S.C. §§ 124(d)(1) and 1391(b) because a substantial part of the events that give rise to Plaintiffs' claims occurred in this judicial district.

13. This Court has the authority to enter declaratory and injunctive relief under Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. §§ 2201 and 2202.

PARTIES

14. Plaintiff Voto Latino is a 501(c)(4) nonprofit, social welfare organization that engages, educates, and empowers Latinx communities across the United States, working to ensure

that Latinx voters are enfranchised and included in the democratic process. In furtherance of its mission, Voto Latino expends significant resources to register and mobilize thousands of Latinx voters each election cycle, including the nearly 5.6 million eligible Latinx voters in Texas. Voto Latino considers eligible Latinx voters in Texas to be the core of its constituency. Voto Latino mobilizes Latinx voters in Texas through statewide voter registration initiatives, as well as peer-to-peer and digital voter education and get-out-the-vote ("GOTV") campaigns. In 2020 alone, Voto Latino registered 184,465 voters in Texas. In future elections, Voto Latino anticipates making expenditures in the millions of dollars to educate, register, mobilize, and turn out Latinx voters across the United States, including in Texas.

15. Plaintiff Voto Latino brings this action on behalf of its supporters and constituents, including the thousands of Latinx voters that Voto Latino has registered that reside in congressional districts that dilute the voting power of Latinx Texans. Voto Latino will now have to expend and divert additional funds and resources that it would otherwise spend on its efforts to accomplish its mission in other states or its own registration efforts in Texas to combat Senate Bill 6's effects on its core constituency, in particular to combat the dilution of the voting power of Latinx voters in Texas. Because of Senate Bill 6, Voto Latino and its constituents have suffered and will continue to suffer irreparable harm.

16. Plaintiff Rosalinda Ramos Abuabara is a Latina citizen of the United States and of the State of Texas, a registered voter, and a resident of San Antonio, in Bexar County. Under Senate Bill 6, she resides in Texas's 23rd congressional district ("CD23").

17. Plaintiff Akilah Bacy is an African-American citizen of the United States and of the State of Texas, a registered voter, and a resident of Houston, in Harris County. Under Senate Bill 6, she resides in Texas's 38th congressional district ("CD38").

18. Plaintiff Orlando Flores is a Latino citizen of the United States and of the State of Texas, a registered voter, and a resident of Fabens, in El Paso County. Under Senate Bill 6, he resides in CD23.

19. Plaintiff Marilena Garza is a Latina citizen of the United States and of the State of Texas, a registered voter, and a resident of Corpus Christi, in Nueces County. Under Senate Bill 6, she resides in Texas's 27th congressional district ("CD27").

20. Plaintiff Cecilia Gonzales is a Latina citizen of the United States and of the State of Texas, a registered voter, and a resident of Arlington, in Tarrant County. Under Senate Bill 6, she resides in Texas's 25th congressional district ("CD25").

21. Plaintiff Agustin Loredo is a Latino citizen of the United States and of the State of Texas, a registered voter, and a resident of Baytown, in Harris County. Under Senate Bill 6, he resides in Texas's 36th congressional district ("CD36").

22. Plaintiff Cinia Montoya is a Latina citizen of the United States and of the State of Texas, a registered voter, and a resident of Corpus Christi, in Nueces County. Under Senate Bill 6, she resides in CD27.

23. Plaintiff Ana Ramón is a Latina citizen of the United States and of the State of Texas, a registered voter, and a resident of San Antonio, in Bexar County. Under Senate Bill 6, she resides in Texas's 21st congressional district ("CD21").

24. Plaintiff Jana Lynne Sanchez is a Latina citizen of the United States and of the State of Texas, a registered voter, and a resident of Fort Worth, in Tarrant County. Under Senate Bill 6, she resides in Texas's 12th congressional district ("CD12").

25. Plaintiff Jerry Shafer is a Latino citizen of the United States and of the State of Texas, a registered voter, and a resident of Baytown, in Harris County. Under Senate Bill 6, he resides in CD36.

26. Plaintiff Debbie Lynn Solis is a Latina citizen of the United States and of the State of Texas, a registered voter, and a resident of Dallas, in Dallas County. Under Senate Bill 6, she resides in Texas's 33rd congressional district ("CD33").

27. Plaintiff Angel Ulloa is a Latina citizen of the United States and of the State of Texas, a registered voter, and a resident of El Paso, in El Paso County. Under Senate Bill 6, she resides in Texas's 16th congressional district ("CD16").

28. Plaintiff Mary Uribe is a Latina citizen of the United States and of the State of Texas, a registered voter, and a resident of Helotes, in Bexar County. Under Senate Bill 6, she resides in CD23.

29. Defendant John Scott is sued in his official capacity as the Secretary of State of Texas. As Secretary of State, Mr. Scott serves as Texas's Chief Election Officer. Tex. Elec. Code § 31.001(a). As "the chief election officer of the state," *id.*, Mr. Scott is required to "obtain and maintain uniformity in the application, operation, and interpretation of" Texas's election laws, including by issuing directives and instructions to all state and local authorities having duties in the administration of these laws, *id.* § 31.003. Mr. Scott is further empowered to remedy voting rights violations by ordering any official to correct conduct that "impedes the free exercise of a citizen's voting rights." *Id.* § 31.005(b). Mr. Scott prescribes the form that individuals must complete for a place on a political party's general primary ballot, *see id.* §§ 141.031, 172.021-.024. And political parties who wish to hold a primary must deliver written notice to the Secretary of State noting their intent to hold a primary election, *id.* § 172.002, and the party chairs must certify

to the Secretary of State the name of each candidate who has qualified for placement on the general primary election ballot, *id.* § 172.028. The Secretary of State also serves as the filing authority for independent candidates for federal office, including members of Congress. *See id.* § 142.005. Finally, the adopted redistricting plans are filed with the Secretary of State to ensure that elections are conducted in accordance with those plans.

30. Defendant Gregory Wayne Abbott is sued in his official capacity as the Governor of the State of Texas. Under Texas's election laws, Governor Abbott "shall order . . . each general election for . . . members of the United States Congress" by proclamation. Tex. Elec. Code § 3.003.

LEGAL BACKGROUND

31. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a), prohibits any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color[.]" Thus, in addition to prohibiting practices that deny outright the exercise of the right to vote, Section 2 prohibits vote dilution. A violation of Section 2 is established if it is shown that "the political processes leading to nomination or election" in the jurisdiction "are not equally open to participation by [minority voters] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b).

32. The dilution of voting strength "may be caused by the dispersal of [members of a racial or ethnic group] into districts in which they constitute an ineffective minority of voters or from the concentration of [members of that group] into districts where they constitute an excessive majority." *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

33. The United States Supreme Court, in *Thornburg v. Gingles*, identified three necessary preconditions ("the *Gingles* preconditions") for a claim of vote dilution under Section 2 of the Voting Rights Act: (1) the minority group must be "sufficiently large and geographically

compact to constitute a majority in a single-member district"; (2) the minority group must be "politically cohesive"; and (3) the majority must vote "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." 478 U.S. at 50-51.

34. Once all three preconditions are established, the statute directs courts to consider whether, under the totality of the circumstances, members of a racial group have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. 52 U.S.C. § 10301(b). The Senate Report on the 1982 amendments to the Voting Rights Act identifies several non-exclusive factors that courts should consider when determining if, under the totality of the circumstances in a jurisdiction, the operation of the electoral device being challenged results in a violation of Section 2.

35. These Senate factors include: (1) the history of official voting-related discrimination in the state or political subdivision; (2) the extent to which voting in the elections of the state or political subdivision is racially polarized; (3) the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet-voting; (4) the exclusion of members of the minority group from candidate slating processes; (5) the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; (6) the use of overt or subtle racial appeals in political campaigns; and (7) the extent to which members of the minority group have been elected to public office in the jurisdiction.

36. The Senate Report itself and the cases interpreting it have made clear that "there is no requirement that any particular number of factors be proved, or that a majority of them point

one way or the other." *United States v. Marengo Cnty. Comm'n*, 731 F.2d 1546, 1566 n.33 (11th Cir. 1984) (quoting S. Rep. No. 97-417, at 29 (1982)); *see also id.* ("The statute explicitly calls for a 'totality-of-the circumstances' approach and the Senate Report indicates that no particular factor is an indispensable element of a dilution claim.").

FACTUAL ALLEGATIONS

A. The 2020 Census

37. On April 26, 2021, the U.S. Census Bureau announced that based on the 2020 decennial census, Texas would gain two additional seats in the United States House of Representatives. On August 12, the Census Bureau then released the detailed population and demographic data needed to draw new congressional districts. The Census Bureau's data revealed that Texas's population grew by nearly four million people between 2010 and 2020.

38. Texas's growth came overwhelmingly from communities of color. Texas's white population grew by just 187,252 between 2010 and 2020. In contrast, Texas's Latino population grew by 1,980,796; Texas's Asian population grew by 613,092; and Texas's Black population grew by 557,887. The number of Texans identifying as members of multiple races also grew significantly. In all, non-white Texans accounted for 95 percent of Texas' population growth from 2010 to 2020, and Latinos accounted for more than half of that growth. Latino Texans now make up just under 40 percent of Texas's population—only half a percentage point less than white Texans. Had it not been for the growth in its communities of color, Texas likely would have lost congressional seats instead of gaining them.

39. Communities of color also grew significantly in their share of Texas's voting-age population. More than 36 percent of voting-age Texans are now Latino—an increase of almost three percentage points since 2010. More than 12 percent of voting-age Texans are now Black and

more than 5 percent are Asian. Only 43 percent of Texas's voting age population is now white—a decrease of more than 6 percentage points since 2010.

40. The 2020 census did not collect citizenship information. Based on the Census Bureau's 2019 American Community Survey ("ACS"), Texas's citizen voting age population was 30.9 percent Latino, 13.4 percent Black, 3.9 percent Asian, and 50.1 percent white.

B. The Redistricting Process

41. Senate Bill 6 is the direct result of the Texas Legislature's failure to meaningfully engage with voters and abdication of its map-drawing responsibility to outside interests.

42. After a lengthy delay due to the coronavirus pandemic, the Texas Legislature began collecting public input on the redistricting process in January 2021.

43. From January to March 2021, the Senate Special Committee on Redistricting, led by Republican Senator Joan Huffman, heard public testimony during a series of hearings with a regional focus. Each hearing was held over the Zoom two-way video conferencing platform.

44. Although taking testimony remotely might as a matter of first impression appear to open the opportunity to give testimony to a greater number of people, the process was entirely inaccessible to many Texans. Not only did all but one of the twelve hearings held in those three months take place on weekdays during regular work hours—precluding working Texans from testifying unless they took time off work to do so—only Texans with a computer or other device with an internet connection and video/audio capability, such as a smartphone or tablet, were able to participate in the hearings. Witnesses were required to have both audio and video capabilities in order to provide virtual testimony. And those who did not have access to such a device were advised—in the middle of a global pandemic that prohibited in-person regional hearings—to visit their local public library.

45. The Senate held four additional virtual hearings in September 2021.

46. On September 7, 2021, Governor Abbott announced a third special session of the Texas Legislature, commencing on September 20, for the purpose of redrawing legislative and congressional districts in accordance with the results of the 2020 census. One week later, on September 27, Senator Joan Huffman released congressional Plan 2101—the first proposed congressional district map, which later became Senate Bill 6, and scheduled a public hearing on it three days later.

47. On September 30, 2021, Senate Bill 6 was considered by the Special Committee on Redistricting. The Committee considered invited and in-person public testimony.

48. During the September 30 hearing, Senator Huffman admitted that Plan 2101, the base map for Senate Bill 6, was drawn not by any Texas legislator or their staff but by the State's Republican congressional delegation's lawyer, indicating that the public testimony was nothing more than a formality.

49. When asked by Senator John Whitmire about the fact that Plan 2101 paired two Houston Democrats in Harris County in the same district, Senator Huffman admitted that this plan had been provided to her by the Texas Republican congressional delegation. After Senator Huffman received the plan, she made "some changes," and those changes were incorporated into Plan 2101 before she introduced it as Senate Bill 6.

50. On October 4, 2021, the Senate Special Committee on Redistricting met to consider Senate Bill 6. After a public hearing in which witnesses were overwhelmingly opposed to the plan, the committee reported it favorably with minor amendments in the Dallas–Fort Worth Area.

51. On October 8, 2021, the full Senate considered Senate Bill 6. Senate Bill 6 was amended to make minor changes to the border between CD6 and CD17 in East Texas. All other

amendments that were offered failed. Senate Bill 6 then passed out of the Senate on party lines by a vote of 18-13.

52. Senate Bill 6 then moved to the Texas House.

53. Like the Senate, prior to the consideration of Senate Bill 6, the House had held a series of virtual hearings for the purpose of considering public testimony on the redistricting process.

54. And, like the Senate, the process for providing public input during the map drawing process was held entirely online and almost entirely during the work week, all but ensuring the process was inaccessible for most Texans.

55. And, like the Senate, the individuals responsible for redrawing the congressional maps did not directly receive or respond to public comments and criticisms during these hearings.

56. On September 29, 2021, just after Plan 2101 became public, the Texas Tribune reported that Adam Foltz, a Republican lawyer and political operative who had previously played a key role in another state's redistricting process described by federal judges as "needlessly secret," had been hired by the House Redistricting Committee. Despite being paid by the non-partisan Texas Legislative Council, Foltz was reporting directly to the Chair of the House Redistricting Committee, Representative Todd Hunter.

57. Foltz's work was entirely separate from the House Redistricting Committee's public facing work and, until the Texas Tribune's story broke, at least one Democratic member of the Committee was unaware of Foltz's involvement in the process.

58. The House process for considering Senate Bill 6 allowed for only limited public testimony. Senate Bill 6 was received by the House on October 8, 2021, and referred to the House's

Redistricting Committee that same day. The Committee sat on the bill for five days until October 13, 2021, when they noticed a hearing for October 14, 2021—the very next day.

59. Despite the less than 24 hours' notice that was provided for the hearing, 94 Texans testified before the House Redistricting Committee—93 of them opposed Senate Bill 6. Nonetheless, later that same day the House Redistricting Committee met again and passed Senate Bill 6 along a party line vote.

60. On Saturday, October 16, the full House considered Senate Bill 6. The House considered a total of twenty-six amendments, of which five were adopted. Those amendments kept the general outline of Senate Bill 6 the same but made relatively minor changes in numerous counties and districts. The House rejected proposed amendments that would have created additional majority-minority districts. Early in the morning on Sunday, October 17, the House then voted 79 to 56 to pass Senate Bill 6 as amended.

61. The Senate refused to concur in the House's amendments to Senate Bill 6, and a conference committee was immediately appointed. Less than 24 hours after the House version of Senate Bill 6 was adopted, on the evening of October 17, the conference committee issued a report. The conference committee report adopted some of the House's amendments, rejected others, and made several other changes.

62. Representative Todd Hunter, the Chair of the House Redistricting Committee, described the conference committee as a "casual discussion," explaining that the House "showed deference to the Senate. They took the lead and I agreed."

63. On October 18, 2021, both the House and Senate passed the conference committee report, sending Senate Bill 6 to the Governor.

64. Governor Abbott signed Senate Bill 6 on October 25, 2021.

C. Senate Bill 6

65. Senate Bill 6 creates significant problems focused in three parts of the State: in the districts in South and West Texas and neighboring districts to the north, which systematically dilute Latino voting strength, and in the Dallas–Fort Worth and Houston metropolitan areas, where Senate Bill 6 packs and cracks non-white voters to reduce the number of districts in which they have an opportunity to elect their candidates of choice.

1. South and West Texas

66. The U.S.–Mexico Border stretches for 1,254 miles across south Texas, from El Paso to Brownsville. The majority of Texans living in the border region are Latino, and Latino Texans in the border region cohesively support political candidates affiliated with the Democratic Party. North of the border, however, are many predominantly white, rural counties whose white residents vote as a bloc to oppose Latino voters' favored candidates.

67. In Senate Bill 6, this region is divided into nine districts: CD16, CD23, CD28, CD15, and CD34 along the U.S.–Mexico Border, and CD27, CD35, CD20, and CD21 just north of the border districts.

68. As explained in more detail in the paragraphs that follow, Senate Bill 6 systematically combines predominantly Latino areas in the border region with white counties in the interior to dilute the votes of Latino Texans and limit the number of congressional districts in which they may elect their candidates of choice. It also carefully packs and cracks non-white voters in Bexar County, denying those communities the opportunity to collect their candidate of choice. But for this packing and cracking, Latino eligible voters could form a numerical majority in two additional districts in South and West Texas without compromising their ability to elect their candidates of choice in the existing districts.

a. CD16

69. CD16 is the western-most congressional district in Texas, centered in El Paso. It has long been an overwhelmingly Latino district. Under the previously enacted map, 76.5 percent of CD16's voting-eligible population—that is, of its U.S. Citizen population of voting age—was Latino. Senate Bill 6 packs CD16 still further with voting-eligible Latino Texans, so that 77.8 percent of CD16's eligible voters are now Latino. Senate Bill 6 does this by excising the comparatively white northeast portion of El Paso County from CD16, and replacing it with a more densely Latino area further south. The result is a less compact district that increases the packing of Latino voters in El Paso in CD16, further diluting their voting rights, including the voting rights of Plaintiff Angel Ulloa. By doing so, Senate Bill 6 also reduces the ability of Latino voters in neighboring districts, including Plaintiffs Orlando Flores, Rosalinda Ramos Abuabara, and Mary Uribe in CD23, to elect their candidates of choice.

b. CD23

70. Immediately east of CD16 is CD23, a large, predominantly rural district stretching along the U.S–Mexico Border from El Paso County to Maverick County. But CD23's vast geographic size is misleading, because the district includes many very sparsely populated counties in West Texas. In fact, the bulk of CD23's population is located in two pockets separated by more than 500 miles: in El Paso County at CD23's western extreme and in Bexar County at CD23's eastern extreme. Senate Bill 6 surgically alters CD23's boundaries in El Paso and Bexar Counties to reduce the district's population of voting-eligible Latinos from 63.1 percent under the previously enacted map to 58.1 percent under the new map.

71. Latino voters in CD23 cohesively prefer candidates affiliated with the Democratic Party, but the higher turnout and bloc voting of CD23's white residents ensured that even under the prior map, Latino voters were often unable to elect their candidates of choice. And when Latino

voters have been able to do so, it was nearly always by a margin of fewer than five-percentage points.

72. In previous litigation, a federal court ultimately concluded that the prior version of CD23 was a highly competitive district that still allowed Latino voters an opportunity to elect their candidates of choice, even though more often than not such candidates were in fact defeated. But Senate Bill 6's five percentage-point reduction in CD23's Latino voting-eligible population transforms CD23 into a non-competitive district and will prevent Latino voters in CD23, including Plaintiffs Orlando Flores, Rosalinda Ramos Abuabara, and Mary Uribe, from electing their candidates of choice in the future. A more compact district or set of districts could readily be drawn that would enable Latino voters in these areas, including Plaintiffs Orlando Flores, Rosalinda Ramos Abuabara, and Mary Uribe, to elect their candidates of choice.

c. CD28

73. South of CD23 along the U.S.–Mexico border is CD28, which stretches from the City of Laredo and Starr County in the south to Bexar County in the north. Senate Bill 6 leaves CD28 largely unchanged, with a Latino voting-eligible population that is just under 70 percent.

d. CD15

74. Just east of CD28 is CD15, a skinny, more than 250-mile-long district running from McAllen to Guadalupe County. More than 70 percent of CD15's voting-eligible population is Latino, a percentage that is largely unchanged from the previous map. More compact districts could readily be drawn that would enable Latino voters to elect their candidates of choice.

e. CD34

75. Southeast of CD15 is CD34, which includes the southernmost portion of Texas's gulf coast. Under the prior enacted map, nearly 79 percent of CD34's voting eligible population was Latino. Senate Bill 6 further packs Latino voters into CD34 by adding more of Hidalgo County

into CD34, and by eliminating a tail that previously stretched north through several rural counties. As a result, CD34's voting-eligible population is now nearly 87 percent Latino.

76. The packing of Latino voters into CD34 dilutes the votes of its Latino residents, and it reduces the ability of Latino voters in neighboring districts—in particular, Latino voters in CD27, including Plaintiffs Marilena Garza and Cinia Montoya—to elect their candidates of choice.

f. CD27

77. North of CD34 is CD27, which combines predominantly Latino Nueces County with predominantly white counties to its north and west, creating a district with a voting eligible population that is just 48.65 percent Latino. Because of higher turnout and bloc voting among CD27's white voters, this configuration ensures that Latino voters in CD27, including Plaintiffs Marilena Garza and Cinia Montoya, will be unable to elect their candidates of choice. By adopting such a configuration, Senate Bill 6 dilutes the votes of Latino voters in CD27, including Latino voters in Nueces County. Alternative compact districts could readily be drawn that would enable Latino voters in CD27—particularly Latino voters in Nueces County, including Plaintiffs Marilena Garza and Cinia Montoya—to elect their candidates of choice.

g. CD35

78. Northwest of CD27 is CD35, a narrow strip of a district that stretches along I-35 from Travis County to Bexar County, often covering an area little wider than I-35's median strip. The district combines separate Latino populations in Travis and Bexar County, for a voting-eligible population that is just under 48 percent Latino. While the Supreme Court ruled in 2018 that the existing CD35 was not necessarily an illegal racial gerrymander, the fact remains that there is no need for such contortions in this area. Unlike in other parts of Texas, Latino and white voters in Travis County frequently favor the same political candidates—those affiliated with the Democratic Party. Latino voters in Travis County may therefore elect their candidates of choice

even if they do not form a majority of eligible voters in their districts. And Bexar County is a majority-Latino county, so it is entirely possible to create compact districts which allow Latinos in Bexar County to elect their candidates of choice without resorting to the geographic gymnastics typified by CD35. By unnecessarily combining two, differently situated populations of Latino voters in an oddly-shaped, non-compact district in CD35, Senate Bill 6 dilutes their votes, and impairs the ability of Latino voters in neighboring districts, including Plaintiffs Marilena Garza and Cinia Montoya in CD27, Plaintiff Ana Ramón in CD21, and Plaintiffs Orlando Flores, Rosalinda Ramos Abuabara, and Mary Uribe in CD23, to elect their candidates of choice.

h. CD20

79. CD20 is a small district centered in San Antonio, strategically drawn to cover many of the most Latino portions of Bexar County, while excluding precincts—like those covering Lackland Air Force Base—that are less Latino. The result is a district with a voting-eligible population that is 69.94 percent Latino, an increase of four percentage points from the prior enacted map. By packing Latino voters into CD20, Senate Bill 6 dilutes the votes of its Latino residents, and it reduces the ability of Latino voters in neighboring districts, including Plaintiffs Orlando Flores, Rosalinda Ramos Abuabara, and Mary Uribe in CD23, to elect their candidates of choice.

i. CD21

80. North of CD20 is CD 21, which combines eight largely rural, predominantly white counties with more diverse slices of Bexar and Travis Counties to form a district that is 25.78 percent Latino. By cracking slices of Latino voters from Bexar and Travis Counties and placing those voters in a predominantly white, rural district, Senate Bill 6 dilutes the votes of CD21's Latino residents, including Plaintiff Ana Ramón, and impairs their ability to elect their candidates of choice.

2. Dallas–Fort Worth

81. Senate Bill 6 carves up Dallas and Tarrant Counties, the core of the diverse Dallas–Fort Worth metropolitan area, among nine extraordinarily convoluted congressional districts. Non-white voters have a reasonable opportunity to elect their candidates of choice in just three of those districts: CD30, a predominantly Black district in southern Dallas County; CD32, a diverse coalition district in northwest Dallas County, and CD33, a bizarrely-shaped, predominantly Latino district that includes portions of Fort Worth and Downtown Dallas. Non-white voters elsewhere in the area are cracked among the other six districts, many of which combine diverse slices of the Dallas–Fort Worth metropolitan area with distant, predominantly-white rural counties.

82. Latino and Black voters in Tarrant and Dallas Counties overwhelmingly and consistently join together in supporting candidates affiliated with the Democratic Party, and often favor the same candidates in primary elections, while white voters vote as a bloc to oppose such candidates in general elections.

83. Alternative districts could readily be drawn in Tarrant and Dallas Counties that would either (a) create an additional district in which a majority of eligible voters, including Plaintiff Debbie Lynn Solis, are Latino, or (b) create an additional district in which Latino and Black voters have a reasonable opportunity to form coalitions to elect their candidates of choice, in each case without eliminating any districts in the area in which Latino and Black voters, already have a reasonable opportunity to elect their candidates of choice. Doing so would provide additional Latino voters in the region, including Plaintiffs Cecilia Gonzales and Jana Lynne Sanchez, with the opportunity to elect their candidates of choice.

3. Houston

84. Harris County is the largest county in Texas and is home to more non-white residents than any other Texas county. In fact, there are more non-white residents in Harris County

than there are *total* residents in any other Texas county. Just under 30 percent of Harris County residents are white—20 percent of the county's residents are Black and nearly 45 percent are Latino.

85. Senate Bill 6 separates highly diverse Harris County into eight congressional districts. In terms of voting eligible population, five of those congressional districts—CD7, CD8, CD9, CD18, and CD29—are majority non-white, while three—CD2, CD36, and CD38—are majority white. This configuration deprives Latino and Black voters in CD2, CD36, and CD38 of the opportunity to elect their candidates of choice.

86. Latino and Black voters in Harris County overwhelmingly join together in supporting candidates affiliated with the Democratic Party, and often favor the same candidates in primary elections, while white voters vote as a bloc to oppose such candidates in general elections.

87. Senate Bill 6 is able to draw three majority-white districts in the diverse Harris County area principally via its configuration of CD29, which both (a) cracks compact Latino communities in southeast Harris County between CD29 and the predominantly white and rural CD36, and then (b) captures a separate, dense triangle of Latino voters north of Houston and places it in CD29. Such a configuration is unnecessary and improper.

88. A more compact version of CD29 in which a majority of the citizen voting age population is still Latino could be drawn entirely in the southeast Houston suburbs, by eliminating the cracking of a portion of that community into CD36. By doing so, Latino voters in eastern Harris County, including Plaintiffs Jerry Shafer and Agustin Loredo, would gain a reasonable opportunity to elect their candidates of choice. This change would also enable the creation of an additional district in Harris County either (a) in which a majority of eligible voters are Latino or (b) in which Latino and Black voters, including Plaintiff Akilah Bacy, have a reasonable opportunity to form

coalitions to elect their candidates of choice, in each case without eliminating the number of districts in the area in which Latino and Black voters already have a reasonable opportunity to elect their candidates of choice.

D. Racial Polarization

89. As courts have long recognized, voting in nearly every region of Texas is severely racially polarized. *See Veasey v. Abbott*, 830 F.3d 216, 258 (5th Cir. 2016) (en banc) (noting State's failure to contest evidence that "racially polarized voting exists throughout Texas"); *Perez v. Abbott* ("*Perez I*"), 250 F. Supp. 3d 123, 180 (W.D. Tex. 2017) (three-judge panel) (noting "the existence of racially polarized voting throughout Texas").

90. Black and Latino voters across Texas cohesively vote for the same candidates. For example, ecological regression analysis suggests that in the 2020 presidential election, more than 70 percent of Latino voters and more than 95 percent of Black voters statewide supported President Biden, the Latino and Black candidate of choice. Similarly, in the 2018 governor's race, more than 70 percent of Latino voters and more than 95 percent of Black voters supported candidate Lupe Valdez, the Latino and Black candidate of choice. In contrast, non-Hispanic white voters in Texas consistently vote as a bloc to defeat those candidates, with just 15 percent of white Texas voters supporting President Biden and just 10 percent of white Texas voters supporting Lupe Valdez.

91. The racially polarized voting patterns in Texas are driven in significant part by attitudes about race and ethnicity. Members of Texas's two major political parties exhibit sharp disagreements over issues relating to race and ethnicity. Members of the Democratic Party—which Latino and Black voters in the state overwhelmingly prefer—are significantly more likely to view Texas's voting laws as racially discriminatory, support removing Confederate monuments from public spaces, oppose immediate deportation of undocumented immigrants, and support

comprehensive immigration reform with a pathway to citizenship than members of the Republican Party, which white voters overwhelmingly prefer.

92. In 2008, the Cooperative Congressional Election Study found that *60 percent* of Texas Republicans supported re-imposing a literacy test for voting, compared to just 24 percent of the State's Democrats.

E. Texas's History of Discrimination

93. Texas's attempts to dilute the Latino vote through redistricting is nothing new. It is simply the latest iteration of centuries-long efforts by Texas officials to suppress non-white political participation.

94. "Texas has a long, well-documented history of discrimination that has touched upon the rights of Blacks and Hispanics to register, to vote, or to participate otherwise in the electoral process. Devices such as the poll tax, an all-white primary system, and restrictive voter registration time periods are an unfortunate part of this State's minority voting rights history." *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 682–83 (S.D. Tex. 2017) (quoting *League of United Latin Am. Citizens v. Perry* ("*LULAC*"), 548 U.S. 399, 439–40 (2006)); *see also Perez v. Abbott* ("*Perez II*"), 253 F. Supp. 3d 864, 888, 906 (W.D. Tex. 2017) (three-judge panel noting that "Texas's history of official discrimination touching on the right of Hispanics to register, vote, and otherwise to participate in the democratic process is well documented").

95. Texas's ongoing history of voting discrimination against minorities has deep historical roots. In 1866, Texas prohibited freed slaves from voting and holding office. After Reconstruction-era policies expanded ballot access, Texas systematically fought to suppress minority voting rights.

96. In the decades before white Texans coalesced around the Republican Party, white Texans dominated the Democratic Party—and stopped minority voters from participating in its primaries. This was particularly problematic because the historic Democratic Party so dominated the State's politics into the mid-twentieth century that no other party was even relevant. By 1923, Texas had passed a law explicitly providing that "in no event shall a negro participate in a Democratic primary in the State of Texas and declaring ballots cast by negroes as void." S.B. 44, 38th Leg., 2d Sess. (Tex. 1923). After the U.S. Supreme Court invalidated that law, Texas maneuvered around the ruling by allowing political parties to set their own qualifications, after which Black and Latino voters were immediately barred from political participation once again.

97. Texas further engaged in systematic disenfranchisement of Latino voters by capitalizing on language barriers and literacy disparities, going so far as to prohibit anyone from assisting "illiterate" individuals or non-English speakers at the polls. These restrictions remained in place until federal court intervention in 1970.

98. Texas also used a poll tax to disenfranchise Black and Latino voters, who were significantly more likely to be living in poverty. This significantly depressed Black and Latino registration and turnout throughout much of the twentieth century.

99. After the Voting Rights Act of 1965 increased registration rates among Black and Latino Texans, the State quickly legislated counteractive measures. The following year, Texas enacted a law requiring that every voter reregister each year, a measure intended to mimic the poll tax's burden on minority voters. After a federal court found this annual-registration requirement unconstitutional, *see Beare v. Smith*, 321 F. Supp. 1100, 1101–02 (S.D. Tex. 1971) (three-judge panel), *aff'd sub nom. Beare v. Briscoe*, 498 F.2d 244 (5th Cir. 1974), Texas purged minority voters from its rolls by requiring all voters in the State to reregister before voting in future

elections. These and other tactics against minority voters eventually led Congress to include Texas as a covered state under Section 5 of the Voting Rights Act in 1975.

100. While Texas's efforts to limit Black and Latino voters' access to the franchise have a long and shameful heritage, they are by no means a thing of the past. The State continues to lead the nation in efforts to suppress minority political participation.

101. A 2018 study by the U.S. Commission on Civil Rights found that Texas had "the highest number of recent [Voting Rights Act] violations in the nation." U.S. Comm'n on C.R., *An Assessment of Minority Voting Rights Access in the United States* 74 (2018). In every redistricting cycle since 1970, a federal court has ruled at least once that the State violated the Voting Rights Act or the U.S. Constitution during the redistricting process.

102. In 2006, the U.S. Supreme Court held that the State had enacted a congressional map that unlawfully diluted the voting strength of Latino voters in West Texas in direct response to those voters' growing political power. *See LULAC*, 548 U.S. at 436–42. These actions "b[ore] the mark of intentional discrimination that could give rise to an equal protection violation." *Id.* at 440.

103. During the 2010 redistricting cycle, federal courts found that Texas had intentionally diluted Black and Latino voting strength in crafting new congressional and state legislative maps. *See Perez II*, 253 F. Supp. 3d at 949–62; *Perez I*, 250 F. Supp. 3d at 145–80 (W.D. Tex. 2017); *Texas v. United States*, 887 F. Supp. 2d 133, 159–66, 177–78 (D.D.C. 2012) (three-judge panel), *vacated and remanded on other grounds*, 570 U.S. 928 (2013). A three-judge court "found that the Texas Legislature intentionally discriminated in 2011 in numerous and significant ways" during the last decennial redistricting, and the Supreme Court "never addressed or in any way called into question [that court's] findings as to the Legislature's discriminatory

purpose in enacting the 2011 plans." *Perez v. Abbott*, 390 F. Supp. 3d 803, 811–12 (W.D. Tex. 2019).

104. In 2016, an en banc panel of the U.S. Court of Appeals for the Fifth Circuit concluded that there was evidence that Texas's 2011 law requiring photo identification for voters was motivated by a discriminatory purpose. *See Veasey*, 830 F.3d at 225, 234–43. The Fifth Circuit further "conclude[d] that the district court did not clearly err in determining that [the photo identification law] ha[d] a discriminatory effect on minorities' voting rights in violation of Section 2 of the Voting Rights Act." *Id.* at 265.

105. Texas also uses the enormous power of its criminal justice system to suppress minority political participation. Since Attorney General Paxton took office in 2015, at least 72 percent of the prosecutions brought by his Election Integrity Unit have been against Black and Latino individuals—who make up just over 50 percent of the State's population.

106. Because the rules governing voter registration and ballot casting can be confusing, the threat of criminal prosecution for violating such rules significantly deters eligible voters from participating in the political process. The severe racial and ethnic disparities in Texas's election-related prosecutions thus intimidate minority voters against participating in the State's elections.

107. Attorney General Paxton has not been alone in intimidating minority voters. In 2019, former Acting Secretary of State David Whitley issued an advisory decision to county registrars claiming to have a list of 95,000 noncitizens who were unlawfully registered to vote. The list was rife with errors, particularly because it failed to account for noncitizens who had since become naturalized. A federal judge called Secretary Whitley's actions in this incident "ham-handed and threatening" and lamented that these actions stoked "fear and anxiety" among the State's minority population and "intimidate[d] the least powerful among us." *Tex. League of*

United Latin Am. Citizens v. Whitley, No. SA-19-CA-74-FB, 2019 WL 7938511, at *1 (W.D. Tex. Feb. 27, 2019).

108. In addition to the threat of criminal prosecution, Black and Latino Texans routinely face intimidation and misinformation at the polls.

109. Dallas County's former elections administrator stated in 2018 that the severity and intensity of voter harassment and intimidation had reached levels she had not seen in her 30 years of service. During that year's election, a white poll worker in North Houston yelled racial insults at a Black voter, stating, "Maybe if I'd worn my blackface makeup today you could comprehend what I'm saying to you," and, "If you call the police, they're going to take you to jail and do something to you, because I'm white."

110. The 2020 election was no better. On the first day of early voting at a Dallas polling place, an older white man falsely told a long line of mostly Black and Latino voters that they would not be allowed to vote if they were not inside the building by the time the polls closed.

111. At a different Dallas polling location, supporters of former president Trump blared messages aimed at Latino and Black voters while one of them told the voters that he sends people to the morgue.

112. On October 29, cars and military-style trucks gathered in the parking lot of a Fort Bend polling place with loudspeakers, bullhorns, and a coffin.

113. Incidents of Trump supporters engaging in similar intimidating behavior were reported in Tarrant, Montgomery, and Harris Counties.

114. And just this year, the Texas Legislature re-doubled its efforts to make it more difficult of Black and Latino Texans to vote, enacting an omnibus voter suppression bill that burdens voters, restricts access to the franchise, and targets the very measures that communities of

color disproportionately relied on to increase voter turnout in 2020 and other recent elections. *See generally* SB 1, 87th Leg., 2d Called Sess. (Tex. 2021). Disturbingly, SB 1 even empowered partisan poll watchers to employ voter intimidation tactics by granting them increased freedom in the polling place while limiting the oversight powers of election workers.

F. Use of Racial Appeals in Political Campaigns

115. Political campaigns in Texas commonly resort to racial appeals that rely on stereotypes. During the 2018 campaign for the U.S. Senate, Senator Cruz ran ads capitalizing on fears founded on the stereotype that Latino immigrants are violent criminals and mocked his opponent's call for an investigation into the police shooting of an unarmed Black man in the man's own apartment.

116. In support of former congressman Pete Olson, who was facing a challenge by Sri Preston Kulkarni in 2018, the Fort Bend County Republican Party circulated an advertisement depicting Ganesha, a Hindu deity, asking, "Would you worship a donkey or an elephant? The choice is yours."

117. That same year, former congressman Pete Sessions claimed that his Black opponent, now-congressman Colin Allred, wanted to legalize crack cocaine, and ran a digital ad placing Congressman Allred's name over a picture of a dark-skinned hand clasping a white woman's mouth.

118. Local campaigns have also included racial appeals. For example, Vic Cunningham, a white candidate for Dallas County Commissioner in 2018, explained to the *Dallas Morning News* that he believed it would be "Christian" only if his children married a person "that's Caucasian."

119. Race played an enormous role in the 2020 election, fueled in significant part by police killings of Black Americans like George Floyd and Breonna Taylor. In Texas, Republican

officials publicly mocked the worldwide outrage and protests that these killings provoked. One county Republican chair posted a Martin Luther King Jr. quote on a background with a banana. Other county Republican chairs spread false conspiracy theories on social media suggesting that George Floyd's murder was staged in an effort to limit Black support for former president Trump and that the protesters demanding racial justice nationwide were being paid by George Soros. Taking these blatantly false assertions a step further, Republican Agriculture Commissioner Sid Miller publicly stated that Soros was starting a "race war."

120. During the 2020 U.S. Senate race, Republican incumbent John Cornyn engaged in several racial appeals. He nicknamed potential opponent Royce West, who is Black, "Restful Royce"—a clear reference to a longstanding racist stereotype.

121. Senator Cornyn also publicly blamed China's "culture" for the coronavirus outbreak, playing into the same racial appeals used by former president Trump and other Republicans, who, for example, referred to the pandemic as the "Kung-Flu." An Asian American studies expert called this language "textbook racist discourse."

122. And, just a few months ago, a Republican candidate in the State's special congressional election for CD6 outright declared that she did not want Chinese immigrants in the United States.

G. Ongoing Effects of Texas's History of Discrimination

123. The long history of discrimination against Black and Latino Texans has produced stark disparities between the everyday lives of minority and white Texans. Black and Latino Texans make up a disproportionate number of individuals living in poverty. According to the U.S. Census Bureau's 2019 American Community Survey ("ACS") 5-Year Estimate, 8.4 percent of

white Texans lived below the poverty line, compared to 19.3 percent of Black Texans and 20.7 percent of Latino Texans.

124. Disparities also exist in the areas of employment and income. According to the 2019 5-year ACS Estimate, the median income among non-Latino white Texan households ($75,879) was significantly higher than that among Black Texan households ($46,572) and Latino Texan households ($49,260). And according to a 2018 study by the Economic Policy Institute, non-white Texans had a significantly lower unemployment rate (3.9 percent) than Black Texans (5.7 percent) and Latino Texans (4.5 percent).

125. Low-income voters face a number of hurdles to voter participation including working multiple jobs, working during polling place hours, lack of access to childcare, lack of access to transportation, and higher rates of illness and disability. All of these hurdles make it more difficult for poor and low-income voters to participate effectively in the political process.

H. Extent to Which Latino and Black Texans Have Been Elected to Public Office

126. The ongoing disparities in minority political participation are also reflected by the fact that Latino and Black lawmakers are underrepresented in the State's elected offices. While Latino Texans constitute more than 36 percent of Texas's voting-age population and nearly 30 percent of its citizen voting-age population, and Black Texans constitute more than 12 percent of Texas's voting age population and more than 13 percent of its citizen voting age population, just two of Texas's twenty-seven statewide elected State officials are Latino, and none is Black. Less than 20 percent of the seats in Texas's delegation to the U.S. House of Representatives, and less than 25 percent of the seats in the Texas Senate and Texas House are held by Latino lawmakers. At the local level, many communities with large Latino populations lack any minority representation at all.

CLAIMS FOR RELIEF

COUNT I

SECTION 2 OF THE VOTING RIGHTS ACT

127. Plaintiffs re-allege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

128. Section 2 of the Voting Rights Act prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice, or procedure that results in the denial or abridgement of the right of any U.S. citizen to vote on account of race, color, or membership in a language minority group. 52 U.S.C. § 10301(a).

129. The district boundaries created by Senate Bill 6 combine to "crack" and "pack" Latino Texans, resulting in the dilution of the electoral strength of the state's Latino and Black residents, in violation of Section 2 of the Voting Rights Act.

130. Latino Texans in South and West Texas are sufficiently numerous and geographically compact to constitute a majority of eligible voters in two additional congressional districts, for a total of eight such districts in that region.

131. Additionally, Senate Bill 6's CD23, which contains a majority of Latino eligible voters, is drawn to ensure that Latino voters do not have a reasonable opportunity to elect their candidates of choice. Latino voters in South and West Texas are sufficiently numerous and geographically compact to permit CD23 to be drawn in ways that would give the Latino residents of that district a reasonable opportunity to elect their candidates of choice.

132. In addition, Black and Latino voters in the Dallas–Fort Worth and Houston metropolitan areas are sufficiently numerous and geographically compact to either (a) allow for an additional district in each of the Dallas–Fort Worth and Houston areas in which a majority of eligible voters are Latino, or (b) allow for an additional district in each of the Dallas–Fort Worth

and Houston areas in which Black and Latino eligible voters are, together, a majority of eligible voters.

133. In sum, under Section 2 of the Voting Rights Act, the Texas legislature was required (a) to create two additional majority-minority districts in which Latino Texans in South and West Texas have the opportunity to elect their candidates of choice, (b) to draw CD23 in a manner that would give Latino Texans in that district a reasonable opportunity to elect their candidates of choice, and (c) to create two additional districts—one each in the Dallas–Fort Worth and Houston areas—in which either Latino Texans or Black and Latino Texans together form a majority of eligible voters. Not one of these additional districts would reduce the number of minority opportunity districts in their respective regions or in the enacted map as a whole.

134. Black and Latino voters in Dallas–Fort Worth and Houston, and Latino voters in South and West Texas, are politically cohesive, and elections in the state reveal a clear pattern of racially polarized voting that allows the bloc of white voters usually to defeat minority-preferred candidates.

135. The totality of the circumstances establishes that the congressional map established by Senate Bill 6 has the effect of denying Black and Latino voters an equal opportunity to participate in the political process and to elect candidates of their choice, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

136. By engaging in the acts and omissions alleged herein, Defendants have acted and continue to act to deny Plaintiffs' rights guaranteed to them by Section 2 of the Voting Rights Act. Defendants will continue to violate those rights absent relief granted by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

a. Declare that Senate Bill 6 violates Section 2 of the Voting Rights Act.

b. Order the adoption of a valid congressional redistricting plan that includes:

   i. Two additional majority-Latino districts in South and West Texas, from the border region north to Bexar County and south to the Gulf of Mexico, without reducing the number of majority-Latino districts currently in the region or elsewhere in the State;

   ii. A district that gives the Latino residents of TX-23 a reasonable opportunity to elect their candidates of choice;

   iii. An additional majority-Latino or majority–Black and Latino district in the Dallas–Fort Worth metropolitan area, without reducing the number of minority opportunity districts currently in the region; and

   iv. An additional majority-Latino or majority–Black and Latino district in the Houston metropolitan area, without reducing the number of minority opportunity districts currently in the region.

c. Enjoin Defendants, as well as their agents and successors in office, from enforcing or giving any effect to the boundaries of the congressional districts as drawn in Senate Bill 6, including an injunction barring Defendants from conducting any further congressional elections under the current map.

d. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to determine and order a valid plan for new congressional districts in the State of Texas; and

e. Grant such other or further relief the Court deems to be appropriate, including but not limited to an award of Plaintiffs' attorneys' fees and reasonable costs.

Dated: October 25, 2021.

Respectfully submitted,

/s/ Renea Hicks

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**Pro Hac Vice* Application Forthcoming

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL., *Plaintiffs*, v. GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS SUED IN HIS OFFICIAL CAPACITY; AND JOHN SCOTT, SECRETARY OF STATE OF TEXAS OF TEXAS SUED IN HIS OFFICIAL CAPACITY, *Defendants*.	§ § § § § § § § § § § § § § §	Case No. 3:21-cv-259-DCG-JES-JVB

EXHIBIT F

ORIGINAL COMPLAINT, *MALC V. TEXAS*

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES,	§	
Plaintiffs	§	
	§	Civil Action No.:_____
v.	§	
STATE OF TEXAS, GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS, in his official capacity, and JOHN SCOTT, SECRETARY OF STATE OF TEXAS, in his official capacity	§	
Defendants	§	

PLAINTIFF MALC'S ORIGINAL COMPLAINT

Texas has adopted redistricting plans for the Texas House of Representatives, the Texas delegation to the United States House of Representatives, and the Texas State Board of Education. In keeping with a long history of legal violations in the redistricting process, these plans discriminate on the basis of race and impermissibly dilute the vote of Latino populations. While the United States Supreme Court declined to permit federal courts to police partisan gerrymandering because redistricting is, by its nature, inherently political, the Court did not give state legislatures a license to racially discriminate or dilute minority voting power under the guise of mere partisanship. In places where racially polarized voting is the norm, there is a long-standing history of discrimination, and as racially-tinged political speech is increasingly on the rise, it is particularly important to ensure the courts have the ability to review plans for impermissible vote dilution and potentially invidious discrimination. Texas has violated the Equal Protection Clause of the Fourteenth and Fifteenth Amendments of the United States Constitution and Section 2 of the Voting Rights Act consistently every decade when drawing new maps. This

redistricting suit is brought to redress once again Texas's sordid pattern of racial discrimination in redistricting.

Plaintiff requests declaratory and injunctive relief against Defendants in regard to the redistricting plans adopted by the State of Texas for the Texas House of Representatives (Plan H2316); the United States House of Representatives (Plan C2193); and the Texas State Board of Education (Plan E2106) (collectively, "the Plans").

Plaintiff seeks declaratory relief declaring that the Plans were drawn and adopted with the purpose of discriminating on the basis of race in violation of the Fifteenth Amendment and the Equal Protection Clause of the Fourteenth Amendment; that certain districts within the plan, detailed in the ensuing paragraphs, violate Section 2 of the Voting Rights Act on the grounds that they impermissibly dilute the voting power of Latinos and Spanish speakers; that certain districts, detailed in the ensuing paragraphs, manipulate population deviations for impermissible ends, in violation of the Fourteenth Amendment; and that certain districts, detailed in the ensuing paragraphs, constitute an impermissible racial gerrymander on the grounds that race was a predominant factor in their drawing without a sufficiently compelling governmental interest to justify making it such. Plaintiff further seeks injunctive relief to prevent the use of the Plans in upcoming elections.

Population growth in the State over the last decade was overwhelmingly non-Anglo, with communities of color accounting for approximately 95% of the growth in the whole state. In particular, Latinos accounted for approximately 49.5% of all population growth in the state. As a result, Texas gained two additional Congressional seats—the only state in the nation to do so. As a natural consequence of this growth, new Latino and minority opportunity districts could and should have been included in the redistricting plans adopted by the Legislature. The plans adopted

by the State not only failed to increase Latino and minority opportunities for representation, they actually decreased them while increasing the number of districts in which Anglos form a majority of the eligible voter population. This turns the concept of representative democracy on its head. These plans were developed to minimize and limit Latino and minority electoral opportunities and dilute the voting strength of Latino and minority voters.

Latinos, and to an even greater extent Spanish-speaking Latinos, still face phenomenal barriers to equal participation and feel the effects of past and present official discrimination. The Plans further dilute the opportunities for Latinos and the Spanish speaking community to participate in the political process and elect candidates of their choice on the same basis as Anglo citizens, and therefore violate Section 2 of the Voting Rights Act.

The Plans share common tactics for disenfranchising Latino and Spanish speaking voters. For example, they strategically pair areas which grapple with low turnout rates, as a result of historical and current socio-economic conditions, barriers to participation, and discrimination, with areas that have extremely high and extremely polarized Anglo bloc voting to create districts that are nominally majority-minority but do not perform to elect candidates of choice for minority voters. Some districts are overly packed, unnecessarily wasting votes, while other districts crack communities and dilute their voting power. The extent to which each of the Plans goes to avoid creating new electoral opportunities for communities of color, despite these communities accounting for 95% of the growth in the state, is prima facie evident in the shape of certain districts.

Plaintiff also brings this action challenging the plan adopted for Texas House districts (Plan H2316) because the plan strategically employs population variances between districts to gain a racial advantage, in violation of the Fourteenth Amendment.

The shape of many of the districts in the Plans are unexplainable on grounds other than

race, and the Legislature at times explicitly centered race in its redistricting decisions. Because the Legislature drew many of these districts to minimize minority opportunities rather than to comply with the Voting Rights Act, the use of race as a predominant factor in their drawing constitutes an impermissible racial gerrymander.

PARTIES

1. Plaintiff, Mexican American Legislative Caucus, Texas House of Representatives (hereinafter MALC), is the nation's oldest and largest Latino legislative caucus. MALC is a non-profit organization established to serve the members of the Texas House of Representatives and their staff in matters of interest to the Mexican American community of Texas, in order to form a strong and cohesive voice on those matters in the legislative process, including redistricting. MALC's mission includes maintaining and expanding Latino representation across elected offices in Texas. MALC strives to raise the level of Latino engagement in Texas government and politics through policy, education, outreach, organizing, and advocacy. MALC has one or more members who reside in the challenged districts and who have had their ability to elect representatives of their choice injured on account of being Latino and/or being part of the Spanish-speaking community in the affected areas. MALC members representing the challenged districts will have their ability to successfully gain election hindered if the Plans go into effect. MALC members will face increased difficulty advocating for their legislative platforms and raising the level of Latino engagement in Texas government if Latino representation in the Texas Legislature is diminished. Additionally, MALC will have to expend resource, including paid staff time to counteract said reduction in representation, playing defense against policies it opposes instead of expending its resources to proactively enact new policy priorities.

2. MALC members in challenged districts include:

a. Rep. Ryan Guillen, who resides in Starr County, in SBOE District 3, and is the incumbent State Representative for Texas HD 31.

b. Rep. Abel Herrero, who resides in Nueces County, in Congressional District 27, and is the incumbent State Representative for Texas HD 34.

c. Rep. Alex Dominguez, who resides in Cameron County, in SBOE District 2, and is the incumbent State Representative for HD 37.

d. Rep. Eddie Lucio, who resides in Cameron County, in SBOE District 2, and is the incumbent State Representative for HD 38.

e. Rep. Terry Canales, who resides in Hidalgo County, in CD 15, and is the incumbent State Representative for HD 40.

f. Rep. Eddie Morales, who resides in Maverick County, in CD 23, and is the incumbent State Representative for HD 74.

g. Rep. Mary González, who resides in El Paso County, in CD 23, and is the incumbent State Representative for HD 75.

h. Rep. Claudia Ordaz-Perez, who resides in El Paso County, in CD 16, and is the incumbent State Representative for HD 76.

i. Rep. Lina Ortega, who resides in El Paso County, in CD 16, and is the incumbent State Representative for HD 77.

j. Rep. Joe Moody, who resides in El Paso County, in CD 16, and is the incumbent State Representative for HD 78.

k. Rep. Art Fierro, who resides in El Paso County, in CD 16, and is the incumbent State Representative for HD 79.

l. Rep. Ramon Romero, who resides in Tarrant County, in CD 33, and is the

incumbent State Representative for HD 90.

m. Rep. Rafael Anchía, who resides in Dallas County, in CD 33, and is the incumbent State Representative for HD 103.

n. Rep. Terry Meza, who resides in Dallas County, in CD 6, and is the incumbent State Representative for HD 105.

o. Rep. Armando Walle, who resides in Harris County, in CD 29 and SBOE District 4, and is the incumbent State Representative for HD 140.

p. Rep. Christina Morales, who resides in Harris County, in CD 18 and SBOE District 4, and is the incumbent State Representative for HD 145.

q. Rep. Penny Morales Shaw, who resides in Harris County, in CD 18 and SBOE District 4, and is the incumbent State Representative for HD 148.

3. Defendant State of Texas is a political subdivision covered under the provisions of the Voting Rights Act and responsible for the actions of its officials with regard to state-wide redistricting.

4. Defendant Greg Abbott is the Governor of the State of Texas. Pursuant to Article Four Section 1 of the Texas Constitution, he is the chief executive officer of the Defendant State of Texas. His duties include ordering the elections for state offices and the United States House of Representatives. He is sued in his official capacity. He may be served at the Office of the Governor, State Insurance Building, 1100 San Jacinto, Austin, Texas 78701.

5. Defendant John Scott is the current Texas Secretary of State, appointed by Governor Greg Abbott on October 21, 2021. The Secretary of State is the chief election officer of this state. He supervises elections and has constitutional and statutory duties associated with redistricting and apportionment, including advising election authorities on boundaries of districts, setting election deadlines for new districts, and enforcement of certain election rules and laws. He is sued in his

official capacity. He may be served at 1019 Brazos Street, Austin, Texas 78701.

JURISDICTION AND VENUE

6. Plaintiff's Complaint arises under the United States Constitution and federal statutes. This Court has jurisdiction over this action under 28 U.S.C §§ 1331, 1343(a)(3) and (5), and 1988.

7. Venue is proper in this Court pursuant to 28 U.S.C § 1391(b).

8. Plaintiff seeks declaratory and injunctive relief pursuant to 28 U.S.C §§ 2201 and 2202.

FACTS

A. The 2020 Census revealed dramatic growth of the Latino population in Texas, but nevertheless still produced an undercount of Latinos and Spanish speakers.

9. On August 12, 2021, the United States Department of Commerce and the United States Census Bureau released to the State of Texas the population data gathered during the 2020 decennial Census. The information released to the State of Texas showed the population of Texas had increased by about 15.9%—from 25,145,561 in 2010 to 29,145,505 in 2020. Overall, Texans of color accounted for 95% of the state's population growth.

10. According to the 2020 Census, the Hispanic population of Texas grew to 11,441,717 from 9,460,921 in the 2010 Census. This was an increase of about 20.9%. Moreover, according to the 2020 Census, Hispanic growth accounted for about 49.5% of the overall growth of Texas.

11. Texas gained the most residents of any state since 2010, and its Hispanic population is now nearly as large as the non-Hispanic white population, with just half a percentage point separating them. Non-Hispanic white Texans now make up just 39.8% of the state's population – down from 45% in 2010. Meanwhile, the share of Hispanic Texans has grown to 39.3%. Indeed, Texas gained nearly 11 Hispanic residents for every additional white resident since 2010. The total population numbers released to the State of Texas by the Census Bureau were used as the measure for population for purposes of the Plans.

12. Historically, there has never been a completely accurate census in the United States. Moreover, the undercount of population has affected racial and ethnic minorities more than whites. That is, while various groups and individuals have not been counted from time to time, among certain groups, *e.g.* Blacks and Latinos, the level of undercount has consistently been more severe than with Anglos. This disparate impact of the undercount is often referred to as the "differential undercount." Generally, American censuses result in more accurate counts for Anglos than they do for racial and ethnic minorities. *See* National Research Council, "Modernizing the U.S. Census" 32, 33 (Barry Edmonston & Charles Schutze eds., 1995).

13. The Census Bureau has recognized that in Texas, certain populations are more difficult to count than other populations. For example, people in poorer urban communities are harder to count, as are people who live in poor suburban unincorporated subdivisions primarily located along the Texas-Mexican border in areas often referred to as "colonias." In Texas, this means an undercount of racial and ethnic minorities.

14. Language barriers exacerbate undercounts. As a result, areas with low Limited English Proficiency, including those areas along the Texas-Mexico border, are not accurately reflected in official Census data. The Texas Demographic Center—the official body tasked with conducting demographic work on behalf of the State of Texas—has acknowledged a likely undercount in Latino communities in Texas, and particularly those along the border.

15. For example, Congressional District 23 had a Census self-response rate of 57.2%, lower than Texas's state average self-response rate of 62.8%. Within the currently existing CD-23 boundaries, self-response rates varied greatly. The predominantly Anglo census tracts of CD-23 in Bexar County had self-response rates on average above 70%. Conversely, heavily Latino areas along the border had average rates below 40%, with some areas having rates in the teens. Self-

response to the Census was particularly important this decade due to the limitations the COVID-19 pandemic placed on in-person enumeration.

16. Despite repeated warnings about the likely impact of not investing in Census complete count efforts, the State of Texas was one of only three states to not form a complete count committee or appropriate state funding to facilitate a complete count. This had the predictable result of exacerbating an undercount in the state.

17. As a natural result of using data which incorporates an undercount, there is a built-in vulnerability to diluting the voting power of Latinos along the border or in urban counties because more outside populations must be added in to equalize the population totals in those districts.

18. The fact that border-based districts started from an undercounted baseline, thus making them more susceptible to dilution, is well-known to Texas legislators and third-party map drawers. Representatives of the Texas Demographic Center and others repeatedly addressed likely undercounts in public hearings at the legislature in advance of the release of Census results.

B. Texas has a long and notorious history of discriminating when drawing district lines.

19. "[I]n every redistricting cycle since 1970, Texas has been found to have violated the Voting Rights Act with racially gerrymandered districts." *Veasey v. Abbott*, 830 F.3d 216, 240 (5th Cir. 2016) (citing *Veasey v. Perry*, 71 F. Supp. 3d 627, 636 & n.23 (W.D. Tex. 2014) (collecting cases)); Expert Report of Dr. Allan J. Lichtman at 19, *Perez v. Abbott*, No. 5:11-cv-00360-OLG (W.D. Tex. May 26, 2017), ("Lichtman Report").

20. In 2006, the U.S. Supreme Court held that Texas had violated the Voting Rights Act by attempting to redraw a congressional district in order to reduce the voting strength of Latino voters. The Court found that the Legislature's action "bears the mark of intentional discrimination that could give rise to an equal protection violation." *League of United Latin Am. Citizens v.*

Perry, 548 U.S. 399, 440 (2006). "In response, Texas sought to undermine [the Supreme] Court's order by curtailing early voting in the district but was blocked by an action to enforce the § 5 preclearance requirement." *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 574 (2013) (Ginsburg, J., dissenting); see Order, *League of United Latin American Citizens v. Texas, No.* 06–cv–1046 (W.D. Tex. Dec. 8, 2006), ECF No. 8.

21. In the 2011 cycle, another federal court found that Texas created redistricting plans with a discriminatory purpose. *See Texas v. United States*, 887 F. Supp. 2d 133, 159-66 (D.D.C. 2012), vacated and remanded on other grounds, 570 U.S. 928 (2013).

22. In 2018, the U.S. Supreme Court found that the Texas Legislature had unconstitutionally racially gerrymandered a Texas House of Representatives district in 2013. *See Abbott v. Perez*, 138 S. Ct. 2305, 2335 (2018).

23. During the 87th Regular Session of the Texas Legislature, Senator Joan Huffman (Chair of the Texas Senate Select Committee on Redistricting) introduced a plan to reorganize the state's appellate judicial courts. After recent electoral successes by minority candidates and minority candidates of choice, the Bill, SB 11, would have cut the number of effective minority opportunity seats by over 20%, from 50% (still underrepresented from a proportional basis) all the way down to 28.5%. After public outcry from both civil rights organizations and members of the state judiciary, Senator Huffman eventually pulled down the Bill.

C. The sequence of events leading to the enactment of Congressional District Plan C2193 bears the indicia of intentional discrimination.

1. Pre-map release hearings were mere lip service to deliberative democracy because there was neither updated Census data nor map proposals to review, and ultimately the Texas Legislature ignored all comments and data gathered.

24. At various points in 2019, 2020, and early 2021, the Texas House of Representatives Redistricting Committee (the House Committee) and the Texas Senate Special Committee on

Redistricting (the Senate Committee) held hearings to receive public comments on the prospective 2021 redistricting process.

25. These pre-map field hearings were a strategy employed last redistricting cycle by the Legislature, and a federal court commented that, because they occurred prior to the release of Census data and the release of proposed maps, they "were of limited usefulness in terms of obtaining meaningful public input for legislators, and there is little indication that the . . . Legislature or the map drawers paid much attention to the public testimony received at these hearings." *Perez v. Abbott*, 253 F. Supp. 3d 864, 960 (W.D. Tex. 2017); *see also Perez v. Abbott*, 390 F. Supp. 3d 803, 821 n.14 (W.D. Tex. 2019) ("[The Legislature] had hearings before a census map was released—census data was released. So that was of no value to anybody.").

26. The most common theme from public testimony during these pre-map hearings was that the public wanted more transparency and fairness in the process, and increased opportunities for input and participation once maps had actually been produced, in order to have a meaningful chance to weigh in on the proposed maps. Approximately two hundred and thirty (230) individuals testified at a hearing that they wished for a transparent and open redistricting process, with approximately one hundred and twelve (112) specifically asking for public hearings on maps with ample time to review the maps before they were voted on. Additionally, hundreds of written comments were submitted voicing these same demands.

27. Over fifty (50) civil rights and community organizations wrote to the House and Senate Committees to demand a fair and transparent process. Specific demands included a minimum of five (5) day's notice before any hearing; to hold at least five (5) hearings on each map to correspond to the five general geographic regions of the state; and to provide individuals with multiple options for participating a hearing.

28. Despite these pleas for transparency and input, the Legislature reverted to the same process it used when passing maps in 2011—one which was marked by "[t]he exclusion of minority member and public input despite the minority population growth, the misleading information, the secrecy and closed process, and the rushed process." *Perez v. Abbott*, 253 F. Supp. 3d 864, 961 (W.D. Tex. 2017).

2. The adoption of Plan C2193 was irregular, truncated, and designed to eliminate transparency and deliberation.

29. Senator Joan Huffman, the Chair of the Senate Committee, filed Senate Bill 6 ("SB 6") on September 27, 2021. That same day it was referred to the Senate Committee.

30. Just after 2:00 p.m. on September 27, 2021, the Senate Committee posted a notice for a single hearing on SB 6 to be held on September 30, 2021 at 9:00 a.m. This provided members of the public with only sixty-seven (67) hours, less than three days, to review and analyze the map and make arrangements to be in Austin in person at the Capitol at 9:00 a.m. on a Thursday.

31. Sixty (60) individuals testified or registered in opposition to SB 6; only one (1) individual testified or registered in favor of the Bill.

32. Individuals testified at length on the negative impacts SB 6 (at that time Plan C2101) would have on minority communities across the state, providing specific information on demographic and community impacts to demonstrate that the map split apart communities of color, diminished the voting strength of Latinos in CD 23 and elsewhere, and failed to draw any new Latino or minority opportunity districts despite communities of color accounting for 95% of the growth in the State. They critiqued the fact that, despite gaining two Congressional seats entirely on the back of minority growth in the state, SB 6 created two new Anglo majority districts—one majority Anglo Democratic district, and one majority Anglo Republican district.

33. At the hearing, Senator Huffman indicated that she would hold a separate hearing to

consider committee amendments from members of the Senate Committee, vote on those amendments, and vote on the map as a whole.

34. The Senate Committee posted a notice at approximately 8 p.m. on September 30, 2021 for the hearing on committee amendments to be held on October 4, 2021 at 9 a.m. The one and only hearing in the House Committee on the proposed Texas House of Representatives map (HB 1) was scheduled for the exact same time.

35. At the hearing, twenty-three (23) individuals once again testified in opposition to the Bill as a whole, and zero (0) individuals testified in favor of it.

36. Senator Zaffirini offered a committee amendment (Plan C2109) which only affected the boundaries between CD 16 (fully contained in El Paso) and CD 23 and would have raised the 2020 and 2018 Spanish Surname Voter Registration levels to above 50% (50.3% and 50.7% respectively). This amendment was opposed by the Chair, Sen. Huffman, and voted down by the committee.

37. Senator Zaffirini offered another similar amendment (Plan C2110) which made even fewer changes between CD 16 and CD 23, but which would have raised the SSVR in CD 23 to 50.0% in 2020 and 50.5% in 2018. Chair Huffman opposed the amendment, and it too was voted down.

38. Ensuring that public testimony from that day could not be incorporated into the map, the Senate Committee voted out the committee substitute for SB 6 that same day, with no minority Senator voting in favor of it.

39. On October 8, 2021, the Texas Senate suspended Rule 7.12 of the Texas Senate Rules in order to consider SB 6 on the Senate floor without printing of the Committee Report on the bill.

40. Multiple amendments were offered on the Senate floor which would have ameliorated the dilution of Latino voting strength in the proposed plan, yet none were accepted despite being

supported by every minority Senator.

41. The Senate passed the Committee Substitute for SB 6 through on second reading with every minority Senator opposing the Bill.

42. To bypass the Texas Constitutional rule that bills be read on three separate days, the Senate adjourned for one minute at 2:27 p.m. on October 8, 2021, then reconvened at 2:28 p.m. to begin a "new legislative day." The Senate then proceeded to engross CSSB 6 and send it to the House on that same day, where it was referred to the House Committee.

43. After repeatedly implying that the House would not take up consideration of a Congressional map until after Texas House and Texas Senate maps had been passed, the House Committee, chaired by Representative Todd Hunter, abruptly posted at 9:41 a.m. on October 12, 2021 notice for a hearing on the Senate's Congressional proposal to be held at 10:00 a.m. the next day.

44. No advance notice of this hearing was given to minority members of the House Committee, and it was posted on the same day the House was debating HB 1 (the proposed map for the Texas House of Representatives) on the House floor.

45. If an individual was diligently monitoring the legislature for any posting of notice for a hearing, they would have only had 24 hours and 19 minutes notice of the House Committee hearing on Congressional maps. The House offered an option to register to testify virtually; however, there was only a twelve (12) hour window to register from the time the notice was posted. In addition, the option to register and testify virtually was not feasible for many minority communities across the state who continue to be on the far end of the digital divide.

46. Individuals who needed language interpretation assistance at the House hearing were only provided an eight hour window to request assistance. At least one individual who needed

interpretation assistance was unable to participate in the hearing because they missed the window for requesting assistance.

47. No instructions or timeline was provided for members of the House Committee to submit proposed amendments, and no information was provided on whether there would be any votes in Committee.

48. Despite only having twenty-four hour's notice, ninety-three (93) individuals testified or registered in opposition to SB 6 at the House Committee hearing. Only one (1) individual testified or registered in favor of the Bill.

49. As he had done in hearings and on the floor when describing the Texas House and Texas Senate redistricting plans, Chair Hunter highlighted the demographic effects of the Bill—minimizing its discriminatory impact—by inaccurately basing his assessment of minority opportunity districts on Voting Age Population ("VAP"), despite it having been repeatedly pointed out that Citizen Voting Age Population ("CVAP"), particularly for Latino communities, is a more indicative measure and preferred by courts. In his layout of all redistricting plans (Congressional, Senate, House, State Board of Education) both in Committee and on the Floor, Chair Hunter made the number of majority minority VAP districts a centerpiece of his presentation.

50. At the hearing, Chair Hunter announced that he would not be allowing members to offer any committee amendments, and that they would vote the Bill out that same day.

51. CSSB 6 was voted out of the House Committee in the evening on the same day it was heard, ensuring that public testimony could not be incorporated.

52. Despite acknowledgment, including by Representatives from both political parties in private conversations and debate on the Texas House floor, that the map and public testimony on

the map revealed potential legal problems, no amendments were accepted on the House floor which would have mitigated these issues.

53. It was openly acknowledged that the way the map split apart Asian American and Pacific Islander communities in Fort Bend County was problematic. Amendments were offered which would have alleviated this problem, yet none were accepted.

54. Multiple amendments were offered which would have ameliorated the retrogression of Latino voting power in CD 23 as well, but none were accepted.

55. Amendments which would have drawn new additional Latino opportunity districts, to reflect that Latinos were the major driving force behind the growth of the state, were similarly rejected. When questioned on the floor as to why he opposed this specific effort, Representative Jetton of House District 26—one of the Representatives who took a lead on redistricting debates—offered a scant defense of his position, repeatedly stating that he was "not advised" on the needs of north Texas Latino communities of interest.

56. Obviously pretextual reasons for opposing the creation of new opportunity districts were proffered on the House floor. For instance, an amendment which would have created a new Latino majority Congressional district in Dallas was opposed on the basis that it slightly lowered the non-Anglo population in an adjacent district. When it was rebutted that this was the natural result of creating an entirely new minority opportunity district, the response was "not advised."

57. Unfortunately, this kind of short and frivolous defense in opposition to these ameliorating amendments was common throughout both the House Committee and Floor proceedings during the deliberation of SB 6.

58. Conversely, amendments that furthered the political ambitions of members of the body received extended consideration time, and favorable passage. For example, over an hour was

spent on Representative Toth's amendment that drew his residence out of CD 2—represented by Congressman Dan Crenshaw—and into CD 8—a soon-to-be open congressional seat. Such consideration was not given to amendments that sought to remedy the intentional dilution of minority votes across the state.

59. Early in the midnight hours of October 17, 2021, the House passed SB 6 on third reading. Taking issue with various changes made by the House to SB 6, the Senate did not concur. Just before 1:50 am that evening, a conference committee was appointed to adjust the differences between the upper and lower chambers on the Bill.

60. In a departure from ordinary procedure, the House granted the request of the Senate for the appointment of a conference committee on SB 6 after the House had recessed pending administrative matters and after the members had left the floor. While it is not unusual for the House to stand in recess pending administrative matters, generally on bills of this nature, motions to grant a conference committee and to appoint conferees is done with the membership present because members may want to object to the granting of the Senate's request for a conference committee. The appointment of a conference can include important substantive components, such as instructions on how far the committee can veer from the House's engrossed legislation. Here, however, members did not have that opportunity because the conference committee at issue was appointed when members were not present.

61. The conference report contained changes that were not present in either the Senate or House passed version of SB 6. This deviation from permitted legislative procedure gave rise to a point of order against further consideration of the conference committee report on SB 6 under Rule 13, Section 9(d)(1) of the House rules on the grounds that the conferees exceeded their authority without permission.

62. Specifically, Representative Anchía noted that the structure of CD 20 was the same in both the Senate and House versions of SB 6 and, thus, was not a matter of disagreement between the two houses, as the House Rules require. Indeed, the report's swap of territory between CD 35 and CD 20 to resolve disagreement over the latter was not permitted under the rule because it was not "essential to the effective resolving of the matter in disagreement."

63. Representative Anchía pointed out that Senator Huffman had already explicitly stated on the Senate floor during the layout of the SB 6 conference committee report that the changes made between CD 35 and CD 20 were made at the behest of a Member of the Texas House of Representatives so that his residence could be in a particular district. Therefore, these were new, distinct changes to the map requiring permission by resolution under Rule 13, Section 9(f) of the Texas House Rules.

64. The Texas House Parliamentarian overruled this point of order, pretextually relying on a single instance from over a century ago related to the U.S. House of Representative debates to justify ignoring proceedings on the Senate floor, while ignoring the hard evidence that the changes in the conference committee report were not essential to resolving a disagreement between plans, as explicitly required in the House Rule governing redistricting conference committee reports.

65. Upon adoption of the conference committee report by both Houses, the report was then sent to the Governor's office.

3. The adoption of Plan H2316 was also irregular, truncated, and designed to eliminate transparency and deliberation.

66. The efforts of the Texas Legislature to circumvent debate and maintain a shadowy veil over the origins of the proposed map for the House Districts were similarly problematic. Indeed, it appears that the leadership of the Texas House of Representatives worked to ensure a swift and non-deliberative process that essentially rubber-stamped maps drawn in secret.

67. Although redistricting data was not loaded into the Texas Legislature's map system until September 1, 2021, Chair Hunter sent a letter to members of the House on September 9, 2021 informing them that they had only ten (10) days to submit any proposed maps to the House Committee for consideration.

68. Plaintiff MALC, along with the Texas Legislative Black Caucus and the Texas Legislative Study Group sent a letter requesting more time to work with members on proposed maps. This request was ignored.

69. While still telling some members of the Texas House that no map existed yet, Chairman Hunter began privately showing portions of the map to members on Wednesday, September 29, 2021.

70. Chairman Todd Hunter then publicly revealed his proposed map for redistricting the Texas House on Thursday, September 30, 2021, with the release of House Bill 1 ("HB 1"). At the same time, Chairman Hunter posted a public notice to hear public testimony on the following Monday, October 4, 2021 at 9:00 a.m. Chairman Hunter required all proposed amendments to HB 1 by members of the Committee be delivered by 12:00 p.m. on October 4, 2021, leaving members of the Committee who had no prior knowledge of the maps with grossly insufficient time to analyze the map and prepare amendments.

71. On Friday, October 1, 2021, members of the House Committee who belong to the Mexican American Legislative Caucus and Texas Legislative Black Caucus sent a letter to Chair Hunter in response to the arbitrary committee amendment deadline. Through this letter, these members requested an October 11, 2021 committee amendment deadline and an opportunity to allow for invited testimony to provide voting rights experts sufficient time to analyze the proposed maps.

72. Chair Hunter denied both requests. It is extremely common practice to allow members of

the Committee to invite expert witnesses, who traditionally testify first and are not bound by the same time limitations imposed on other witnesses. For instance, the Senate Committee allowed invited testifiers from the Mexican American Legal Defense and Education Fund, the Texas NAACP, LULAC, and the Brennan Center.

73. After only three calendar days' notice, only one of which was a business day, the House Committee held a sole public hearing to discuss and deliberate HB 1. In addition to not allowing invited testimony, the House Committee did not even have state resource witnesses from the Texas Legislative Conference or the Office of the Attorney General available to answer questions—an almost unheard of departure from ordinary committee proceedings, especially for a bill of this magnitude.

74. Repeated inquiries were made from minority members of the Committee to clarify the timeline on which amendments would be considered and voted on, yet the Committee provided no concrete information.

75. At the hearing, in another extraordinary move, the entire layout of the Bill—including the author's presentation and all questions from other members—was limited to only one hour. The author, Chair Hunter, did not allow several of the Latino and African-American members of the Committee to ask any questions at all despite their requests to do so, yet every Anglo member of the Committee, regardless of partisanship, who sought to ask questions was able to do so.

76. After public testimony, Chair Hunter forced members to vote on committee amendments (which had just been distributed hours before) and the Bill itself as part of the same hearing. Given the importance and magnitude of the legislation, this time frame for passage of the proposed Bill was unnecessarily and irregularly truncated.

77. When an African-American member of the Committee objected to this procedure, on the

grounds that there had been insufficient time to review the amendments, these objections were ignored. Then, remarkably, when a non-controversial amendment from a Latino member of the Committee which would have only made minor agreed-to changes to a few predominantly Latino districts was offered, Chairman Hunter refused to support the amendment on the grounds that there had been insufficient time to review its impacts.

78. The Texas House of Representatives Calendars Committee set HB 1 for floor consideration on October 12, 2021 and required all amendments to be filed by 6:00 p.m on Sunday, October 10, 2021. Again, given the importance and magnitude of the legislation, the time to provide meaningful review and amendments to the legislation was unnecessarily and irregularly truncated.

79. On October 12, 2021, the Texas House of Representatives again truncated debate and deliberation over HB 1. Chairman Hunter only allowed one hour for his layout of the proposed maps for the Texas House and truncated debate by refusing to answer questions beyond that time period in any reasonable manner. A majority of the Legislature voted down minority members' motions for additional extensions of time. Further, instead of recessing so that deliberation could occur during normal working hours, the House leadership ensured that HB 1 was passed under the cover of darkness and voted on at approximately 3:40 a.m. in the morning on October 13, 2021. HB 1 passed the Texas House adopting Plan H2316.

80. On information and belief, certain legislators representing minority opportunity districts were pressured into voting for Plan H2316 with implications that their districts would be negatively impacted if they did not do so.

81. The Texas Senate received HB 1 that same day and the Bill was scheduled for a public hearing on October 15, 2021. True to form, the Senate committee voted HB 1 out the same day it

heard public testimony. and again suspended the body's institutional rules—adopted to ensure transparency and effective deliberation—to ensure expedited passage of HB 1 on that same day.

4. The adoption of State Board of Education Plan E2106 suffered from the same anti-democratic defects.

82. The process through which the Legislature passed Senate Bill 7 ("SB 7")—the new State Board of Education districts—was also truncated and opaque. Once again, the Senate suspended Senate Rule 7.12(a) to consider SB 7 on the floor on an expedited basis and both required readings post-committee were had on the same day.

83. Once introduced in the Texas House, only one public hearing was held and SB 7 was voted out of committee that same day. Chair Hunter declined to answer any substantive questions on the Bill, citing the fact that it had originated in the Senate and he did not have information on the map beyond that.

84. Upon being fast-tracked to the House floor, members of the body asked many questions of Chair Hunter to elucidate whether changes were required to adhere to protections afforded under the Constitution and the Voting Rights Act. Instead of providing constructive insight, Chair Hunter purposefully stood at the podium with a single piece of paper and repeatedly stated that he could not answer the inquiries because of his lack of knowledge or understanding of the Senate's drafting or adoption process.

85. Throughout the bicameral process, pleas from legislators and the general public for more time to consider and analyze the maps as proposed were wholly ignored. Indeed, of the five amendments offered, three were offered by Latino legislators and two by Anglo legislators. Those offered by the Anglo legislators were accepted; those offered by the Latino legislators were not.

D. The Plans violate the Voting Rights Act in multiple districts and regions.

86. Despite Latinos accounting for a full half of all growth in the State, the adopted State House, Congressional, and State Board of Education all boldly reduce Latino representation across the state, denying Latinos an equal opportunity to participate in the political process and elect candidates of their choice. The systematic dilution of voting power in certain regions, particularly when taken together with current and historical barriers to participation, also deprive Spanish language communities of the equal opportunity to elect candidates of their choice, in violation of explicit language in Section 2 of the Voting Rights Act.

1. House of Representatives Redistricting Plan H2136 is discriminatory.

a. The configuration and systemic overpopulation of Texas House districts in El Paso, in particular the consolidation of House Districts 76 and 77, dilutes the voting power of cohesive Latino communities and eliminates a performing Latino opportunity district in violation of the Voting Rights Act.

87. Under the benchmark plan, El Paso County contains five whole districts within its boundaries.

88. Every El Paso district in the benchmark is a performing Latino opportunity district, with Hispanic Citizen Voting Age Population ("HCVAP") percentages, Spanish Surname Voter Registration ("SSVR") percentages from the 2020 General Election, and Spanish Surname Turnout ("SSTO") (the percentage of the overall turnout attributable to individuals with Spanish surnames) percentages from the 2020 General Election as represented below:

DISTRICT	HCVAP	SSVR	SSTO
75	89.4%	76.6%	75.9%
76	85.8%	79.7%	80.1%
77	73.3%	62.4%	60.7%
78	65.4%	53.2%	52.7%

79	79.2%	69.5%	70.6%

89. Plan H2316 entirely removes HD 76 from El Paso and moves it to Fort Bend County where it has numbers less than 20% in all three of the measures of Latino voting power listed above.

90. This wholesale removal of an effective and longstanding Latino opportunity district cannot be justified.

91. The population of El Paso county divided by the ideal district size for Texas House districts (194,303) indicates that El Paso County on its own has enough population for 4.46 ideal sized districts, meaning that ideally (and under a strict construction of the Texas Constitution's own county line rule, Texas Const. Art. III § 26—which rule must yield to federal law but which otherwise controls), it should have at least four whole districts and comprise roughly half (89,379 total population) of a fifth district. Yet, the Legislature systematically deprived El Pasoans of representation in a fifth partial district.

92. The Texas Legislature jumped through hoops and over hurdles to avoid giving Latinos in El Paso equal representation in the State House.

93. In particular, H2316 under-populates to the extreme every single Anglo majority district in West Texas (average district is underpopulated down to -4.1% below ideal), while it overpopulates Latino majority districts to the extreme (average district size is overpopulated up to +4.3% above ideal). The pernicious effect is obvious: minimized representation for Latinos in the area and maximized representation for Anglos. H2316 avoids eliminating Anglo majority districts or pairing incumbent Anglo representatives and does so at the expense of Latino opportunity.

94. Multiple configurations of Texas House districts exist, and were presented to the

legislature, which would maintain four seats wholly contained within El Paso and have a fifth seat anchored with at least half of its population in El Paso and which does not extend all the way into Maverick County (roughly 500 miles away).

95. El Paso is a cohesive Latino community with identifiable communities of interest. Plan H2316 deprives these communities of equal representation.

b. Texas House District 31 has been drawn to dilute the voting power of Latinos and Spanish language communities in border counties such that extreme Anglo bloc voting from counties to the North prevents them from electing the candidate of their choice.

96. In its current form, HD 31 is a performing Latino and Spanish language opportunity district which consistently elects the Latino and Spanish language community candidate of choice.

97. Under the benchmark plan, HD 31 is 77.2% HCVAP; had SSVR of 74.1% in the 2020 General Election; and SSTO of 68.7% in the same election.

98. On information and belief, under the benchmark plan, the most recent American Community Survey (ACS) data indicates that a majority (roughly 55%) of the citizen voting age population in HD 31 speaks Spanish at home.

99. Under Plan H2316, the HCVAP in HD 31 drops to 66.6% (-10.6); the SSVR for 2020 General Election drops to 63.9% (-10.2); and the SSTO drops to 56.3% (-12.4).

100. On information and belief, under Plan H2316, the most recent ACS data indicates that the percentage of the citizen voting age population that speaks Spanish at home in HD 31 would drop below a majority, to roughly 49% (-6).

101. Under Plan H2316, due to the dilution of Latino and Spanish community voting strength coupled with the inclusion of new high Anglo turnout counties with extreme Anglo bloc voting, such as Wilson and Karnes Counties, the Latino and Spanish language community candidate of choice would be practically unable to win an election in HD 31.

102. Latino and Spanish language voters are sufficiently numerous and geographically compact to form a majority of the voting population in a reconfigured HD 31.

c. A late night amendment to Texas House District 37, passed against the will of every member whose district was affected by the Amendment, diluted the voting power of Latinos and Spanish speakers in portions of Cameron County while impermissibly packing HD 38.

103. During late night debate on the House Floor, Plan H2308 (an amendment to an amendment to Plan 2316) was offered which changed the composition of districts in Cameron and Hidalgo counties. The Amendment was opposed by every Representative whose district was affected, yet passed over their objection.

104. Currently HDs 35, 37, and 38, are wholly contained in Cameron and Hidalgo counties in the benchmark plan, and all consistently elect the candidate of choice for Latinos and the Spanish language community.

105. Plan H2316 (which incorporated the amendment) dramatically changed these three districts to unnecessarily pack HD 38, crack apart communities of interest, and severely dilute the ability of Latinos and the Spanish language community to elect candidates of their choice in HD 37.

106. Under the benchmark, HD 37 is 85.7% HCVAP; had 78.9% SSVR in the 2020 General Election; and 74.1% SSTO in the 2020 General Election.

107. On information and belief, under the benchmark, the most recent American Community Survey (ACS) data indicates that a majority (roughly 59%) of the citizen voting age population in HD 37 speaks Spanish at home.

108. Under Plan H2316, the HCVAP would drop to 77.8% (-7.9); SSVR in the 2020 General to 70.5% (-8.4); and SSTO in the 2020 General to 65.8% (-8.3).

109. On information and belief, under Plan H2316, the most recent American Community Survey (ACS) data indicates that the percentage of the citizen voting age population that speaks

Spanish at home in HD 37 would drop below a majority, to roughly 44.2% (-14.8).

110. Due to the systematic arrangement of high turnout, extreme Anglo bloc voting, less Spanish-speaking areas in HD 37, Latinos and the Spanish language community would face significant hurdles to electing the candidate of their choice for Representative.

111. The arrangement of HD 37 prior to the Plan H2308 Amendment would have kept the district as a performing Latino and Spanish language opportunity district, and Latinos and Spanish language voters are sufficiently numerous and geographically compact to form the majority of the eligible voting population in HD 37.

d. Plan H2316 severely retrogresses Latino and the Spanish language community's voting power in Texas House District 80.

112. Texas House District 80 has long been a performing Latino and Spanish language community opportunity district which consistently elects the candidate of choice for those communities. Plan H2316 undermines the district and creates substantial barriers for those communities by bringing in high turnout, extremely polarized Anglo regions.

113. Under the benchmark plan, HD 80 is 86.2% HCVAP; had 2020 General Election SSVR of 80.6%; and 2020 General Election SSTO of 76.5%.

114. On information and belief, under the benchmark plan, the most recent American Community Survey (ACS) data indicates that approximately 64.8% of the citizen voting age population in HD 80 speaks Spanish at home.

115. Under Plan H2316, the HCVAP in HD 80 falls to 77.6% (-8.6); 2020 General Election SSVR to 73.3% (-7.3); and 2020 General Election SSTO to 66.1% (-10.4).

116. On information and belief, under Plan H2316, the most recent American Community Survey (ACS) data indicates that approximately 55.7% (-9.1) of the citizen voting age population in HD 80 would speak Spanish at home.

117. The retrogressions in HD 80 make it substantially more difficult for the Latino and Spanish language communities, particularly substantial communities in Webb, Dimmit, and Zavala Counties, to elect the candidates of their choice. It turns HD 80 from a consistently performing district into a marginally performing district. It does so primarily by adding Atascosa County, SSTO of only 46.4%, to the district. It is possible to draw HD 80 in a way which keeps it consistently performing without injuring other districts in the area, and the Legislature was presented with opportunities to do so.

118. Although Plan H2316 would not make HD 80 unwinnable by the Latino/Spanish language community candidate of choice, when taken together with the elimination of HD 76 in El Paso and the extreme retrogression of HD 31 and HD 37, the overall effect of H2316 is to unnaturally dilute the voting power of Latino and Spanish language communities along the border. Although, in large part due to a widely acknowledged undercount, some shifting of districts in the region is necessary, these changes would *at most* lead to slightly altering the performance of *one* opportunity district, not eliminating or severely weakening *four* performing opportunity districts.

e. Texas House District 90 dilutes the ability of Latinos to elect the candidate of their choice in Primary Elections in Tarrant County

119. Texas House District 90 has a history of legal complications from the last redistricting cycle.

120. As recently as 2018, the United States Supreme Court found that the district had been unconstitutionally racially gerrymandered by the Texas Legislature when it redrew maps in 2013. *Abbott v. Perez*, 138 S. Ct. 2305, 2335 (2018). The purpose of the impermissible gerrymander was to keep certain non-Latino communities in HD 90 to increase the ability of the Anglo incumbent at the time to win Democratic primary elections in the district while superficially meeting certain demographic metrics.

121. Natural demographic trends have resulted in the Hispanic Citizen Voting Age Population in HD 90 increasing dramatically over the course of the decade and the district becoming a reliable Latino opportunity district in both primary and general elections.

122. Under Plan H2316, the Legislature has dramatically reduced Latino voting power in the district, weakening the ability of Latino voters in the area to elect the candidate of their choice in Democratic primary elections.

123. Under the benchmark, HD 90 is 58.6% HCVAP; had 2020 General Election SSVR of 50.8%; had 2020 General Election SSTO of 48.1%; 2020 Democratic Primary SSVR of 51.0%; and 2020 Democratic Primary SSTO of 44.3%.

124. Under Plan H2316, HD 90 would be 49.2% HCVAP (-9.4); would have 2020 General Election SSVR of 41.8% (-9); would have 2020 General Election SSTO of 37.9% (-10.2); 2020 Democratic Primary SSVR of 41.8% (-9.2); and 2020 Democratic Primary SSVR of 33.4% (-10.9).

125. These changes were unnecessary and split apart communities of interest. Alternative proposals exist and were presented to the Legislature which would have brought HD 90 within acceptable population deviation limits while only making minor alterations to its structure.

f. Texas House District 118 was redrawn to dilute the voting power of Latinos in what is otherwise a performing Latino opportunity district.

126. HD 118 is currently a performing Latino opportunity district. Proposals for HD 118 from the Bexar County delegation of Texas House members would have kept it as such, and Plan H2176 (the plan voted out of the House Redistricting Committee) would have slightly weakened the performance of HD 118, but likely still kept it a performing Latino opportunity district.

127. However, Plan H2228, a floor amendment to HD 118 offered by Rep. Jacey Jetton (whose district is in Fort Bend, not Bexar County), was adopted over objections from the Bexar County

delegation, which severely dilutes the voting power of Latinos in the district by extending the district from the far Southwestern corner of Bexar County to wrap all the way to the most Northeastern corner of the County, taking in predominantly Anglo areas in that corner.

128. Under the benchmark plan, HD 118 is 68.2% HCVAP; had 2020 General Election SSVR of 59.5%; and 2020 General Election SSTO of 55.7%.

129. Under Plan H2316 (which incorporates the Jetton amendment), HD 118 would be 56.4% HCVAP (-11.8); would have had 2020 General Election SSVR of 47.6 % (-11.9); and would have had 2020 General Election SSTO of 43.9% (-11.8).

130. These changes were made with the purpose and effect of preventing Latinos in HD 118 and surrounding areas from being able to consistently have an opportunity to elect candidates of their choice.

g. The arrangement of House districts in Harris County does not provide Latinos in the area with an equal opportunity to participate in the electoral process and elect candidates of their choice.

131. Under the benchmark plan, there are five (5) districts in Harris County which consistently perform to elect the Latino candidate of choice in primary and general elections, four (4) of which have majority HCVAP populations.

132. According to the 2020 Census, there are 2,034,709 Latinos in Harris County, comprising 43% of the total population, and 29.9% of the citizen voting age population.

133. Latinos accounted for 21.7% of the growth in Harris County over the last decade.

134. Harris County is large enough to contain either 24 or 25 Texas House districts entirely within its boundaries. It currently contains 24, and the Legislature chose to leave that unchanged this decade. That means that, if one were working on a strictly proportional basis, Latinos should comprise a majority of the citizen voting age population in no fewer than 7 districts.

135. Indeed, Latinos in Harris County are sufficiently numerous and geographically compact to form a majority of the citizen voting age population in at least seven (7) districts, as was demonstrated in plans presented before the Texas Legislature. Further, it is easy to draw five (5) majority HCVAP districts which stay within population deviation without changing the core shape of surrounding districts from the benchmark plan, and plans were presented which would have accomplished such. The Legislature was presented with plans which would have drawn additional majority HCVAP opportunity districts in Harris County, but leadership in the Texas House opposed the proposals.

136. Rather than drawing a new Latino opportunity district, or even preserving existing ones, Plan H2316 actually took a step backwards and eliminated a performing Latino opportunity district while severely compromising another, weakening the ability of Latinos in those districts to elect candidates of choice in primary elections and providing no new opportunities in the County for Latinos to elect candidates of choice in either primary or general elections.

137. Under the benchmark plan, HD 145 is 61.3% HCVAP; had 2020 General Election SSVR of 53.9%; 2020 General Election SSTO of 50.4%; 2020 Democratic Primary SSVR of 54.4%; and 2020 Democratic Primary SSTO of 46.4%.

138. Under Plan H2316, HD 145 would be 55.7% HCVAP (-5.6); would have had 2020 General Election SSVR of 45.3% (-8.6); 2020 General Election SSTO of 39.3% (-11.1); 2020 Democratic Primary SSVR of 46.3% (-8.1); and 2020 Democratic Primary SSTO of 32.6% (-13.8).

139. Under the benchmark plan, HD 148 is 45.5% HCVAP; had 2020 General Election SSVR of 36.1%; 2020 General Election SSTO of 30.1%; 2020 Democratic Primary SSVR of 36.9%; and 2020 Democratic Primary SSTO of 25.8%.

140. Under Plan H2316, HD 148 would be 37.7% HCVAP (-7.8); would have had 2020 General

Election SSVR of 32.4% (-3.7); 2020 General Election SSTO of 28.9% (-1.2); 2020 Democratic Primary SSVR of 32.4%(-4.5); and 2020 Democratic Primary SSTO of 26.0% (+.2).

141. The configuration of Texas House districts in Harris County under Plan H2316 does not provide Latinos in the county with an equal opportunity to participate in the political process and elect candidates of their choice for the Texas House. In addition to HDs 145 and 148 being restored, the Voting Rights Act requires drawing at least one additional majority HCVAP district in Harris County.

h. Additional Latino opportunity districts should be drawn in West Texas, Central Texas, and the Nueces County region.

142. Latinos in Odessa and surrounding West Texas areas are sufficiently numerous and geographically compact to comprise a majority of the eligible voter population in at least one single member district.

143. Latinos in Central Texas, in regions between Bexar and Travis Counties, are sufficiently numerous and geographically compact to comprise a majority of the eligible voter population in at least one single member district.

144. Plan H2316 reduces the HCVAP in HD 32 from 50.6% down to 42.0%. This reduction is unnecessary, and a Latino opportunity district could be drawn in the region while maintaining the same number of existing Latino opportunity districts in South Texas.

145. Under Plan H2316, Anglo bloc voting in these areas prevents Latinos from electing the candidates of their choice in primary or general elections.

2. Congressional Districts Plan C2193 is discriminatory.

a. Congressional District 23 is drawn to dilute the voting power of Latino and Spanish language communities in El Paso, along the border, and in parts of Bexar County.

146. CD 23 has been a repeated target of the Texas legislature for Latino vote dilution, and

courts have had to repeatedly step in to remedy the district.

147. In 2006, following an off-cycle redistricting by the Texas legislature in 2003, the United States Supreme Court held that CD 23 was drawn in a way that diluted Latino voting power in violation of Section 2 of the Voting Rights Act. The district was subsequently redrawn by a federal district court for the remainder of that decade to remedy this violation.

148. The 2006 Court pointed to the fact that the Latino population was reduced in the 2003 map so as to constitute less than a majority of the citizen voting age population of the district.

149. In 2011, after the 2010 decennial Census, the Texas legislature again redrew CD 23 in a way which was found to violate the Voting Rights Act and to be part of a Congressional Plan which was drawn to intentionally discriminate against non-Anglos.

150. In analyzing the Legislature's 2011 redrawing of CD 23, a federal three-judge panel found that the State had systematically removed high turnout Latino areas from the district and replaced them with low turnout areas to minimize the ability of Latinos to elect candidates of their choice while superficially maintaining the district at over 58% Hispanic Citizen Voting Age Population (HCVAP). "The[se] changes were enough to "nudge" a district that was an ability district, but barely so, to a nonperforming district." *Texas v. United States*, 887 F. Supp. 2d 133, 155 (D.D.C. 2012), *vacated and remanded on other grounds*, 570 U.S. 928 (2013).

151. Because the 2011 Congressional Plan failed to gain preclearance under Section 5 of the Voting Rights Act at that time, CD 23 was redrawn ahead of the 2012 election by a three-judge panel and has remained in that configuration for the rest of the decade.

152. In re-examining the configuration of CD 23 in 2017, a three-judge panel found that the district as drawn did not violate Section 2 of the Voting Rights Act, and that it provided Latinos in the district with an ability to elect candidates of choice. In reaching this conclusion, the court

looked at election results from the 2012, 2014, and 2016 cycles, in which the Latino-preferred candidate won one election and was closely competitive in the other two, and the fact that "[w]hen the current configuration of CD23 was adopted, the HCVAP was 61.3%, an increase from 58.5% HCVAP in the 2011 plan. The most recently available ACS five-year survey data (2011–2015) places the HCVAP at 62.1%[, and the] SSVR in CD23 was stable across all three elections for which C235 has been in place: 55.6, 55.9, and 55.3%, respectively." *Perez v. Abbott*, 274 F. Supp. 3d 624, 679 (W.D. Tex. 2017), *rev'd and remanded on other grounds*, 138 S. Ct. 2305 (2018).

153. CD 23 in its current configuration (the benchmark plan) using the most recent data is 63.2% HCVAP; had 54.1% Spanish Surname Voter Registration in 2020 the 2020 General Election; had 47.8% Spanish Surname Turnout in the 2020 General Election; and approximately 53.8% of the voting age population in the district speaks Spanish at home.

154. Plan C2193 reduces the HCVAP in CD 23 to 57.8% (-5.4%); the SSVR for 2020 to 49.2% (-4.9%); the SSTO for 2020 to 42.9% (-4.9%); and the approximate percentage of the voting age population who speak Spanish at home down to 49.6% (-4.2%).

155. Latinos and Spanish speakers are sufficiently numerous and compact to form an effective majority of the voting population in a single member district in the area and to overcome Anglo block voting to elect a candidate of their choice.

b. By pairing lower turnout Latino and Spanish language communities in South Texas, where the effects of historical and current barriers to participation are notable, with higher turnout areas that have extreme Anglo bloc voting, CD 15 dilutes the voting power of Latino and Spanish language voters, while CD 27 dilutes the voting power of Latino and Spanish language voters in Nueces County.

156. In both its current form and under Plan C2193, Congressional District 15 unnecessarily dilutes the voting power of Latino and Spanish language voters in South Texas by pairing them with extreme Anglo bloc voting counties even further north than Bexar.

157. Plan C2193 makes this dilution worse by losing the heavily Latino and Spanish speaking communities of Jim Hogg and Duval Counties (92.0% and 88.3% HCVAP respectively; on information and belief, approximately 75.5% and 61.2% of CVAP speaks Spanish at home) while bringing in more population from Wilson County (36.7% HCVAP; on information and belief, approximately 18.8% of CVAP speaks Spanish at home), which has extremely high and cohesive Anglo bloc voting.

158. On information and belief, under Plan C2193, the most recent American Community Survey (ACS) data indicates that only a very bare majority (approximately 53.0%) of the citizen voting age population in CD 15 speaks Spanish at home.

159. Nueces County is 59.6% HCVAP and, on information and belief, approximately 34.8% of the citizen voting age population speaks Spanish at home. The western portion of Nueces County is even more highly concentrated—the current HD 34, for instance, is 69.4% HCVAP and, on information and belief, approximately 42.8% of the citizen voting age population speaks Spanish at home. In both the benchmark plan and Plan C2193, Nueces County is paired with heavily Anglo counties with extreme bloc voting as far North and inland as Bastrop to form a district which is below 49% HCVAP and in which only approximately 22% of the citizen voting age population speaks Spanish at home.

160. A district configuration which puts some or all of Nueces County into CD 15 and Central Texas counties such as Wilson, Guadalupe, and Karnes into CD 27—or a district configuration which puts some or all of Nueces County into CD 34 while putting more of Hidalgo County into CD 15 and the Central Texas counties into CD 27—would provide Latino and Spanish language communities in CD 15 and Nueces County with a more equal opportunity to elect candidates of their choice. Such a district configuration would also be more geographically compact and keep

intact more communities of interest than the current configuration.

c. The Voting Rights Act requires drawing a Latino opportunity district in the DFW Metroplex.

161. Latinos accounted for over 50% of the growth in Dallas and Tarrant Counties in the last decade. Despite this, Plan C2193 gives no new representation to Latinos in the area. Instead, it goes to extreme lengths to crack Latino communities in the area. CD 6, for example, slices down the middle of Arlington and cuts in half cohesive Latino communities in Grand Prairie and Irving, taking portions of these communities and pairing them with distant rural counties as far East as Cherokee County. Meanwhile, CD 33 cuts through Irving and winds all the way around CD 6 to come back into Grand Prairie, slicing through Latino communities along the way.

162. Latinos in Dallas and Tarrant County are sufficiently numerous and compact to constitute a majority of the eligible voter population in a new district while maintaining the current Dallas and Tarrant anchored congressional districts which exist. Plans were presented to the Legislature which would have done so, but they were not adopted.

d. The Voting Rights Act requires drawing an additional Latino opportunity district in Harris County.

163. The current configuration of Congressional districts in Harris County artificially and unnecessarily packs Latino voters into CD 29 (62.2% HCVAP), while the rest of the Latino communities in Harris County are split between numerous districts. Given voting patterns in the County, CD 29 would continue to perform to elect the Latino candidate of choice in primary and general elections with less of a concentration of Latino voters.

164. Latinos in Harris County are sufficiently numerous and geographically compact to form a majority of the eligible voter population in a second district wholly contained within Harris

County. Plans were presented to the Legislature which would have done so, but they were not adopted.

3. State Board of Education Plan E2106 is discriminatory.

a. Latino voting power in State Board of Education Districts 2 and 3 is severely diluted despite it being possible to increase the performance of both of these existing Latino opportunity districts while also making them more geographically compact and providing representation for Latinos in Central Texas.

165. Despite accounting for 30% of the citizen voting age population, Latinos only account for a majority of the citizen voting age population in 3 out 15 SBOE Districts (20%). Under Plan E2106, the performance of two out of three of the existing Latino opportunity districts is at best marginal when it comes to electing candidates of choice. This is a result of bringing in distant, predominantly Anglo counties such as Wilson, Dewitt, Lavaca, Goliad, and Jackson (all over 60% Anglo CVAP) where extreme bloc voting dilutes the voting power of Latinos in South Texas and Bexar County.

166. Additionally, under Plan E2106, large populations of Latinos in Central Texas between Bexar and Travis County are not included in a district where they have an equal opportunity to elect candidates of their choice in primary elections, but rather are put into a heavily Anglo Democratic-leaning district.

b. The Voting Rights Act requires drawing a new Latino opportunity SBOE District in Harris County

167. Harris County and Fort Bend County have a total population of over 5.5 million people (enough for nearly 3 wholly contained SBOE districts) which is 70% non-Anglo. Communities of color accounted for 100% of the new growth in these counties last decade, with the Anglo population in Fort Bend County decreasing by 4.8%, and the Anglo population in Harris County decreasing by 25.8%. Despite this, Plan E2106 only provides the region with a single CVAP

majority minority SBOE District (SBOE District 4) and diminishes minority representation in the region as compared to the benchmark plan.

168. Under the benchmark, SBOE District 6 was on the verge of becoming a competitive district where a coalition of minorities had a meaningful opportunity to elect the candidate of their choice. Plan E2106 takes minority communities from District 6 and pairs them with the predominantly Anglo Montgomery County.

169. Latinos are sufficiently numerous and geographically compact to form a majority of the eligible voters in a SBOE district wholly contained in Harris County while still maintaining SBOE District 4 in roughly its current form. Plans were presented to the Legislature which would have accomplished this, but they were not adopted.

E. There is significant racial and language-based polarization in the challenged districts.

170. On information and belief, voting is polarized between Anglo and Latino voters at levels which are legally significant in the regions described in paragraphs 86-169 above.

171. On information and belief, voting is even further polarized as between Anglo and Spanish-language voters at levels which are legally significant in the regions described in paragraphs 86-169 above.

172. Anglo bloc voting in the regions detailed in paragraphs 86-169 above is sufficient to prevent cohesive Latino and/or Spanish language voters from having an equal opportunity to elect the candidates of their choice in those regions under the adopted Plans.

F. Under the Totality of the Circumstances, The Political Process Is Not Equally Open to Latinos and Spanish Speakers in CD 23 and Surrounding Areas, and Intentional Racial Discrimination Is Evident.

1. Latinos are under-represented in the Texas House, Texas Senate, and Texas Congressional Delegation both in the benchmark plans and the newly enrolled plans.

173. Latinos make up approximately 30% of the Citizen Voting Age Population (CVAP) in Texas.

174. Under Plan C2193, Latinos would only comprise a majority of the CVAP in 7 out of 38 districts (18.4%), falling over 4 seats short of proportional representation.

175. Under the recently enacted plan for the Texas House of Representatives, Latinos would only comprise a majority of the CVAP in 30 out of 150 districts (20%), falling 15 seats short of proportional representation.

176. Under the recently enacted plan for the Texas State Senate, Latinos would only comprise a majority of the CVAP in 7 out of 31 districts (22.6%), falling over 2 seats short of proportional representation.

177. Under the recently enacted plan for the Texas State Board of Education, Latinos would only comprise a majority of the CVAP in 3 out of 15 districts (20%), falling over 1 seat short of proportional representation.

178. It is geographically possible for Latinos to comprise a reasonably compact majority of the CVAP in at least 10 Congressional Districts, 43 Texas House Districts, 9 Texas Senate Districts, and 4 State Board of Education Districts.

179. On the whole, this severe and systematic under-representation has the effect of denying Latinos an equal opportunity as Anglos to engage in the political process and suggests an intent to produce such an effect.

180. While reducing Latino and Spanish language opportunities for representation, both Plan C2193 and Plan E2106 increase the number of Anglo majority Democratic districts.

2. Texas has a long and unfortunate history of intentional discrimination and Voting Rights Act violations, and continues to enforce laws and administer elections in ways that deprive Latinos and Spanish speakers of an equal opportunity to participate.

181. In addition to the redistricting-specific violations detailed in Paragraphs 86-169 above, official racial discrimination in the electoral process in Texas dates back to the formation of the State.

182. In the early Republic, Mexicans were prohibited from organizing political rallies or serving as election judges. Lichtman Report, *supra* at 9.

183. "After the Civil War, in 1866, an all-white constitutional convention prohibited freed slaves from voting, holding office, or serving on juries." *Id.* at 18.

184. Texas instituted post-Reconstruction Jim Crow laws such as the poll tax, racial gerrymandering, restrictive voter registration laws, and the all-white Democratic primary, to prevent minorities from participating in the political process. *Id.* The U.S. Supreme Court struck down Texas's white primaries as violations of the Fifteenth Amendment in *Nixon v. Herndon*, 273 U.S. 536 (1927), and *Smith v. Allwright*, 321 U.S. 649 (1944).

185. In the 1964 election, Republican operatives circulated false information in Black neighborhoods in Houston indicating that authorities could arrest voters who had an outstanding parking ticket or traffic conviction. Lichtman Report at 18-19. Similar tactics were deployed throughout the decades in South Texas to discourage Latinos from voting. *See* Texas Civil Rights Project, *Opening the Floodgates for Racial Intimidation, Disenfranchisement, and Violence by Expanding Poll Watcher Authority* (2018), https://txcivilrights.org/wp-content/uploads/2021/05/TCRP-Poll-Watcher-Report.pdf.

186. After Texas's poll tax was struck down as unconstitutional in 1966, Texas passed a new law requiring voters to re-register every year. The law had a substantial disenfranchising effect

on minority voters and was struck down as unconstitutional in 1974. *Beare v. Briscoe*, 498 F.2d 244, 247–48 (5th Cir. 1974).

187. A federal court found that the 2011 Texas Legislature passed SB 14, a voter ID law, with racially discriminatory intent. *See Veasey v. Perry*, 71 F. Supp. 3d 627, 702-03 (W.D. Tex. 2014) ("*Veasey I*"); *Veasey v. Abbott*, 249 F. Supp. 3d 868, 875-76 (S.D. Tex. 2017) ("*Veasey III*"). SB14 has been deemed among the most restrictive voter ID laws in the country.

188. "Minorities continue to have to overcome fear and intimidation when they vote," including in-person harassment at the polls to suppress minority participation. *Veasey I* at 71 F. Supp. 3d at 636-37; *see also Rodriguez v. Harris Cnty.*, 964 F. Supp. 2d 686, 783 (S.D. Tex. 2013) (describing poll workers being hostile to Latinos, depriving them of the opportunity to bring an assistant with them, and requiring them to show driver's licenses to vote even before Texas made that a legal requirement).

189. In 2016, the Fifth Circuit held that a Texas law limiting who could provide foreign-language voters with assistance violated the Voting Rights Act. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 614 (5th Cir. 2017).

190. Numerous counties in CD 23 and throughout the state have failed to provide adequate Spanish language voting materials and information, in apparent violation of the Voting Rights Act, including at least as recently as 2016.

191. In 2019, the Texas Secretary of State attempted to purge nearly 100,000 registered voters from the voter rolls despite being made aware that the process for identifying voters for removal targeted eligible voters who were naturalized citizens. *Tex. League of United Latin Am. Citizens v. Whitley,* CV SA-19-CA-074-FB, 2019 WL 7938511, at *2 (W.D. Tex. Feb. 27, 2019). The individuals who were affected by this attempted purge were overwhelmingly non-Anglo, and

mostly of Latino origin. A court had to enjoin the State from proceeding with this purge, *id.*, and ultimately the State settled the matter.

192. Since the end of preclearance under the Voting Rights Act, Texas has led the nation in polling place closures. During the 2020 General Election, a Bexar County District Court Judge enjoined the County from further closing polling places because "the additional closure of polling locations in 2020 will negatively impact African American and Hispanic voters in those precincts." Order, *Texas Organizing Project v. Callanen*, NO. 2020-CI-19387 (Bexar County 45th Judicial District October 13, 2020).

193. During the 87th Regular and Special Sessions, the Legislature repeatedly tried, and ultimately after much debate and controversy succeeded, in passing a new law, S.B. 1, 2021 87th Leg., 2d Spec. Sess. (Tex. 2021). Senate Bill 1 imposes numerous restrictions on the right to vote in spite of demonstrably disparate impacts on communities of color and foreign language voters. These new measures include making the process for receiving language assistance for in person and mail ballot voting significantly more onerous, restricting who can provide language assistance for voters, eliminating voting practices which have been disproportionately utilized by minority voters, such as extended hours and drive-thru voting, severely limiting Sunday voting hours which would curtail the historical African American practice of post-church "souls to the polls" mobilization, increasing the authority of poll watchers to interfere with voters and the election process despite evidence of racial targeting and intimidation. There is pending litigation over the Bill.

3. The Texas Legislature is not redistricting in a vacuum, and the racial dynamics of modern political appeals villainizing Latinos, and intimidation tactics meant to discourage their participation, have proliferated in recent years.

194. Increasingly in recent years, politics have become racialized, particularly when it comes to

communities which have large immigrant populations—namely Latino and AAPI communities. Although immigration debates naturally have a racial and ethnic component, the political messaging around the issues has unnecessarily inflamed racial resentment, such as using stock imagery of brown-skinned individuals with tattoos or in rafts to raise the specter of an "illegal invasion."

195. Lieutenant Governor Dan Patrick has repeatedly publicly echoed a white supremacist conspiracy theory, "the Great Replacement theory," that non-Anglo undocumented immigrants are being ushered into the United States so that they can eventually help Democrats win elections.

196. Then-candidate Donald Trump infamously started his campaign with comments which were widely regarded as stirring up anti-Latino sentiment, stating: "When Mexico sends its people, they're not sending their best. . . . They're sending people that have lots of problems, and they're bringing those problems with us [sic]. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people."

197. Then-candidate Trump argued in 2016 that Judge Gonzalo Curiel — who was overseeing a lawsuit involving one of Donald Trump's business ventures — should recuse himself from the case because of his Mexican heritage and membership in a Latino lawyers association, implying that Latinos and immigrants are one and the same and incapable of unbiased legal reasoning.

198. President Trump tweeted that several minority members of Congress — Reps. Alexandria Ocasio-Cortez (D-NY), Ayanna Pressley (D-MA), Ilhan Omar (D-MN), and Rashida Tlaib (D-MI) — are "from countries whose governments are a complete and total catastrophe" and that they should "go back" to those countries. This echoed a common racist trope of saying that Black and Brown people, particularly immigrants, should go back to their countries of origin. Three of the four members of Congress whom Trump targeted were born in the US.

199. October 16, 2018 America First Action sponsored a Facebook ad alleging that candidate Colin Allred "is essentially extending an open invitation to not only the 11 million illegal immigrants already in the United States, but also to those who haven't gotten here, yet." The ad featured stock images of Brown-skinned individuals in rafts, equating Latinos with an illegal invasion of the country.

200. September 19, 2018 Ted Cruz posted a video on Twitter that highlighted three undocumented immigrants from Latin America who were convicted of violent crimes, but no immigrants from any other regions or races.

201. In the 2020 race for Galveston County Tax Assessor, one candidate sent a mailer with a stock image of a Latino man with a tattooed face and tattooed bare chest, standing arms crossed. The words accompanying the photo are meant to create fear about the man and what he represents: "Texans can thank Cheryl Johnson for having illegal immigrants vote in this November's Election!"

202. A paid social media ad from the Donald Trump war room account featured stock photos of brown-skinned men with tattoos and the phrase "I'm on Team Joe," villainizing Latinos and implying that Latino gang members support Joe Biden.

203. President Trump called the SARS-CoV-2 coronavirus the "Chinese virus" and "kung flu" — racist terms that tap into xenophobia.

204. Texas Congressman Jodey Arrington posted a paid social media ad calling to hold China accountable for coronavirus.

205. Members of the Texas Senate called into question a research paper on the Coronavirus because its co-authors included two individuals with Asian surnames, despite the fact that they were affiliated with Texas A&M University.

206. Texas Agriculture Commissioner Sid Miller has been repeatedly noted as posting anti-Semitic tropes on social media.

207. Not only has this rhetoric led to racial polarization in the electorate, it has led to actual physical violence against Latinos, Asians, and non-English speakers, and been openly lauded by white supremacists. Richard Spencer, a leader of the alt-right movement and the 2017 Charlottesville Unite the Right rally which ended in violence, has stated: "There is no question that Charlottesville wouldn't have occurred without Trump. It really was because of his campaign and this new potential for a nationalist candidate who was resonating with the public in a very intense way. The alt-right found something in Trump. He changed the paradigm and made this kind of public presence of the alt-right possible."

208. David Duke, a former Ku Klux Klan leader, who participated in the Charlottesville rally, called the rally a "turning point" for his own movement, which seeks to "fulfill the promises of Donald Trump."

209. On August 3, 2019, a man from Allen, Texas drove to El Paso for the express purpose of killing Latinos and proceeded to kill 23 and injure 23 others. The shooter, echoing the same Great Replacement theory referenced above, wrote prior to the shooting: "The heavy Hispanic population in Texas will make us a Democrat stronghold," he wrote. "Losing Texas and a few other states with heavy Hispanic population to the Democrats is all it would take for them to win nearly every presidential election."

210. Incidents of Anti-Asian violence have proliferated in the last two years. In Texas, these have included stabbings and vandalism.

211. Latino and foreign-language voters have faced intimidation and baseless challenges to their voter registrations at the polls in recent years, including poll watchers and third-parties

questioning Latino and Asian-appearing voters and attempting to investigate their identification documents.

212. In the 2018 General Election, the Fort Bend Republican Party published an ad in the India Herald in advance of the local Hindu community's annual festival. It featured the Hindu god Ganesha, who is depicted in the form of an elephant, and reads, "Would you worship an elephant or a donkey?"

213. October 16, 2018, America First Action sponsored a Facebook ad against candidate Colin Allred, claiming that he did not support the Second Amendment. The ad includes a picture of a white woman with a hand over her face appearing to belong to a person of color. Representative Allred's name appears above the image. Another picture shows a white woman engaged in target practice with a handgun, with Representative Pete Sessions's name above it.

214. The Miami Herald reported that the National Republican Congressional Committee appeared to have darkened a photograph of NFL quarterback Colin Kaepernick that it had purchased from the Herald, which it then disseminated in a fundraising mailer.

215. Most recently, Texas Lieutenant Governor Dan Patrick made headlines for stating that African Americans were disproportionately responsible for the spread of Coronavirus and equating African Americans with Democrats in order to then blame the spread on Democrats.

4. The Texas legislature applied traditional redistricting principles unequally -- employing them only when it was useful to protect the interests of Anglo majority communities and incumbents.

216. Amendments offered on the grounds of preserving communities of interest were accepted when the communities being protected were Anglo majority, but similar concerns about splitting minority communities were ignored. For example, an amendment to Plan H2316 was accepted in the House Committee on the grounds that it preserved the communities of Belton and Temple in

Bell County—both majority Anglo—yet when amendments were offered which would have preserved both the Belton/Temple communities and the majority minority community of Killeen in Western Bell County, the amendments were not accepted.

217. When an amendment was offered by a legislator which would have created new minority opportunity districts but affected other members' districts without their consent, those amendments were rejected on the grounds that they affected other members' districts. When amendments were offered which weakened minority opportunity districts and affected other members' districts without their consent, those amendments were accepted over the objections of the affected members.

218. Population deviations in Plan H2316 were severely manipulated in West Texas to overpopulate every Latino opportunity district and underpopulate every Anglo controlled district, as detailed in Paragraphs 87-102 above. These deviation manipulations are particularly egregious when one takes into account how prison populations are counted in Texas. Despite not counting prisoners as residents of their prison facility for any other legal purpose—for instance redistricting of county and local political subdivisions, voter registration, residence for taxation purposes—Texas still counts prisoners at their facility for purposes of allocating population in the redistricting context. The Texas prison population is disproportionately non-Anglo. On information and belief, at least 3 Anglo majority West Texas districts would not be large enough to fall within the acceptable population deviation were it not for their sizable non-voting, majority minority prison populations.

219. Texas's County Line Rule, articulated in Article III Section 26 of the Texas Constitution, was used as a reason to object to amendments which would have created new minority opportunity districts. Yet Plan H2316 itself breaks county lines 19 times and clearly violates the

plain language of the County Line Rule in splitting Cameron County in two different directions.

220. As detailed in Paragraph 77 above, minority members' concerns about insufficient time to review amendments were ignored, yet their own amendments were rejected on the grounds that there had been insufficient time to review them.

5. The Legislature made race a predominant factor in the drawing of certain districts without a good faith effort to comply with the Voting Rights Act and without any other compelling governmental interest.

221. The shape and composition of many districts—in particular the Texas House, Congressional, and SBOE districts in Harris County, and the Congressional districts in the DFW metroplex—are inexplicable except on the grounds of race.

222. Chairman Hunter repeatedly centered race in his explanations of proposed plans, but used inappropriate metrics in his assessment of their effects on minority communities. In his Committee layout of the Bill, he opened by stating:

> My view is that the correct analysis in reviewing majority minority districts is to look at African-American and Hispanic VAP, voting age population, which shows that the plan, as we call it, actually creates a new African-American districts, and 2 new Hispanic HVAP districts from the benchmark. . . . Some summary points: There's 3 new, under my bill, majority minority districts. There are 38 majority minority HVAP, Hispanic, districts versus 36 under the benchmark, that's plus 2. . . . then we have 2 majority minority African American districts versus 1 under the benchmark. and by the way, HD 111, an African-American majority district, it was 50.4% BVAP and due to the 2020 census, dropped to 47%. the bill before you has brought it back to 54.7%.

223. Again in closing, he stated: "summary: 4 new majority minority districts, 3 Hispanic, 1 African-American."

224. Then again on the House floor, Chair Hunter repeatedly emphasized the creation of new VAP majority minority districts and the propriety of considering VAP without being able to discuss details of any consideration of electoral performance or other substantive analysis. He did

this for both his own House plan as well as the Congressional and SBOE plans which originated in the Senate.

225. Amendments were offered, and in some cases accepted, on the explicit grounds that they made districts hit certain arbitrary racial metrics without substantive analysis of if doing so was relevant to a Voting Rights Act violation.

226. Amendments were rejected if they crossed certain arbitrary thresholds—for instance, lowering BVAP below 50%—without any substantive analysis of if the Voting Rights Act required maintaining these particular demographic metrics.

227. SBOE District 6 is 50.3% non-Anglo VAP, just barely making it a majority minority district. Given the Legislature's improper focus on VAP, this raises the inference that the Legislature arbitrarily kept it at just over 50% non-Anglo VAP without any analysis of whether it would perform as a Voting Rights Act opportunity district.

228. On information and belief, certain legislators from Harris County centered racial considerations in their drawing of proposed districts and amendments to Plan H2316, openly discussing these matters with other members of the delegation and House leadership, specifically focusing on the level of Anglo voting age population in particular districts which did not have Voting Rights Act implications.

229. The shapes and interplay of Congressional Districts 6 and 33 are also inexplicable except on the grounds of race.

230. An amendment which would have created a new, Voting Rights Act-compliant Latino opportunity district in Dallas County was rejected on the grounds that it lowered the Latino population in the coalition-type CD 33. No substantive analysis was provided as to why creating a new Latino majority district in Dallas County at the expense of slightly reducing the Latino

population in CD 33 presented a problem under the Voting Rights Act.

V. Legal Claims

Count I

Intentional Racial Discrimination Violating the Fourteenth and Fifteenth Amendments to the United States Constitution

231. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

232. Texas House Plan H2316, Congressional Plan C2193, and SBOE Plan E2106 discriminate against Plaintiff on the basis of race and national origin in violation of the 14th and 15th Amendments to the U.S. Constitution.

Count II

Violations of Section 2 of the Voting Rights Act

233. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

234. Plaintiff's cause of action arises under Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973. Defendants are in violation of the Voting Rights Act because they: have failed to provide sufficient Latino and minority opportunity districts in Texas House Plan H2316, Congressional Plan C2193, and SBOE Plan E2106 in the face of racial bloc voting; employed redistricting gerrymandering techniques such as packing and cracking of minority communities to limit and avoid drawing Latino and minority opportunity districts; used redistricting criteria, such as the "whole county" rule inconsistently and as an unjustifiable pretext to limit and avoid drawing Latino and minority opportunity districts; manipulated population deviations and leveraged a known undercount to further reduce electoral opportunities. Defendants' elimination and weakening of existing districts, failure to draw additional Latino and minority opportunity districts, use of racial gerrymandering techniques, pretextual and inconsistent use of traditional redistricting criteria, and manipulation of population data

collectively results in a violation of Plaintiff's rights as secured by Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

235. Taken together with the totality of the circumstances, Texas House Plan H2316, Congressional Plan C2193, and SBOE Plan E2106 do not afford plaintiff's members an equal opportunity to participate in the political process and to elect representatives of their choice, and deny plaintiff's members the right to vote in elections without distinction of race, color, or membership in a language minority group.

Count III

Unconstitutional Racial Gerrymandering in Violation of the Fourteenth Amendment to the United States Constitution

236. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

237. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution bars racial gerrymandering, or the "intentional[] assigning [of] citizens to a district on the basis of race without sufficient justification." *Shaw v. Reno*, 509 U.S. 630 (1993). Texas House Plan H2316, Congressional Plan 2193, and SBOE Plan E2106 violate these principles because races was a predominant factor in drawing the districts previously mentioned in Paragraphs 86-169. Despite some members of the Legislatures proclaiming that race was not a factor in the drawing of any redistricting maps, race appears to be the only factor that can explain many of the redistricting outcomes. When the Legislature explicitly relied on race in redistricting, it often did so under an incorrect legal understanding.

238. In numerous instances, Texas violates traditional redistricting guidelines—such as compactness, contiguity, and preservation of political subdivisions and communities of interest—and the only explanation can be based on race.

Count IV

Violation of the Fourteenth Amendment's One Person-One Vote Requirement

239. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

240. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution "requires that the seats in both houses of a bicameral state legislature [] be apportioned on a population basis." *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). Although, in the context of state legislative districts, traditionally a deviation of up to 10% from the most underpopulated to the most overpopulated district has been afforded a presumption of constitutional validity, these deviations cannot be leveraged for impermissible purposes, including racial or even mere partisan advantages. *See Cox v. Larios*, 542 U.S. 947 (2004).

241. Texas adopted House Plan H2316 and it was signed into law on October 25, 2021. House Plan H2316 has a total or "top to bottom" deviation of 9.98%. Defendants achieved this deviation by dramatically over-populating Latino majority districts and dramatically under-populating surrounding Anglo majority districts to eliminate Latino majority districts while preserving Anglo districts. For example, the configuration and systematic overpopulation of Texas House Districts in El Paso, in particular the consolidation of House Districts 76 and 77, dilutes the voting power of cohesive Latino communities. There is no legal justification for maintaining a deviation of 9.98% for these purposes. The deviation in House Plan H2316 violates the one person, one vote principle of the Fourteenth Amendment of the U.S. Constitution.

VI. Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

a. Declare that House Bill 1, Senate Bill 6, and Senate Bill 7 violate Section 2 of the Voting Rights Act as to the districts and regions described in this Complaint;

b. Declare that House Bill 1, Senate Bill 6, and Senate Bill 7 are unconstitutional and violate the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment because they were drawn with racially discriminatory intent;

c. Declare that House Bill 1, Senate Bill 6, and Senate Bill 7 violate the Fourteenth Amendment's one person-one vote principle by manipulating population deviations for impermissible purposes as described in this Complaint;

d. Declare that House Bill 1, Senate Bill 6, and Senate Bill 7 violate the Fourteenth and Fifteenth Amendment by making race a predominant factor in the drawing of certain districts without a compelling justification for doing so;

e. Permanently enjoin Defendants from calling, holding, supervising or certifying any elections under Texas House Plan H2316, Congressional Plan C2193, and SBOE Plan E2106. Plaintiff has no adequate remedy at law other than the judicial relief sought herein, and unless the Defendants are enjoined from using the foregoing plans, plaintiff and plaintiff's members will be irreparably harmed by the continued violation of their statutory and constitutional rights;

f. Set a reasonable deadline for state authorities to enact or adopt redistrict plans for Texas House, Congress and SBOE that do not dilute, cancel out, or minimize the voting strength of Latino voters;

g. If state authorities fail to enact or adopt valid redistricting plans by the Court's deadline, order new redistricting plans for Texas House, Congress and SBOE that do not dilute, cancel out or minimize the voting strength of Latino voters;

h. Adjudge all costs against Defendants, including reasonable attorneys' fees;

i. Retain jurisdiction to render any and all further orders that this Court may enter; and

j. Grant any and all further relief to which Plaintiff may show itself to be entitled.

Dated: November 3, 2021.

Respectfully submitted,

SOMMERMAN, MCCAFFITY,
QUESADA &GEISLER, L.L.P.

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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL., *Plaintiffs*, v. GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS SUED IN HIS OFFICIAL CAPACITY; AND JOHN SCOTT, SECRETARY OF STATE OF TEXAS OF TEXAS SUED IN HIS OFFICIAL CAPACITY, *Defendants*.	§ § § § § § § § § § § § § § §	Case No. 3:21-cv-259-DCG-JES-JVB

EXHIBIT G

ORIGINAL COMPLAINT, *BROOKS V. ABBOTT*

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ROY CHARLES BROOKS, FELIPE GUTIERREZ, PHYLLIS GOINES, EVA BONILLA, CLARA FAULKNER, DEBORAH SPELL, and BEVERLY POWELL, *Plaintiffs,* v. GREG ABBOTT, in his official capacity as Governor of Texas; JOHN SCOTT, in his official capacity as Secretary of State of Texas, *Defendants.*	Case No.: 1:21-cv-00991 THREE-JUDGE COURT REQUESTED

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

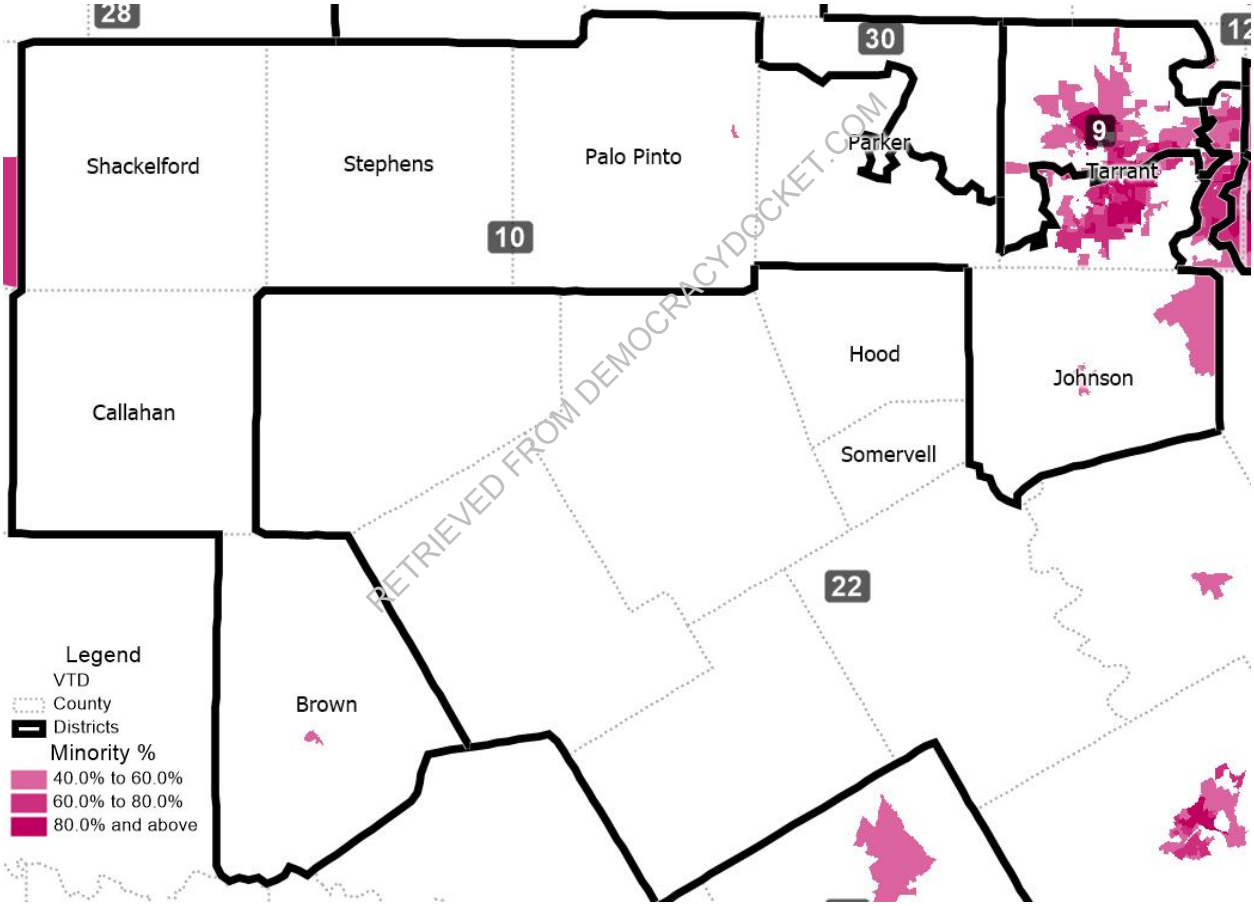
Pursuant to 42 U.S.C. § 1983 and 52 U.S.C. § 10301, Plaintiffs allege as follows:

INTRODUCTION

1. In each decennial redistricting cycle in modern history, Texas has enacted plans that federal courts have ruled to be racially discriminatory in intent and/or effect. Like clockwork, Texas has done so again.

2. Remarkably, Texas has enacted the *same* racially discriminatory scheme to dismantle Senate District 10 ("SD10") as a performing crossover district for Tarrant County's minority voters that a federal court declared intentionally discriminatory last decade. With knowledge of that federal court ruling, and with full knowledge of where Tarrant County's Black, Latino, and Asian voters reside, the mapdrawers acted with racially discriminatory intent in drawing Plan S2168, which cracks apart Tarrant County's Black, Latino, and Asian voters and

submerges them in Anglo-dominated districts in which they will have no opportunity to elect their preferred candidates. As the map below show, the legislature purposefully cracked apart Tarrant County's minority voters, shown in pink shading, and splintered them across three senate districts in which they will be overpowered by Anglo bloc-voting against their candidate of choice. Those districts take tortured shapes, as they did when the federal court invalidated them last decade. Indeed, the legislature has reprised the infamous "lightning bolt" from its 2011 Tarrant County congressional plan, inverting it this time to come from the south.



3. Since the federal court last enjoined this same scheme just nine years ago, SD10's Anglo population has fallen nearly ten points, making this latest attack on SD10's minority population even more egregious. Indeed, 57% of Tarrant County's population is non-Anglo, and

53% of its voting-age population is non-Anglo. Yet in this majority-minority county with over 2 million residents, SB4 includes ***zero*** districts in which Tarrant County's minority voters have any opportunity to elect their candidate of choice.

4. Every member of the legislature was made aware of this intentionally racially discriminatory scheme, and the adverse effect it would have on the electoral opportunity for Tarrant County's minority voters. Each member saw maps showing the details of the cracking of minority populations in SD10, and each received and heard detailed demographic information about the discriminatory changes to SD10. A floor amendment in the senate to restore SD10 to its benchmark configuration received bipartisan support—including the vote of Sen. Kel Seliger (R), who chaired the redistricting committee last decade when the federal court ordered the restoration of SD10—but nevertheless failed to pass.

5. The legislature knew what it was doing, and intended the discriminatory result it achieved by cracking SD10's minority voters and submerging them in Anglo-controlled districts.

6. In addition to engaging in intentional racial discrimination by dismantling SD10, the legislature has diluted the votes of Tarrant County's Black and Latino voters by failing to create a new majority Black/Latino coalition senate district in Tarrant County as Section 2 of the Voting Rights Act ("VRA") requires.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1357, 42 U.S.C. § 1983; and pursuant to 52 U.S.C. § 10301 *et seq*. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, as well as by Rules 57 and 65 of the Federal Rules of Civil Procedure. Jurisdiction for Plaintiffs' claim for costs and attorneys' fees' is based upon Fed. R. Civ. P. 54, 42 U.S.C. § 1988, and 52 U.S.C. § 10310(e). Venue is proper in this

district pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events and omissions giving rise to the claims in this case occurred in the Western District of Texas and Defendants reside in this district.

PARTIES

8. Plaintiffs challenging Senate Plan S2168 are citizens and registered voters residing in benchmark SD10 and SD22. Plaintiffs have standing to bring this action under 42 U.S.C. § 1983 to redress injuries suffered through the deprivation, under color of state law, of rights secured by the Voting Rights Act of 1965, 52 U.S.C. § 10301 et seq., and the U.S. Constitution, as well as standing to bring this action directly under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

9. Plaintiff Roy Charles Brooks is a Black citizen and registered voter. He resides in benchmark SD10 and under Plan S2168 resides in SD10.

10. Plaintiff Felipe Gutierrez is a Latino citizen and registered voter. He resides in benchmark SD10 and under Plan S2168 resides in SD9.

11. Plaintiff Phyllis Goines is a Black citizen and registered voter. She resides in benchmark SD10 and under Plan S2168 resides in SD9.

12. Plaintiff Eva Bonilla is a Latina citizen and registered voter. She resides in benchmark SD10 and under Plan S2168 resides in SD9.

13. Plaintiff Clara Faulkner is a Black citizen and registered voter. She resides in benchmark SD10 and under Plan S2168 resides in SD10.

14. Plaintiff Deborah Spell is a Black citizen and registered voter. She resides in benchmark SD22 and under Plan S2168 resides in SD22.

15. Plaintiff Beverly Powell is the incumbent state senator in SD10 and is the candidate of choice of the district's minority population. She resides in benchmark SD10 and under Plan S2168 resides in SD10.

16. Defendant Greg Abbott is sued in his official capacity as the Governor of the State of Texas. Under Texas election laws, Governor Abbott "shall order . . . each general election for officers of the state government" by proclamation. Tex. Elec. Code § 3.003.

17. Defendant John Scott is sued in his official capacity as the Secretary of State of Texas. Mr. Scott is "the chief election officers of the state," Tex. Elec. Code § 31.001(a), and is required to "obtain and maintain uniformity in the application, operation, and interpretation of" Texas election laws, such as by issuing directives and instructions to all state and local authorities having duties in the administration of these laws, *id.* § 31.003. As Secretary of State, Mr. Scott is empowered to remedy voting rights violations by ordering any official to correct conduct that "impedes the free exercise of a citizen's voting rights." *Id.* § 31.005(b). Mr. Scott prescribes the forms used to obtain a place on a party's general primary ballot, *see id.* §§ 141.031, 172.021-.024. A political party wishing to hold a primary must deliver written notice to Mr. Scott noting its intent to hold a primary election, *id.* § 172.002, and must certify to Mr. Scott the name of each candidate who has qualified for placement on the general primary election ballot, *id.* § 172.028. Finally, the adopted redistricting plans are filed with the Secretary of State to ensure that elections are conducted in accordance with those plans.

FACTS

Federal Court Declares 2011 Effort to Dismantle SD10 Intentionally Racially Discriminatory

18. In 2011, the legislature cracked SD10's minority population across three districts, ensuring that they would have no ability to elect their preferred candidates. Examining the

evidence, a three-judge federal court concluded that "the Senate Plan was enacted with discriminatory purpose as to SD 10." *United States v. Texas*, 887 F. Supp. 2d 133, 166 (D.D.C. 2012).

19. The court provide a detailed account of the fracturing, explaining that SD10 contained "almost all the traditional and growing minority neighborhoods of Tarrant County in and around Fort Worth, including the historic Northside Hispanic area, the growing Southside Hispanic area, and the predominantly Black areas of Southeast Fort Worth, Forest Hill, and Everman." *Id.* at 226 (citation omitted). The court explained that in the 2011 Plan, "[t]hese areas are broken apart and placed into Anglo-controlled districts." *Id.*

20. In particular, the court noted the "community known as the 'north side Latino community,' which [was] moved out of SD 10" in the 2011 Plan. *Id.* at 228.

21. The changes to SD10 in the 2011 Plan were not explainable by the need for population adjustments, the court reasoned, because SD10's deviation was "well within the population deviation accepted for redistricting" state legislative districts. *Id.* at 226.

22. The court noted that the mapdrawers knew the areas removed from SD10 were minority neighborhoods, and rejected the mapdrawers' contention that partisanship explained their decision to fracture SD10's minority population. *Id.* at 228-229. Concluding that the dismantling of SD10 was the product of intentional racial discrimination, the court noted that "[t]he dismantling of SD 10 will have a disparate and negative impact on minority groups in the District." *Id.* at 229.

23. On April 18, 2013, then-Attorney General Greg Abbott sent a letter to the House and Senate Redistricting Chairs, copying all committee members, explaining that "the D.C. court concluded that all three maps were tainted by evidence of discriminatory purpose" and "[t]hat is exactly why you should take action. The Legislature has both the opportunity and the obligation

to remove the specter of discrimination." Mr. Abbott advised the legislature "to adopt the court-drawn interim plans as the State's permanent redistricting maps," including the benchmark configuration of SD10.

24. Sen. Joan Huffman—the Chair of the Senate Redistricting Committee this year—was a member of the Senate Redistricting Committee in 2011 and 2013, received the letter from then-Attorney General Abbott, and was present at committee meetings in which the federal court's discriminatory intent ruling regarding SD10 was discussed. She voted to adopt Plan S172, which restored SD10 to its benchmark configuration, a bill that passed and was signed into law by then-Governor Rick Perry.

25. After the legislature repealed the 2011 Plan, acquiescing to the federal court's intentional discrimination ruling, the federal court declared then-Senator Davis the prevailing party and ordered Texas to pay her (and her co-litigants') attorneys' fees in excess of $1 million—a ruling that was upheld on appeal and which the Supreme Court declined to disturb.

2020 Census

26. Under 13 U.S.C. § 141, commonly referred to as Public Law 94-171 or P.L. 94-171, the Secretary of Commerce must complete, report, and transmit to each state the detailed tabulations of population for specific geographic areas within each state. States ordinarily use the P.L. 94-171 data to redraw district lines.

27. States, including Texas, received the P.L. 94-171 dated on August 12, 2021.

28. The 2020 Census revealed that Texas's population grew by roughly 4 million people from 2010 to 2020, and this growth was driven almost exclusively by minorities. Minorities accounted for ***95%*** of the roughly 4 million new Texans.

29. Texas is a majority-minority state. The 2020 Census shows that 39.7% of Texans are Anglo, 39.3% are Hispanic, 13.6% are Black, and 6.3% are Asian. Minorities also constitute a majority—56.8%—of Texas's voting age population.

30. The 2020 Census also revealed explosive growth among Tarrant County's Black, Hispanic, and Asian populations. Tarrant County has a total population of 2,110,640 persons, of whom 42.9% are Anglo, 29.4% are Hispanic, 19.2% are Black, and 7.2% are Asian.

31. As of the 2020 Census, Tarrant County's voting age population is 46.9% Anglo, 26.3% Hispanic, 17.9% Black, and 7.1% Asian. This reflects a rapid growth in the minority share of Tarrant County's voting age population and a steep decline in the Anglo share of its voting age population. At the time of the 2010 Census, Tarrant County's voting age population was 56.6% Anglo, 22.9% Hispanic, 14.6% Black, and 5.3% Asian.

Benchmark SD10 Is a Performing Crossover District that Effectively Elects Minority Voters' Candidates of Choice

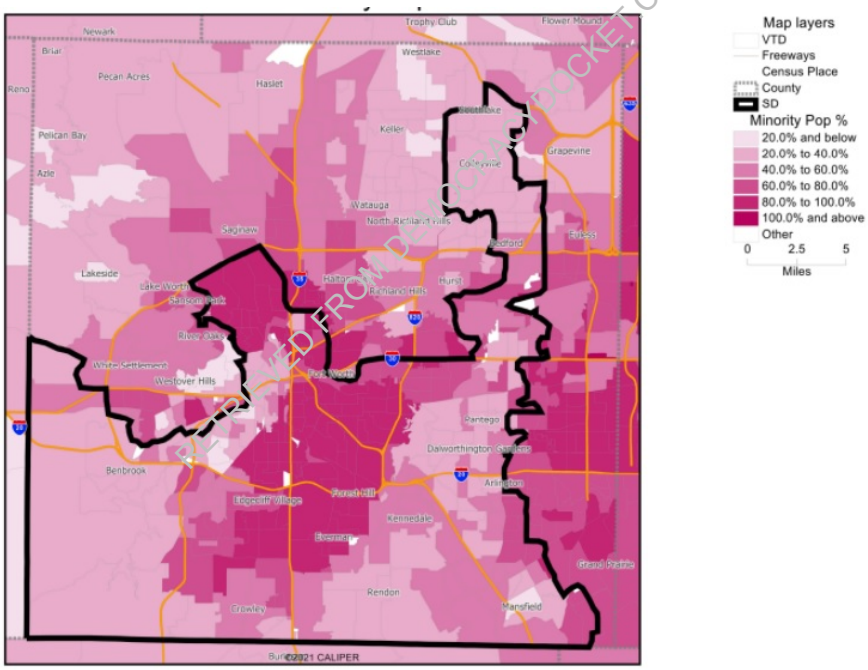
32. SD10 has existed in essentially the same configuration since 2001. The 2020 Census revealed that it had a population of 945,496 persons, just 5,318 above the ideal population. This translates to a 0.57% deviation—the fourth lowest among any senate district in the benchmark plan—and well within the legally permissible deviation.

33. The population deviations of the neighboring senate districts could have nearly perfectly offset one another, such that no changes to SD10 were needed to balance the population of any other district. For example, while benchmark SD8 was overpopulated by 6.16%, benchmark SD16 and SD23 were underpopulated by 1.42% and 5.64% respectively. Moreover, while benchmark SD12 was overpopulated by 15.55% and benchmark SD30 was overpopulated by 9.26%, those deviations could have been remedied by shifting population to neighboring SD28, which was underpopulated by 15.33% and SD31, which was underpopulated by 7.54%.

34. As of the 2010 Census—the data available when the federal court ruled the prior attempt to dismantle SD10 was unlawful racial discrimination—SD10's population was 47.6% Anglo, 28.9% Hispanic, and 19.2% Black. Its Anglo citizen voting age population ("CVAP") was 62.7%.

35. The 2020 Census revealed a large increase in minority population in SD10, and a corresponding decline in Anglo population. SD10's total population under the benchmark map is now 39.5% Anglo, 32.2% Hispanic, and 21.5% Black. Its Anglo CVAP has fallen to 53.8%.

36. The map below shows SD10's boundaries as they existed in the benchmark map and includes shading to show the areas where SD10's minority populations are concentrated.

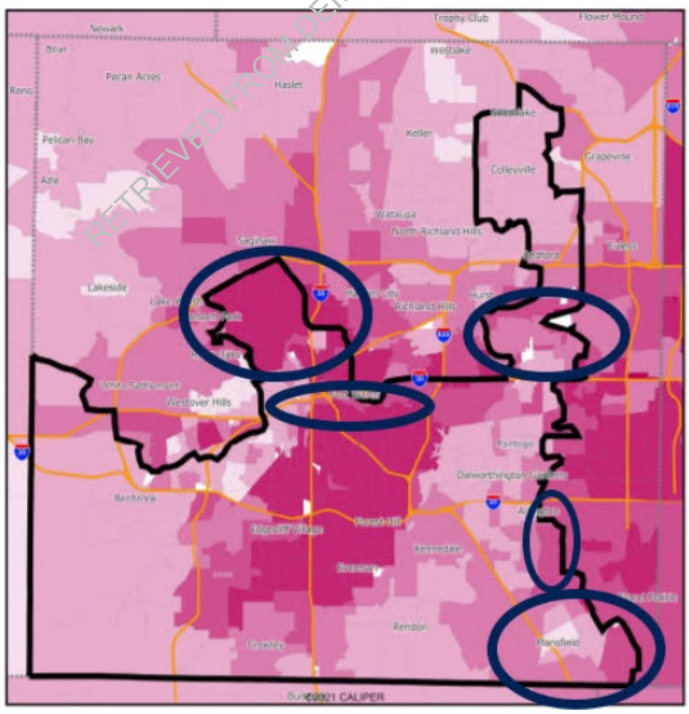


37. SD10 has performed as an effective crossover district in which its minority voters succeed, with some crossover Anglo support, in electing their candidates of choice. For example, then-Sen. Davis (D) won the district in 2008 and 2012, carrying the vast majority of SD10's minority voters. Likewise, Sen. Beverly Powell (D) won the district in 2018, with overwhelming support from the district's minority voters. In recent years, minority candidates of choice for

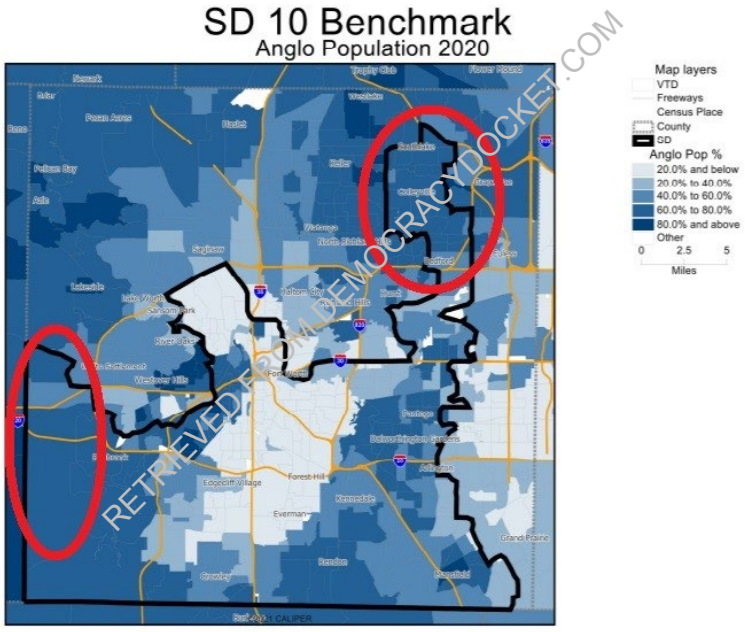
statewide or national office have likewise carried the district. In the 2020 presidential election, Biden (D) prevailed in SD10 over Trump (R) (53.1% to 45.4%), in the 2020 U.S. Senate election Hegar (D) prevailed in SD10 over Cornyn (R) (49.8% to 47.7%), in the 2018 U.S. Senate election O'Rourke (D) prevailed in SD10 over Cruz (R) (53.3% to 45.9%), in the 2018 Attorney General race Nelson (D) prevailed in SD10 over Paxton (R) (51.6% to 46.1%), and in the 2018 Lieutenant Governor election Collier (D) prevailed in SD10 over Patrick (R) (50.8% to 46.9%). Moreover, in the 2020 Tarrant County Sherriff race, Vance Keyes, a Black Democratic candidate, carried SD10 over Anglo Republican candidate Bill Waybourn by a margin of 51.2% to 48.8%.

Enacted SD10 Cracks Tarrant County's Minority Population

38. The enacted SD10 in Plan S2168 intentionally cracks Tarrant County's minority population in order to dismantle the district's status as a performing crossover district for minority voters. The map below shows, in circles, the minority population that is cleaved from SD10.

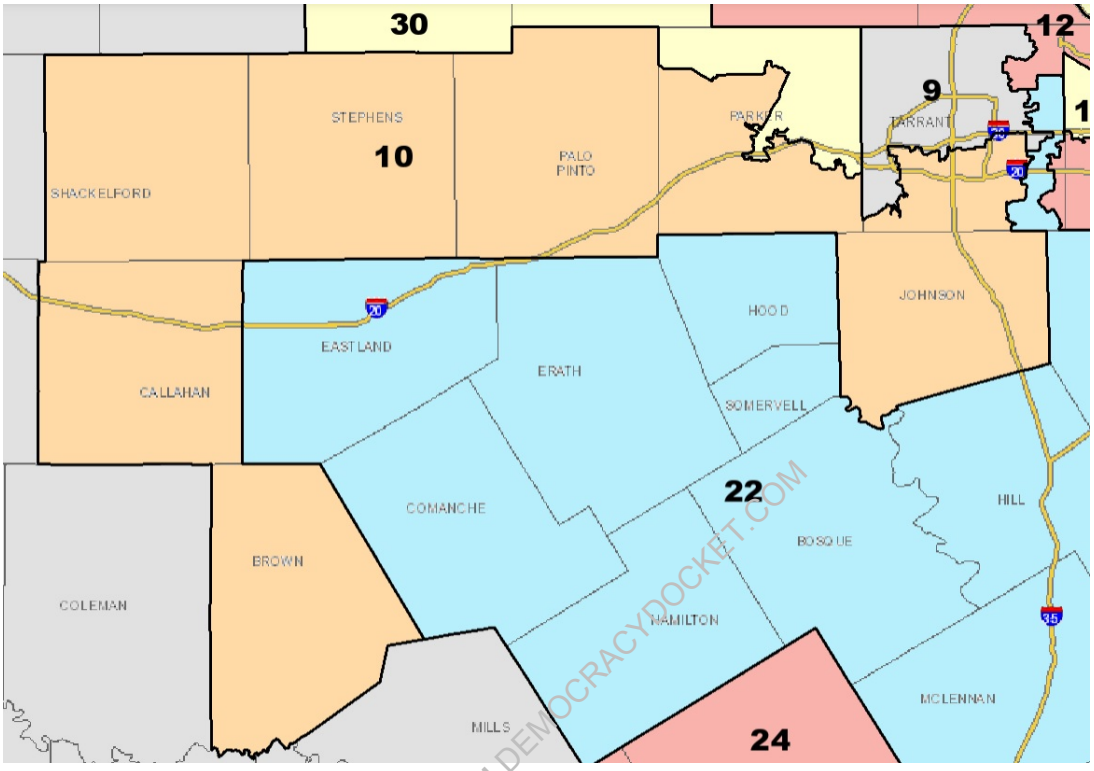


39. SB4 also eliminates Anglo crossover voters from SD10 and replaces them with Anglo voters from seven rural counties who vote almost entirely as a bloc against minority-preferred candidates. The maps below show in red circles the Anglo crossover voters from current SD10 who are eliminated from the district by SB4. In the areas shown in red, a portion of Anglo voters crossover to support minority-preferred candidates. Together, the areas shown in red have a roughly 78% Anglo CVAP, but the Anglo-preferred candidates generally receive vote percentages of 13-17 points below that number (*i.e.* Anglo-preferred candidates receive about 61-65% of the vote in the areas shown in red).

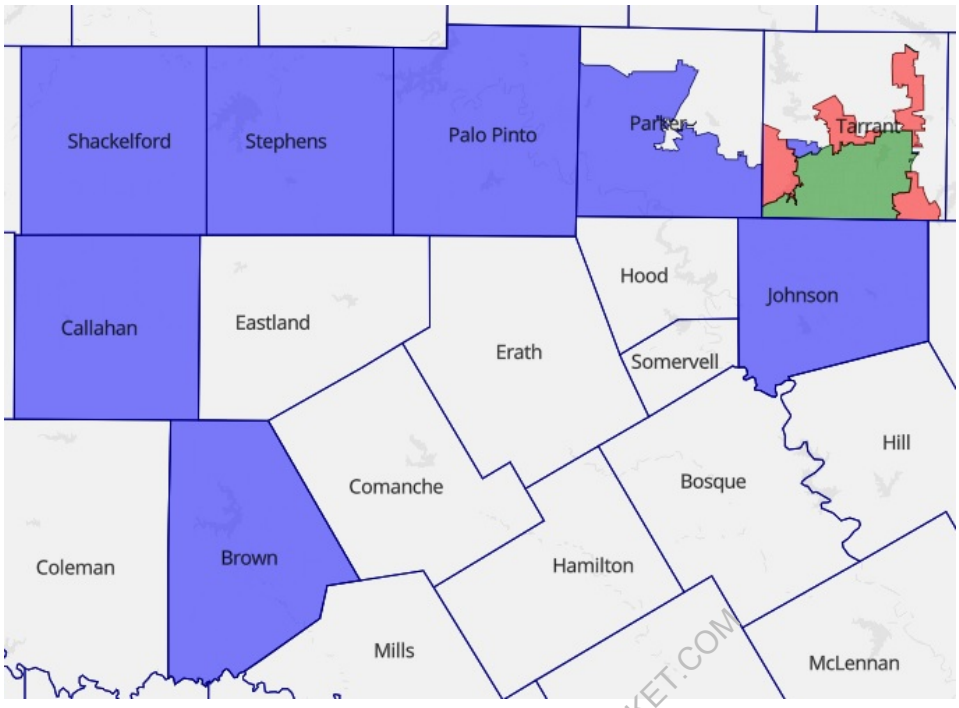


40. By contrast, SB4 eliminates these regions with Anglo crossover voters and replaces them (as well as the cleaved minority populations shown in the previous maps) with seven rural counties dominated by Anglo voters who engage in little to no crossover voting. The map below shows the enacted version of SD10. The seven rural counties added to SD10 have an 80.4% Anglo CVAP, and the Anglo-preferred candidates generally receive vote percentages nearly equal to the

Anglo share of CVAP (*i.e.*, Anglo-preferred candidates receive about 78.1-82.7% of the vote in those seven counties).



41. The map below compares three regions: (1) in green, the area in current SD10 that SB4 retains, (2) in red, the area in current SD10 that SB4 eliminates, and (3) in blue, the new area added to SD10 in SB4.



42. The green area contains 558,335 people, of whom 205,181 (36.7%) are Anglo, 182,243 (32.6%) are Hispanic, 140,270 (25.1%) are Black, and 26,019 (4.7%) are Asian.

43. The red area—the area removed from SD10—contains 387,161 people, of whom 168,721 (43.6%) are Anglo, 122,446 (31.6%) are Hispanic, 63,362 (16.4%) are Black, and 27,522 (7.1%) are Asian.

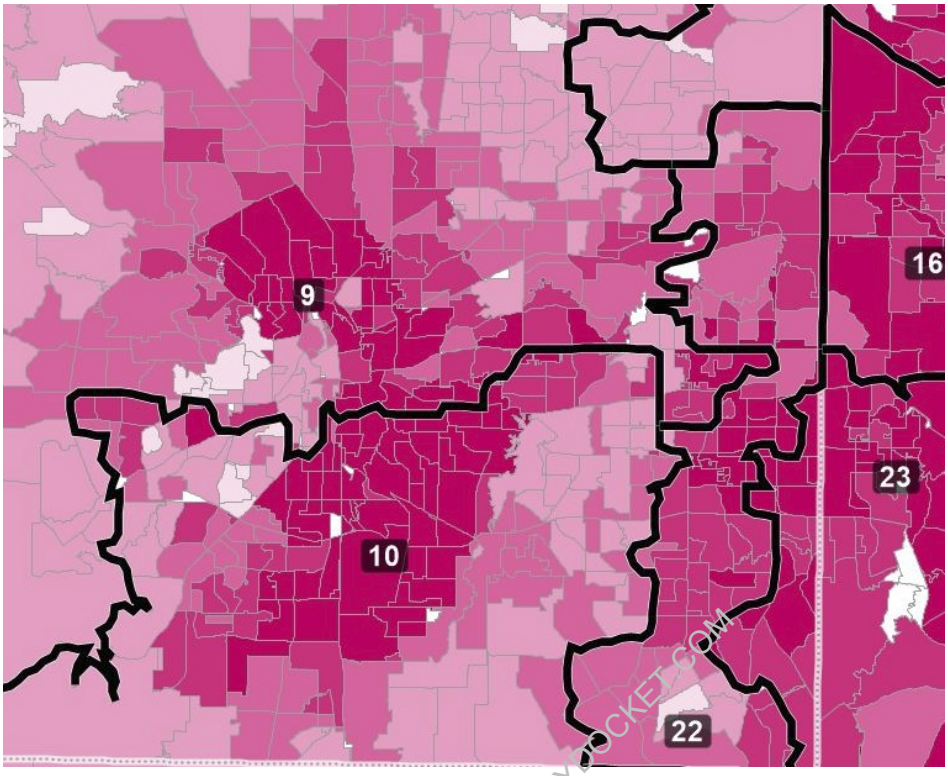
44. The blue area—the area added to SD10—contains 377,534 people, of whom 253,532 (67.2%) are Anglo, 81,604 (21.6%) are Hispanic, 25,138 (6.7%) are Black, and 5,734 (1.5%) are Asian.

45. The ***Anglo*** population share is 23.6 percentage points ***higher*** in the new area than in the eliminated area, the ***Hispanic*** population share is 10 percentage points ***lower*** in the new area than in the eliminated area, the ***Black*** population share is 9.7 percentage points ***lower*** in the new area than in the eliminated area, and the Asian population share is 5.6 percentage points ***lower*** in the new area than in the eliminated area.

46. SB4 thus increases SD10's Anglo population by 84,811, decreases its Hispanic population by 40,842, decreases its Black population by 38,224, and decreases is Asian population by 21,788.

47. The net effect of SB4's cracking of minority populations, its elimination of Anglo crossover voters, and its addition of near-uniformly bloc-voting Anglo voters is the intentional dismantling of a performing crossover district. Unlike current SD10, which performs to elect minority voters' candidates of choice, the new SD10 will reliably defeat minority voters' preferred candidates. For example, Trump (R) defeated Biden (D) in this district 57.2% to 41.4%, Cornyn (R) defeated Hegar (D) 58.5% to 39.1%, Cruz (R) defeated O'Rourke (D) 56.9% to 42.3%, Paxton (R) defeated Nelson (D) 56.4% to 41.3%, and Patrick (R) defeated Collier (D) 57.0% to 40.8%.

48. As the map below shows, the new senate districts for Tarrant County crack its minority populations into pieces, spreading them across three districts that will be controlled by Anglo voters. In a majority-minority county of over 2 million residents, minority voters will have their voices shut out completely, reducing from ***one*** to ***zero*** the number of senate districts in which they will be able to elect their candidate of choice.



The Dismantling of SD10 as a Performing Crossover District Was Intentionally Racially Discriminatory

49. These extreme changes to SD10—a district that had near perfect population equality and that was ordered in place last decade to remedy intentional racial discrimination—were done in order to destroy its performing crossover status. This was intentionally racially discriminatory against Tarrant County's minority voters.

50. The Chair of the Senate Redistricting Committee, Sen. Joan Huffman, served on the 2011 Senate Redistricting Committee that was responsible for the 2011 Senate Plan ruled by the federal court to be intentionally discriminatory as to SD10. She attended committee meetings in which witnesses testified about the particular neighborhoods within SD10 that had large concentrations of minority voters.

51. Chair Huffman acknowledged that she "probably" has read the federal court's order ruling SD10 to be the product of intentional racial discrimination, and she was well aware of the Court's ruling with respect to SD10.

52. Chair Huffman received the April 18, 2013 letter from then-Attorney General Abbott acknowledging the federal court's ruling that SD10 was the product of intentional racial discrimination and urging the committee to remedy that violation by adopting the benchmark configuration of SD10 that reunited its minority population.

53. Chair Huffman served on the 2013 Senate Redistricting Committee and attended meetings in which the federal court's ruling that SD10 was the product of intentional racial discrimination was discussed. Chair Huffman voted to repeal the discriminatory 2011 Plan and adopt the benchmark configuration of SD10 in its place, in response to the federal court's ruling and the urging of then-Attorney General Abbott that the committee correct the violation of law with respect to SD10.

54. Chair Huffman presided over multiple senate redistricting committee hearings prior to drawing Plan S2168 in which the State Demographer, Dr. Potter, discussed the explosive growth of minority communities, including in Tarrant County.

55. Chair Huffman is fully aware of the location of Tarrant County's minority population. Moreover, her lead staffer responsible for actually drawing the district lines, Anna Mackin, is likewise fully aware of the location of Tarrant County's minority population.

56. During the Senate Redistricting Committee hearings, multiple witnesses—voters, elected officials, and community leaders from across SD10—spoke in great detail about how the proposed plan would fracture SD10's minority community, with the names of particular

neighborhoods and the specific numbers of minority residents cracked apart by the proposal provided repeatedly by witnesses.

57. During a meeting with Sen. Huffman and her aides Anna Mackin and Sean Opperman prior to the release of the proposed plan, Sen. Powell—who currently represents SD10—showed Sen. Huffman maps of current SD10 with shading to indicate the location of the district's minority population. Sen. Huffman viewed each of several maps, initialed, and dated each map. Sen. Huffman was also provided a copy of the federal court order from 2012 declaring the prior attempt to dismantle SD10 was the result of purposeful racial discrimination. Anna Mackin displayed in-depth knowledge of the decision—a fact obvious from her decade of extensive involvement in Texas redistricting, including *Perez v. Abbott*.

58. Sen. Powell followed up with a letter to Sen. Huffman on September 16, 2021, which included the maps showing the location of SD10's minority population, and attachments providing detailed facts of SD10's minority population and its status as a performing crossover district for minority voters.

59. Before the senate plan was released, Sen. Powell emailed each member of the Senate a copy of the letter, maps, federal court order, and fact sheet that she had sent to Sen. Huffman. The cover email included a map showing how the proposed plan cracked apart SD10's minority population in order to destroy its performance as a crossover district. When the senate plan was introduced in the House, Sen. Powell sent similar correspondence and materials to the House Redistricting Committee members, and then to all members of the Texas House.

60. During the floor debate on SB4, Sen. Powell questioned Sen. Huffman at length about the redistricting process and the choice to intentionally dismantle SD10 so that it would no longer perform as a crossover district for minority voters.

61. Sen. Huffman offered demonstrably false, pretextual statements in support of her dismantling of SD10 as a preforming crossover district for minority voters, such as the goals of population equality (until a last minute change, proposed SD10 had a population deviation four times its benchmark deviation), preserving political subdivisions (the plan splits Arlington into four senate districts), compactness (the plan worsens it), preserving the core of existing districts (the plan splits apart the core of the existing district and appends seven rural counties), preserving communities of interest (the plan cracks apart SD10's core communities of interest), and incumbent protection (the plan would likely cause the defeat of the minority-preferred incumbent). Sen. Huffman could not cite which of these criteria she followed when drawing SD10; she falsely and pretextually asserted that her decision to crack apart SD10's minority communities served "all" of these supposed redistricting criteria.

62. Sen. Huffman was speechless when asked by Sen. Powell during the floor debate to explain how she managed to draw a plan that reduced the number of majority-minority senate districts from the benchmark plan notwithstanding the fact that minority voters constituted 95% of the 4-million-person growth in the state.

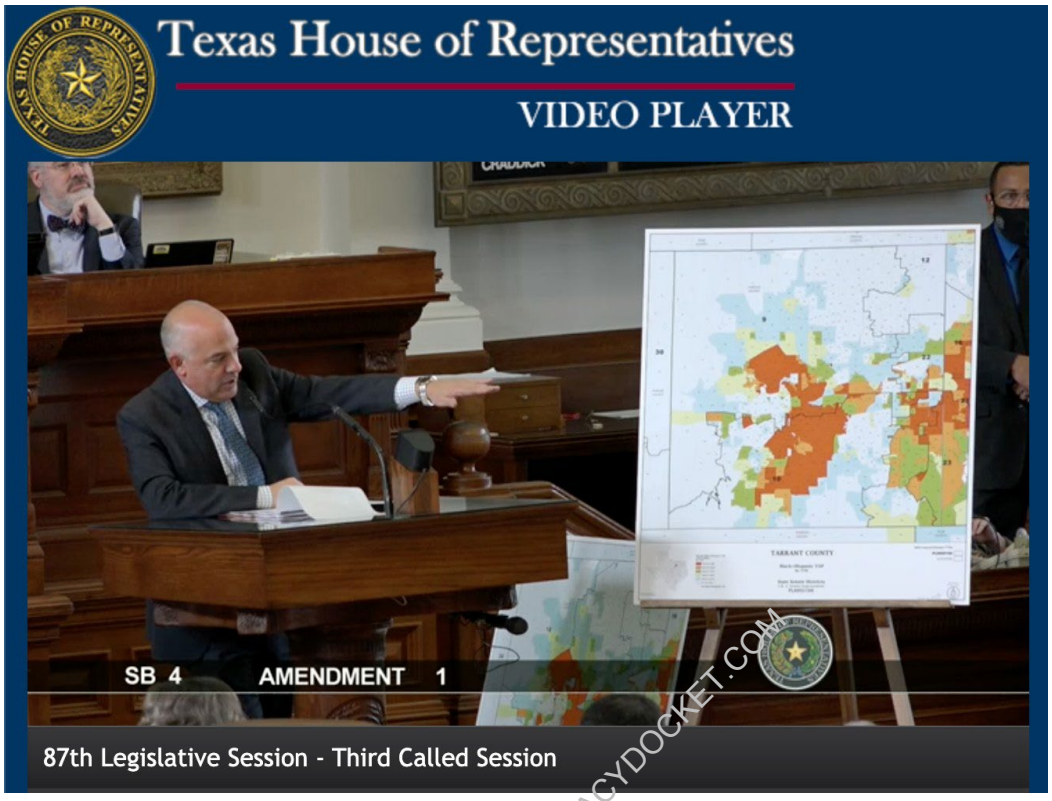
63. Sen. Huffman was speechless when asked by Sen. Powell during the floor debate to explain how it came to be that the districts with the largest ***increases*** in their share of minority population were those in which the added minority population would have ***no effect*** on electoral outcomes.

64. Sen. Huffman was speechless when asked by Sen. Powell during the floor debate to explain how the districts with the largest ***decreases*** in their share of minorities were those in which the Anglo-preferred incumbents were most at risk of electoral defeat in upcoming elections.

65. None of this was a coincidence. It was the result of intentional racial discrimination in order to dilute minority voters' ability to elect their preferred candidates.

66. Sen. Powell offered a floor amendment to return SD10 to essentially its benchmark configuration. When that amendment was offered, Republican Sen. Kel Seliger, who had chaired the 2011 and 2013 Senate Redistricting Committees, commented that SB4 proposed "a substantial decrease in [SD10] in the . . . voting age population of Hispanic an African American voters." Sen. Seliger voted in favor of the amendment to restore SD10, and voted against SB4. A bipartisan group of senators supported eliminating the intentional racial discrimination in SB4 with respect to SD10, but to no avail.

67. During the House debate on SB4, Rep. Chris Turner placed maps on each House member's desk showing, with shading, how the proposed senate plan cracked apart SD10's minority community. He also displayed a large poster on the House floor, as shown below. Every member of the Legislature was fully aware of the intentional cracking of SD10's minority community, and its discriminatory effect.



68. The process of adopting SB4 demonstrated departures from the normal procedures and from the substantive considerations usually deemed important by the Legislature in redistricting.

69. The Senate Redistricting Committee offered little advance notice of its hearing. Late in the evening before a hearing on the senate redistricting plan, Sen. Huffman released a committee amendment, S2108, that radically altered SD10 even more than the original proposal, tacking on an additional eight rural counties. The hearing at which the public was to testify was held the very next morning, and the large blown-up maps in the room that the public could see in order to comment on the maps were of the *old* proposal, rather than the committee substitute.

70. The Senate Redistricting Committee conducted no field hearings, and Sen. Huffman refused Sen. Powell's invitation for the Committee to come to Tarrant County to hear from minority voters victimized by the discriminatory proposal.

71. When Sen. Huffman made changes throughout the process to SD10 and its neighboring districts, she kept all the other affected members informed except for Sen. Powell, who represented the district controlled by minority voters.

72. The historical background of the decision to dismantle SD10 reveals a discriminatory purpose. The *precise same* scheme was ruled intentionally racially discriminatory in 2012. Sen. Huffman has acknowledged that she "probably" read that decision and is familiar with its ruling regarding SD10, was on the Committee that drew the invalidated plan, received the legal advice from then-Attorney General Abbott that the legislature was duty-bound to correct that discrimination, and ultimately voted to reinstate SD10 to its benchmark configuration to remedy that discrimination in 2013. The decision to knowingly revive the same discriminatory scheme, in light of that history, evidences purposeful racial discrimination.

73. The specific sequence of events leading to the enactment of SB4 illustrates its racially discriminatory purpose. As just one example, Sen. Huffman offered shifting pretextual explanations for the choice to dismantle SD10 as a performing crossover district, while ignoring the cavalcade of testimony of minority voters and community leaders asking the legislature not to repeat the same discriminatory tactic that had been declared unlawful in 2012.

74. SB4, including its dismantling of SD10 as a performing crossover district for minority voters, has an extreme, disproportionate negative impact on minority voters compare to Anglo voters. With the destruction of SD10, SB4 reduces the number of districts in which Texas voters of color can elect their candidate of choice, even though Texans of color are responsible for ***95%*** of the State's explosive population growth since 2010.

75. The legislature intended the discriminatory result it achieved—a second attempt in ten years to accomplish the same illegal goal with respect to SD10.

Race Predominated in the Drawing of SD10

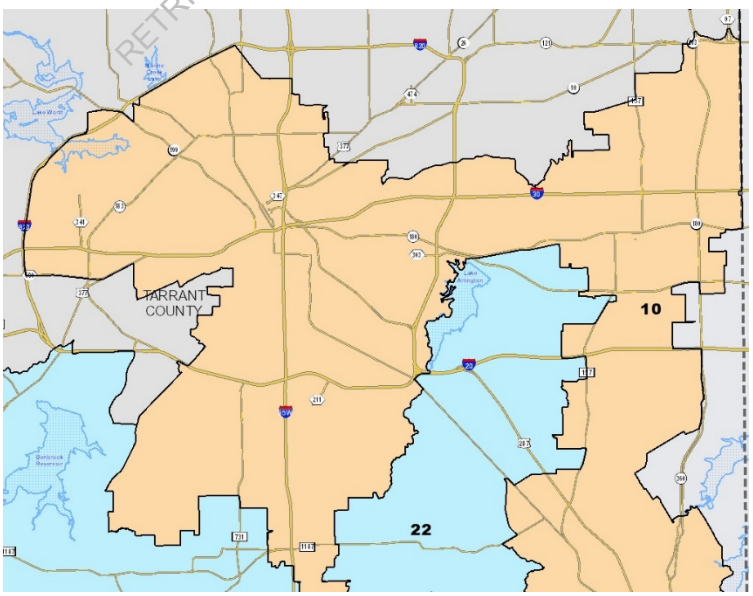
76. Race—cracking minority communities and adding multiple Anglo-controlled counties—was the predominant consideration in the drawing of SD10, and it was not in service of a compelling interest like complying with the Voting Rights Act.

77. Other districting criteria, like compactness, respect for political subdivisions, communities of interest, incumbent protection, and others were subordinated to race.

Tarrant County's Black and Latino Voters Form a Geographically Compact, Politically Cohesive Group Entitled to a Coalition Senate District Under Section 2 of the VRA

78. SB4 cracks apart Tarrant County's minority populations, diluting their voting strength by submerging them in Anglo-controlled senate districts.

79. The population of Black and Hispanic voters in Tarrant County is sufficiently large and geographically compact to constitute a majority in a newly configured SD10. For example, Plan S2134, shown below, was offered as a floor amendment by Sen. Powell. It has an Anglo CVAP of 41.8%, a Black CVAP of 26.3%, a Hispanic CVAP of 26.3%, and an Asian CVAP of 3.7%. Its combined Black and Hispanic CVAP is thus 52.6%.



80. Black and Hispanic voters in Tarrant County are politically cohesive. General elections are most probative, given the high voter participation and the political unity that exists within the choice of which party's primary to vote in. But both recent general and primary elections illustrate the strong cohesion between Tarrant County's Black and Hispanic voters.

81. Moreover, as SB4's configuration of SD10 illustrates, Anglo bloc voting will usually defeat Black and Hispanic voters' candidates of choice in the region, as the minority-preferred candidates prevailed in zero elections in the newly configured district among recent statewide elections. Even in just Tarrant County, which is 57.1% Anglo CVAP, the candidates preferred by Black and Hispanic voters lost 7 of the 9 most recent elections statewide elections (2020 Senate, 2018 Governor, 2018 Lieutenant Governor, 2018 Attorney General, 2016 President, 2014 Senate, 2014 Governor).

82. The totality of circumstances demonstrate that Black and Hispanic voters have less opportunity that other members of the electorate to participate in the political process and to elect representatives of their choice. *See* 52 U.S.C. § 10301(b).

83. There is a history of official voting-related discrimination in Texas. Indeed, the federal court found that the legislature acted with racially discriminatory intent in its last redistricting of SD10. Moreover, the San Antonio federal court ruled that the legislature's cracking and packing of minority voters in the 2011 Dallas Forth-Worth area congressional districts was the product of intentional racial discrimination. And the *en banc* Fifth Circuit held in 2016 that Texas's voter ID law had a racially discriminatory effect in violation of Section 2 of the Voting Rights Act. History is replete with examples in Texas, which hasn't made it through a single redistricting cycle in modern history without being found to have racially discriminated in intent or effect.

84. Voting in Tarrant County is racially polarized, with Anglo voters preferring Republican candidates by wide margins and Black and Hispanic voters preferring Democratic candidates by wide margins.

85. Black and Hispanic residents of Tarrant County bear the effects of discrimination in education, employment, and health, which hinders their ability to participate effectively in the political process. For example, in 2017, the Fort Worth City Council appointed a task force on Race and Culture and the task force issued its report on December 4, 2018.

86. The task force found that in Fort Worth in 2016, the unemployment rate among Anglo residents was 4.2%, while it was 6.1% among Black residents and 5.7% among Hispanic residents. The 2016 median household income in Fort Worth was $63,704 for Anglo households, $41,317 for Black households, and $44,748 for Hispanic households.

87. The task force found that, in Fort Worth, Anglo residents are more likely to hold a bachelor's degree than Black and Hispanic residents, and Black and Hispanic residents are more likely to live in economically depressed areas.

88. The task force found that in the Fort Worth ISD, 62% of Anglo third-grade students were reading at grade level, while just 32% of Hispanic and 20% of Black third-grade students were.

89. The task force reported, based on 2015 statistics, that the infant death rate in Tarrant County was 9.6 per 1,000 for Black babies, 6.2 per 1,000 for Hispanic babies, and 4.3 per 1,000 for Anglo babies.

90. Health disparities are evident in diabetes diagnoses in Tarrant County. The task force reported that 16% of Black residents had been diagnosed with diabetes, 12% of Hispanic residents had, and 9% of Anglo residents had.

91. Elections in Tarrant County have seen frequent overt and subtle racial appeals in campaigns, from President down to local offices.

92. Black and Hispanic residents are underrepresented in elected office in Tarrant County. The Fort Worth task force found that Hispanic residents were underrepresented on the city council. Until recently, only 1 of the 5 members of the Tarrant County Commissioners Court were Black; now 2 are. There are no Hispanic Commissioners. Only 1 of Tarrant County's 11 state house members is Black, and only 1 is Hispanic.

93. Black and Hispanic voters are a combined 43.4% of the CVAP in Texas, yet only 11 of 31 senate districts (35.5%) in SB4 are majority Black and/or Hispanic.

CAUSES OF ACTION

COUNT 1

Intentional Racial Discrimination in Violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 et seq.

94. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

95. Texas Senate Plan S2168, as reflected in SB4, was enacted with the intent to discriminate on the basis of race and national origin, and has a discriminatory effect on that basis, by the intentional dismantling of SD10 as an effective crossover district for minority voters.

COUNT 2

Intentional Racial Discrimination in Violation of the Equal Protection Clause of the Fourteenth Amendment

96. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

97. Texas Senate Plan S2168, as reflected in SB4, was enacted with the intent to discriminate on the basis of race and national origin, and has a discriminatory effect on that basis, by the intentional dismantling of SD10 as an effective crossover district for minority voters.

COUNT 3

Intentional Racial Discrimination in Violation of the Fifteenth Amendment

98. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

99. Texas Senate Plan S2168, as reflected in SB4, was enacted with the intent to discriminate on the basis of race and national origin, and has a discriminatory effect on that basis, by the intentional dismantling of SD10 as an effective crossover district for minority voters.

COUNT 4

Predominant use of race in violation of Equal Protection Clause of the Fourteenth Amendment (Shaw Violation)

100. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

101. Race was the predominant consideration in the drawing of SD10, with other districting criteria, such as compactness, respect for communities of interest, respect for political subdivisions, and other considerations subordinated to racial considerations.

102. There is no compelling interest that justifies the racial predominance in the drawing of SD10. While Section 2 of the Voting Rights Act provided a compelling justification to draw an alternative district in which Black and Latino voters would form the majority of eligible voters in a newly configured SD10 based solely in Tarrant County, SD10 as enacted violates, rather than advances, Section 2 of the Voting Rights Act.

103. The racial predominance in the drawing of SD10 violates the Equal Protection Clause.

COUNT 5

***Discriminatory Results in Violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 et seq.* (State Senate/Tarrant County)**

104. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

105. Black and Hispanic voters in Tarrant County are sufficiently numerous and geographically compact to constitute a majority in a single member senate district.

106. Black and Hispanic voters in Tarrant County are politically cohesive.

107. Anglo voters in Tarrant County, and in the legislature's enacted version of SD10 in SB4, vote sufficiently as a bloc to usually defeat the candidates of choice of Black and Hispanic voters.

108. The totality of circumstances reveals that Black and Latino voters in Tarrant County have less opportunity than other groups of the electorate to elect their candidates of choice and to participate in the political process.

109. Black and Hispanic voters are thus entitled, under Section 2 of the Voting Rights Act, to a coalition district that would provide them with an effective opportunity to elect the candidate of their choice to the Texas State Senate.

REQUESTED RELIEF

Plaintiffs request that the Court:

a) Issue a declaratory judgment that Texas Senate Plan S2168, enacted in SB4, unlawfully dilutes minorities' voting right, through intentional racial discrimination in violation of

Section 2 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments, in SD10 by intentionally dismantling a performing crossover district;

b) Issue a declaratory judgment that Texas Senate Plan S2168, enacted in SB4, unlawfully had race as the predominant consideration in the drawing of SD10, with other districting criteria subordinated to race, without any sufficient justification;

c) Issue a declaratory judgment that Texas Senate Plan S2168, enacted in SB4, violates the discriminatory results prong of Section 2 of the Voting Rights Act by failing to draw a coalition district in Tarrant County for Black and Latino voters in which they would have the opportunity to elect their candidate of choice to the state senate;

d) Preliminarily and permanently enjoin Defendants from calling, holding, supervising, or certifying any elections under Texas Senate Plan S2168, as enacted in SB4, with respect to SD10. Plaintiffs have no adequate remedy at law other than judicial relief sought herein, and unless Defendants are enjoined from using Texas Senate Plan S2168 with respect to SD10, Plaintiffs will be irreparably injured by the continued violation of their statutory rights;

e) Set a reasonable deadline for state authorities to enact or adopt a redistricting plan with respect to SD10 that does not dilute, cancel out, or minimize the voting strength of minority voters;

f) If state authorities fail to enact or adopt a valid redistricting plan by the Court's deadline, order a new senate redistricting plans that does not dilute, cancel out, or minimize the voting strength of minority voters in Tarrant County;

g) Award Plaintiffs their costs and reasonable attorneys' fees pursuant to Fed. R. Civ. P. 54, 42 U.S.C. § 1988, and 52 U.S.C. § 10310(e);

h) Retain jurisdiction and render any and further orders that the Court may find necessary to cure the violation; and

i) Grant any and all further relief to which Plaintiffs may show themselves to be entitled.

November 3, 2021

Respectfully submitted,

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*Motions for admission *pro hac vice* forthcoming

Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL., *Plaintiffs*, v. GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS SUED IN HIS OFFICIAL CAPACITY; AND JOHN SCOTT, SECRETARY OF STATE OF TEXAS OF TEXAS SUED IN HIS OFFICIAL CAPACITY, *Defendants*.	§ § § § § § § § § § § § § § §	Case No. 3:21-cv-259-DCG-JES-JVB

ORDER

Before the Court is Defendants' Partially Opposed Motion to Consolidate this action with *Wilson v. Texas*, No. 1:21-cv-943-RP-JES-JVB (W.D. Tex.), *Voto Latino v. Scott*, No. 1:21-cv-965-RP (W.D. Tex.), *MALC v. Texas*, No. 1:21-cv-988-RP-JES-JVB (W.D. Tex.), and *Brooks v. Abbott*, No. 1:21-cv-991-LY-JES-JVB (W.D. Tex.). The Court has considered the Motion and is of the opinion that it should be GRANTED.

The Court finds that this case and the four other actions substantially overlap on substantive issues. The Court also finds that this case was the first of these cases to have been filed.

As this is the first-filed case, the Fifth Circuit's first-to-file rule directs that this Court decide how the subsequently-filed cases should proceed. The Court finds that these cases should be consolidated because they involve common questions of law and fact, and because the other relevant factors weigh in favor of consolidation.

IT IS THEREFORE ORDERED that Defendants' Opposed Motion to Consolidate is hereby GRANTED. The Court hereby ORDERS that *Wilson v. Texas*, No. 1:21-cv-943-RP-JES-JVB (W.D. Tex.), *Voto Latino v. Scott*, No. 1:21-cv-965-RP (W.D. Tex.), *MALC v. Texas*, No. 1:21-cv-988-RP-JES-

JVB (W.D. Tex.), and *Brooks v. Abbott*, No. 1:21-cv-991-LY-JES-JVB (W.D. Tex.) be consolidated into *LULAC et al. v. Abbott et al.,* 3:21-cv-259-DCG-JES-JVB (W.D.Tex.).

IT IS ORDERED that all future filings be filed in *LULAC et al. v. Abbott et al.,* 3:21-cv-259-DCG-JES-JVB (W.D.Tex.).

DATE:_____

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UNITED STATES DISTRICT JUDGE