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**DEFENDANTS' PROPOSED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Galveston County, Texas, County Judge Mark Henry, in his official capacity as Galveston County Judge, and Dwight D. Sullivan, in his official capacity as the Galveston County Clerk (“Defendants”) respectfully submit the following proposed Findings of Fact and Conclusions of Law.

**PART I: CONCLUSIONS OF LAW**

**I. Jurisdiction**

1. The Court has jurisdiction over the action brought by the United States of America (“DOJ”) under 28 U.S.C. § 1345 (DOJ as a plaintiff) and 52 U.S.C. § 10308(d) (under the Voting Rights Act of 1965 or “VRA”). The Court has jurisdiction under 28 U.S.C. §§1331 and 1343(a)(4).

2. As discussed below, the VRA does not provide (1) protection for a coalition of multiple minority groups,<sup>1</sup> or (2) federal courts the authority to weigh in on political acts. Therefore, the Court lacks jurisdiction over claims based on those facts.

3. The Petteway Plaintiffs<sup>2</sup> allege the Court has jurisdiction under 28 U.S.C. § 1357, as this is not an action for damages. Dkt. 42 at 3 ¶ 8. Meanwhile, the NAACP Plaintiffs<sup>3</sup> allege jurisdiction under 52 U.S.C. § 10101(d), but this action does not involve

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<sup>1</sup> The Court has rejected some of the legal arguments raised herein; however, Defendants raise arguments here to preserve them on appeal.

<sup>2</sup> Terry Petteway, Constable Derrick Rose, and the Hon. Penny Pope are the “Petteway Plaintiffs.” Sonny James and Michael Montez have been dismissed. Dkt. 100, 125. The Petteway Plaintiffs sued Galveston County, Texas and the Hon. Mark Henry as Galveston County Judge.

<sup>3</sup> The “NAACP Plaintiffs” are Dickinson Bay Area Branch NAACP, Galveston Branch NAACP, Mainland Branch NAACP, Galveston League of United Latin American Citizens Council 151, Edna Courville, Joe

a denial of the ability to vote in an election, or the determination of an individual's qualification to vote; nor does it concern intimidation, threats or coercion. *See* 52 U.S.C. § 10101(a)-(b).

**A. Section 2 of the Voting Rights Act does not create a claim for minority coalitions.**

4. The Fifth Circuit has permitted coalition claim since its 1993 opinion *LULAC v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (en banc). Since that time, however, the Fourth, Sixth and Seventh Circuits have held the VRA does not permit coalition claims. *See Hall v. Virginia*, 385 F.3d 421, 431-32 (4th Cir. 2004); *Nixon v. Kent County*, 76 F.3d 1381, 1392-93 (6th Cir. 1996); *Frank v. Forest County*, 336 F.3d 570, 575-76 (7th Cir. 2003). These cases are consistent with Judge Higginbotham's dissents in *LULAC v. Midland ISD* and *Campos v. City of Baytown*. *See LULAC v. Midland ISD*, 812 F.2d 1494 (5th Cir. 1987) (Higginbotham, J., dissenting), *vacated on reh.*, 829 F.2d 546 (5th Cir. 1987); *Campos v. City of Baytown*, 840 F.2d 943, 945 (5th Cir. 1988) (Higginbotham, J., dissenting from denial of reh. en banc). The decisions are also consistent with Judge Jones' concurring opinion in *Clements*. *See Clements*, 999 F.2d at 894 (Jones, J., concurring). Whether a minority coalition can satisfy *Gingles* I may be ripe for appellate review, and Defendants re-urge that argument here.<sup>4</sup>

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A. Compián, and Leon Phillips. They sued Galveston County, Texas, the Hon, Mark Henry as Galveston County Judge, and Dwight D. Sullivan as Galveston County Clerk.

<sup>4</sup> Defendants do not intend to waive any argument about the viability of VRA coalition claims by including this in their proposed conclusions.

**B. Plaintiffs seek “an unprecedented expansion of judicial power,” as they ultimately ask the Court to “take the extraordinary step of reallocating power and influence between political parties.”<sup>5</sup>**

5. “Partisan gerrymandering is nothing new. Nor is frustration with it.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2494 (2019). Plaintiffs’<sup>6</sup> allegations raise an old question: should a federal court adjudicate the degree of political fairness?

6. While the United States Supreme Court has permitted one-person, one-vote and racial gerrymandering challenges to redistricting, the Court has foreclosed partisan gerrymandering claims because there is no appropriate standard to assess *partisan* gerrymandering; in fact, courts cannot review political gerrymandering. *Id.* at 2495-96 (“[u]nlike partisan gerrymandering claims, a racial gerrymandering claim does not ask for a fair share of political power and influence, with all the justiciability conundrums that entails. It asks instead for the elimination of a racial classification. A partisan gerrymandering claim cannot ask for the elimination of partisanship”).

7. Thus, as *Rucho* explained, “[t]he ‘central problem’ is not determining whether a jurisdiction has engaged in partisan gerrymandering. It is ‘determining when political gerrymandering has gone too far.’” *Id.* at 2497. Just as a permissible intent in redistricting is to secure partisan advantage, it is *not* permissible to raise a racial gerrymandering claim on the basis that it dilutes one party’s political power. Federal courts have no “commission to allocate political power and influence.” *Id.* at 2508.

8. Partisan gerrymandering claims ultimately ask courts to “make their own

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<sup>5</sup> *Rucho v. Common Cause*, 139 S. Ct. 2484, 2502 & 2507 (2019).

<sup>6</sup> “Plaintiffs” collectively refer to the Petteway Plaintiffs, NAACP Plaintiffs, and DOJ.

political judgment about how much representation particular parties *deserve*—based on the votes of their supporters—and to rearrange the challenged districts to achieve that end.” *Id.* at 2499. But federal courts lack the power to apportion political power. *Id.* at 2499-2500. That is, courts cannot “vindicat[e] generalized partisan preferences.” *Id.* at 2501.

9. Recently, in *Allen v. Milligan*, the Court once again observed that reapportionment “is primarily the duty and responsibility of the State[s]” and not federal courts. *Allen v. Milligan*, 143 S. Ct. 1487, 1510 (2023). A VRA analysis under Supreme Court law in *Gingles* must be “properly applied” to “help ensure this remains the case.” *Id.* (citing *Thornburg v. Gingles*, 478 U.S. 30 (1986)). Therefore, Section 2 limits judicial action to “instances of intensive racial politics where the excessive role of race in the electoral process denies minority voters equal opportunity to participate.” *Id.* (cleaned up).

10. Because there is no right to proportional representation, or even a guarantee that redistricting “come as near as possible” to proportional representation—that argument is “clearly foreclose[d]” under Supreme Court cases—Plaintiffs’ claims do not rise to the level of invoking this Court’s power. *See Rucho*, 139 S. Ct. at 2499. The Court must therefore dismiss.<sup>7</sup>

11. This case is about politics. Plaintiffs’ claim boils down to the reality that African-Americans and Latinos cohesively vote for Democrats in the general election, while Anglo voters in Galveston County overwhelmingly favor Republicans. Plaintiffs complain that the new configuration of Commissioners Court Precinct 3 will no longer

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<sup>7</sup> Partisanship is also discussed below with respect to a merits analysis.

allow voters of that precinct to elect Commissioner Holmes, who is a Democrat.

12. But the Court is cannot “vindicat[e] generalized partisan preferences.” *Rucho*, 139 S. Ct. at 2501. It therefore lacks the authority to “allocate political power and influence” in the absence of judicially manageable standards. *Id.* at 2508. In the alternative,

## **II. Redistricting Requirements and Presumptions**

### **A. Federal Law**

13. Under the Fourteenth Amendment Equal Protection Clause, districts must be substantially equal, meaning some amount of population deviation is acceptable. *See Avery v. Midland Cty.*, 390 U.S. 474, 484-85 (1968). The Supreme Court, in the context of legislative districts, has stated that “as a general matter, [] an apportionment plan with a maximum population deviation under 10%” is consistent with the principle of one-person, one-vote, *Brown v. Thomson*, 462 U.S. 835, 842 (1983).

14. To provide information necessary to comply with federal law, Congress requires the Census Bureau release redistricting data by April 1st. *See* 13 U.S.C. § 141(c).

15. The Commissioners Court must comply with federal requirements in redistricting. In reviewing challenges to redistricting plans, federal courts presume the plan was enacted in good faith. *LULAC v. Abbott*, 604 F. Supp. 3d 463, 493 (W.D. Tex. May 23, 2022) (“*Abbott II*”) (citing *Miller v. Johnson*, 515 U.S. 900, 915 (1995))

### **B. State Law**

16. Texas’s Constitution requires counties be divided into four Commissioner Court precincts. Tex. Const. art. V, § 18(b). Texas Constitutional or statutory State law does not provide a deadline to complete County commissioner court redistricting.



17. Notice of a Commissioners Court meeting must be posted at least 72 hours before the meeting. Tex. Gov't Code § 551.043(a).

18. There is no legal requirement for the Galveston County Commissioners Court to post proposed redistricting maps online for public comment.

19. The law does not require jurisdictions to adopt redistricting criteria.

20. Commissioner Holmes had the legal authority and right to put redistricting-related items on the agenda at any of the public Commissioner's Court meetings, including the time between April 5, 2021 and November 12, 2021. *See* Tex. Att'y Gen. Op. No. DM-228 at 3 (“a county commissioner may place a matter on the agenda for a meeting”). That includes a timeline, redistricting criteria, or meetings for public comment. Texas law prohibits any procedure that would preclude a representative on the Commissioner's Court “from at a minimum providing a public forum for discussion of any particular issue.” *Id.* at 2.

### **III. Section 2 Voting Rights Act Claims (DOJ, Petteway Plaintiffs)<sup>8</sup>**

#### **A. Section 2 Background and General Legal Framework**

21. As amended in 1982, VRA Section 2(a) prohibits any state or political subdivision from imposing or applying any “qualification or prerequisite” to voting or any “standard, practice, or procedure” which “results in a denial or abridgement of the right of any citizen of the United States to vote on account or race or color.” 42 U.S.C. § 1973(a). The section prohibits all forms of voting discrimination that “result in the denial of equal

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<sup>8</sup> The Petteway Plaintiffs allege a VRA claim through Section 1983.

access to any phase of the electoral process for minority group members.” S. Rep. No. 97-417, at 30 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 205. It also protects voters from election practices “which operate, designedly or otherwise” to deny them the same opportunity to participate in the political process as other citizens enjoy. *Id.* at 28.

22. “The purpose of the Voting Rights Act is to prevent discrimination in the exercise of the electoral franchise and to foster our transformation to a society that is no longer fixated on race.” *LULAC v. Perry*, 548 U.S. 399, 433-34 (2006) (“*LULAC I*”) (citation omitted).

23. Section 2 prohibits “voting qualification or prerequisite to voting or 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” which “is established if” the members “of a class of citizens . . . 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. A “totality of circumstances” must show the challenged process is “not equally open” because a minority group has “less opportunity . . . to participate in the political process and to elect representatives of their choice.” *Id.* § 10301(b).

24. Vote-dilution (effects) claims under Section 2 of the VRA are analyzed under the framework provided in *Thornburg v. Gingles*, 478 U.S. 30 (1986).

25. The *Gingles* factors cannot be applied mechanically and without regard to the nature of the claim. *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993).

26. *Gingles* “construed” Section 2 to prohibit the ‘dispersal of a [minority] group’s members into districts in which they constitute an ineffective minority of voters.’”

*Abbott II*, 604 F.Supp.3d at 493-94. “A successful *Gingles* claim remedies that situation by undoing the dispersal of minorities . . . by requiring the state to concentrate them in a new, majority-minority district that will allow the group usually to be able to elect its preferred candidates.” *Id.*

27. *Gingles* requires a two-step analysis under Section 2 of the VRA. *Harding v. Cty. of Dall.*, 948 F.3d 302, 308 (5th Cir. 2020). First, Plaintiffs must prove by a preponderance of the evidence three threshold conditions: (1) a sufficiently large and geographically compact majority-minority district; (2) that is politically cohesive; in which (3) white residents vote as a bloc to usually defeat that majority-minority’s preferred candidate. *Id.* (citing *Gingles*, 478 at U.S. 50-51). Failure to prove even one of these three preconditions is fatal to Plaintiffs’ claims, although proof of all three does not, standing alone, entitle Plaintiffs to relief. See *Cooper v. Harris*, 137 S. Ct. 1455, 1472 (2017); *Johnson v. De Grandy*, 512 U.S. 997, 1012 (1994); *Campos v. City of Hous.*, 113 F.3d 544, 547 (5th Cir. 1997) (“*Campos*”). Those three showings “are needed to establish that the minority has the potential to elect a representative of its own choice” in a possible district, and that “the challenged districting thwarts a distinctive minority vote by submerging it in a larger white voting population.” *Grove v. Emison*, 507 U.S. 25, 40 (1993).

28. Each *Gingles* precondition has its own purpose. The first precondition is focused on numerosity, that the district contains a majority of minority population as measured by citizen voting age population (“CVAP”). *Allen*, 143 S. Ct. at 1503; *Campos*, 113 F.3d at 548. The first precondition also asks whether the proposed district is geographically compact, meaning whether it is reasonably configured. *Allen*, 143 S. Ct. at

1503. A district is reasonably configured when it complies with traditional redistricting criteria, including contiguity, compactness, and constitutes a community of interest as measured by common socioeconomic factors. *Id.*; *Robinson v. Ardoin*, 37 F.4th 208, 218 (5th Cir. 2022) (“Beyond geography, plaintiffs must also show that putting the minority population into one district is consistent with traditional districting principles such as maintaining communities of interest and traditional boundaries... Thus, combining discrete communities of interest—with differences in socio-economic status, education, employment, health, and other characteristics”—is impermissible.”) (internal citations omitted). The purpose of the first *Gingles* precondition is to “establish that the minority has the potential to elect a representative of its own choice in some single-member district.” *Allen*, 143 S. Ct. at 1503.

29. The purpose of the second *Gingles* precondition is to show “that a representative of [the minority voters’ choice] would in fact be elected. *Id.*”

30. The third precondition, which is “focused on racially polarized voting,” asks whether Anglo voters “thwarts a distinctive minority vote *at least plausibly on account of race.*” *Id.* (emphasis added).

31. If a plaintiff satisfies the *Gingles* preconditions, the inquiry then shifts to the totality of the circumstances test under 52 U.S.C. § 10301(b). Under that test, “the plaintiffs must further prove that under the ‘totality of circumstances,’ they do not possess the same opportunities to participate in the political process and elect representatives of their choice enjoyed by other voters.” *Clark v. Calhoun Cnty., Miss.*, 88 F.3d 1393, 1395 (5th Cir. 1996) (citation and quotation marks omitted). “Although unlawful vote dilution ‘may be readily

imagined and unsurprising’ where the three *Gingles* preconditions exist, that conclusion ‘must still be addressed explicitly, and without isolating any other arguably relevant facts from the act of judgment.’” *Id.* at 1396 (citation omitted). The totality-of the circumstances inquiry is guided by the Senate or *Zimmer* factors, which *Gingles*, are quoted from the 1982 Senate report amendments, 478 U.S. at 44-45. *Clark*, 88 F.3d at 1396.

32. The DOJ and Petteway Plaintiffs also allege a Section 2 violation based on discriminatory intent. As *Abbott II* discussed, Fifth Circuit case law holds a Section 2 intent claim still exists. *Abbott II*, 604 F.Supp.3d at 493 (citing *McMillan v. Escambia Cnty.*, 748 F.2d 1037, 1046) (5th Cir. 1984)).

## **B. Important “guardrails” for a Section 2 analysis**

### **i. Section 2 Effects and Intentional Discrimination Claims**

33. There are two types of Section 2 claims—an intent claim and an effects (result) claim. *See Chisom v. Roemer*, 501 U.S. 380, 383-84 (1991).

34. The Supreme Court has held, “Discriminatory intent is simply not amenable to calibration. It either is a factor that has influenced the legislative choice or it is not.” *Pers. Admin. of Mass. v. Feeney*, 442 U.S. 256, 277 (1979).

35. Under the VRA, once the plaintiff has proven intentional discrimination exists, the burden shifts to the defendant who must prove that a discriminatory purpose is altogether absent. *City of Pleasant Grove v. United States*, 479 U.S. 462, 479 (1987).

**ii. An intensely local analysis of the challenged district is required under *Gingles*.**

36. A Section 2 case presents the question of whether, “as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.” *Westwego Citizens for Better Gov’t v. City of Westwego*, 946 F.2d 1109, 1120 (5th Cir. 1991). The inquiry “depends upon a searching practical evaluation of the past and present reality” and on a “functional view of the political process.” *Id.*; *see also De Grandy*, 512 U.S. at 1018. Fundamentally, Section 2 of the VRA requires “an intensely local appraisal of the challenged district.” *Wis. Legis. v. Wis. Elections Comm’n*, 142 S. Ct. 1245, 1251 (2022).

37. “It bears emphasizing that each of these preconditions must be shown on a district-by-district basis.” *Abbott II*, 604 F. Supp. 3d at 496 (citing *Wis. Legis.*, 142 S. Ct. at 1248 (per curiam) (explaining the *Gingles* precondition standards require careful evaluation of “evidence at the district level,” and it was improper to rely on “generalizations” to conclude the preconditions were satisfied). The analysis must take into account the “political experiences of a minority group in a particular location,” and must reject any “generalized conclusion” to answer whether the preconditions are met. *Id.* The *Gingles* preconditions must be analyzed at the appropriate level, here, the precinct level. *See Wis. Legis.*, 142 S. Ct. at 1250; *see also LULAC*, 548 U.S. at 437. Courts may not view an entire state or County as a whole to make “generalized conclusion[s]” about what vote dilution might exist at the relevant local level. The relevant question here, which requires meaningful analysis, is whether the *Gingles* preconditions “would be satisfied as to each”

precinct. *See Wis. Legis.*, 142 S. Ct. at 1250 (citing *Cooper*, 137 S. Ct. at 1471 n.5). And insofar as Plaintiffs wish to use illustrative maps to bear their burden, their maps must satisfy *each* of the *Gingles* preconditions. *See City of Hous.*, 113 F.3d at 547.

**iii. Section 2 affords an equal opportunity to elect a candidate of choice, not a right to a minority candidate of choice.**

38. Section 2 affords minorities a right to equal opportunity to elect “representatives of their choice,” not minority representatives of their choice. 52 U.S.C. 10301(b). If Section 2 conferred on minorities the right to elect their ideal candidates, it would not grant minority voters merely equal opportunity, but a right that no one in the political system enjoys. *See De Grandy*, 512 U.S. at 1020 (“minority voters are not immune from the obligation to pull, haul, and trade to find common political ground”).

**iv. Under Section 2, proportionality is not a right, and is never dispositive, and cannot govern a totality analysis.**

39. Neither the Constitution nor the VRA guarantees proportional representation. Section 2 expressly states that “nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.” 52 U.S.C. § 10301(b). The Supreme Court has clearly held that proportionality “is not dispositive in a challenge to single-member districting . . . .” *De Grandy*, 512 U.S. at 1000. In *De Grandy*, Florida argued proportionality as a *defense* to the plaintiff’s claims—that it was not liable because it *had* proportional representation. *Id.* at 1019. The Court rejected such reliance. While proportionality can be considered as an upper-limit in a state-wide analysis in a Section 2 totality-of-the-circumstances analysis

(e.g., in considering ‘equality of opportunity’<sup>9</sup>), the Supreme Court has rejected any attempt to rely on proportionality as a single-factor shortcut to a vote dilution finding. *Id.* at 1020-22 (district court’s “finding of dilution did not address the statutory standard of unequal political and electoral opportunity, and reflected instead a misconstruction of § 2 that equated dilution with failure to maximize the number of reasonably compact majority-minority districts”); *see also Wis. Legis.*, 142 S. Ct. at 1250 (per curiam). Courts, therefore, cannot properly consider proportionality unless and until all *Gingles* preconditions are met, and even then, placing too much weight on proportionality in a totality analysis has led to reversal. *Id.*; *see also S. Rep.*, at 28-29, U.S. Code Cong. & Admin. News 1982, pp. 206-207.

40. As the Fifth Circuit has recognized, minority groups are “not constitutionally entitled to an apportionment structure designed to maximize its political advantage” and have “no federal right to be represented in legislative bodies in proportion to their numbers in the general population.” *Panior v. Iberville Par. Sch. Bd.*, 536 F.2d 101, 104 (5th Cir. 1976) (internal quotations omitted).

41. The Constitution restricts consideration of race, while the VRA demands consideration of race. *Abbott v. Perez*, 138 S. Ct. 2305, 2315 (2018) (“*Perez*”). Strict scrutiny is therefore implicated when Section 2 is applied to require the adoption or rejection of districting plans on the basis of race. *See Allen*, 143 S. Ct. at 1538 (Thomas, J., dissenting). “The Constitution is supreme over statutes, not vice versa.” *Id.* at 1538-39 (citing *Marbury v. Madison*, 1 Cranch 137, 178, 2 L.Ed. 60 (1803)). “Therefore, if

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<sup>9</sup> *De Grandy*, 512 U.S. at 1014 n.11.



complying with a federal statute would require a State to engage in unconstitutional racial discrimination, the proper conclusion is not that the statute excuses the State's discrimination, but that the statute is invalid." *Id.* at 1539. The Reconstruction Amendments "forbi[d], so far as civil and political rights are concerned, discrimination . . . against any citizen because of his race," ensuring that "[a]ll citizens are equal before the law." *Id.* at 1540 (citing *Gibson v. Miss.*, 162 U.S. 565, 591 (1896)). They dictate "that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class." *Id.* (citing *Miller*, 515 U.S. at 911, 115 S.Ct. 2475 (internal quotation marks omitted)). These principles are why the Constitution presumptively forbids race-predominant districting, "even for remedial purposes." *Id.* (citing *Shaw v. Reno*, 509 U.S. 630, 657 (1993) ("*Shaw I*"). Thus, no "generalized assertion of past discrimination" can justify race-based redistricting, "because it provides no guidance for a legislative body to determine the precise scope of the injury it seeks to remedy." *Id.* at 1541 (citing *Shaw v. Hunt*, 517 U.S. 899, 909 (1996)).

42. In *Washington v. Tensas Parish School Board*, 819 F.2d 609 (5th Cir. 1987), the Fifth Circuit reiterated that, "although some democracies provide for proportional representations of parties and ethnic groups, that has never been an American tradition." *Id.* at 612 (citation omitted; alterations accepted). The Court rejected the notion that a minority group having three majority districts of seven was entitled to a fourth district to match its percentage of the population. *Id.* at 611-12. The court reasoned that, "while race may be considered as a factor, safe seats for the minorities are not required of a reapportionment plan." *Id.* at 612 (citation omitted); *Wyche v. Madison Par. Police Jury*,

635 F.2d 1151, 1161 (5th Cir. 1981) (“Even as a remedial measure, court plans should not aim at proportional representation.”). The Seventh Circuit has applied similar reasoning. *See Gonzalez v. City of Aurora, Illinois*, 535 F.3d 594, 598 (7th Cir. 2008) (“plaintiffs have staked their all on a proposal that Latinos are entitled at least to proportional representation via two Latino-effective districts no matter what the consequences of race-blind districting would be. The Voting Rights Act does not require either outcome”); *see also Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 802 (2017).

43. Section 2 requires “an effective majority,” *LULAC I*, 548 U.S. at 426, not a superficial majority. *Harding*, 948 F.3d at 309.

44. The VRA must not be interpreted in a vacuum. This is because, while Section 2 sometimes requires redistricting authorities to consider race in redistricting, at the same time “federal law restrict[s] the use of race in making districting decisions.” *Perez*, 138 S. Ct. at 2314 . “The Equal Protection Clause forbids ‘racial gerrymandering,’ that is, intentionally assigning citizens to a district on the basis of race without sufficient justification.” *Id.* (citing *Shaw I*, 509 U.S. at 641). Districting maps that “sort voters on the basis of race ‘are by their very nature odious.’” *Wis. Legis.*, 142 S. Ct. at 1248 (quoting *Shaw I*, 509 U.S. at 643). As a result, purposefully creating a new majority-minority district is presumptively unconstitutional. *See Cooper*, 137 S. Ct. at 1468- 69.

45. In the face of these “‘competing hazards of liability,’” the Supreme Court has “‘assumed” that “‘compliance with the VRA may justify the consideration of race in a way that would not otherwise be allowed.” *Perez*, 138 S. Ct. at 2315 (quoting *Bush v. Vera*, 517 U.S. 952, 977 (1996) (plurality opinion)). The Supreme Court has never expressly held

this, however. *See Miller*, 515 U.S. at 927 (observing that this assumption raises “troubling and difficult constitutional questions”). And, in any event, the burden to satisfy “strictest scrutiny” is demanding. *Id.* at 915. A redistricting authority has never successfully justified racially predominant redistricting in any Supreme Court case by asserting Section 2 as a defense.

### C. *Gingles* I Compactness

46. The first *Gingles* precondition requires a challenger to establish that the relevant minority group is “‘sufficiently large and geographically compact to constitute a majority’ in some reasonably configured legislative district.” *Cooper*, 137 S. Ct. at 1470 (quoting *Gingles*, 478 U.S. at 50). A majority means just that: 50 percent of the (citizen) voting-age population plus one. *See Bartlett v. Strickland*, 556 U.S. 1, 12 (2009). This precondition “specifically contemplates the creation of hypothetical districts.” *Magnolia Bar Ass’n, Inc. v. Lee*, 994 F.2d 1143, 1151 n.6 (5th Cir. 1993).

47. The *Gingles* preconditions require adherence to “traditional districting principles such as maintaining communities of interest and traditional boundaries.” *Abrams v. Johnson*, 521 U.S. 74, 92 (1997) (quoting *Bush*, 517 U.S. at 977)

48. Under *Gingles* I, a minority group must constitute a majority by CVAP. *Campos*, 113 F.3d at 548; *Abbott II*, 604 F.Supp.3d at 495. “[T]he population for which that must be shown is the population in the proposed district.” *Id.* This is “focused on geographical compactness and numerosity, [and] is ‘needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district.’” *Allen*, 143 S. Ct. at 1503 (quoting *Grove*, 507 U. S. at 40).

49. A Section 2 “compactness inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries.” *Abrams*, 521 U.S. at 92; *see also Sensley v. Albritton*, 385 F.3d 591, 596 (5th Cir. 2004). That is, it cannot be assumed merely “from a group of voters’ race that they think alike, share the same political interests, and will prefer the same candidates at the polls.” *LULAC I*, 548 U.S. at 433. For that reason, illustrative plans that “lump[] together” minority populations “separated by considerable distance,” *Sensley*, 385 F.3d at 598, or “combin[e] ‘discrete communities of interest’” that differ “in socio-economic status, education, employment, health, and other characteristics” cannot satisfy the first *Gingles* precondition. *Robinson*, 37 F.4th at 218 (quoting *LULAC I*, 548 U.S. at 432).

50. Satisfying *Gingles I* is necessary “to establish that the minority has the potential to elect a representative of its own choice in some single-member district.” *Allen*, 143 S.Ct. at 1503 (quoting *Grove*, 507 U.S. at 40). The purpose of the first *Gingles* precondition is to show a solution is possible, not to necessarily give a solution to any perceived problem. *See Clark*, 21 F.3d at 95.

51. *Gingles I* sets a minimum threshold requirement to distinguish between colorable Section 2 claims and those that have no chance of success. *See Bartlett* 556 U.S. at 21. Plaintiffs typically satisfy *Gingles I* by drawing hypothetical majority-minority districts. *See Clark*, 88 F.3d at 1406. This is “needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district.” *Allen*, 143 S.Ct. at 1503 (quoting *Grove*, 507 U.S. at 40). The “ultimate end of the first *Gingles* precondition is to prove that a solution is possible, and not necessarily to present the final

solution to the problem.” *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 1019 (D.S.D. 2004) (quotation omitted); *see also Clark*, 21 F.3d at 95.

52. To satisfy their burden under the first *Gingles* precondition, Plaintiffs must show that it is possible to “creat[e] more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice.” *LULAC*, 548 U.S. at 430. To satisfy this test, these remedial districts must contain a 50 percent plus one majority of minority citizens of voting age population. *Bartlett*, 556 U.S. at 19-20; *Campos*, 113 F.3d at 548. The Supreme Court has held that a bright-line 50% plus one rule applies to determine numerosity; it is an objective test. *See id.* at 18.

53. Plaintiffs improperly invite the Court to view the County map as a whole. *See LULAC v. Abbott*, No. 1:21-CV-1006, 2022 WL 12097120, at \*8 (W.D. Tex. Oct. 20, 2022) (explaining it is improper to infer, even at the motion to dismiss stage, that a “minority coalition as a whole in the proposed district will be cohesive” without also showing “that the voters moving into the proposed district are cohesive”). Thus, insofar as Plaintiffs wish to use illustrative maps to bear their burden, their maps must satisfy *each* of the *Gingles* preconditions within the guidelines of the Constitution. *See Campos*, 113 F.3d at 547.

54. To analyze the second element of the first *Gingles* precondition, compactness, the Court must consider whether a proposed plan is consistent with traditional districting criteria such as “respect for political subdivisions or communities defined by actual shared interests.” *Miller*, 515 U.S. at 916 (1995); *see also Shaw I*, 509 U.S. at 647.

55. A Section 2 “compactness inquiry should take into account ‘traditional districting principles such as maintaining communities of interest and traditional boundaries.’” *Abrams*, 521 U.S. at 92. “[T]here is no basis to believe a district that combines two farflung segments of a racial group with disparate interests provides the opportunity that § 2 requires or that the first Gingles condition contemplates.” *LULAC I*, 548 U.S. at 433. This is “because the right to an undiluted vote does not belong to the ‘minority as a group,’ but rather to ‘its individual members.’” *Id.* at 437 (citation omitted).

56. In analyzing whether a proposed plan maintains communities of interest, “[a] State is free to recognize communities that have a particular racial makeup” so long as there is “some common thread of relevant interests.” *Miller*, 515 U.S. at 920. These shared characteristics may include social and economic needs of the communities.

57. Plus or minus five percent deviation can be an acceptable measure of approximate population equality to apply for purposes of assessing *Gingles I*. See *Fusilier v. Landry*, 963 F.3d 447, 458 (5th Cir. 2020) (holding there was no clear error in the district court’s finding that plaintiffs satisfied *Gingles I* and noting plaintiffs’ remedial plan for judicial districts considered, *inter alia*, respect for the principle of one-person, one-vote).

58. In analyzing whether a proposed plan maintains communities of interest, “[a] State is free to recognize communities that have a particular racial makeup” so long as there is “some common thread of relevant interests.” *Miller*, 515 U.S. at 920. These shared characteristics may include social and economic needs of the communities. For example, in *Theriot v. Parish of Jefferson*, the Fifth Circuit found that a majority-Black district for the Jefferson Parish Council included “low-income residents who are less-educated, more

often unemployed, and more poorly-housed” and thus shared “common social and economic needs.” 185 F.3d 477, 486 (5th Cir. 1999). The Court held that, “[g]iven the common thread which binds the [B]lack voters within [that district], they are entitled to an effective voice in the electoral process and to an influence over the outcome of elections.” *Id.* at 487 (internal quotation and citation omitted); *see also Allen*, 143 S. Ct. at 1505 (affirming district court ruling that proposed second majority-minority congressional district was reasonably configured because it joined a community of interest known as the Black Belt which combined a population that shared a “rural geography, concentrated poverty, unequal access to government services...lack of adequate healthcare and a lineal connection to “the many enslaved people brought there to work in the antebellum period.”).

59. Contiguity is a traditional redistricting principle that requires districts to be contiguous, meaning that all parts of a district are connected to one another. *See Harris v. Ariz. Indep. Redistricting Comm’n*, 578 U.S. 253, 258 (2016) (citation omitted). Influence over the outcome of elections.” *Id.* at 487 (internal quotation and citation omitted); *see also Allen*, 143 S. Ct. at 1505 (affirming district court ruling that proposed second majority-minority congressional district was reasonably configured because it joined a community of interest known as the Black Belt which combined a population that shared a “rural geography, concentrated poverty, unequal access to government services...lack of adequate healthcare and a lineal connection to “the many enslaved people brought there to work in the antebellum period.”).

#### **D. *Gingles* II - Voter Cohesion**

60. *Gingles* II and III are often addressed together. *Harding*, 948 F.3d at 308.

61. *Gingles II* requires Plaintiffs to prove that members of the minority group vote cohesively—that is, they must meet their burden to show cohesion exists. Minority political cohesion is usually shown through proof of “a significant number of minority group members usually vot[ing] for the same candidates.” *Id.* “[I]f the statistical evidence is that Blacks and Hispanics together vote for the Black or Hispanic candidate, then cohesion is shown.” *Campos*, 840 F.2d at 1245. While there is no clear threshold percentage for voter cohesion, it is clear that 51% falls “far short of the large majority typically required to show political cohesion.” *Abbott II*, 604 F. Supp. 3d at 499.

62. A minority group, or groups as asserted here, whose preferences are not cohesive enough to elect candidates without substantial Anglo voter support are “crossover” districts and do not present a viable Section 2 claim. *See Bartlett*, 556 U.S. at 14-15 (plurality opinion). Section 2 does not require jurisdictions to create “crossover” districts, in which “the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority’s preferred candidate.” *Id.* at 13. A rationale for this conclusion is that a crossover-district requirement would cause revision of “the *Gingles* threshold inquiry that has been the baseline of our § 2 jurisprudence.” *Id.* at 16. The Court reasoned that “the majority-bloc- voting requirement” will not “be met in a district where, by definition, white voters join in sufficient numbers with minority voters to elect the minority’s preferred candidate.” *Id.* The Court further explained that, where crossover voting is sufficient to create performing crossover districts, “*majority-minority districts would not be required in the first place.*” *Id.* at 24 (emphasis added).



63. It is important to keep in mind that “[n]othing in § 2 grants special protection to a minority group’s right to form political coalitions.” *Bartlett*, 556 U.S. at 15 (plurality op.). Section 2 is only violated when an electoral scheme deprives minorities of the ability to elect their preferred candidates on their own. *Id.* at 20.

64. Cohesion breaks down when primary and non-partisan general elections are analyzed. That shows partisanship is the driver here, not race. A few courts have recognized that 60% or more of minority voters must support the same candidates to establish sufficient cohesion, although they treat this as a guideline rather than “an absolute threshold” for finding cohesion. *Cottier v. City of Martin*, 445 F.3d 1113 (8th Cir. 2006) (quotation marks omitted), *overruled on other grounds*, 604 F.3d 553 (8th Cir. 2010); *see also Bone Shirt*, 336 F. Supp. 2d at 999 (holding that “cohesion exists at levels above 60 percent and may exist, albeit more weakly, at lower levels”); *Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F. Supp. 1022, 1056 (D. Md. 1994) (three-judge court) (treating 60% as a presumptive minimum).

65. In *Covington*, the North Carolina legislature created twenty-eight majority-minority districts in its state house and senate plans, based on the advice of statistical experts who found “statistically significant [RPV] in 50 of the 51 counties studied.” *Covington v. North Carolina*, 316 F.R.D. 117, 169 (M.D.N.C. 2016), *aff’d*, 581 U.S. 1015 (2017) (quotation omitted). The problem was that North Carolina’s experts, addressed “the general term ‘[RPV]’” which “simply refers to when different racial groups ‘vote in blocs for different candidates.’” *Id.* at 170 (citation omitted). But they missed “crucial difference between legally significant and statistically significant [RPV].” *Id.* (underlining in

original). Whereas polarized voting can be said to occur “when 51% of a minority group’s voters prefer a candidate and 49% of the majority group’s voters prefer that same candidate,” a *Gingles* III inquiry focuses only on legally significant RPV. *Id.*

66. Non-actionable polarized voting becomes legally significant only when “racial bloc voting is operating at such a level that it would actually minimize or cancel minority voters’ ability to elect representatives of their choice, *if no remedial district were drawn.*” *Id.* at 168 (quotation and edit marks omitted; emphasis added). The question is whether “the candidate of choice of African-American voters would usually be defeated *without a VRA remedy.*” *Id.* (emphasis added). The *Covington* court—whose decision was endorsed by every Supreme Court justice—criticized the North Carolina legislature because it “**Never Analyzed *Gingles*’ Third Factor.**” *Id.* at 167 (emphasis in original). The legislature did not assess whether the Black-preferred candidate would likely lose “absent some remedy,” and this “failure” was “fatal to their Section 2 defense.” *Id.*

67. As *Bartlett* had explained, where a crossover district would perform, “majority-minority districts would not be required in the first place.” 556 U.S. at 24 (plurality opinion). They were not required in North Carolina. The three-judge court—led by Fourth Circuit Judge James Wynn—subsequently called the invalidated North Carolina plan “the most extensive unconstitutional racial gerrymander ever encountered by a federal court,” *Covington v. North Carolina*, 270 F. Supp. 3d 881, 892 (M.D.N.C. 2017). The U.S. Supreme Court summarily affirmed the decision, which fell within its appellate jurisdiction, in a one-sentence order by a unanimous vote. *North Carolina v. Covington*, 137 S. Ct. 2211 (2017).

68. The Supreme Court reached a materially identical conclusion in *Cooper*, finding that a majority-minority district was unnecessary, and hence racially gerrymandered, where crossover voting levels were such that a crossover district would perform. 137 S. Ct. at 1471-72.

69. Additionally, in determining whether here Latinos and African Americans vote cohesively for the same candidates, it is important to study both primary elections and non-partisan general elections. *See LULAC v. Abbott*, 601 F. Supp.3d 147, 165-66 (W.D. Tex. 2022) (three-judge court) (“*Abbott I*”); *see also id.* at 169 n. 10 (citing “*Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 421 (S.D.N.Y.) (per curiam) (three-judge court) (concluding that divergence in primaries defeats a showing of political cohesion), *aff’d*, 543 U.S. 997, 125 S. Ct. 627, 160 L. Ed. 2d 454 (2004).”).

70. When one studies primary and non-partisan general elections, cohesion among Latinos and Black voters dissipates. Under Dr. Trounstine’s regression analysis, one out of eight primary elections in Galveston County shows cohesion between African Americans and Latinos. Day 10 Tr. 37:1-6. Similarly, in one out of six endogenous primary elections are African Americans and Latinos cohesive for the same candidate. Day 10 Tr. 38:3-7. Meanwhile, zero out of ten non-partisan general elections studied, using Dr. Alford’s “gold standard” analysis, showed that Latinos and African Americans were cohesive for the same candidates. Day 10 Tr. 40:23-25; 41: 1-6.

71. Consistent with *Clements*, 999 F.2d at 864-65, this cannot be sufficient to establish minority cohesion—particularly because it indicates that *partisan affiliation* is

likely a better explanation for voter behavior. Consider the Fifth circuit’s analysis of this particular point in *Clements*:

In Harris County, Taebel studied 45 elections in which he determined the percentage of black and Hispanic votes cast for the minority/winning candidate. In 35 elections the black and Hispanic vote percentages varied by less than 10%. Similarly, the levels of black and Hispanic support for the same candidate were within ten percentage points in 13 of the 17 elections studied in Tarrant County. In Midland County, by contrast, the black and Hispanic voting [\*\*102] percentages differed by less than 10% in only 4 of the 8 elections analyzed; in Ector County, this close correlation between the preferences of Hispanic and black voters was shown in just 2 of 10 elections. Under the present law of this circuit, there is no error in the district court's findings of cohesion in Midland, Ector, and Lubbock Counties, because in those counties a significant number of blacks and Hispanics usually voted for the same candidates. *Gingles*, 478 U.S. at 56. But this standard also compels the conclusion that there is also black-Hispanic cohesion in Harris and Tarrant Counties. The district court thus clearly erred in ignoring elections involving Hispanic and white candidates in these counties.

*Clements*, 999 F.2d 831, 864-865.

### **E. *Gingles* III – White Bloc Voting**

72. *Gingles* III requires a challenger to prove an “amount of white bloc voting that can generally ‘minimize or cancel’ black voters’ ability to elect representatives of their choice.” *Gingles*, 478 U.S. at 56 (citations omitted). The question is not merely “whether white residents tend to vote as a bloc, but whether such bloc voting is ‘legally significant.’” *Clements*, 999 F.2d at 850 (citation omitted). Importantly, “the third precondition, focused on racially polarized voting, establish[es] that the challenged districting thwarts a distinctive minority vote *at least plausibly on account of race*.” *Allen*, 143 S. Ct. at 1503. Causality is the focus of *Gingles* III.

73. “[I]n the absence of significant white bloc voting it cannot be said that the

ability of minority voters to elect their chosen representatives is inferior to that of white voters.” *Voinovich*, 507 U.S. at 158 (quoting *Gingles*, 478 U.S. at 49 n. 15). That is, “[i]n areas with substantial crossover voting” a challenger will not “be able to establish the third *Gingles* precondition—bloc voting by majority voters.” *Bartlett*, 556 U.S. at 24.

74. “[D]iscriminatory effect under Section 2 is specifically defined and is sometimes difficult to meet.” *Abbott II*, 604 F. Supp. 3d at 492 (citing *Gingles*, 478 U.S. at 45 and *Brnovich v. Dem. Nat’l Comm.*, 141 S. Ct. 2321, 2338-40 (2021)). “[P]artisan motives are not the same as racial motives.” *Brnovich v. Dem. Nat’l Comm.*, 141 S. Ct. at 2349.

75. Plaintiffs must show that a majority of the white citizen voting age population votes sufficiently as a bloc to enable it—absent special circumstances—to usually defeat the minority coalition’s preferred candidate; *i.e.*, evidence that the white bloc vote normally defeats the combined strength of minority support plus white “crossover” votes. *Rangel v. Morales*, 8 F.3d 242, 245 (5th Cir. 1993). Unlike for the second precondition, this must be proved in regard to the *challenged* map, not Plaintiff’s proposed map. *See LULAC v. Abbott*, 2022 WL 4545754, at \*5 (W.D. Tex. Sept. 28, 2022) (explaining the second and third *Gingles* preconditions “are not mirror-image requirements for different racial groups” and a plaintiff “must show the second precondition for the minority population that would be included in its proposed district” while “the third precondition must be established for the challenged districting”). Minority electoral success and “[RPV]” are the two most probative factors in evaluating the merits of a Section 2 dilution allegation. *LULAC # 4552 v. Roscoe Indep. Sch. Dist.*, 123 F.3d 843,

848 (5th Cir. 1997) (citing *Clark*, 88 F.3d at 1397 (5th Cir. 1996)).

76. The third *Gingles* precondition requires a challenger to prove an “amount of white bloc voting that can generally ‘minimize or cancel’ black voters’ ability to elect representatives of their choice.” *Gingles*, 478 U.S. at 56 (citations omitted). The question is not merely “whether white residents tend to vote as a bloc, but whether such bloc voting is ‘legally significant.’” *Clements*, 999 F.2d at 850 (5th Cir. 1993) (en banc) (citation omitted).

77. “[I]n the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters.” *Voinovich*, 507 U.S. at 158 (quoting *Gingles*, 478 U.S. at 49 n. 15). That is, “[i]n areas with substantial crossover voting” a challenger will not “be able to establish the third *Gingles* precondition—bloc voting by majority voters.” *Bartlett*, 556 U.S. at 24.

78. If “partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens,” then there is no “legally significant” RPV under the third *Gingles* precondition. *Clements*, 999 F.2d at 850. This is so because “[t]he Voting Rights Act does not guarantee that nominees of the Democratic Party will be elected, even if black voters are likely to favor that party’s candidates.” *Id.* at 854 (emphasis added) (quoting *Baird v. Consolidated City of Indianapolis*, 976 F.2d 357, 361 (7th Cir. 1992)). Section 2 “is implicated only where Democrats lose because they are black, not where blacks lose because they are Democrats.” *Id.*

79. The protections of Section 2 of the VRA “extend only to defeats experienced by voters ‘on account of race or color.’” *Clements*, 999 F.2d at 850. That means that when

“partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens” then there is no legally sufficient white bloc voting. *Id.*

80. The Court must determine who the minority-preferred candidate is, if the white majority voted as a bloc and to defeat that candidate, and whether there were special circumstances involved in each particular election. “When both minorities and Anglos vote in blocs, courts conclude that voting is ‘racially polarized’ and typically hold that both the second and third preconditions have been met.” *Abbott II*, 604 F.Supp.3d at 495. The difference between the second and third *Gingles* factors is that, for *Gingles 2*, cohesion among the minority group must be shown within the proposed district and, for *Gingles 3*, block voting must be shown for the challenged district. *Id.* at 496.

81. Failures of a minority group to elect representatives of its choice that are attributable to “partisan politics” provide no grounds for relief. Section 2 is “a balm for racial minorities, not political ones” *Baird*, 976 F.2d at 361 (citation omitted).

82. In other words, the elections that matter for purposes of RPV are those where minority candidates are defeated by White candidates *because of* their minority status. *Citizens for a Better Gretna v. Gretna*, 834 F. 2d 496, 503-04 (5th Cir. 1987).<sup>10</sup> Precedent makes this clear. “[I]mplicit in the *Gingles* holding is the notion that black preference is determined from elections which offer the choice of a black candidate.” *Id.* Without

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<sup>10</sup> In her report’s *Gingles III* analysis, Dr. Trounstein also uses an unusual definition of “racially polarized voting.” Under her approach, when white voters and Black voters vote cohesively for the same candidate and Latino voters vote cohesively for a different candidate, she still categorizes this as a racially polarized election. As far as Defendants are aware, no Court has characterized such elections as racially polarized for purposes of Section 2 claim, further undermining the reliability of her analysis.

examining races featuring a minority candidate, it is impossible to know “the extent that candidates preferred by Black voters are consistently defeated because of their substantive political positions,” which makes them “casualties of interest group politics, not racial considerations.” *Clements*, 999 F.2d at 879. A Court must determine whether a Plaintiff has met their burden to show bloc voting is race-driven and should consider whether partisanship remains as a cause for potential losses at the polls; otherwise, a “vote[-]dilution claim is a mere euphemism for political defeat at the polls.” *Lopez v. Abbott*, 339 F. Supp. 3d 589, 603 (S.D. Tex. 2018). Plaintiffs may not need to affirmatively show racial animus on behalf of the white voting bloc, but they must present evidence satisfying the Court that partisan affiliation was *not* the cause of any divergent voting patterns in the presented races. *Clements*, 999 F.2d at 879.

#### **F. Totality of the Circumstances or “Senate Factors”**

83. Even if all three *Gingles* preconditions are met, Plaintiffs must still show that “under the totality of circumstances that the political process is not equally open to minority voters” to prevail on their Section 2 claim. *Allen*, 143 S. Ct. at 1503 (2023) (cleaned up). A totality-of-the-circumstances analysis is “peculiarly dependent upon the facts of each case and requires an intensely local appraisal of the design and impact of the contested electoral mechanisms.” *Harding*, 948 F.3d at 308-09.

84. In the Senate Report accompanying Section 2’s 1982 amendments,<sup>11</sup> Congress provided a litany of “factors that will typically be relevant to the totality of

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<sup>11</sup> See S. Rep., at 28-29, U.S. Code Cong. & Admin. News 1982, pp. 206-207.



circumstances inquiry.” *Magnolia Bar Ass’n, Inc.*, 994 F.2d at 1146. The Senate Report for the amended Section 2 indicates that a “proper application of the results test requires courts to distinguish between situations in which racial politics play an excessive role in the electoral process, and communities in which they do not.” *Clements*, 999 F.2d at 855 (cleaned up).

85. A totality-of-the-circumstances analysis requires “a searching practical evaluation of the past and present reality”—typically leading courts to review a number of nonexhaustive factors derived from the Senate Report accompanying the passage of the 1982 amendments to Section 2. *Gingles*, 478 U.S. at 75-76; *see id.* at 44-45; *Missouri State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924, 931 (8th Cir. 2018). The totality analysis considers factors enumerated in a Senate Report that issued with the 1982 VRA Amendments, S. Rep. No. 97-417, at 28-29 (1982). The nonexhaustive factors are:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
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 unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in

the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals; and
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

86. No one factor is dispositive, a plaintiff does not have to prove a majority of the factors, and some factors will be more relevant than others in certain cases. *See Westwego*, 946 F.2d at 1120.

87. In conducting a totality analysis, relevant evidence under Senate 1 concerns recent or reasonably contemporaneous events. Courts focus the analysis “on recent evidence of discrimination.” *Lopez*, 339 F. Supp. 3d at 611; *see also McCleskey v. Kemp*, 481 U.S. 279, 298 n.20 (1987) (“unless historical evidence is reasonably contemporaneous with the challenged decision, it has little probative value” and stating that, “[a]lthough the history of racial discrimination in this country is undeniable, we cannot accept official actions taken long ago as evidence of current intent”); *Veasey v. Abbott*, 830 F.3d 216, 232 (5th Cir. 2016) (holding “the district court’s disproportionate reliance on long-ago history was error”). “[A]s the Chief Justice has observed, ‘our country has changed’ in its treatment of minorities” *Fusilier*, 963 F.3d at 459 n.9 (quoting *Shelby County v. Holder*, 570 U.S. 529, 557 (2013)). Relevant evidence in a Senate 1 analysis also must also pertain to actions, not to the DOJ’s refusal to preclear proffered plans. “[T]hat the state failed to receive preclearance from DOJ under the now-void Section 4 of the VRA does not prove this ‘historical’ point, because the Section 4 test did not deal with actual discrimination in election practices but with the lesser charge of ‘backsliding.’” *Fusilier*, 963 F.3d at 460 n.9

(citing *Reno v. Bossier Parish School Bd.*, 528 U.S. 320, 335 (2000)).

88. The fourth Senate Factor requires Plaintiffs to establish whether, “if there is a candidate slating process, whether the members of the minority group have been denied access to that process.” *Gingles*, 478 U.S. at 37. “A slating organization can either be an official political party or an unofficial nonpartisan organization.” *U.S. v. City of Euclid*, 580 F. Supp. 2d 584, 608 (N.D. Ohio 2008); see also *Citizens for a Better Gretna v. City of Gretna, La.*, 636 F. Supp. 1113, 1122-23 n.24 (E.D. La. 1986), *aff’d*, 834 F.2d 496 (5th Cir. 1987) (defining a slating group as “an organization whose purpose is to recruit candidates, nominate them, and campaign for their election to office in a nonpartisan election system.”). The relevant question is, “where there is an influential official or unofficial slating organization, [what is] the ability of minorities to participate in that slating organization and to receive its endorsement?” *U.S. v. Marengo County Comm’n*, 731 F.2d 1546, 1569 (11th Cir. 1984).

89. In a Senate factor 5 analysis, the inquiry is whether past discrimination results in “reduced levels of [minority] voter registration, lower turnout [], or any other factor tending to show that past discrimination has affected their ability to participate in the political process” that is at issue. *Clements*, 999 F.2d at 866-67. That is, is there “proof that participation in the political process is in fact depressed among minority citizens.” *Id.* “[P]roof of socioeconomic disparities and a history of discrimination ‘without more’ d[oes] not suffice to establish” this factor. *Clark*, 88 F.3d at 1399.

90. Isolated instances of racial appeals, especially when the campaign results in an election that shows the racial appeal was not successful, are not strong evidence under

this factor. *See Clements*, 999 F.2d at 879 (two racial appeals, one of which resulted in the election of a Black candidate in both the Republican primary and the general election, were mere isolated incidents).

91. The extent to which minority candidates are elected to public office helps contextualize the degree to which vestiges of discrimination continue to reduce minority participation in the political process. *See Gingles*, 478 U.S. at 45. Therefore, Senate Factor 7 does not confine itself to endogenous elections, and instead looks at the extent to which minorities have been elected across the jurisdiction to gauge the extent to which minorities have gained a political beachhead. Minority elected officials also normalize political power in the hands of those who decades ago were excluded from political power to the broader electorate across the county. *Gingles* requires a review of the Senate Factors “requires a searching practical evaluation of the past and present reality” of a jurisdiction’s electoral system that is “intensely local,” “fact-intensive,” and “functional” in nature. 478 U.S. at 45-46, 62-63, 79. To truly consider the totality of the circumstances, and considering Plaintiffs’ arguments span various jurisdictions throughout the County, considering all elections within Galveston County as the challenged jurisdiction gives a fuller picture for a Senate factor analysis. *See NAACP v. Fordice*, 252 F.3d 361, 370 (5th Cir. 2001) (“district court was not barred from considering the Banks and Anderson elections in making its determination of minority electoral success regarding the offices of public service and transportation commissioner”); *see also Westwego*, 872 F.2d at 1208, n.8. Plaintiffs, instead, ask the Court to put on “judicial blinders” and limit the scope to only County-wide elections.

92. Additional factors which may be of limited relevance in some cases are (sometimes referred to as Senate Factors 8 and 9): whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.<sup>12</sup> For the first enhancing factor, the Fifth Circuit has cautioned that “responsiveness cannot be weighed in the abstract” and that “[r]esponsiveness, like many things, is a question of both kind and degree.” *Clark*, 88 F.3d at 1401. The second enhancing factor takes into consideration the interrelated problems faced by a redistricting body. *See Rodriguez v. Harris Cnty., Tex.*, 964 F. Supp. 2d 686, 799 (S.D. Tex. 2013). *Rodriguez* confirms that where legislative bodies balance issues like compliance with federal law, population shifts, and maintaining incumbent relationships, the limited inquiry is whether the reasons “for adopting and maintaining the [plan] are arbitrary or without adequate basis.” *Id.*

93. The Fifth Circuit instructs courts using the Senate factors not to “become bogged down in mechanical point counting, but rather, to make a searching practical

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<sup>12</sup> Some courts have stated (without analysis) that the two most important factors are 2 and 7. *See Clark*, 88 F.3d at 1397 (5th Cir. 1996) (citing *Gingles*, 478 U.S. at 48 n.5 and *Westwego*, 946 F.2d at 1122). But this is only for challenges to multi-member districts, a circumstance not present in this case. The primary source for this is footnote 15 in *Gingles*. *Gingles* addressed a claim of that the use of multi-member districts submerged minority vote strength in a white majority. *Gingles*, 478 U.S. at 46. In a footnote, the Court stated that “some Senate Report factors are more important to multimember district vote dilution claims than others,” and “[u]nder a ‘functional’ view of the political process mandated by § 2, S.Rep. at 30, n. 120, the most important Senate Report factors bearing on § 2 challenges to multimember districts are [factors 2 and 7.]” *Id.* at 48 n.15. *Clark* reviewed a districting plan dividing a county into 5 districts, each with one type of elected official, and *Westwego* involved at-large voting. Regardless, courts must still review the totality of the circumstances under the VRA.

evaluation of the locality’s past and present reality. There is no requirement that any particular number of the Senate factors be proved, or that a majority of them point one way or another.” *Magnolia Bar Ass’n, Inc.*, 994 F.2d at 1147 (internal citations and quotations omitted); *see also McMillan*, 748 F.2d at 1046 (stating that the absence of any of the Senate factors is not conclusive under the Section 2 “totality of the circumstances” test).

94. The Senate factors, which guide the totality of the circumstances inquiry, cut against a finding of vote dilution.

#### **IV. Constitutional Claims (NAACP and Petteway Plaintiffs)**

##### **A. Fifteenth Amendment claims**

95. Under Fifth Circuit precedent, there is no cause of action for intentional vote dilution under the Fifteenth Amendment. *See Prejean v. Foster*, 227 F.3d 504, 519 (5th Cir. 2000). This makes sense because the U.S. Supreme Court has never held that vote dilution claims are cognizable under the Fifteenth Amendment. *See Voinovich*, 507 U.S. at 159. Instead, intentional vote dilution cases are resolved under the Fourteenth Amendment.

##### **B. Fourteenth Amendment Intentional Racial Discrimination<sup>13</sup>**

96. The Constitution and the VRA are not synonymous. *Gingles*, 478 U.S. at 35 (noting important differences in constitutional and VRA analyses).

97. In a Constitutional intentional vote dilution claim, a plaintiff must plead that the challenged redistricting plan was enacted with a discriminatory purpose and has discriminatory effects. *See Harding*, 948 F.3d at 312. The gravamen of an intentional vote

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<sup>13</sup> The Fifteenth Amendment claims are discussed *infra*.

dilution claim is that the Commissioners Court enacted “a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities.” *Perez v. Abbott*, 253 F. Supp. 3d 864, 932 (W.D. Tex. 2017) (internal quotation marks omitted). These claims are “infrequently” asserted because intentional vote dilution claims are harder to prove than an effects-only Section 2 claim. *Abbott I*, 601 F. Supp. 3d at 160 (citing *Harding*, 948 F.3d at 313 n.47).

98. A plaintiff must plead that a defendant “acted at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Id.* (quoting *Pers. Adm’r of Mass.*, 442 U.S. at 279). Courts use the factors outlined in *Arlington Heights*, 429 U.S. 252 (1977), to determine if the decision-makers acted with illicit intent. *Id.* at 160-61. Essentially, in intentional vote-dilution claims, a plaintiff must prove that race was “part of [the defendants’] redistricting calculus.” *Id.* at 161. Similarly, in a VRA Section 2 claim of intentional discrimination, a plaintiff must plead that racial discrimination was one purpose of the challenged government action. *U.S. v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009). The *Arlington Heights* factors are also used to determine intent in a Section 2 claim. *See id.*

99. To state an intentional-discrimination claim, “racial discrimination need only be one purpose, and not even a primary purpose” of the challenged plan. *Veasey*, 830 F.3d at 230 (quoting *Brown*, 561 F.3d at 433). “[I]ndirect circumstantial evidence, including the normal inferences to be drawn from the foreseeability of defendant’s actions may be considered.” *Brown*, 561 F.3d at 433 (quotation marks omitted).

100. Accordingly, “[d]etermining whether invidious discriminatory purpose was

a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Arlington Heights*, 429 U.S. at 266. “The impact of the official action . . . provide[s] an important starting point.” *Id.* (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)). From there, courts consider “five nonexhaustive factors to determine whether a particular decision was made with a discriminatory purpose”: (1) “the historical background of the decision,” (2) “the specific sequence of events leading up to the decision,” (3) “departures from the normal procedural sequence,” (4) “substantive departures,” and (5) “legislative history.” *Veasey*, 830 F.3d at 231 (quotation marks omitted); *see also Arlington Heights*, 429 U.S. at 267-68. Evidence of “race-based hatred or outright racism, or that any particular legislator harbored racial animosity or ill-will towards minorities because of their race,” is not required. *Perez*, 253 F. Supp. 3d at 948.

101. For the same reason, Plaintiffs’ alternative plans cannot be deemed “reasonably configured,” *Wis. Legis.*, 142 S. Ct. at 1248 (2022), when they “segregate the races for purposes of voting.” *Shaw I*, 509 U.S. at 642. A plan that links “distinct locations” on the basis of race does not satisfy the first *Gingles* precondition. *Sensley*, 385 F.3d at 597.

102. Section 5 and Section 2 have different mechanics and purposes. *See Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471 (1997). Courts have “an independent obligation in adjudicating consequent equal protection challenges.” *Miller*, 515 U.S. at 922. It is the duty of this Court, and not the Department of Justice, to say what the law is. *Id.* (citing *Marbury*, 5 U.S. (1 Cranch) at 177). Additionally, the Department of Justice’s “legal conclusion[s]



[are] still [] legal conclusion[s]—i.e. something that the Court can’t consider when evaluating whether [Plaintiffs] have stated a claim.” *Abbott II*, 604 F.Supp.3d at 505.

103. The *Allen* Court recently maintained the position that “Section 2 itself ‘demands consideration of race.’” *Allen*, 143 S. Ct. at 1510-11 (quoting *Perez*, 138 S. Ct. at 2315). However, those considerations are not without limits. *Miller*, 115 S. Ct. at 2494.

As explained in *Shaw I*:

A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid.

*Shaw I*, 509 U.S. at 647 (emphasis added, citations omitted). Subsequently, in *Miller*, 115 S. Ct. 2475, the Supreme Court clarified that districts drawn for predominantly racial reasons fail the Gingles compactness requirement, even if they are not as obviously irregular as the North Carolina district invalidated in the *Shaw* cases.

104. *Miller* arose from the same max-black policy addressed in *Shaw I*. In Georgia, the DOJ refused to preclear a remedial plan drawn by the Georgia General Assembly, because the General Assembly refused to create the third majority-minority district found in the “max-black” plan drafted by the ACLU for the General Assembly’s Black caucus. *Id.* at 2484. “Twice spurned” by the DOJ’s refusal to preclear plans with less than three majority-Black districts, the General Assembly finally relented and enacted the ACLU’s “max-black” plan. *Id.* at 2484. The hallmark of the ACLU’s “max-black” plan was the “Macon/Savannah trade” which moved the densely Black population of Macon into a new district, thereby creating a district that connected “black

neighborhoods of metropolitan Atlanta to the poor black populace of Coastal Chatham County” near Savannah. *Id.* This new district was 260 miles long and “worlds apart in culture.” *Id.* The Supreme Court found that this district was a “geographic monstrosity” that tied majority Black population centers at the periphery of Atlanta, Augusta, and Savannah with a sparsely populated rural area called “plantation country.” *Id.* In striking down this “max-black” strategy, the Supreme Court held that only “a shortsighted and unauthorized view of the Voting Rights Act . . . which has played a decisive role in redressing some of our worst forms of discrimination” could support “the very racial stereotyping the Fourteenth Amendment forbids.” *Id.* at 2494.

### C. Fourteenth Amendment Racial Gerrymandering

105. The Court must presume the challenged plan complies with the Constitution. *Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 153 (1944) (“State statutes, like federal ones, are entitled to the presumption of constitutionality until their invalidity is judicially declared”); *see also Perez*, 138 S. Ct. at 2324-25.

106. The Equal Protection Clause of the Fourteenth Amendment’s “central mandate is racial neutrality in governmental decisionmaking.” *Miller*, 515 U.S. at 904. It “limits racial gerrymandering without ‘sufficient justification’ to separate voters on the basis of race.” *Walters v. Bos. City Council*, No. CV 22-12048-PBS, 2023 WL 3300466 (D. Mass. May 8, 2023), at \*8 (internal citations omitted). Plaintiffs must prove that “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Miller*, 515 U.S. at 916; *see also Harding*, 948 F.3d at 313. The legislature must have “subordinated traditional race-neutral

districting principles” like “compactness, contiguity, and respect for communities of interest” to racial considerations.” *Walters*, 2023 WL 3300466, at \*9; *see also Bethune-Hill*, 137 S. Ct. at 797. Mere awareness of race is not enough; legislatures “will . . . almost always be aware of racial demographics.” *Miller*, 515 U.S. at 916. Racial gerrymandering claims are district-specific and therefore apply “to the boundaries of individual districts” rather than the map as a whole. *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 262 (2015).

107. To succeed on a racial gerrymandering claim, Plaintiffs must plead and prove that “the legislature subordinated traditional race-neutral districting principles . . . to racial considerations.” *Bethune-Hill*, 137 S. Ct. at 797. A plaintiff can attempt to show this through alleging that the district’s shape deviates from traditional redistricting principles such as compactness, or more direct evidence going to legislative purpose. *See id.* at 798. As for evidence of legislative purpose, in past cases, plaintiffs have successfully proven that race predominated in the drawing of districts through pleading and proving that the legislature established population percentage targets for the minority population. *See id.* at 799; *Ala. Legis. Black Caucus*, 575 U.S. at 267 (“That Alabama expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote) provides evidence that race motivated the drawing of particular lines in multiple districts in the State.”); *Abbott II*, 604 F. Supp. 3d at 510 (observing that plaintiffs had pleaded sufficient facts to survive a motion to dismiss where the plaintiffs alleged that the “House committee chairman’s statements stressing the number of majority-minority districts, the legislature’s apparent desire to keep various

racial groups above 50% of certain districts, *and the irregular shapes of CD 6 and 33*") (emphasis added). Here, as Plaintiffs allege racial gerrymandering where racial identification correlates highly with political affiliation, SAC ¶¶ 124, 126-28, Plaintiffs must also plead and prove that "the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles." *Easley v. Cromartie*, 532 U.S. 234, 258 (2001).

108. "The Equal Protection Clause prohibits a State, without sufficient justification, from 'separat[ing] its citizens into different voting districts on the basis of race.'" *Bethune-Hill*, 137 S. Ct. at 797 (quoting *Miller*, 515 U.S., at 911). Race therefore must not be "the predominant factor motivating" the "decision to place a significant number of voters within or without a particular district." *Id.* (quoting *Miller*, 515 U.S. at 916).

109. The United States Supreme Court has not "affirmed a predominance finding, or remanded a case for a determination of predominance, without evidence that some district lines deviated from traditional [redistricting] principles." *Bethune-Hill*, 137 S. Ct. at 799. In fact, "classic racial-gerrymandering cases often included vivid descriptions of the specific districts at issue." *Abbott II*, 604 F. Supp. at 509 (citing *Shaw I*, 509 U.S. at 635-36) (describing North Carolina Congressional District as looking like a "Rorschach ink-blot test" or a "bug splattered on a windshield); *see also Bush*, 517 U.S. at 973-74 (describing Texas Congressional District 29 as resembling a "sacred Mayan bird").

110. Just as in *Abbott I*, the *Arlington Heights* factors do not favor Plaintiffs. In *Abbott I*, even though changes to one district bore more heavily on Black and Hispanic

voters than on Anglo voters, and recent history weighed against the state, the circumstances surrounding the passage of the redistricting plan were “uniformly innocuous, at least from the standpoint of discriminatory intent.” *Abbott I*, 601 F. Supp. 3d at 181-82. Alternative maps proposed by Plaintiffs were “not persuasive” in that case. *Id.* at 182.

111. More particularly, any existing or redrawn precinct may violate equal protection guarantees if race predominated the design. *See Bethune-Hill*, 580 U.S. at 188-89 (discussing *Miller*, 515 U.S. at 916). Although compliance with the VRA might be a compelling interest, strict scrutiny and narrow tailoring require that there be a “strong basis in evidence”—meaning the drawing body must have “good reasons to believe”—that compliance cannot be achieved through use of race-neutral policies. *Id.* at 193-4 (citing *Ala. Legis. Black Caucus*, 575 U.S. at 278). The *Gingles* discussion reveals both that race is the primary driver of the Plaintiffs’ illustrative maps, and that there is no “good reason” to believe the County had to use race during redistricting to avoid a Section 2 violation.

112. In *Jacksonville*, the district court enjoined a redistricting plan that maintained the districts as they were drawn in the 2011 redistricting cycle. *Jacksonville Branch of the NAACP v. City of Jacksonville*, 635 F. Supp. 3d 1229, 1286 (M.D. Fla. 2022). Although the court acknowledged a “very understandable desire” by city council “to assure continued minority representation,” such intentions were not enough to withstand constitutional scrutiny. *Id.* As the court emphasized, “the Supreme Court has been unequivocal in its direction that racial sorting—even when done with good intention—violates the Constitutional mandate of the Equal Protection Clause if it cannot survive strict scrutiny.”

*Id.*

113. The lesson from *Jacksonville* is that by Plaintiffs contending that County Defendants should have enacted a least changes plan, moving as minimal population as possible, and they have proposed plans that do just that, Plaintiffs have made the “historical foundations of the [2011 and 2013 plans] particularly relevant.” *Id.* (citing *Chen v. City of Houston*, 206 F.3d 502, 521-22 (5th Cir. 2000)). Thus, where “district lines track a path similar to their predecessor districts...courts should also examine the underlying justification for the original lines or original district.” *Bethune-Hill*, 141F. Supp.3d at 544.

114. In *Walters v. Boston City Council*, voters sued the City of Boston over a redistricting map alleging it was enacted to achieve “racial balancing.” *Walters*, 2023 WL 3300466, at \*1. The court, after finding the legislation was in fact racially motivated to strengthen a minority opportunity district or to avoid packing, found there was no compelling interest narrowly tailored to accomplish that goal under a Fourteenth Amendment analysis. *Id.* at \*13. It reiterated that “[C]ompliance with federal antidiscrimination laws cannot justify race-based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws.” *Id.* (quotation omitted).

115. To succeed on a racial-gerrymandering claim, a plaintiff must plead and prove that “the legislature subordinated traditional race-neutral districting principles . . . to racial considerations.” *Bethune-Hill*, 580 U.S. at 187. A plaintiff can attempt to show this by alleging that the district’s shape deviates from traditional redistricting principles, such as compactness, or through more direct evidence going to legislative purpose. *See id.* at 188-89.

116. Racial-gerrymandering claims are district specific and therefore apply “to the boundaries of individual districts.” *Ala. Legis. Black Caucus*, 575 U.S. at 262. By contrast, racial-gerrymandering claims do not apply to the map as an undifferentiated whole. *See id.* The harm in a racial-gerrymandering claim is personal and includes being “personally . . . subjected to [a] racial classification . . . as well as being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group.” *Id.* at 263 (alterations in original) (internal quotation marks and citations omitted). Thus, racial gerrymanders “directly threaten a voter who lives in the *district* attacked” and not those who live elsewhere. *See id.* (emphasis in original).

117. As the Supreme Court has explained, a “plaintiff’s burden is to show, either through circumstantial evidence of a district’s shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature’s decision.” *Miller*, 515 U.S. at 916.

118. Racial predominance occurs when (1) a mapmaker “purposefully established a racial target,” such as that “African-Americans should make up no less than a majority of the voting-age population,” and (2) the racial target “had a direct and significant impact” on the district’s “configuration.” *Cooper*, 137 S. Ct. at 1468-69. Predominance may be shown through either direct or circumstantial evidence. *Bethune-Hill*, 137 S. Ct. at 797.

119. The Supreme Court defines traditional districting principles for the purpose of the racial-predominance test as “*race-neutral* districting principles,” *Bethune-Hill*, 137 S. Ct. at 797 (quoting *Miller*, 515 U.S. at 916) (emphasis added). Creating majority-minority districts is a *race-based* goal. *Wis. Legislature*, 142 S. Ct. at 1248-51; *Cooper*,

137 S. Ct. at 1468-69.

120. In *Bethune-Hill*, the Supreme Court rejected this standard and held that “a conflict or inconsistency between the enacted plan and traditional redistricting criteria is not a threshold requirement or a mandatory precondition in order for a challenger to establish a claim of racial gerrymandering.” 137 S. Ct. at 799. It is only “persuasive circumstantial evidence tending to show racial predomination.” *Id.* In *Cooper*, the Court reaffirmed this holding and clearly established the above-described predominance test. 137 S. Ct. at 1469 n.3 (quoting *Bethune-Hill*, 137 S. Ct. at 799).

121. But “the equal population goal is not one factor among others to be weighed against the use of race to determine whether race ‘predominates.’ Rather, it is part of the redistricting background, taken as a given, when determining whether race, or other factors, predominate in a legislator’s determination as to *how* equal population objectives will be met.” *Ala. Legislative Black Caucus*, 575 U.S. at 272.



## PART II: FINDINGS OF FACT<sup>14</sup>

### I. Background

#### A. Galveston County and its Commissioners Court

122. Galveston County is a political and geographical subdivision of the State of Texas, located in southeast Texas on the Gulf of Mexico and borders Harris, Brazoria, and Chambers Counties. Dkt. 204-6 ¶ 1 (Jt. Stip. Facts).

123. The Galveston County Commissioners Court consists of a County Judge elected at-large, who serves as the presiding officer, and four commissioners elected from single-member districts, called “precincts,” to serve four-year, staggered terms. Dkt. 204-6 ¶ 2 (Jt. Stip. Facts). Members of the Commissioners Court are elected in partisan elections with a majority-vote requirement in the party primary. Dkt. 204-6 ¶ 4 (Jt. Stip. Facts).

124. Galveston County Judge Mark Henry was first elected in 2010 and has served as County Judge from that time until the present day. Dkt. 204-6 ¶ 12 (Jt. Stip. Facts).

125. Commissioner Stephen Holmes has served as Galveston County’s Precinct 3 Commissioner from 1999 to the present day. Dkt. 204-6 ¶¶ 11, 16 (Jt. Stip. Facts). Darrell Apffel has served as the County’s Precinct 1 Commissioner from 2016 until the present day. Dkt. 204-6 ¶ 11 (Jt. Stip. Facts). Joseph Giusti has served as the County’s Precinct 2 Commissioner from 2014 until the present day. *Id.*

126. Kenneth Clark served as Commissioner for Precinct 4 from 1998. Dkt. 204-6 ¶ 11 (Jt. Stip. Facts). Commissioner Clark passed away in May of 2022. Dkt. 204-6 ¶ 14

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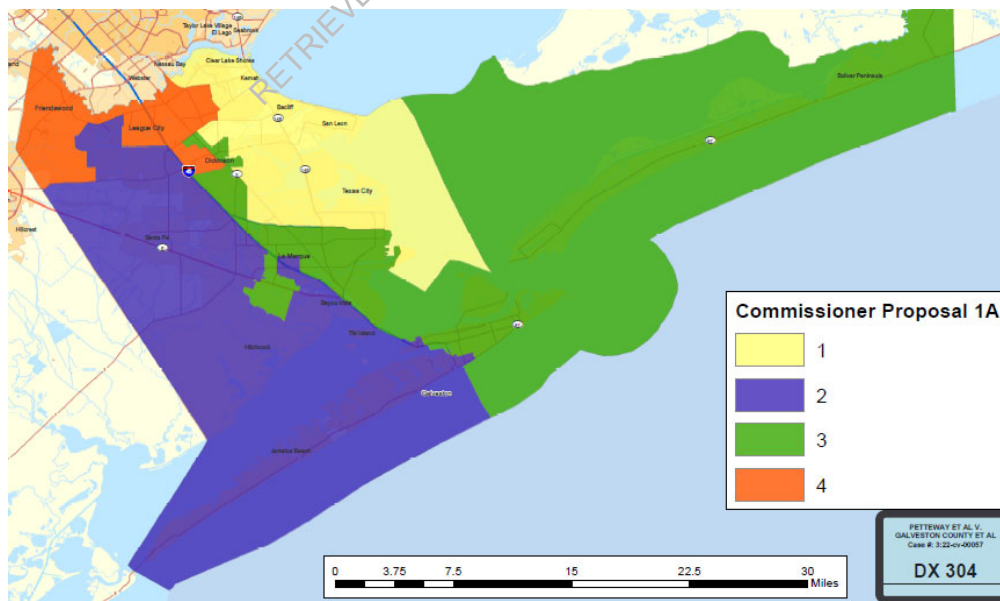
<sup>14</sup> Evidence will overlap into more than one element in this case. By attempting to categorize the evidence at trial, Defendants do not mean to limit the relevance of evidence to other categories or elements.

(Jt. Stip. Facts). Commissioner Clark was the sole Republican on the Galveston County Commissioners Court from his 1998 election until 2010. Dkt. 204-6 ¶ 13 (Jt. Stip. Facts).

127. Commissioner Dr. Robin Armstrong, who is Black, was appointed to represent Galveston County Commissioners Court Precinct 4 in May 2022; he was elected as Precinct 4 Commissioner in November 2022 after running unopposed. Dkt. 204-6 ¶ 14 (Jt. Stip. Facts).

**B. 2011-2013 Redistricting Plans**

128. In October 2011, Galveston County sought preclearance from the Department of Justice (“DOJ”) for its County Commissioners, Justice of the Peace and Constable redistricting plans (JX-45), and also sought judicial preclearance by filing a declaratory judgment action. Day 8 Tr. 10:16-22. Page 22 of JX-45 is the Commissioners precinct map submitted by the County for preclearance in 2011. Day 8 Tr. 14:12-15. DX-304 is a clearer image of that map (Day 8 Tr. 14:12-16):



129. On November 14, 2011, after the County sought preclearance, Cause No. 3:11-cv-00511 (“2011 Redistricting Case”) was filed seeking, in part, an injunction to prevent use of unprecleared maps.

130. The County assured the DOJ and the court in the 2011 Redistricting Case that it would not implement any unprecleared maps.

131. On November 21, 2011, a temporary restraining order (“TRO”) was entered in the 2011 Redistricting Case.

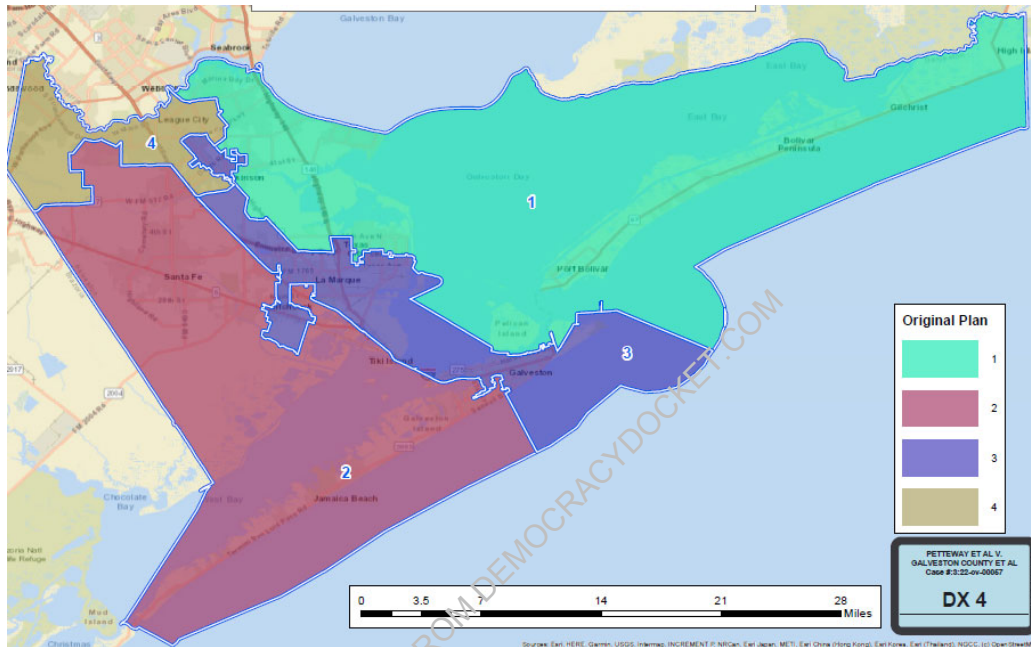
132. On December 9, 2011, a majority of a three-judge panel vacated the TRO in the 2011 Redistricting Case.

133. On January 20, 2012, despite the County’s assurance it would not implement any unprecleared maps, a three-judge panel reinstated the TRO and enjoined the County from using unprecleared maps (2011 Redistricting Case).

134. On March 5, 2012, the DOJ issued its first objection to Galveston County’s submitted plan. JX-6 is the DOJ’s preclearance objection letter. While the letter discussed the overall decrease in Black and Hispanic population, the letter also reflects concern that relocating Bolivar had the effect of reducing the African American share of the electorate in Precinct 3 while increasing both the Hispanic and Anglo populations.

135. The County promptly entered into discussions with the DOJ. Mr. Oldham met with the DOJ in a room at the Galveston County Courthouse, began negotiating with the DOJ on behalf of the County and resolved the matter. Day 8 Tr. 11:15-25. In the DOJ’s

negotiations, they decreased the Hispanic population while increasing the African American population, so there is a relative change they're engaged in. Day 8 Tr. 208:21-209:4. The new plan was adopted, precleared and submitted in the 2011 Redistricting Case. It is the 2011 Map, sometimes called the Benchmark plan (DX 4):



136. Comparing DX-304 with DX-4, which is the County Commissioners Court precinct map that existed from 2012 forward, shows the changes what were in discussion with the DOJ in 2012. Day 8 Tr. 14:2-15:2.

137. Old Precinct 3 (shown on Dx-4) created a population dam in the middle of the County so moving population from the western part to the eastern part of the County was tricky. Day 8 Tr. 46:8-16. Old Precinct 3 runs basically, right through the middle of the entire County, and there is only a small gap at the top of it through which population could be changed. If you were going to flow population through Precinct 3, that would create a massive disruption. Day 8 Tr. 47:15-19. Oldham had concerns that old Precinct 3

in DX-4 was subject to challenge as a racial gerrymander because since Section 5 of the Voting Rights Act no longer applies to Galveston County, the standard under which the precinct had been drawn no longer applied. Day 8 Tr. 59:22-60:9.

138. Section 5 had a retrogression legal standard to it and it didn't really matter if the African Americans in the precinct constituted a majority. Every change done to Precinct 3 had been done under a racial basis under Section 5. Not only is race the predominant reason for the design of old Precinct 3, it was the only reason. The County would either have to find another basis for the drawing of old Precinct 3, or pick up additional requirements. Day 8 Tr. 61:2-8.

139. Section 5 put the burden on the jurisdiction to show it had not engaged in any retrogression. Section 2 puts the burden on plaintiffs. Also, a jurisdiction that is going to draw a Section 2 district in a prophylactic fashion has to have a strong basis in evidence to allow it to do what it is going to do. Day 8 Tr. 62:6-16. Mr. Oldham had concern in examining the law and facts that old Precinct 3 had to be changed to have a legal map based on the changed preclearance standard in 2013. Day 8 Tr. 63:18-24.

140. As Mr. Oldham testified, if drawing to the Section 5 standard, especially if there are heavy racial criteria, there is exposure to a racial gerrymandering charge which then triggers the need to protect the district under Section 2. Day 8 Tr. 206:5-10.

141. He reviewed whether a coalition might be shown just by looking at general data or whether you have to look at primary data or nonpartisan election data and noted that the Fifth Circuit decided its case on exogenous primary data and applying the same standing in Galveston County, the County does not have good primary data but also a Court

had not viewed the situation favorably a few years prior. Day 8 Tr. 64:8-65:7.

142. All of the forgoing suggested that the idea of proving a coalition was going to be incredibly difficult and the County would have to change its position from that in the prior cases. Day 8 Tr. 66:3-12.

143. Mr. Oldham considers it malpractice for a lawyer who practices in redistricting to not study the facts of the place on the ground. Day 8 Tr. 131:12-19.

144. The cuts required by the DOJ of Bolivar Peninsula and Pelican Island, and along the straight line adjacent to Texas City all increased the African American percentage and reduced the Hispanic White and non-Hispanic White in Precinct 3. Day 8 Tr. 15:17-16:5.

145. Bolivar absolutely had to come out or the DOJ would not preclear the County map in 2011. Day 8 Tr. 17:22-18:2. The effect of removing Bolivar was to raise the Black population percentage in Precinct 3. And it meant that the African American population was going to be decidedly larger than the Hispanic White population in Precinct 3. Day 8 Tr. 17:25-18:7. County Commissioners Precinct 3 was changed to increase the African American population in 2012, and Mr. Oldham believed it was racially gerrymandered. Day 8 Tr. 18:17-24. In 2011, the Voting Rights excuse for allowing a racially gerrymandered district was Section 5 and retrogression and the need for preclearance; but in 2021 the problem is going to be that you don't have an excuse for that. Day 8 Tr. 19:1-17.

146. There are two voting precincts on Bolivar Peninsula. Day 1 Tr. at 161:8-14. There are not many voters on Bolivar Peninsula, and the area is mainly Anglo. Day 1 Tr.

at 161:19-162:4, 177:12-15. The area is rural, there is no real commerce there, and it is not likely to be developed like the City of Galveston. Day 1 Tr. at 162:1-18. A big issue on Bolivar is coastal erosion, just as in Galveston. Day 1 Tr. at 163:18-164:1.

147. Despite agreement among the parties about the submitted map, the court in the 2011 Redistricting Case permanently enjoined the County from implementing plans for 2012 elections that were not precleared.

148. On August 19, 2013, the Galveston County Commissioner's Court adopted a map that reduced the number of Justices of the Peace districts from eight to four. The County was sued on that proposal. Day 8 Tr. 19:23-20:6. Two JP precincts were considered to be majority-minority African American. Day 8 Tr. 21:15-19.

149. On August 26, 2013, Plaintiffs filed suit challenging these redistricting changes as intentionally discriminatory and as a violation of Section 2 of the VRA (the "2013 Redistricting Case"). Plaintiffs also sought continued preclearance requirements for Galveston County under Section 3(c) of the VRA.

150. The complaints made in the JP lawsuit in 2013 were, first, that they did not want the number of JP districts reduced at all, and second was whether you had a third majority-minority coalition seat based upon cohesion between Black and Hispanic voters. Day 8 Tr. 17:4-13. Mr. Oldham believes that the Court absolutely did not find a legitimate coalition and cohesion between Black and Hispanic voters. Day 8 Tr. 22:9-15. Dr. Barreto was the expert in the 2013 case. Day 8 Tr. 23:14-16.

151. The Court dismissed the vote dilution claim from the bench. DX 177. According to Mr. Oldham, the Court would have had to have looked at the issue of

cohesiveness between Black and Hispanic voters in dismissing the Section 2 claim from the bench in 2013. Day 8 Tr. 23:17-22.

152. On December 17, 2013, the Fifth Circuit made clear on appeal that the injunction in the 2011 Redistricting Case had no effect on the implementation of the electoral map before or after preclearance, that preclearance had always been an express condition of any election and the County always unequivocally committed itself to that condition, and that the plaintiffs were not prevailing parties because their suit did not materially change any conduct of the County and the plaintiffs did not benefit from the injunction where the County had already voluntarily, on the record, committed to forbear from making any permanent changes without preclearance as was required by law.

153. On August 6, 2015, the district court in the 2011 Redistricting Case, hearing the case on remand, entered a take-nothing judgment dismissing Plaintiffs' claims (Cause No. 3:11-CV-511).

154. On August 31, 2022, the Court in the 2013 Redistricting Case entered judgment in favor of the County on both the Plaintiffs' vote dilution and intent claims. (Cause No. 3-13-308). The crux of that ruling is that while the 2013 Plan reduced the number of majority-minority JP/Constable precincts in Galveston County, it increased the percentage of Galveston County residents living in a majority-minority district while also saving the County roughly \$1 million in the JP budget and similar dollars in the Constable budget.



### C. The County's early preparations for redistricting

- 11/2020 - County reaches out to past redistricting counsel
- 1/2021 (DX 43, JX 9, PX 123-124)
- 3/25/2021 County receives proposed engagement letter (PX 138)
- 4/5/2021- County engages redistricting counsel (JX 12) and is informed
- 4/21/2021 about the "looming census crisis" (PX 144)

155. The County attempted to prepare for the decennial census and redistricting well in advance. On November 25, 2020, counsel for the County reached out to the County's former redistricting counsel, Dale Oldham. DX 43. Mr. Oldham informed them that the County would have to work with him through another firm since he is not licensed in Texas. Day 8 Tr. 26:12-29:12.

156. Counsel followed up with Mr. Oldham and had a phone call with him in December 2020. JX 9, PX 121, PX 123, PX 124. In January, the County followed up with Mr. Oldham about engaging him as redistricting counsel (JX 11), and set a public meeting on the issue, but deferred it. PX 583, PX 584.

157. The Galveston County Commissioners Court approved the retention of outside redistricting counsel at an April 5, 2021 meeting, and Commissioner Stephen Holmes voted against this. Dkt. 204-6 ¶ 18 (Jt. Stip. Facts); PX 140; JX 12.<sup>15</sup>

158. The County ultimately engaged Holtzman Vogel and Mr. Oldham to provide expertise on the Voting Rights Act and one-person, one-vote, and other aspects of

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<sup>15</sup> The form engagement letter from the law firm of Holtzman Vogel, with whom Dale Oldham had partnered (PX 138) was not sent to the County until March 25, 2021, and counsel for the County had to review and approve it before it could be sent to the County Judge's office for posting (*see* PX 138); the form letter was not approved until after the agenda was posted. *See* PX 138.

redistricting, legal advice and opinion. Day 8 Tr. 28:5-29:12 The County engaged them because of the success in 2011 and 2013, and because Mr. Oldham knew the County. Day 8 Tr. 29:22-30:1. Mr. Oldham was engaged in the 2011 redistricting matter for Galveston County through lawyers at Beirne Maynard Parsons; he was not involved in the 2011 process until the case got to the preclearance stage. Day 8 Tr. 8:14-9:7. Mr. Oldham is a lawyer. The bulk of his work has involved election law, either redistricting or campaign finance Day 8 Tr. 9:16-10:20.

159. As of April 2021 when Holtzman Vogel and Oldham were formally engaged, the census data was not out and they did not have a clear idea of when it would be released. Day 8 Tr. 26:4-8. The administration had promised and missed release dates several times through the spring of 2021. Day 8 Tr. 31:7-11.

160. On April 20, 2021, shortly after retaining Dale Oldham as its redistricting counsel, the County's attorney reached out to Mr. Oldham at Judge Henry's request about what preparations could begin without census data, to which Mr. Oldham responded that there was no Census data, "worse yet we may not get data," referring to a "looming census crisis" that "is likely to be a serious problem for all Texas jurisdictions." PX 144.

161. In terms of public meetings before census data was released, Counsel suggested that rather than talking blindly to the public about redistricting without data creating false expectations, that the County would be better off to hopefully get some numbers soon and have everyone who wants to comment on something, do so intelligently and in an informed manner. Day 8 Tr. 32:9-33:8. Counsel's advice was public meetings and criteria is better considered when the County has data in hand. Day 8 Tr. 34:11-34:16.

In 2011, the County had public meetings, but also would have had data back in February of 2011. Day 8 Tr. 34:17-21.

162. Prior to release of the data, the County did not know what changes or corrections need to be made. The County can guess looking at other things like building permits, but in reality they don't know. Some of the guesses counsel heard were not anywhere close to correct. Day 8 Tr. 33:23-34:10.

163. The County was advised that it would like to have criteria informed by what the census data is going to be, the County would know until you know what changes are going to look like. Day 8 Tr. 33:9-33:22.

164. On August 4, 2021, when there was still no Census data release, Judge Henry emailed the Precinct 3 Justice of the Peace and Constable Rose because he was told Commissioner Ken Clark had reached out to them about redistricting. PX 426 at 2. Judge Henry informed them that the Commissioners "has been waiting on the Census data before we take up these conversations," and had not yet discussed the topic. PX 426 at 2.

**D. The 2020 Decennial Census data was not released in a usable format until September 16, 2021.**

8/12/2021 - Census data released (the easier-to-use "final redistricting toolkit"  
9/16/2021 is not released until September 16th) DX 175 at 2-3.

9/2021 Redistricting counsel analyzes the data and begins meeting with Commissioners to discuss what they would like to see in redistricting (JX 16, 19, 20, DX 74, DX 79-80, DX 84)

165. In 2021, the County had an incredibly compressed time-schedule. Day 8 Tr. 34:22-35:5. The 2020 census data was delayed and was the worse census in over 100 years. Texas census results normally follow the prioritized states and come out usually the last

week of February. Day 8 Tr. 30:9-31:6.

166. Census data for all 50 states were released at the same time which has never happened in the modern era and is more troublesome for Texas. Day 8 Tr. 35:10-21.

167. On August 12, 2021, the United States Bureau of the Census released P.L. 94-171 data. Dkt. 204-6 ¶ 19 (Jt. Stip. Facts). On that day, the data release was “in a format that **requires additional handling and software to extract familiar tables.**” DX 175 at 3 (emphasis added). “COVID-19-related delays and prioritizing the delivery of the apportionment results delayed the U.S. Census Bureau’s original redistricting data delivery plan.” *Id.*

168. The first release in the legacy data format was in August of 2021 and Mr. Oldham contacted various people to find someone that had figured out how to load the legacy data. Once the user friendly format came out, everybody had it, but that was several weeks after the original release in August. Day 8 Tr. 35:22-25.

169. Commissioner Holmes also emailed the Census.gov link to data on August 13, 2021. DX 62. He received it again from Paul Ready on September 20th. DX 80; DX 282. He testified that when he went to the link, “it was just a bunch of mumbo jumbo” and was not “anything that you could kind of make hay out of . . .” Day 7 Tr. (Rough) 129:2-6.

170. On September 16, 2021, the Census Bureau released data in an easier-to-use “toolkit” format. DX 175 at 3-4 (explaining the September 16th release included “digital tools that provide access to an integrated software browsing tool for official recipients, as well access to the online Data Explorer tool for both official recipients and the public”).

### **E. The Census Data**

171. The 2020 Census revealed population imbalances in the Galveston County Commissioners Court precincts under the 2012 Commissioner precincts that required redistricting in 2021. Dkt. 204-6 ¶ 10 (Jt. Stip. Facts).

172. The 2020 Census P.L. 94-171 redistricting data set reported that Galveston County had a total population of 350,682 persons. Dkt. 204-6 ¶ 5 (Jt. Stip. Facts).

173. The total population grew by 59,373, approximately 20%, between the 2010 and 2020 Censuses. DX 290 at 5.

174. According to the 2020 Census P.L. 94-171 redistricting data set, Galveston County's 2020 Census population consisted of 191,358 (54.6%) persons who were non-Hispanic white, 88,636 (25.3%) persons who were Hispanic, and 45,637 (13.0%) who were non-Hispanic Black. Dkt. 204-6 ¶ 6 (Jt. Stip. Facts).

175. According to the 2020 Census, the County has a total voting age population of 267,382, of whom 155,020 (58%) are non-Hispanic White, 60,159 (22.5%) are Hispanic, and 33,341 (12.5%) are non-Hispanic Black. Dkt. 204-6 ¶ 7 (Jt. Stip. Facts).

176. The proportion of non-Hispanic white residents in Galveston County decreased between the 2010 Census and the 2020 Census, from 59.3% in 2010 to 54.6% in 2020, while the proportion of the Hispanic population grew from 22.4% to 25.3% during the same time period. Dkt. 204-6 ¶ 8 (Jt. Stip. Facts).

177. The total Hispanic population grew from approximately 65,270 in 2010 to 88,636 in 2020, and the total non-Hispanic Black population grew from 39,229 to 43,120. Dkt. 204-6 ¶ 9 (Jt. Stip. Facts).

178. The Census data estimates show that Black and Hispanic citizens are approximately 27.5% of the citizen voting age population in Precinct 3 of Galveston County's adopted 2021 commissioners court plan. Dkt. 204-6 ¶ 26 (Jt. Stip. Facts).

179. This late data release impacted redistricting efforts in Galveston County, and across the State.

180. As recounted in a November 1, 2021 Election Advisory from the Texas Secretary of State's office:

On October 25, 2021, Governor Greg Abbott signed Senate Bill 4, Senate Bill 6, Senate Bill 7, and House Bill 1, adopting new redistricting maps for the U.S. House of Representatives, Texas Senate, Texas House of Representatives, and State Board of Education. Pursuant to Senate Bill 13 (87th Leg., 2d C.S.), **because these redistricting plans were passed by the Legislature and signed by the Governor before November 15, 2021, the 2022 primary and primary runoff elections are still scheduled to occur on March 1, 2022 and May 24, 2022, respectively.**

Due to delays in the U.S. Census Bureau releasing 2020 Census data to the States for redistricting purposes, **the timeline for undertaking redistricting in Texas was modified this year.** Recognizing these delays, SB 13 authorizes the Secretary of State to adjust the schedules for performing any official act relating to the 2022 election cycle "as necessary for the efficient and orderly administration of the election."

This advisory will provide relevant dates and deadlines that have been adjusted in accordance with SB 13 to effectuate legislative redistricting plans. Additionally, this advisory will highlight certain provisions for county officials to consider when redrawing their county election precincts following the adoption of legislative redistricting plans.

JX 34 (emphasis added).

#### **F. Redistricting Requirements**

181. Under the Texas Constitution, counties in Texas must be divided into four commissioner precincts. Therefore, to achieve an equal distribution of the population into

four commissioners precincts, the ideal division of Galveston County’s population into its commissioners precincts is 87,670 people per precinct (350,682 divided by 4 precincts).

182. Before redistricting in 2021, Galveston County Commissioner Precincts had the following number of active registered voters:

Precinct 1 – 52,076	Precinct 3 – 41,433
Precinct 2 – 61,844	Precinct 4 – 58,699

DX 63 at 3. Precinct 2 had the largest number of active, registered voters before redistricting, and Precinct 3 had the smallest number. *Id.*

### G. Redistricting Counsel’s Efforts

9/8/2021 Call with Dale Oldham, Judge Henry & Commissioner Apffel (JX 16)

9/13/2021 Call with Dale Oldham & Commissioner Giusti (JX 19)

9/16/2021 Call with Dale Oldham & Commissioner Clark (JX 20)

9/20/2021 Call with Dale Oldham & Commissioner Holmes (JX 23, DX 79), counsel sends additional information to Commissioner Holmes (DX 80)

9/23/2021 Call with Dale Oldham & Commissioner Holmes (DX 84)

10/17/2021-10/18/2021 Redistricting counsel works with demographer to provide 2 map choices: (1) a “least change” map, and (2) a “coastal precinct” map that would also achieve 4 majority republican Commissioner precincts

10/19/2021 Counsel meeting with Commissioner Holmes (JX 23 at 184)

10/22/2021 Counsel meeting with Giusti and Commissioner Holmes (JX 23 at 184)

10/29/2021 Maps posted online, Judge staff calls Commissioner Holmes with update (JX 23 at 185)

11/1/2021 Secretary of State (recognizing S.B. 13 authorized adjustment of schedules for performing official acts relating to the 2022 election cycle) advised Counties must redistrict by Nov. 13th (JX 34)

- 11/4/2021- Judge staff calls to Commissioner Holmes with updates on meeting date (JX  
11/5/2021 23 at 185-86)
- 11/12/2021 Meeting to consider Maps 1 and 2 and enact a plan (a majority of the online  
public comments support Map 2) (JX 41, JX 42, DX 153)

183. Mr. Oldham had a phone call with Commissioner Apffel, Judge Mark Henry and Paul Ready on or about September 8, 2021 (JX-16) as a first call seeking what the commissioners want to do. Day 8 Tr. 38:12-39:13. All data was not available to him at that time, and Mr. Oldham had some data coming available, but not the kind of data he really wanted for the meetings with commissioners. Day 8 Tr. 42:6-10.

184. They discussed the need for legally compliant maps. The key to it was the need to comply with one-person, one-vote and comply with the Voting Rights Act. Day 8 Tr. 40:12-18. Judge Henry wanted to go to a geographically based redistricting map, in particular putting Pelican Island, Galveston Island and Bolivar Peninsula together, with various other regions such as suburbs off Harris County in the north, Galveston Bay area and not pairing commissioners. Day 8 Tr. 39:14-24. Commissioner Apffel wanted Pelican Island and Bolivar out of a district that went across Galveston Bay to hook into his district, and to keep his Texas City area and add two precincts in the north. Day 8 Tr. 40:20-41:20.

185. The expectation after the call with Judge Henry and Commissioner Apffel was that Mr. Oldham would next call the commissioners and get their read on what they wanted. Day 8 Tr. 42:11-20. Mr. Oldham told each of the commissioners that there would be confidentiality between he and the commissioners and the conversations would not be shared with other commissioners unless they allowed it. Day 8 Tr. 48:17-49:21. Mr.



Oldham believes he reminded commissioners that he would keep their comments confidential in each of their meetings. Day 8 Tr. 55:20-24.

186. Mr. Oldham also stressed to the commissioners that no other commissioners needed to know about a request from any commissioner, including Commissioner Holmes, to make changes or draw another map. Day 8 Tr. 104:11-104:16.

187. Mr. Oldham had a call with Commissioner Giusti on or about September 13, 2021 (JX-19) and determined that Giusti wanted to keep his parents' house in his district, which is on Galveston Island, and his home. Day 8 Tr. 43:19-44:9.

188. Mr. Oldham received a spreadsheet with more specific data on Galveston County around September 14, 2021. Day 8 Tr. 31:23-32:16. Mr. Oldham acquired this data from the only person he knew he could get it from. Day 8 Tr. 46:21-47:12.

189. Mr. Oldham had a phone call with Commissioner Clark on or about September 16, 2021 to determine what he wanted to see in the maps. Commissioner Clark would have to give up population, but asked for as little movement from Giusti's precinct into his precinct as possible. Day 8 Tr. 45:14-47:1.

#### **H. Commissioner Holmes' Communications with Redistricting Counsel**

190. On September 20, 2021, Commissioner Holmes had his first meeting with Dale Oldham and County counsel Paul Ready to discuss changes Commissioner Holmes would like. JX 23, Day 8 Tr. 48:2-16. Mr. Oldham asked Commissioner Holmes what areas he would like to have because he had to add about 8,000 people. JX 23; Day 8 Tr. 50:7-15; Day 7 Tr. (Rough) 64:4-11. At some point, Mr. Oldham asked Commissioner Holmes to "draw your map," and Commissioner Holmes testified he was not prepared to do at that

time (Day 7 Tr. 64:4-18), and that he would get back to Mr. Oldham. Day 8 Tr. 50:21-23. Commissioner Holmes wanted more information. *See* DX 80.

191. Mr. Oldham told Commissioner Holmes he was free to contact Mr. Oldham at any time to discuss any issue with redistricting. Day 8 Tr. 55:20-56:7.

192. Mr. Ready got all of the data he could find to send to Commissioner Holmes—a spreadsheet from Mr. Oldham<sup>16</sup> and a link to the Census data, saying:

I called and confirmed with the County Judge’s office that they do not have the 2020 census data. Dale shared this top-level summary he put together. No other Commissioners have seen this yet.

DX 80. Mr. Ready explained the link to publicly available Census data “may be somewhat difficult to manipulate.” DX 80; Day 7 Tr. (Rough) 66:19-67:6. Commissioner Holmes confirmed he received this data from Mr. Ready, the spreadsheet that “showed the total populations in each precinct and I think racial data as well, but not individual voting precincts.” Day 7 Tr. (Rough) 129:7-11.

193. On September 21st, Commissioner Holmes asked the County engineering department (Michael Shannon) if they could run precinct data. JX 23 at 2. He wanted this data to see where the shifts in population were and the racial demographics of different voting precincts before he agreed to draw a map. Day 7 Tr. 67:20-68:1. Nathan Sigler was asked by Mr. Shannon to prepare the information (demographic breakdown by commissioner and voting precincts); he did so but he did not use the 2020 Census data because he did not know it was available, and on September 27th he sent the information

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<sup>16</sup> Mr. Oldham sent data he received in spreadsheet format to Mr. Ready (after Mr. Oldham removed the header material from the spreadsheet). DX-80; Day 8 Tr. 51:11-20, 52:1-14.

to Mr. Shannon for review. DX 306 at PDF pp.9-11. Mr. Sigler was never told not to work with or help Commissioner Holmes during redistricting, and he was not told to speak with anyone first before providing data to Commissioner Holmes. *Id.* at 12. At deposition, Commissioner Holmes testified he went to Michael Shannon “maybe a few days later” and told him to stand down. Day 7 Tr. (Rough) 143:16-22. At trial, he changed that testimony to *two weeks* later, saying he did not have his notes at his deposition. *Id.* 143:23-144:8. He did have his handwritten notes at his deposition. *Id.* 144:9-25. Commissioner Holmes testified he received the data from another source—Census.gov. *Id.* 146:12-16.

194. Mr. Oldham had a second phone call follow-up with Commissioner Holmes on or about September 23, 2021 to get information from him as to what he would like to see in the maps. Day 8 Tr. 53:1-14. Commissioner Holmes provided very detailed requests in the second meeting providing request for specific areas by street names and listed by specific voter precinct numbers, leading Oldham to conclude that Commissioner Holmes had assistance. Day 8 Tr. 53:19-23.

195. As of the first meetings with commissioners, no maps had been drawn and the purpose of these meetings was to get the requests and commissioners’ ideas of what criteria should be embodied in the maps. No commissioner had been shown any more data than Commissioner Holmes would have been shown at that point, if any. Day 8 Tr. 53:23-58:3.

196. Commissioner Holmes had a second teleconference with Dale Oldham and Paul Ready on September 23rd (JX 23 at 3), where he made specific changes for Precinct 3. Day 7 Tr. 69:1-70:8. He testified that these changes would not have made a difference

to the map politically, and his purpose for these changes was to balance the population, clean up the lines on the map, and make the precinct boundaries clear to constituents. Day 7 Tr. 70:9-71:15. He testified that Mr. Oldham said he would take in these suggestions and produce a map incorporating them, but he testified that he did not receive a map drawn with these proposals nor any data. Day 7 Tr. 72:2-6.

197. Commissioner Holmes believed he and the County had a duty to determine the racial makeup of his precinct in particular because he believes the minority vote should have maintained at least the same strength as before. Day 7 Tr. 68:2-11.

198. After the meetings, Mr. Oldham finished doing some analysis of the legal problems in Galveston County and Oldham was hopeful, but unsure, whether the requests of the four commissioners could be coordinated in such a fashion that the requests can be honored. Day 8 Tr. 58:8-59:1.

199. Mr. Oldham believed from prior cases that, based on DOJ negotiations, old Precinct 3 was susceptible to a racial gerrymander claim, and that there was no evidence that Black voters and Hispanic voters were cohesive. Day 8 Tr. 25:24-26:9.

200. Mr. Oldham believed that a map that tried to preserve Precinct 3 could be drawn on a least-change criteria basis and done for politics, and if the County faced a racial gerrymander claim, which he considered a very real possibility, the County would have an adequate nonracial defense. Day 8 Tr. 66:10-67:4.

201. Mr. Oldham believed a least-change type of change to the map could arguably remove the racial gerrymander arguments in the future. Day 8 Tr. 67:5-20.

202. At this point, Mr. Oldham saw from what he had been told by commissioner

after considering his legal analysis, two very different criteria that will result in two very different maps, both of which could be defended. Day 8 Tr. 67:21-68:4.

### **I. Map 1 and Map 2**

203. Demographer Tom Bryan was brought on to the project in October of 2021. Day 8 Tr. 68:21-25. The first call between Tom Bryan and Mr. Oldham (PX-193) occurred around October 17, 2021 and Oldham started giving him information gathered from commissioners to work on the two plans. Day 8 Tr. 69:1-14.

204. They discussed the need to get the maps done quickly as the census had put the worst squeeze on them that Mr. Oldham had ever been in. Day 8 Tr. 72:21-73:7.

205. They worked on the least-changes map (Map 1) first to see if the commissioner requests could be put together on a single map.<sup>17</sup> Most of the time the wants of elected officials are so on top of each other that it cannot be done. But Mr. Oldham could see the flexibility and thought the least-change maps was a real possibility. Day 8 Tr. 65:4-23. The minimum change map was intended to pick up areas that Commissioner Holmes requested in his meeting with Mr. Oldham. Commissioner Holmes' precinct was drawn first before any others. Day 8 Tr. 75:21-77:6.

206. Mr. Oldham conveyed the Commissioners' thoughts, and Judge Henry's thoughts, to Mr. Bryan. Day 8 Tr. 71:8-16.

207. Mr. Oldham recalls asking Bryan to not use or refer to racial data in creating the least-change map. Day 8 Tr. 71:17-25. Not using racial data was important because is

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<sup>17</sup> Mr. Oldham is unsure how Mr. Bryan would have obtained the location of the homes of incumbents. Day 8 Tr. 179:25.-180:4

defending against a racial gerrymander claim, one of the first things to be alleged is that the County used race in the draw. Day 8 Tr. 72:1-14.

208. The problem of the population dam occurs on the least-changes map because Precinct 3 runs all the way from almost the very top of the County to runs all the way to the Gulf of Mexico, so moving population from precinct 2 over to precinct 1 has to go through Clark's precinct 4. That problem goes away with a geographically-based map. Day 8 Tr. 156:14-157:9.

209. The second map was the coastal geographic criteria map. Day 8 Tr. 68:5-10. The primary concerns or thoughts for creating Map 2 related to the coastal precinct. Day 8 Tr. 214:1-3. Judge Henry's information went into map 2 because that is a completely different concept than what was worked on in map 1. Day 8 Tr. 71:8-16.

210. Mr. Oldham made it a point to ensure that racial data was *not* used in developing the maps, because "if we are going to be defending against a racial gerrymandering claim, one of the first things that's going to be alleged against us is that we used race in the draw . . . ." Day 8 Tr. 72:1-14.

211. The configuration of the coastal precinct came from Judge Henry, but neither he nor Mr. Oldham knew how it would turn out until Mr. Bryan is actually putting pen to paper. Day 8 Tr. 148:7-17. Map 2 was created by taking all precinct lines off of the map and it was to be a start-from-go map, kind of like the League of Women Voters was suggesting. Day 8 Tr. 159:10-24. To a certain degree, Judge Henry's idea of a coastal district went beyond just the coastal district; but any time you start making that massive of a change, it's going to go to the whole map. Day 8 Tr. 161:17-162:5. Most of the

discussions with Judge Henry focused more on the coastal precinct than the rest of the County. The idea was to have a geographic plan. Day 8 Tr. 213:4-12. At no time did Mr. Oldham have a map drawn out by Judge Henry handed to him and then to Mr. Bryan later. Mr. Oldham did not know what Map 2 would look like or even if it was possible at the time of meeting with Judge Henry. Day 8 Tr. 213:13-25.

212. A key part of the instruction on the coastal precinct from Judge Henry was to keep all the commissioners in their own seats. He didn't specifically say go to Giusti. Mr. Oldham and Mr. Bryan are the ones that kind of said go to Giusti because that was the only way we could figure out how to make it work. Day 8 Tr. 167:7-17.

213. Mr. Oldham told Mr. Bryan that the basis of map 2 was a geographically-oriented criteria map. Mr. Oldham was not looking for any other justification for it. Mr. Oldham does not recall telling Mr. Bryan that the purpose of map 2 was to draw four Republican commissioner precincts. Day 8 Tr. 153:10-154:4. Mr. Oldham does not know whether Judge Henry cared what precincts 1, 3 and 4 looked like. It was not clear to him. Map 2 was certainly something that had public support and Judge Henry wanted to see what it would look like. Day 8 Tr. 163:6-12.

214. Of the maps shown drawing a coastal precinct, the percentages of Black and Hispanic populations are barely over 50% and the maps divide up the suburban district. Day 8 Tr. 169:8-169:12.

215. Mr. Bryan sent draft maps to Mr. Oldham on October 17, 2021 (PX-197). Day 8 Tr. 73:8-74:2. The first of the maps attached to PX-197 is the benchmark plan. Day 8 Tr. 74:3-6. The second is the "Galveston Texas Draft Optimal D Plan" which would be

a draft of Map 2, which embodies the coastal precinct suggested by Judge Henry. Day 8 Tr. 74:8-16. The third map is the minimum or least-changes map which reflected the individual commissioners' wants. It was designed to alleviate the issues of a potential racial gerrymander claim that existed in old Precinct 3. Day 8 Tr. 75:2-15. The minimum change map puts Bolivar Peninsula in Precinct 3 and cuts the DOJ made are reversed or smoothed over by including Commissioner Holmes' requests in a couple places. Day 8 Tr. 75:7-20.

216. Looking at political performance under the minimal-change plan for Precinct 3 (DX-262 tab "VTD Pivot"), the percentage of expected voters to vote Republican in Precinct 3 under the minimum change plan draft Map 1 Oldham and Bryan drew for the County is 37%, which indicates it is a very strong Democrat precinct. Day 8 Tr. 98:15-22. Under the Optimal D plan for precinct 1 (DX-262 tab "VTD Pivot"), the expectation is that 64% of the vote is Republican, and 56% of the vote is expected to be Republican in precinct 2. Day 8 Tr. 97:3-98:4.

217. The 2011 Precinct 3 expected results of 32%, and the draft Map 1 results were about 5 percentage points which doesn't affect the overall ability to elect a Democrat from Precinct 3. Day 8 Tr. 98:20-99:9. Original plan Precinct 3 could not stay in place as it had to gain people as a result of one-person, one-vote so it would be hard to keep it at the same level of Democrat performance. Day 8 Tr. 99:6-99:21.

218. From conversations with Mr. Bryan, Mr. Oldham was satisfied that both maps had been drawn without specific reference to racial data. Day 8 Tr. 80:24-81:2.



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219. Paul Ready set up calls between the commissioners and Mr. Oldham and Mr. Bryan. Day 8 Tr. 191:2-191:1.

220. Oldham showed the two maps that he thought were legally defensible to the commissioners in meetings to get their reactions. Day 8 Tr. 79:1-7. The question for the commissioners was a political one and Mr. Oldham had a duty not to interfere with or to become part of the how that gets decided. Day 8 Tr. 78:23-80:5.

221. At the time of presenting the maps to commissioners, they had access to political data, such as that on DX-262. Day 8 Tr. 93:9-93:12.<sup>18</sup>

222. Commissioners Appfel, Clark, Holmes, Giusti and Judge Henry wanted to know the political performance information on the maps. Day 8 Tr. 93:2-93:8

223. Mr. Oldham went into the meetings with commissioners prepared to tell them what he thought the issues were with them, but was absolutely not going to say “you have to pass this one or you have to pass that one.” Day 8 Tr. 80:6-80:12.

224. He was not going to cross the line of representing a single commissioner or group of commissioners or pick a side in what was to be a political discussion. Day 8 Tr. 80:13-80:17. Mr. Oldham does not know what politics were going to be at the meeting or

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<sup>18</sup> Mr. Oldham believes “Original” on DX-262 tab “VTD Pivot” refers to the 2011 original county map. Row labels numbers 1, 2, 3 and 4 refer to commissioner districts in Galveston County [Day 8 Tr. 89:1-23]. The tables under minimum change (DX-262) refer to the minimum change map Mr. Oldham help create and political performance of each precinct. [Day 8 Tr. 89:23-90:8]. Below that (DX-262) is political performance on the “Optimal D” map for each precinct and below that is political performance for the “Optimal Geo” map. [Day 8 Tr. 90:9-17]. DX-262 shows under tab “VTD Pivot”, looking under the Optimal D plan shown in the spreadsheet, Precincts 1, 2, 3 and 4 appear to perform for a Republican candidate. [Day 8 Tr. 92:11-16].

what was going to happen or what other things might occur to cause people to change their mind on the maps. Commissioners had done work to become copacetic with Map 2. Day 8 Tr. 198:1-198:13.

225. Mr. Oldham stated to every commissioner that he believed that if the maps were drawn along the basis of what was seen in the draft maps, that he could defend either one. Day 8 Tr. 82:4-82:12.

226. Oldham met with Judge Henry in person on or about October 18, 2021 (PX-199) to show the two maps. Day 8 Tr. 74:2-9

227. The purpose of Oldham's meeting with Judge Henry was to explain each of the maps, what was done when they were drawn, what the criteria were that were embodied in the maps, and the legal defenses for Map 1 and Map 2. Day 8 Tr. 79:10-79:19.

228. Judge Henry's preference appeared to be for "Draft Optimal Plan D" (PX-197) which also has the coastal precinct in it. Day 8 Tr. 81:10-82:18. It wasn't that Judge Henry disliked Map 1 as how much he liked Map 2. Map 2 was something he thought was a rational reasonable way to district Galveston County. Day 8 Tr. 181:2-181:11. Judge Henry was concerned because the 2011 map was a racial gerrymander. Mr. Oldham discussed with him that Map 1 as reconstructed could be defended as a least-change map. Mr. Oldham believes he was successful with Judge Henry in that discussion. Day 8 Tr. 181:23-182:9. Mr. Oldham did not have the impression that Judge Henry would want Map 1 just as much as Map 2. He always liked Map 2 better since 2011 at least with the coastal precinct. Day 8 Tr. 184:1-184:11.

229. It was essentially the geographic criteria of putting Bolivar Peninsula,

Pelican Island and Galveston Island together, getting to the closest commissioner which was Giusti. Day 8 Tr. 82:22-83:7.

230. All of the commissioners live in the northern and far western part of the County. Day 8 Tr. 83:8-84:1.

231. Commissioner Giusti's residence is in the left side in the green area in PX-197 (page DEFS00036199) and lives furthest south and his parents live on Galveston Island so it makes sense for him to be in the coastal precinct. Day 8 Tr. 84:2-84:10.

232. The precincts in "Draft Optimal D Plan" Maps 2 are geographic-based criteria, with precinct 1 essentially covering Galveston Bay shore and working inland, precinct number 4 covering the Harris County suburbs, and the other being a western central district of what is left. Day 8 Tr. 84:18-85:12.

233. All of the precincts in Map 2 are dictated by where the commissioners at that time lived. Day 8 Tr. 85:13-85:18.

234. Mr. Oldham showed Judge Henry Map 1. Of the two, Mr. Oldham believed Judge Henry preferred the Optimal D Map 2. Day 8 Tr. 86:2-86:6.

235. Mr. Oldham recalls meeting with Commissioners Apffel and Clark subsequent to meeting with Judge Henry, but does not recall whether or not they met together. Day 8 Tr. 86:10-86:16.

236. Mr. Oldham did not believe Commissioner Apffel was particularly happy with Map 2, but was fine with Map 1. His comments on Map 2 were that it did not give him the precincts he asked for. He was planning on moving into one of those precincts and requested they be added. Day 8 Tr. 89:6-89:16.

237. Commissioner Clark was fine with Map 1 but was upset with Map 2 due to political concerns. Day 8 Tr. 90:4-90:13.

238. Commissioner Clark was worried about his political opponents and changes were made to the draft maps requested by Commissioner Clark, but they had to be checked as to whether they created a legal problem on the maps. Day 8 Tr. 90:20-92:12.

239. Mr. Oldham and Paul Ready met with Commissioner Holmes on October 19, 2021 at his office in Texas City and showed him both maps. Day 7 Tr. 72:9-21. Commissioner Holmes testified he was not shown the map he asked for and no corresponding data was provided. Day 7 Tr. 73:7-20. Commissioner Holmes testified that he did later receive data, but he could not recall whether it included racial data or just population data. Day 7 Tr. 73:21-74:8.

240. Mr. Oldham testified that Commissioner Holmes did not like Map 2, and was not real happy about Map 1 including Bolivar. Oldham told Commissioner Holmes that he did not believe map 1 changed his ability to be re-elected at all as a Democrat candidate given the political performance numbers. Day 8 Tr. 101:13-18. Commissioner Holmes said, "Well, there is only one of these maps I like." Day 8 Tr. 101:5-101:12. He did not appear to be agreeable to creating a map that kept the core of his precinct and also fit into the idea of a coastal precinct. Day 8 Tr. 187:3-9.

241. Commissioner Holmes understood he was extremely likely to be elected as a Democrat candidate under map 1 even with Bolivar in it. Day 8 Tr. 102:2-11.

242. Commissioner Holmes insisted that Mr. Oldham should tell the Court that Section 2 required that Commissioner Holmes' seat be maintained. Day 8 Tr. 102:12-15.

243. Mr. Oldham discussed the standard had changed from retrogression and the problem with Commissioner Holmes' argument. Day 8 Tr. 102:16-103:22.

244. Mr. Oldham explained to Commissioner Holmes he presented Precinct 3 in Map 1 because he thought he could defend it on a nonracial, least-changes, political basis. Day 8 Tr. 103:25-104:7.

245. Mr. Oldham also offered to draw Commissioner Holmes a version of the map without Bolivar being included in Precinct 3, understanding the problems that would occur with the map if he did that; Commissioner Holmes did not ask Mr. Oldham to draw a map without Bolivar in Precinct 3. Day 8 Tr. 104:8-104:10.

246. DX 97 is an email dated October 26, 2021, from Roxy Williamson to Commissioner Stephen Holmes, in which she forwards an email about a letter she was working to get various organizations to sign on, and she was asking Commissioner Holmes for suggestions on who may want to participate. The original email referenced is between Stephanie Swanson, Roxy Williamson, and Sarah Chen, with the subject, "letter to Galveston County Commissioners Court." DX 95 is Commissioner Stephen Holmes response to Roxy Williamson's email described within DX 97. Commissioner Holmes states, "I don't have anyone in particular o want the letters sent to. Do you have a copy of the letter?" Ms. Williamson wrote to others in the community as well. DX 100.

247. DX 99 is a series of emails discussing a letter to Galveston County regarding redistricting and seeking signatures for the letter. One email, dated October 29, 2021, from Stephanie Swanson to Roxy Williamson, contains a forwarded email from Stephanie Swanson, which states in part that "we need to provide our recommendations before the

maps are drawn **to help us create a record for litigation . . . .**”

248. A letter was ultimately sent on October 29th by the League of Women Voters, Bay Area, and also signed by attorney Sarah Chen. PX 587, PX 239. The letter requested that the public be included in the redistricting process, as well as their recommendations for the timelines and procedures used by the commissioners court during the redistricting process. It was sent to Mr. Oldham and County counsel. DX 105.

249. Mr. Oldham met with Commissioner Giusti to review the maps. He was fine with Map 1 and his problems with Map 2 were political in that he was going from the most Republican precinct to the least Republican precinct and he was concerned about the political performance of his precinct. Day 8 Tr. 106:11-18.

250. Commissioner Holmes testified that on October 21st he received a call from Constable Derreck Rose, who relayed a conversation he had with Commissioner Apffel in which Commissioner Apffel said, “There are a couple of maps floating out there, and it is not looking good for Holmes.” Day 7 Tr. 81:16-20.

251. Commissioner Holmes testified that he attended a Zoom meeting on October 22nd with Dale Oldham, Jed Webb, Paul Ready, Zack Davidson, and the demographer, where two maps were show, which were the same maps he saw in his office on October 19th, and population and racial data were shown. Day 7 Tr. 74:15-75:3; Day 8 Tr. 107:4-10.

252. Commissioner Holmes’ meeting notes state he reviewed political and racial data. JX 23 at 4. Only Commissioner Holmes was concerned about or focused on racial data in reviewing the draft maps. The other commissioners were focused on the politics

and Judge Henry was focused on geography and the politics. Day 8 Tr. 110:22-111:9.

253. Mr. Oldham did not hear from Commissioner Holmes after the October 22, 2021 meeting. Mr. Oldham had let him know that he would make himself available to Commissioner Holmes and that he could have maps drawn through Tom Bryan and that it would be kept confidential. Day 8 Tr. 111:21-112:2.

254. Commissioner Holmes was not shut out or excluded from the redistricting process. Day 8 Tr. 125:17-126:7. Mr. Oldham went out of his way to include him and for him to know Mr. Oldham would keep his confidences. Day 8 Tr. 126:3-7. There were no instructions from Judge Henry or any of the commissioners to ignore input from Commissioner Holmes and Mr. Oldham would have been a part of the process had those instructions been given. Day 8 Tr. 126:8-126:14. There were no instructions from Judge Henry or any of the commissioners to not provide Commissioner Holmes access to Mr. Oldham just like any other commissioner. Day 8 Tr. 126:15-126:20.

255. As far as Judge Henry is aware, Commissioner Holmes was included as much or more in the redistricting effort. Day 7 Tr. (Rough) 348:10-13.

256. Judge Henry knows nothing of any information being hidden from Commissioner Holmes. Judge Henry would have told staff to give Commissioner Holmes what he wants as a sitting commissioner. Any instructions to commissioners, Mr. Oldham, Holtzman Vogel firm and any staff would have been to include Commissioner Holmes as much as you can. Day 7 Tr. (Rough) 347:17-348:9.

257. Mr. Oldham consistently let Commissioner Holmes know at every meeting that he could get back to Mr. Oldham with any concern or need over particular maps. Day

8 Tr. 127:4-127:6.

258. Mr. Oldham specifically asked Commissioner Holmes what he wanted to see happen with the maps and in the redrawing. Day 8 Tr. 127:7-9.

259. According to Tom Bryan's numbers, map 1 should have allowed Commissioner Holmes to retain his seat if he is the Democrat nominee and Commissioner Holmes was aware of that fact. Day 8 Tr. 127:12-127:18.

260. Commissioner Holmes never asked Mr. Oldham for a different map to be drawn, never let him know that he was having maps drawn by someone else. Day 8 Tr. 128:1-128:3.

261. Commissioner Holmes never provided advice on how to redesign Map 1, other than not including Bolivar, and did not request a map without Bolivar in Precinct 3. Day 8 Tr. 128:8-11.

262. Had he requested a different map without Bolivar in Precinct 3, Mr. Oldham would have provided one. Day 8 Tr. 128:10-14.

263. During the period when Mr. Oldham was meeting with commissioners, the thought about whether meetings were appropriate during that time was that when they had something to show the public, the County would do that. Day 8 Tr. 114:3-19.

264. Some commissioners made adjustments Map 2 for parts of it that they opposed. Day 8 Tr. 189:11-15.

265. It was not clear what the deadlines might be as the State of Texas was having similar problems and actually control the deadlines, so it was not clear whether the County would have until some date in December or November. Day 8 Tr. 113:13-114:2.



266. Tyler Drummond emailed (DX-98) on October 28, 2021 asking to get the maps sent to the County. Day 8 Tr. 115:13-116:8.

267. At the time there was clean up being done on the maps. Day 8 Tr. 117:8-10.

268. After finishing meetings with all of the commissioners, Tom Bryan finalized the maps and provided them to the Court on or about October 29, 2021. Day 8 Tr. 118:1-5.

269. Mr. Oldham discussed having meetings with the County, but first thing was to get maps up on the website. Day 8 Tr. 118:16-23.

270. One of the reasons Mr. Oldham was insistent on the website was we had all learned about websites and Zoom during COVID and this was an opportunity to speed the process up and get comments in. Day 8 Tr. 114:20-115:6.

271. The County received notice that the maps were due by November 13, 2021 and someone from the County notified Mr. Oldham. Day 8 Tr. 118:11-15.

272. Prior to getting notice of a shortened deadline from the state, Mr. Oldham hoped that they would have time for one or two meetings at which comment could be received. Day 8 Tr. 113:1-7

273. Mr. Oldham emphasized to the Court that they do not want to cut anyone off and clarify that people could make whatever written comments they want to put in. Day 8 Tr. 118:16-23.

274. Mr. Oldham's advice was to at least allow the public to address the commission even if it is during a regular commission meeting. And make sure everyone knows they can get their comment on the record, which he believes was the most reasonable

approach given the timeline. Day 8 Tr. 123:14-124:2.

275. DX-277 appears to be what started out as the least-changes map created for the County. Day 8 Tr. 119:19-22. DX-276 appears to be Map 2, after changes reflecting the coastal precinct and other geographical changes. Day 8 Tr. 120:5-10.

276. Mr. Oldham considered Map 1 and Map 2 provided to Galveston County to be legally defensible maps. Day 8 Tr. 122:14-123 :2. Mr. Oldham was perfectly okay to defend either map. He never provided an opinion as which map he thought was better. Day 8 Tr. 125:7-12.

277. Commissioner Holmes exchanged emails with attorney for the NAACP Plaintiffs Sarah Chen:

On Thu, Oct 28, 2021 at 8:03 PM sdholmes1 <sdholmes1@aol.com> wrote:

Hey Sarah,

I had a teleconference with Redistricting Counsel Dale Oldham couple weeks ago. Last week had an in person, Monday and zoom meeting, Friday, with Oldam.

Two maps displayed. One that essentially obliterated my current precinct. Another that is close to current configuration, but one area that is unacceptable, and from what I know would be close to current racial percentages.

Requested but have not received maps or data.

Stephen

DX 164 at 6; Day 7 Tr. 151:3-19. Attorney Chen asked on October 29th if the Commissioners Court would put redistricting on the agenda so the public could weigh in, and asked for a screenshot of the map because she “can recreate the map and get data separately.” DX 164 at 6.

### **K. The 2021 Map**

278. On October 29, 2021, two proposed maps, Map 1 and Map 2, were posted on the Galveston County website along with a form for public comment. Dkt. 204-6 ¶ 20 (Jt. Stip. Facts).

279. Commissioner Holmes testified that he had a phone conversation with Tyler Drummond, the County Judge's assistant, on October 29, 2021, and Mr. Drummond told him that the two maps Mr. Oldham had presented would be placed on the County's website that day. Day 7 Tr. 76:14-77:1.

280. The online posting provided public notice that "the Galveston County Commissioners Court will be discussing and voting to redistrict county commissioner's precincts in the next few weeks," provided interactive versions of the **two map proposals** "that will be considered," and allowed County residents to provide public comment. JX. 29.

281. The webpage containing the proposed Map 1 and Map 2 stated, in part, that "The Galveston County Commissioners Court will be discussing and voting to redistrict county commissioner's precincts in the next few weeks. Below are the two proposed maps that will be considered. Public comment is now open for county residents via the form on this page." Dkt. 204-6 ¶ 21 (Jt. Stip. Facts).

282. Mr. Oldham believed the County should take as much feedback as time will allow. Day 8 Tr. 203:1-5. The County did do the website and ultimately did one meeting. Everyone anticipated that there was going to be more time than they ended up having. Day 8 Tr. 203:12-21. The County allowed supplemental comments after the meeting which

allows people to make a record. Day 8 Tr. 203:24-204:6.

283. The Commissioners Court meets every other week. *See* PX 129. No commissioner placed a redistricting-related item on the agenda for any of the public meetings after April 5, 2021 and before November 12, 2021.

284. The Texas Secretary of State issued an “Election Advisory” dated November 1, 2021 recognizing that:

Due to delays in the U.S. Census Bureau releasing 2020 Census data to the States for redistricting purposes, the timeline for undertaking redistricting in Texas was modified” and the Texas Legislature passed Senate Bill 13 to “authorize the Secretary of State to adjust the schedules for performing any official act relating to the 2022 election cycle ‘as necessary for the efficient and orderly administration of the election.’”

JX 34 at 1 (Election Advisory).

285. It then provided deadlines for various entities within the State to submit redistricting plans, including that:

County Commissioner Precincts Article V, Section 18(b) of the Texas Constitution requires each county to be divided into four commissioner precincts. One commissioner is elected from each precinct. There is no statutory deadline for the commissioners court to reapportion precinct lines. However, commissioners precincts must be redrawn as necessary to maintain a substantially equal population within the four precincts. *Avery v. Midland County*, 390 U.S. 474 (1968). Therefore, each county commissioners court must order any necessary changes to the county commissioner precinct lines in light of 2020 census figures no later than November 13, 2021, the first day of the candidate-filing period for the primary election.

JX 34 at 2 (Election Advisory).

286. On November 2, 2021, Tyler Drummond called Commissioner Holmes and told him they were trying to set up a special meeting for November 9, 2021 to vote on the redistricting maps. Day 7 Tr. 78:7-11. Mr. Drummond told him that maybe he could

convince the other commissioners not to support Map 2 and get the vote postponed until next Friday (the 12th). Day 7 Tr. 78:11-17. He testified that Mr. Drummond told him the Secretary of State sent an e-mail stating maps must be sent by November 13, 2021. Day 7 Tr. 78:17-19.

287. Commissioner Holmes testified that Tyler Drummond called him on November 4, 2021 to tell him they were still working on getting the redistricting special meeting posted, and Nathan Sigler was working to finalize the maps. Day 7 Tr. 80:11-17. He testified that he consistently asked for his map throughout the meetings recorded in his notes. Day 7 Tr. 80:2-23. Tyler Drummond called him again on November 5, 2021 to tell him that the maps were still not ready, so the redistricting special meeting would probably take place on November 12, 2021. Day 7 Tr. 80:24-81:4.

288. Commissioner Holmes testified that on November 4, 2021, he contacted Chad Dunn because he needed something to present at the meeting, and he wanted the maps analyzed and to be prepared to vote at the special meeting for redistricting. Day 7 Tr. 89:4-18. He testified that Mr. Dunn connected him with Mr. Rios, which created a RPV analysis for him, and Mr. Angle, who provided him some maps, data, and an analysis of the County's proposed maps. Day 7 Tr. 90:6-14. He testified that he took copies of the maps produced for him by Mr. Angle to be distributed to the Commissioners Court at the special meeting. Day 7 Tr. 90:22-91:3. Commissioner Holmes testified that he handed these items to each member of the Commissioners Court and had enlarged versions of the maps present at the special meeting. Day 7 Tr. 91:11-16. He testified that the racially polarized evidence he was provided showed that Black and Latino voters voted together,

and White voters voted for an alternative candidate. Day 7 Tr. 91:21-92:2. He testified that Mr. Rios' and Mr. Angle's work product was forwarded to him on November 8th, but he could not initially access the materials. Day 7 Tr. 93:1-15. Commissioner Holmes testified that he interpreted Mr. Rios' work product to show that as an area gets more heavily Anglo, they tend to vote more heavily Republican, and as an area is more non-Anglo, they vote more Democrat. Day 7 Tr. 96:2-5.

289. DX 144 is a compilation of emails between Commissioner Stephen Holmes, Chad Dunn and Matt Angle, and a memorandum and several maps and data produced for Commissioner Holmes by Mr. Angle and Michael Rios. Mr. Angle, on page 5 of DX 144, provided Commissioner Holmes an analysis of Galveston County Map 1, which stated: "County-proposed Map 1 makes only minor changes in the Benchmark map. The core neighborhoods within each precinct are maintained. The population deviation in majority minority Precinct 3 is resolved by adding heavily Republican Bolivar Peninsula precincts to the west, which reduces the Black CVAP in Precinct 3 to 32 percent, and the B + H CVAP to 55 percent. However, the district appears to continue to perform for Black and other minority voters."

290. Commissioner Holmes testified about a November 9, 2021 call from Commissioner Apffel. Commissioner Holmes claims Apffel said he would be voting for Map 2 because he wanted to be County Judge one day. Day 7 Tr. 82:3-12. Commissioner Holmes testified he told Apffel Map 2 was discriminatory for the minority voters in Precinct 3, while Commissioner Apffel told him that redistricting counsel told him it was a legal map. Day 7 Tr. 82:13-17. He said Commissioner Apffel told him Mike Guarino,

Commissioner Apffel's brother-in-law and former district attorney, chastised Commissioner Apffel for his support of Map 2, and Commissioner Holmes told Commissioner Apffel that Map 2 runs afoul of the Voting Rights Act. Day 7 Tr. 82:18-24. He testified that Commissioner Apffel discussed what Harris County was doing to the Republican members of their Commissioners Court by changing precincts, and Commissioner Holmes told him that it was not about the Republican or Democrat but about the protections guaranteed to the minority groups in the Voting Rights Act. Day 7 Tr. 82:25-83:5. He testified that Commissioner Apffel said he would call Dale Oldham and ask whether Map 2 was, in fact, discriminatory. Day 7 Tr. 83:8-9. Commissioner Holmes also testified that during this call Commissioner Apffel asked him if he had "sicked" the NAACP on him, which he said he had not. Day 7 Tr. 83:8-11. Commissioner Holmes testified that the vote for the 2021 redistricting maps had already been decided before the meeting, which he believes because Commissioner Apffel, a few days before the meeting, told him that the County Judge was going to make a motion, Commissioner Apffel was going to second it, and they would vote to approve Map 2. Day 7 Tr. 86:6-13.

291. DX 140 is an email to various community members and organizational leaders from Roxy Williamson forwarding an email from Stephanie Swanson, dated November 11, 2021, and originally sent to Hilary Klein, Roxy Williamson and Noor Taj, which informs them, "If they vote for map 2, we could argue intentional discrimination as well as preclearance for the jurisdiction, since they would be a repeat offender."

292. Commissioner Apffel testified that he has known Commissioner Holmes since 1989 and considers him a friend, a great commissioner and a great person. Day 9 Tr.

318:24-319:14. During his November 9th phone call with Commissioner Holmes, Holmes mentioned that the two proposed maps violated the Voting Rights Act, but he did not propose a change or request Apffel take any actions. Day 9 Tr. 330:8-331:7. Commissioner Apffel testified that even up and until the time the motion to accept Map 2 had been made and seconded at the November 12th meeting, Commissioner Holmes never asked him to support Map 1. *Id.* at 337:12-15.

293. On November 12, 2021, two weeks after the proposed plans, Map 1 and Map 2, were posted on the Galveston County website, the Commissioners Court held a special session at 1:30 p.m. to consider and vote on the proposed plans. Dkt. 204-6 ¶ 22 (Jt. Stip. Facts).

294. By approximately one hour before the special session began at 1:30 p.m. on November 12, 2021, 440 people had provided comments on the proposed commissioners court maps through the Galveston County website. Dkt. 204-6 ¶ 23 (Jt. Stip. Facts); JX 42 at PDF p.440. The public comments are in the record in order of receipt at JX 42; 468 comments were made between October 29, 2021 at 5:08 p.m. (JX 42 at PDF p.1) and November 20, 2021 at 12:54 a.m. (JX 42 at PDF p.468). Of those comments, **58** clearly supported Map 1,<sup>19</sup> **221** clearly supported Map 2,<sup>20</sup> **177** did not support either map

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<sup>19</sup> JX 42 at PDF pp.5, 11, 16,-18, 20, 25, 30, 33, 44, 45, 48, 51, 55-56, 59, 60, 64, 75, 85, 87, 88-90, 92-93, 95, 104, 107, 109, 119, 145, 150, 161, 166, 189, 195, 199-200, 202, 204, 210, 215, 217, 240, 244, 314, 315, 342-43, 345, 356, 363, 429, 437, 449, 450, 456.

<sup>20</sup> JX 42 at PDF pp.1-4, 6, 7, 8-10, 12-15, 19, 21-24, 26-29, 31, 34-35, 38, 40-43, 46, 50, 52-54, 58, 61-63, 57, 73, 74, 77, 82, 94, 96-101, 103, 105-106, 108, 110-11, 113-18, 120, 122-25, 127-28, 130, 132-36, 138-44, 146-48, 151-58, 160, 162-65, 167-78, 180, 182-87, 190-94, 196-98, 201, 203, 205-07, 209, 211-14, 216, 218-19, 223-25, 227-37, 241-43, 246-49, 251-65, 267-73, 275-78, 280-82, 284-87, 289-92, 295, 297, 301, 336, 354, 366, 382, 384, 387, 390-91, 397, 399, 401, 404, 413, 439, 451-52, 454, 457, 459, 462, 465.



(including those comments wanting Map 1 *without Bolivar Peninsula* included,<sup>21</sup> and **12** comments were unclear about preference.<sup>22</sup> A summary is attached as **Appendix A**.

295. Only four public comments were submitted before the November 4, 2021 meeting at which Commissioner Holmes spoke showing support for neither map, all but one of which wanted a single commissioner for Friendswood. *See* JX 42 at PDF pp.36-37, 49; *see also* JX 42 at PDF p.39 (“Both of these gerrymandered maps are shameful. Shame on you, diluting the bluest parts of this county. Shame on you, ensuring taxation without representation. Whatever map Mark Henry endorses will be the one that I oppose. I look forward to turning Texas Blue. May you never hold public office again”).

296. Commissioners Court meets at least every other week. The first full agenda meeting of the month is on Monday as a regular meeting and special meetings are on Monday mornings every other week from the regular meeting, because they have to approve payroll every two weeks. Day 7 Tr. (Rough) 251:22-252:16.

297. In recent years, the County has held the Monday special meetings at the Calder annex in League City. They could hold those meetings anywhere; only regular meetings have to be held at the County seat. Day 7 Tr. (Rough) 253:5-17.

298. The Calder Road Annex, where the special session was held, is located at 174 Calder Road, League City, Texas, and is approximately 27 miles away from the

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<sup>21</sup> JX 42 at PDF pp. 36-37, 39, 49, 65-72, 76, 78-79, 83-84, 86, 91, 102, 112, 126, 129, 131, 137, 149, 181, 188, 208, 220-22, 238-39, 250, 266, 274, 279, 283, 288, 293, 294, 296, 298-300, 302-13, 316-35, 337-41, 344, 346-53, 355, 357-62, 364-65, 367, 369-81, 383, 385-86, 388-89, 392-96, 398, 400, 402-03, 405-12, 414-28, 430-36, 438, 440-48, 453, 455, 458, 461, 463, 466-68.

<sup>22</sup> JX 42 at PDF pp. 32, 80, 81, 121, 159, 179, 226, 245, 368, 460, 464.

Galveston County Courthouse located at 722 Moody Avenue in the City of Galveston. Dkt. 204-6 ¶ 24 (Jt. Stip. Facts).

299. At the November 12, 2021, special session, the Galveston County Commissioners Court approved Map 2 with a vote of 3-1. County Judge Mark Henry, Commissioner Joseph Giusti, and Commissioner Darrell Apffel voted in favor of Map 2, Commissioner Stephen Holmes voted against Map 2, and Commissioner Kenneth Clark was not present. Dkt. 204-6 ¶ 25 (Jt. Stip. Facts).

## **II. This Lawsuit**

### **A. Parties**

300. The DOJ filed its complaint in this case on March 24, 2022 (Dkt. 204-6 ¶ 17 (Jt. Stip. Facts)), in cause number 22-cv-00093 against Galveston County, Texas, County Judge Mark Henry, in his official capacity as Galveston County Judge, and the Galveston County Commissioners Court. The Galveston County Commissioners Court is not a separate legal entity subject to suit.

301. The Mainland Branch NAACP, Dickinson Bay Area Branch NAACP, and Galveston Branch NAACP are nonprofit, nonpartisan membership organizations and are affiliate branches of the Texas State Conference of the NAACP (“NAACP”). Dkt. 204-6 ¶ 27 (Jt. Stip. Facts). Galveston LULAC Council 151 is an independent unit of the national organization League of United Latin American Citizens (“LULAC”). Dkt. 204-6 ¶ 28 (Jt. Stip. Facts). The NAACP, LULAC, Edna Courville, Joe A. Compian, and Leon Phillips (collectively the “NAACP Plaintiffs”) filed suit in cause number 22-cv-00117, against Defendants.

302. Terry Petteway, Constable Derrick Rose, the Hon. Penny Pope (the “Petteway Plaintiffs”), along with Sonny James and Michael Montez, sought leave to file a supplemental complaint regarding the 2021 Map in their pending lawsuit concerning the Justice of the Peace and Constable precincts.. Leave was denied, and they filed suit against Galveston County, Texas and the Hon. Mark Henry as Galveston County Judge. Plaintiffs Michael Montez and Sonny James have been dismissed. Dkt. 100, 125.

303. The three cases were consolidated into the Petteway Plaintiffs’ action, cause number 22:cv-00057.

**B. Claims and Defenses**

304. Plaintiffs allege the following claims relating to the 2021 Redistricting Plan:

Parties	Claims
DOJ Plaintiff Petteway Plaintiffs NAACP Plaintiffs	1. Sct 2 VRA Discriminatory Results/Vote Dilution
DOJ Plaintiff Petteway Plaintiffs	2. Sct 2 VRA Discriminatory Intent
Petteway Plaintiffs NAACP Plaintiffs	3. Fourteenth & Fifteenth Amendment Equal Protection - Intentional Racial Discrimination 4. Fourteenth Amendment Equal Protection – Racial Gerrymandering

305. Defendants raise several arguments in defense of Plaintiffs’ claims, including that Plaintiffs raise nonjusticiable political questions and request an unconstitutional racial gerrymander; that the enacted plan was drawn without considering race; that Defendants did not intend to discriminate; that to the extent the VRA is held to require the redistricting

plan to be redrawn considering race, or without respect to traditional districting criteria, Section 2 of the VRA is unconstitutional; that, to the extent the VRA is held to permit liability found without proof of intentional discrimination, or to allow evidence of polarized voting as evidence of racial bias, or to allow evidence of partisan voting as evidence of racial bias, Section 2 of the VRA is unconstitutional; that, to the extent the VRA permits the relief sought by Plaintiffs, it is not proportional and congruent under the United States Constitution; that there is no cause of action for intentional vote dilution under the Fifteenth Amendment; and that any delay with respect to the redistricting process is attributable to the delay in the release of Census data and is no intent to discriminate or consideration of race can be assumed from such timing issues. Dkts. 142-144.

### C. Trial

306. A bench trial was held between August 7th and 19th, 2023.

307. The parties offered 45 joint exhibits which were pre-admitted into evidence on July 25, 2023. Dkt. 204-3. The Plaintiffs' exhibits listed in **Appendix B** were admitted into evidence between July 26 and August 18, 2023.<sup>23</sup> The Defendants' exhibits listed in **Appendix C** were admitted into evidence between July 26 and August 18, 2023.

308. The following witnesses were called to testify by the Plaintiffs:

- Day 1 (Aug. 7, 2023): Plaintiff Constable Derreck Rose, Lucille McGaskey;
- Day 2 (Aug. 8, 2023): Plaintiff Hon. Penny Pope, Dr. Traci Burch, Dr. Edna Courville;

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<sup>23</sup> Plaintiffs offered PX 608 and PX 609, which the Court has excluded as rebuttal evidence. Dkt. 237.

- Day 3 (Aug. 9, 2023): Dr. William Cooper and Dr. Matt Barretto;
- Day 4 (Aug. 10, 2023): Dr. Tye Rush, Dr. Anthony Fairfax, Dr. Jessica Trounstine, and Dr. Kassra Oskooii;
- Day 5 (Aug. 11, 2023): Dr. Max Krochmal and Dr. Rocha;
- Day 6 (Aug. 14, 2023): Robert “Bo” Quintero, Joe Compian (testifying individually and as a representative of LULAC), Sharron Lewis, Joe Jaworski, Lucretia Lofton, and Rev. William L. Randall;
- Day 7 (Aug. 15, 2023): Patrick Doyle and Commissioner Stephen Holmes.

309. The following witnesses were called to testify by the Defendants:

- Day 7 (Aug. 15, 2023): Galveston County Judge Mark Henry;
- Day 8 (Aug. 16, 2023): Dale Oldham and Thomas Bryan;
- Day 9 (Aug. 17, 2023): Thomas Bryan (continued), Galveston County Commissioner Joe Giusti, Dr. Mark Owens, and Galveston County Commissioner Darrell Apffel;
- Day 10 (Aug. 18, 2023): Dr. John Alford, Galveston County Commissioner Robin Armstrong, Galveston County Clerk Dwight Sullivan, Plaintiff Leon Phillips (by deposition), and Nathan Sigler (by deposition).

310. Appended to these findings and conclusions is a “cast of characters” detailing the people related to this litigation, and their roles. **Appendix D.**

311. Plaintiffs offered deposition testimony from Michael Shannon and Cheryl Johnson as rebuttal over Defendants’ objection that neither constituted rebuttal evidence, and the Court took these offers under advisement (Day 10 Tr. 213:8-21, 219:7-21).

312. At the close of Plaintiffs’ evidence, Defendants moved for directed verdict, arguing there was (1) no evidence to support the Petteway and NAACP Plaintiffs’ Fourteenth Amendment racial gerrymandering claims, (2) legally insufficient evidence to

meet any of the VRA *Gingles* elements or Senate Factors 1, 2, 3, 4, 6, and 7, and (3) no evidence of intentional discrimination under either the VRA or the Fourteenth Amendment (Day 10 Tr. 262:18-275:6). The Court denied the motion (Day 10 Tr. 275:7-9).

## **D. Evidence at Trial**

### **i. *Gingles* I Compactness**

#### **1. Mr. William Cooper**

313. Mr. Cooper testified as an expert witness<sup>24</sup> on whether the Black and Latino communities in Galveston County are sufficiently numerous and geographically compact to draw a majority minority district. Day 3 Tr. 12:7-14. As part of this task, Mr. Cooper reviewed the County’s 2021 Map and “Map Proposal 1,” as well as the 2011 Benchmark Plan. He also prepared three Illustrative Plans as part of his review. Day 3 Tr. 12:15-13:7.

314. Mr. Cooper testified about the socio-economic data underlying his Illustrative Plans. He first acknowledged that, under all of his Illustrative Plans, Precinct 3 contains portions of Texas City, League City, and the City of Galveston—which are geographically distant and demographically distinct from each other. Day 3 Tr. 157:9-20; 158:15-18. For example, in Illustrative Plan 1, over 54% of Texas City, over 55% of Galveston City, and 750 residents from League City are included in Precinct 3. Day 3 Tr. 159:19-160:10. In Illustrative Plan 2, over 54% of Texas City, nearly 52% of Galveston

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<sup>24</sup> The Court admitted all expert testimony at trial and addresses its findings about the weight and credibility of that testimony herein. The Court also considers the reliability of expert evidence by considering: (1) whether the expert’s technique or theory can be challenged or tested; (2) whether the technique or theory has been subject to peer review or publication; (3) the known or potential rate of error; (4) the existence of standards and controls; and (5) whether the technique or theory has general acceptance in the scientific community. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593-94 (1993). Reliability includes whether an expert’s methodology is properly applied to the facts. *Curtis v. MS Petroleum*, 174 F.3d 661, 668 (5th Cir. 1999).

City, and 750 residents from League City are included in Precinct 3. Day 3 Tr. 160:17-161:4. And in Illustrative Plan 3, nearly 85% of Texas City and about 4% of League City are included in Precinct 3. Day 3 Tr. 153:17-154:2.

315. In grouping these populations, however, Mr. Cooper testified that he did not analyze the socio-economic data for those jurisdictions at the Commissioners Precinct level. Day 3 Tr. 163:20-164:8. He acknowledged that he could have conducted this analysis by disaggregating the Census block data and re-aggregating it at the Precinct level to show information relevant to the specific populations taken from each city, but chose not to do so. Day 3 Tr. 164:9-25.

316. Even the city-level socio-economic data that Mr. Cooper did report show marked differences among the populations of Texas City, and League City. For example, on educational attainment, 13.2% of Black residents and 18% of Latino residents in Texas City earned a bachelor's degree or higher. Day 3 Tr. 166:22-167:5. Meanwhile, in League City, 50.9% of Black residents and 32.3% of Latino residents earned a bachelor's degree or higher. Day 3 Tr. 168:1-13.

317. On poverty levels, Mr. Cooper testified that 18.2% of Black households and 15.1% of Latino households in Texas City live below the poverty line. Day 3 Tr. 170:3-11. Meanwhile, he testified that 4% of Black households and 8.7% of Latino households in League City live below the poverty line Day 3 Tr. 171:4-13.

318. On earning capacity, Mr. Cooper testified that the median income in Texas City is \$40,750 for Black households and \$49,651 for Latino households. Day 3 Tr. 172:14-23. The per capita income in Texas City, meanwhile, is \$24,286 for Black residents and

\$22,907 for Latino residents. Day 3 Tr. 173:18-24. By contrast, he acknowledged that the median income in League City is \$95,887 for Black households and \$87,767 for Latino households. Day 3 Tr. 173:3-14. And the per capita income in League City is \$35,075 for Black residents and \$32,983 for Latino residents. Day 3 Tr. 174:3-9.

319. With respect to welfare benefits, Mr. Cooper testified that 29.2% of Black households and 16.7% of Latino households in Texas City receive food stamps. Day 3 Tr. 174:13-19. In comparison, 11.9% of Black households and 9.1% of Latino households in League City receive food stamps. Day 3 Tr. 174:23-175:6.

320. On unemployment levels, Mr. Cooper testified that 12.3% of Black residents and 6.3% of Latino residents in Texas City are unemployed. Day 3 Tr. 175:10-17. Meanwhile, in League City, 5.3% of Black residents and 5.9% of Latino residents in League City are unemployed. Day 3 Tr. 175:21-176:6.

321. Regarding home ownership, Mr. Cooper testified that 46.5% of Black residents and 54% of Latino residents in Texas City own a home. Day 3 Tr. 176:10-19. By contrast, he testified that 53.9% of Black residents and 80% of Latino residents in League City own a home Day 3 Tr. 176:23-177:6.

322. With respect to occupation, 18.1% of Black residents and 16% of Latino residents in Texas City are in management positions, while 34% of Black residents and 24.4% of Latino residents are in service occupations. Day 3 Tr. 177:11-178:9. This is in contrast to League City—where 62.1% of Black residents and 40.3% of Latino residents are in management positions, and 9.4% of Black residents and 12.3% of Latino residents are in service occupations. Day 3 Tr. 178:13-179:24.



323. In light of these socio-economic indicators, Mr. Cooper testified that there is a large disparity between the Black and Latino communities of Texas City on one hand, and those of League City on the other. Day 3 Tr. 190:22-191:6.

324. In fact, on re-direct examination, Mr. Cooper testified that the disparity between League City and Texas City is “huge,” so much so that the idea that League City and Texas City should be considered one unit “makes no sense, because the two places are totally different.” Day 3 Tr. 183:3-10.

## **2. Dr. Tye Rush**

325. Dr. Rush was called to testify exclusively as a Gingles I expert. Day 4 Tr. 15:1-7; 46:4-14.

326. At the outset, Dr. Rush testified that he was associated with the UCLA Voting Rights Project when he wrote his report. Day 4 Tr. 46:25-47:3. The Campaign Legal Center—who is co-counsel in this case, and funds the UCLA Voting Rights Project—paid Dr. Rush’s fees for his expert report in this case. Day 4 Tr. 47:5-20. Although Dr. Rush insisted that this did not create any bias because he would be more respected by his peers for his disagreements (if there were any), he could not cite a single instance where he disagreed with either Plaintiffs’ counsel, Mr. Dunn, or Dr. Barreto of the UCLA Voting Rights Project. Day 4 Tr. 47:21-49:15.

327. Dr. Rush made several substantive, non-typographical, changes to his report in his amended report that was served on Defendants several months after his original report and two-months following his deposition. Day 4 Tr. 40:4-45:25; see DX 293 (compare and contrast of Dr. Rush’s two primary reports).

328. Dr. Rush was “aware and mindful” of the six factors considered by the Commissioners Court when adopting the 2021 precinct map. See DX amended Rush Report # at ¶¶ 28 and 32.

329. Dr. Rush testified that he was asked to analyze whether Black and Hispanic voters together could form a majority-minority district. But he did not analyze—nor was he retained to analyze—whether the Black and Hispanic voters create a community of interest or whether they vote cohesively with each other. Day 4 Tr. 55:18 - 56:7. He stated that he did some general background research on the shared interests of the Black and Hispanic populations. Day 4 Tr. 56:21 - 57:11; see also DX 293. Yet, he admitted that he did not include any of that information in his expert report. Day 4 Tr. 57:12-13; see also DX 293.

330. Dr. Rush testified that there is not a sufficiently large and compact Latino population to constitute a majority-Latino Commissioners Court Precinct in Galveston County. Day 4 Tr. 54:8-13. He similarly agreed that there is not a sufficiently large and compact Black population to qualify for a majority-Black district in Galveston County. Day 4 Tr. 54:14-17. He acknowledged that the Black and Hispanic populations must be combined to form a sufficiently large voting population to satisfy Gingles I. Day 4 Tr. 75:19-58:12.

331. Dr. Rush testified that the White and Black populations of Galveston County, as a percentage of the total population, decreased from 2010 to 2020. Day 4 Tr. 58:13-18. Meanwhile, he acknowledged that the Latino population of Galveston County increased as a percentage of total population from 2010 to 2020. Day 4 Tr. 58:13-59:7. Despite these

opposite demographic trends, Dr. Rush insisted that it would not be a problem to put Black and Latino populations together or treat them as a singular group. Day 4 Tr. 59:8-13.

332. Dr. Rush next testified that he thought the Black and Latino populations in Galveston County are geographically compact. Day 4 Tr. 59:14-22. To reach that conclusion, he did not conduct an independent analysis of those populations, but instead relied on the Polsby-Popper and Reock compactness scores for the various maps disclosed in his report. Day 4 Tr. 60:13-23. With regard to those measures, Dr. Rush admitted that the 2021 Map and the Illustrative Plans he prepared are all more or less equally compact. Day 4 Tr. 62:1-5.

333. Dr. Rush testified that populations from Texas City and League City can be lumped together in a majority-minority Precinct. However, he did not conduct an independent analysis of why those populations could or should be paired; instead he simply noted that they “have stuff in common. They are not distinct.” Day 4 Tr. 63:17-64:6. When asked if distance between these jurisdictions is a factor when deciding to lump them together, Dr. Rush testified that he had no professional opinion about that point. Day 4 Tr. 65:16-66:4.

### **3. Mr. Fairfax**

334. Mr. Fairfax was called to testify as an expert only on *Gingles* I. Day 4 Tr. 81:9-16; 129:9-13.

335. Mr. Fairfax testified that he does not question the compactness of either the 2012 Benchmark Plan or the 2021 Map. He admitted that both plans are equally compact according to the reported compactness scores. Day 4 Tr. 121.10-17.

336. Mr. Fairfax testified that he was not aware of the six redistricting criteria set by Judge Henry and the Commissioners when they had map proposals developed in 2021. He stated that he was not provided a copy of the Interrogatory Responses served on Plaintiffs which detailed those criteria, and he did not rely on them when drawing his Illustrative Map. Day 4 Tr. 125:12-126:18.

337. Mr. Fairfax testified that political or partisan choices are inherent in the map-making process, and that those considerations are generally permissible. He admitted that, in jurisdictions such as Galveston County, partisan considerations may be lawfully included during map-making. Day 4 Tr. 128:5-129:8.

338. Mr. Fairfax testified that he utilized the “least-changes” method for his Illustrative Plan, wherein the goal was to draw map in a way that equalized the changing population with the least changes from the 2012 Benchmark Plan. Day 4 Tr. 129:14 - 130:5). Mr. Fairfax acknowledged that two of the four Precincts in his Illustrative Plan did not change from the Benchmark Plan, and that there was only one change between Precincts 2 and 3—namely, moving VTD 218 from Precinct 2 to Precinct 3. Day 4 Tr. 130:6-20).

339. Mr. Fairfax testified that he understood how VRA preclearance previously worked, and that the Benchmark Plan was adopted as part of a settlement with the Department of Justice after a preclearance challenge was mounted to the map enacted in 2011. Day 4 Tr. 131:23-136:6. He further testified that he understood the primary focus of the settlement negotiations regarding the Benchmark Plan was the map’s racial distribution. Day 4 Tr. 136:18-137:2.

340. Despite acknowledging this history, Mr. Fairfax testified that he did not think race predominated as a consideration in the creation of the Benchmark Plan. Day 4 Tr. 137:3-13. Nevertheless, he admitted that if race had predominated in the Benchmark Plan, the change he made to VTD 218 in his Illustrative Plan would not have ameliorated the previous racial predominance. Day 4 Tr. 139:7-11.

341. Mr. Fairfax next testified that his Illustrative Plan had a population deviation of 7.3%, and that this was within the “safe harbor” of 10% population deviation that has been established by the courts. Day 4 Tr. 133:17-134:10. He acknowledged, however, that it would be acceptable for the Commissioners Court to want to equalize population among the Precincts as much as possible. Day 4 Tr. 144:22-145:13. Indeed, Mr. Fairfax stated that it is “likely”—given the population trends in Galveston County from 2010 to 2020—that his Illustrative Map would exceed the 10% population deviation threshold more quickly in the future than a map with lower population deviation. Day 4 Tr. 145:14-146:8.

342. Mr. Fairfax testified that his Illustrative Plan was not intended to be the “best plan” or “optimal plan” for Galveston County. He acknowledged that there are many different ways the Commissioners Court map could be drawn, and that some of them might be just as good maps. Day 4 Tr. 146:11-147:5.

343. Mr. Fairfax next acknowledged that, by percentage, the Black population decreased between 2010 and 2020, while the Hispanic population increased. Day 4 Tr. 148:11-149:17. Nevertheless, he admitted that he lumped them together in his report to conclude that the “combined Black and Latino population” had increased as opposed to the White population, which has decreased. Day 4 Tr. 147:16-150:3; see also PX 337 at ¶

17(a). Moreover, Mr. Fairfax admitted that he did not “analyze or think about” why the Black population is decreasing while the Hispanic population is increasing. Day 4 Tr. 152:25 - 153:7.

344. Mr. Fairfax testified that, in terms of total population, there are roughly twice as many Latino individuals than Black individuals in Galveston County. Day 4 Tr. 154:6-11. However, in his Illustrative Map, a larger percentage of the total Black population is included in Precinct 3 as compared to the percentage of the total Latino population included in the same Precinct. Mr. Fairfax stated that he had no problem with the way his Illustrative Plan grouped those populations together. Day 4 Tr. 154:24-155:16.

345. Mr. Fairfax next testified about his rebuttal report, which addressed issues raised by Defendants’ *Gingles* I expert Dr. Mark Owens. Mr. Fairfax acknowledged that Dr. Owens and he do not disagree on what the reported compactness scores say about his Illustrative Map. Day 4 Tr. 158:16-159:4. However, he confirmed his position from his rebuttal report that he believes “establishing a compact community of interest is not part of the Section 2 votes dilution test when considering the first precondition of *Gingles*.” Day 4 Tr. 159:5-18. Accordingly, he admitted that he “did not provide any type of compact community of interest studies in arriving at his *Gingles* I opinion” because he believed *Gingles* one did not require it. Day 4 Tr. 160:6-10.

346. For example, he did not perform any analysis as to why it would be reasonable to lump together Hispanic and Black populations of League City with those of Texas City. Day 4 Tr. 160:11-15. He similarly had no opinion on the distance that was appropriate to group together Black and Latino populations from those jurisdictions. Day

4 Tr. 160:16-21.

#### 4. Dr. Owens

- a. Based on his education, experience, and qualifications, the Court admitted Dr. Owens as an expert on redistricting, Texas political history, and *Gingles I*.**

347. Dr. Mark Owens was presented to the Court and began by testifying about his education, work experience, and qualifications. He explained that he holds a bachelor's degree in political science from the University of Florida, a master's degree in government from Johns Hopkins University, and a Ph.D. from the University of Georgia. While working on his Ph.D. dissertation, Dr. Owens was also a visiting doctoral student at the University of Oxford. Day 9 Tr. 165:17-166:10.

348. After completing his Ph.D., Dr. Owens was a visiting assistant professor of American politics at Bates College. Day 9 Tr. 168:19-169:5. Thereafter, Dr. Owens joined the faculty at the University of Texas at Tyler, where he taught classes and conducted research on American political institutions and elections. Day 9 Tr. 169:11-25. During his time at UT-Tyler, Dr. Owens developed an expertise and published works on Southern and Texas politics and elections. Day 9 Tr. 173:7-174:4.

349. In the course of his academic work, Dr. Owens was a frequent participant in the Symposium on Southern Politics at the Citadel. Day 9 Tr. 174:11-22. Most recently, Dr. Owens accepted a position as professor of political science at The Citadel, where he will continue his teaching and research, and serve as the assistant director of the Symposium on Southern Politics. Day 9 Tr. 175:1-22.

350. Dr. Owens has published a book on minority voting patterns, population distribution, and demographic shifts in voting behavior in Texas. Day 9 Tr. 176:17-177:13. He has also published various academic articles on American politics involving in-depth statistical analysis, has earned and administered millions of dollars in research grants at UT-Tyler, and participated in a variety of lectures and speaking engagements. Day 9 Tr. 178:6-24.

351. Dr. Owens has experience with redistricting and map-drawing processes, including work he performed on behalf of a non-profit group advocating for redistricting reform in Oklahoma. Day 9 Tr. 182:22-183:21. He has also served as an expert in several redistricting cases—where he has provided written reports and testimony on the Gingles preconditions and population dispersion of minority groups in certain jurisdictions. Day 9 Tr. 185:6-186:8.

352. In light of his education, experience, and qualifications, Defendants proffer Dr. Owens as an expert in the areas of redistricting, Texas political history, and Gingles I—including compactness and numerosity analysis. Day 9 Tr. 187:22-188:1. The Court found that Dr. Owens was qualified and recognized him as an expert in those areas. Day 9 Tr. 198:9-13.

**b. The Plaintiffs failed to show that Black and Latino populations in Galveston County are large enough and sufficiently compact to entitle them to a coalition majority Precinct.**

353. Dr. Owens began by testifying that the total Latino population in Galveston County in 2020 was greater than the ideal Commissioners Court Precinct population for



purposes of population equality. However, that fact alone did not entitle Latinos to a Precinct of their own in the 2021 redistricting cycle. He confirmed that the point of *Gingles* I analysis is to determine when a minority group is entitled to its own district based on the combined measures of numerosity and compactness. Day 9 Tr. 204:3-12.

354. Accordingly, Dr. Owens testified that the first step in his *Gingles* I analysis was to look at the Black and Latino population sizes in Galveston County, and where those groups are concentrated geographically within the jurisdiction. Then, he studied the geographic distance between each of those pockets of Black and Latino populations to determine whether they might be feasibly grouped together in a Precinct. Day 9 Tr. 206:14-207:11.

355. Dr. Owens testified that the Plaintiffs' *Gingles* I experts disagree with his approach, and that their focus is simply on compactness scores of the outer boundaries of proposed precincts, not the comparative compactness of the minority populations contained within the proposed precincts—i.e. whether a fairly compact Precinct could be drawn around Latino and Black populations without considering whether those groups actually belong together based on a variety of factors (such as socio-economic differences, and distance from each other). Day 9 Tr. 207:14-208:19.

356. Whatever the methodology, Dr. Owens testified that he and all the Plaintiffs' *Gingles* I experts agree on one thing: no single minority population is large enough or sufficiently compact to create a majority-Black or majority-Latino Precinct in Galveston County. Therefore, all the experts agree that Latino and Black populations in Galveston County must be combined in order to feasibly satisfy the requirements of *Gingles* I. Day 9

Tr. 208:24-209:17.

357. Dr. Owens testified that all the *Gingles* I experts agree that the total population of Galveston County has grown in the last decade. And he pointed out that all the experts agree that this population growth has occurred primarily in northern portions of the County—especially in League City. Day 9 Tr. 210:5-211:5.

358. Dr. Owens testified that all the *Gingles* I experts agree about how the minority population is dispersed throughout Galveston County. With respect to the Latino population, Dr. Owens testified that all experts agree that it is evenly dispersed throughout the County—i.e. it is not highly concentrated in a single area. Day 9 Tr. 210:13-211:16. Meanwhile, all experts agree that the Black population is concentrated along a central axis within the County—but that this population alone is not large enough to qualify for a Precinct in its own right. Day 9 Tr. 212:22-213:15.

359. Dr. Owens testified that all *Gingles* I experts agreed that the Precincts in both the 2021 Map and the Illustrative Plans proposed by Plaintiffs are all more or less equally compact based on the reported Reock, Polsby-Popper, and Convex-Hull compactness scores. Dr. Owens stated that these perimeter-boundary compactness measures are of course relevant in the *Gingles* I analysis—but clarified they should not be the only consideration. Those scores only speak to the outer boundary shape of the Precincts drawn, but do not take into account the distribution of the minority populations within the Precincts. Day 9 Tr. 214:4-215:18.

360. The basic thrust of Dr. Owens' opinion, therefore, is that compactness scores cannot be singularly determinative of the *Gingles* I inquiry. He reiterated that it would be

improper to automatically group geographically disparate Black and Latino communities in order to satisfy the numerosity element of *Gingles* I. Day 9 Tr. 215:22-216:8.

361. In applying his conceptualization of *Gingles* I, Dr. Owens testified that it would be improper to automatically group minority populations in Texas City and League City together within one precinct, simply because they are 19 miles apart. He reiterated that additional analysis of those populations would need to be conducted in order to determine whether grouping them would be justified. Day 9 Tr. 222:10-223:4.

362. Dr. Owens testified that, as was discussed during the cross-examination of Plaintiffs' expert Mr. William Cooper, there are "huge disparities" between the minority populations in Texas City and League City with regard to home ownership, education, income, occupation, unemployment, and poverty levels. Dr. Owens confirmed that Mr. Cooper agreed with this assessment during his testimony, and that he had described the two places as "totally different." Day 9 Tr. 223:20-224:20.

## **5. Community of Interest Evidence**

363. The African American community resides primarily in two groups—one in Galveston and another in the Texas City/La Marque area—the Hispanic community is not compact like that, and one would have to know the neighborhoods where the Hispanic population lives to know where the Hispanic population is concentrated. Day 1 Tr. 173:5-17. The Hispanic population is all over the place, and fairly well assimilated within the County. Day 1 Tr. 173:14-22.

364. Mr. Phillips testified he cannot speculate on whether African American and Latino individuals have the same concerns to present to a County Commissioner. DX 310

at 102:21-103:1.

365. Commissioner Apffel was asked and testified that, based upon his experience, he could not identify specifically any issues African American and Latino constituents ever brought to his attention distinct from Anglo residents of Galveston County, but would say they do exist. Day 9 Final Tr. 368:2-369:8.

366. Ms. McGaskey testified that Carver Park is an almost 90% African American voting precinct (Precinct 336); it is a historical Black park that was donated by families of the 1867 settlers, and was the first African American park in Galveston County. Day 1 Tr. 147:10-24.

367. Constable Rose testified about Carver Park, where a lot of the gatherings happened; he testified that in Carbide Park there is a building named after former Galveston County Commissioner Wayne Johnson. Day 1 Tr. 62:1-11.

368. Constable Rose testified at trial that he believes that Black and Latino residents tend to have similar interests and issues. Day 1 Tr. 65:12-16, 84:9-14. He did not provide testimony about what he believed those needs were. And, at his deposition, Constable Rose testified that he did not know whether the Black and Latino communities had the same needs. Day 1 Tr. 90:12-22.

369. A self-styled “Redistricting Coalition” (DX 121) acknowledged it could argue for more control over the County if Map 2 were adopted over Map 1. See 52 U.S.C. §10302(c) (the VRA’s Section 3 “bail-in” provision).

370. Ms. McGaskey works with Gulf Coast Interfaith, a multicultural organization comprised of a number of different nonprofits like LULAC and the NAACP that join to

work on different community issues, including for Black and Hispanic communities. Day 1 Tr. 108:12-109:23. Her church, and many other churches, are also involved. Day 1 Tr. 170:24-171:3. She said they call it the Justice League in Galveston, with Plaintiff Leon Phillips. Day 1 Tr. 109:9-14. She testified that the organization and the member churches would help anyone regardless of race. Day 1 Tr. 171:15-25. Ms. McGaskey first worked with LULAC, the Texas City branch, in the early 1990s when the discussion was about creating a majority-minority district, and that Hispanic and Black individuals worked on committees to address community issues. Day 1 Tr. 121:4-122:4.

371. Ms. McGaskey testified that the Black and Hispanic communities in Galveston had parallel concerns with respect to education, that the children receive a good education, they can go to college if they choose to, and if not that they can acquire a skill. Day 1 Tr. 115:8-17, 116:11-21. She testified the Black and Hispanic communities in Galveston County share basically the same issues with respect to healthcare, education, housing and employment, that it is “not too much difference” in what they want. Day 1 Tr. 133:16-23.

372. Constable Rose testified at trial that “it sure looks” like the Commissioners Court intended to discriminate against minority voters in the 2021 redistricting cycle because of “[t]he way that the maps are drawn up.” Day 1 Tr. at 96:6-7. However, at deposition, he testified that he did not know whether the Commissioners Court intended to discriminate against minorities. Day 1 Tr. at 95:22-96:7. This is the third lawsuit he has filed against the County, the other two challenged the 2011 Commissioners Court and 2013 Justice of the Peace and Constables redistricting maps. Day 1 Tr. at 96:8-16. The Court

dismissed his intentional vote dilution claims in the 2013 case, and the prior (2011) Commissioners Court map, was the product of a settlement with the DOJ. Day 1 Tr. at 96:17-25.

373. Constable Rose testified he believed the 2021 redistricting process was racially discriminatory, asking why it was necessary to split Precinct 3 into three parts “to undermine an African American male” and put him in Precinct 4, leaving “no representation” for African Americans in the La Marque, Texas City and Hitchcock areas. Day 1 Tr. at 63:11-22. He did not discuss the needs of Hispanic residents.

## **ii. *Gingles* II Voter Cohesion Evidence**

### **1. Dr. Matt Barreto**

374. Dr. Barreto was recognized as an expert for *Gingles* II and III and on issues covered by him in his expert report. Day 3 Tr. 209:8-11.

375. Dr. Barreto acknowledged that he did not perform a RPV analysis of primary elections or nonpartisan general elections in Galveston County. Day 3 Tr. 266:16-22. His explanation for not conducting this analysis was that there is not enough data on Black and Hispanic cohesion in primaries because those groups often vote in the Democratic primary (which is often uncontested). Day 3 Tr. 237:22-238:8.

376. For example, Dr. Barreto testified that he did not include vote estimates by race for the 2018 Republican primary race for Commissioners Precinct 4. Day 3 Tr. 267:8-25. With regard to the 2022 Republican primary for Texas Attorney General, Dr. Barreto testified that he only reported on data for two of the candidates (George P. Bush and Ken Paxton)—but he did not include data or analysis for any of the other candidates in that

primary race. Day 3 Tr. 268:4-24. Likewise, with regard to the 2022 Republican primary for Texas Governor, Dr. Barreto admits that he did not conduct any RPV analysis. Day 3 Tr. 269:3-270:4.

377. When presented with Dr. Jessica Trounstine's RPV analysis of certain recent Democratic primaries, Dr. Barreto testified that he was not familiar with her use of the "cohesion threshold" concept. Day 3 Tr. 271:14-272:10. He further testified that, unlike Dr. Trounstine, he did not conduct an RPV analysis for those Democratic primary races because he thought they were not relevant (i.e. because they did not pertain to a race for a Commissioners Court seat). Day 3 Tr. 272:24-273:13.

378. Dr. Barreto's explanation for not analyzing primary election data in Galveston County contradicts some of the observations in his own expert report. Specifically, Dr. Barreto acknowledged that, for RPV analysis, it is necessary to consider whether the Republican Party nominates minority candidates for office. Day 3 Tr. 273:19-274:8. He also testified that it is important to look at primary elections to determine whether race or partisanship is at play in voter decision-making. Day 3 Tr. 274:9-19. His only explanation for not looking at the primary election data in this case was because there was not enough minority voter participation in the Republican primaries to make reliable observations. Day 3 Tr. 238:11-24.

379. Having discussed primary elections, Dr. Barreto then testified about the 29 general election races that he did analyze for RPV. As a threshold matter, Dr. Barreto observed that his initial RPV analysis did not use the BISG methodology (he instead used the King's EI and Rows-by-Columns methodologies in his initial report). Day 3 Tr. 231:20-

25. He testified that this was due to the fact that the Galveston County voter file was not provided to him until three days before his initial report had to be submitted. Day 3 Tr. 233:3-234:4.

380. Dr. Barreto testified that, once he had the Galveston County voter file, he used the BISG methodology for all 29 elections in which he conducted an RPV analysis. Day 3 Tr. 312:2-4. He testified that he conducted this analysis in response to Dr. Alford's expert-report observation that "the cohesion levels of Hispanics were not consistently above 75%" Day 3 Tr. 233:5-22. However, Dr. Barreto acknowledged that his own analysis revealed wider confidence intervals for Latino voter cohesion than for Black or White voters. Day 3 Tr. 290:13-291:1.

381. Dr. Barreto agreed that the wider confidence interval for Latino voter cohesion stems from standard error. Day 3 Tr. 283:15-17. He observed that a lower standard error generates a tighter confidence interval, while a high standard error generates a broader confidence interval for the same point estimate. Day 3 Tr. 288:1:9.

382. Despite the wider confidence intervals for Latino voter cohesion, as compared to those for Black and White voter cohesion, Dr. Barreto testified that he had "equal faith" in the point estimates he reported from the BISG analysis. Day 3 Tr. 289:5-290:12. However, the only explanation he offered for his confidence in the Latino cohesion estimates was that they appeared consistent as a matter of probability in the run of elections he analyzed. Day 3 Tr. 291:2-292:17.

383. The Latino cohesion confidence intervals reported by Dr. Barreto, however, tell a different story. Dr. Barreto acknowledged that, of the 29 elections he analyzed, the



Latino intervals ranged from as narrow as 20 points (Texas Supreme Court Position 5 race) to as wide as 34.4 points (2022 TX-14 Congressional race). Day 3 Tr. 292:21-293:17. The only exception from this range was the 60-point wide confidence interval reported for Latinos in the 2014 Commissioners Court Precinct 4 race. Dr. Barreto testified that this outlier was likely due to a smaller sample size—i.e. it surveyed only Latino residents in Precinct 4 rather than County-wide. Day 3 Tr. 293:18-294:12.

384. The confidence intervals reported by Dr. Barreto in his Rows-by-Columns analysis tells a similar story. By those estimates, the Latino confidence interval in the 2022 Texas Attorney General race was 44 points wide. Day 3 Tr. 294:22-295:8. Similarly, the Latino confidence interval in the race for County Judge was 42 points wide. Dr. Barreto testified that these two races fell on the high end for all of the ones he reported using Rows-by-Columns analysis; the other intervals fell closer to 30 points wide. Day 3 Tr. 295:9-19.

## **2. Dr. Jessica Trounstine**

385. Under Dr. Trounstine's analysis, African American and Latino voters frequently do not vote cohesively for the same candidate of choice, particularly in primary elections.

386. Dr. Trounstine was called by Plaintiffs to analyze political cohesion between Latino and Black voters in Galveston County, and to study the degree of polarized voting in Galveston County. Day 4 Tr. 170:20-171:2.

387. In measuring cohesion, Dr. Trounstine in her report uses a 60% threshold for cohesion of African American and Black voters, although she does not use a 60% threshold to determine if Anglo voters are cohesive. Day 4 Tr. 215:6-16. Dr. Trounstine did not

analyze whether Anglo voters are cohesive. Day 4 Tr. 215:17-19.

388. Dr. Trounstine does not propose a 60% threshold for cohesion to the Court, nor does she propose a 50% cohesion threshold to the Court for elections involving three or more candidates. She testified that these thresholds are “definitely not a legal opinion in any way,” but rather “purely political science.” Day 4 Tr. 215:20-216:3.

389. Dr. Trounstine did not construct confidence intervals as part of her analysis of population data, but if she were to build a 95% confidence interval around her estimates, the interval range would be between 65 to over 100%. Day 4 Tr. 259:4-10. She testified that the “larger standard error produces a larger confidence interval.” Day 4 Tr. 259:15-21.

390. Under Dr. Trounstine’s method of analyzing voting cohesion, she categorized 12 out of 14 primary elections as racially polarized. Day 4 Tr. 217:3-14.

391. Under her method of analyzing voting cohesion, Dr. Trounstine acknowledged that in a four-person electoral race, she would categorize African American and Latino voters as cohesive if 30 percent of them vote for the same candidate, even though 70 percent of African Americans or Latinos vote for the other three candidates and disagree on the one candidate she characterizes as cohesive. Day 4 Tr. 218:11-22.

392. Dr. Trounstine tabulated a Texas City Commissioner four-candidate race as “cohesive” Latino support for the Anglo candidate Bruce Clawson where 48.13% of Latinos voted for Mr. Clawson, even though 48.08% of Latinos in that same race also voted for Kevin Yackly, an Anglo candidate, a difference of only about 0.05% support between the two candidates. Day 4 Tr. 219:3-21.

393. According to Dr. Trounstine, the total percentage of Latino support in that

Texas City Commissioner race adds up to a total of about 113% rather than 100%, even though each candidate's vote share was within bounds. Day 4 Tr. 219:22-220:6.

394. In three of the four general elections for County Commissioners analyzed by Dr. Trounstine, African American and Latino voters were cohesive. Day 4 Tr. 221:11-15. African American and Latino voters disagreed on their preferred candidate in the November 2012 County Commissioner election between Ryan Dennard and Winston Cochran, where the Republican Party candidate (Dennard) received 50.49% of the Latino vote while the Democratic Party (Cochran) candidate received 49.45% of the Latino vote. Day 4 Tr. 220:12-24. By contrast, the African American vote was cohesive for Democrats in all four of these elections. Day 4 Tr. 220:25-221:3.

395. In three out of four general elections for Galveston County Judge, the Latino vote was cohesive for Democrats, but in the 2014 general election Latinos voted cohesively for Republicans, with 62.18% of Latinos voting for Republican Judge Mark Henry. Day 4 Tr. 223:3-12. By contrast, in that same 2014 race, African Americans voted cohesively for the Independent challenger to Judge Henry, who received 90.46% of the African American vote. See Trounstine Second Corrected Report A-20. In all four of those general elections, African Americans voted cohesively against the Republican candidate. Day 4 Tr. 223:13-19.

396. A similar pattern can be found in a preceding series of elections for County Judge. In the 2002 general election race for County Judge between Democratic candidate James Yarbrough and Libertarian candidate Dan Murphy, Anglo voters voted cohesively for the Democratic candidate at 80.61%, but then in the remaining elections analyzed voted

cohesively for Republicans at equal or lower rates. Day 4 Tr. 223:24-224:12; Trounstine Second Corrected Report A-21. When pressed further about this election on re-cross examination, Dr. Trounstine acknowledged that this example tends to show a pattern: removal of partisan identification impacts how racial groups vote. Day 4 Tr. 269:25-270:13

397. Anglo voters in Commissioner Precinct 3 in the November 2004 general election for county commissioner voted 72.79% for a Black Republican candidate for commissioner, Lewis Parker, Jr., and 26.65% for Commissioner Stephen Holmes. Trounstine Second Corrected Report A-19. Returns from subsequent elections show that levels of Anglo voter support for White Republican candidates was either roughly consistent with or lower than White support had been for a Black Republican candidates. See Trounstine Second Corrected Report A-19.

398. Dr. Trounstine testified that where there are three races to analyze (African American, Latino, and Anglo), Rows-by-Columns analysis is the optimal methodology. Day 4 Tr. 225:11-21.

399. Dr. Trounstine acknowledged that different outcomes in the vote point estimates can result depending on the regression command code used. Day 4 Tr. 232:3-233:3; 239:9-12. For instance, in one Democratic Party primary race, Dr. Alford's analysis showed a candidate receiving 69.2% of the Latino vote, while Dr. Trounstine's analysis showed Latinos voting cohesively at 73.55% for the other candidate based on different commands used. Day 4 Tr. 231:3-25.

400. Dr. Trounstine acknowledged that of all Democratic Party primary elections analyzed, only one election had African Americans and Latinos agreeing on their candidate

of choice, i.e., the Commissioner of General Land Office election. Day 4 Tr. 240:13-19.

401. In a series of six Democratic Primary elections for County Commissioner that Dr. Trounstine analyzed in her report, there was only one election where Latino and African American voters were cohesive for the same candidate. Day 4 Tr. 243:13-17.

### 3. Dr. Kassra Oskooii

402. Dr. Oskooii's incomplete analysis does not demonstrate that African American and Latino voters vote cohesively in primary or multi-candidate races.

403. Dr. Oskooii was called by Plaintiffs exclusively as a *Gingles* II and III expert. Day 4 Tr. 278:12-5; 348:2-7.

404. Because there is at least some probative value to looking at primary elections, a fully probative RPV analysis includes analyzing primary elections along with general elections, as Dr. Oskooii's report did. Day 4 Tr. 319:19-321:25.

405. Dr. Oskooii acknowledges that "preferences are not as strong for any one candidate as they are in general elections." Oskooii Report at ¶ 65.

406. Dr. Oskooii limited his primary-election analysis to ten Democratic Party primary elections with two candidates, without considering Republican Party or multi-candidate primary elections. Day 4 Tr. 324:10-22; 327:20-24; 334:16-25. Black and Latino voters were cohesive in eight of the ten primary elections analyzed. In the 2018 primary race for Comptroller, however, Black voters split near-evenly for the two candidates. And in the 2018 primary race for Commissioner of the Land Office, Latino voters split near-evenly for the two candidates. Oskooii Report at 24.

407. Dr. Oskooii acknowledged that a rows-by-columns analysis can be

conducted to analyze voting cohesion in multi-candidate races, not just two-candidate races as he did. Day 4 Tr. 326:1-5.

408. Dr. Oskooii decided to not analyze Republican Primaries based entirely on his opinion that a single primary election, the 2020 primary election, had low Hispanic voter turnout, which he did not define; he did this even though he admits that turnout in that primary was likely low across the board because the leading presidential candidate for the Republican Party was essentially unchallenged by any serious candidate. Day 4 Tr. 328:18-329:19, 331:24-332:5; 333:10-15.

409. Dr. Oskooii examined only Hispanic and Black voters while making the decision to exclude Anglo voters from his analysis of voter cohesion in ten primary election contests where Anglo voters voted in alignment with Hispanic and Black voters. Day 4 Tr. 343:22-344:20; 346:3-20; DX 217.

410. Of the 25 general elections he analyzed, Dr. Oskooii's report shows that all elections had a greater than 10% difference between the percentage of Black voters who voted for the Democratic Party candidate and the percentage of Latino voters who did. Oskooii Report, Ex. C, Figure 8.

#### **4. Dr. John Alford**

411. Dr. John Alford was presented to the Court and began by testifying about his education, work experience, and qualifications. He testified that he has served as a tenured professor in the political science department at Rice University for 35 years. Day 10 Tr. 11:25-12:6. He teaches courses on elections and voting behavior. Day 10 Tr. 12:7-9.

412. Dr. Alford has served as a testifying expert for 30 years. No Court has ever

declined to recognize him as an expert witness. Day 10 Tr. 12:10-18. In the past year, courts have recognized Dr. Alford as an expert in analyzing RPV in approximately seven cases. Day 10 Tr. 12:19-22.

413. Dr. Alford is familiar with Galveston County politics and voting patterns because he has lived in the Houston-Galveston area for approximately 60 years. He also graduated from high school in League City, Texas. Day 10 Tr. 11:8-24.

414. Based on his education, experience, and qualifications, Dr. Alford was admitted by the Court as an expert on *Gingles* II and III. Day 10 Tr. 12:23-13:3.

### **5. Lay Testimony about Voter Cohesion**

415. Ms. McGaskey testified she is generally familiar with Galveston County's demographics, and understands that there cannot be a Black-only or Hispanic-only majority Commissioners precinct. Day 1 Tr. at 169:18-170:6. Her position is that the Black and Hispanic populations should be drawn together into one district to elect their candidate of choice. Day 1 Tr. at 170:15-20.

416. Ms. McGaskey testified she reviewed the election returns for Texas City Mayor Dedrick Johnson, that a lot of people all over the City of Texas City supported him, but the Black and Hispanic community numbers were higher, but "basically the City of Texas City voted for him overwhelmingly." Day 1 Tr. at 133:2-15.

417. Ms. McGaskey testified about a race for district judge twenty years ago in 2002 (Helen Truscott, who is Black). Day 1 Tr. at 126:25-127:16. Ms. Truscott beat her white Democratic primary opponent, Lonnie Cox. Day 1 Tr. at 128:7-17. She testified that the Hispanic community does not "have a precinct or a place where you could actually say

these are the Hispanic group,” but they have communities in the area. Day 1 Tr. at 128:24-125:5. Ms. McGaskey reviewed the general election results after a loss to White Republican John Ellisor, and concluded that since John Ellisor and another white candidate won in Anglo precincts, “that’s when I knew that the whites had crossed over and voted for the Republican candidate.” Day 1 Tr. at 129:22-132:3. She did not review the George P. Bush race for Land Commissioner, the Ted Cruz Senate race, Eva Guzman’s race for the Texas Supreme Court, or David Medina’s race. Day 1 Tr. at 174:14-25. Ms. McGaskey testified she believes the Black and Hispanic communities’ shared issues bring them together at the ballot box. Day 1 Tr. at 133:20-134:3.

418. Where a majority of Hispanic voters vote for one candidate in a primary and African American voters vote for a different candidate in that primary and the African American’s candidate wins and goes to the general election, the Hispanic voters who then vote for the African American voter’s candidate are crossover votes. Day 8 Trans. 19:8-20:4. Mr. Oldham has worked on projects here a performing crossover district has been dismantled. What makes this situation unusual is that [Precinct 3] was a Section 5 district before and had a level of protection for the African American percentage under the retrogression standard that does not exist for Section 2. Day 8 Trans. 197:16-198:2.

**A. Drs. Barreto and Oskooii’s Estimates For Latino Votes Contain Confidence Intervals That Are Broad And Therefore Unreliable.**

419. Dr. Alford testified that Dr. Barreto’s and Dr. Oskooii’s Latino estimates are not credible.<sup>25</sup> He noted that it is known that “the distribution of the proportion of

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<sup>25</sup> Dr. Trounstine did not produce confidence intervals in her report. (Day 4 Tr. 261:11-21).



Hispanics across the VTDs in Galveston County is relatively flat. That's always problematic for doing EI analysis." He testified that "that alone would suggest that you would have broader confidence intervals than you do." Day 10 Tr. 64:24-65:3.

420. Dr. Alford testified that confidence intervals "are telling you something about the scatter, basically, in estimates that's coming out of the model. And the more broadly they are scattered, the more caution you should have with that particular estimate because ... it's telling you that the data is not ... informative." Day 10 Tr. 64:12-17.

421. Dr. Alford testified that, because of the broad confidence intervals with Latino election results, "we do not know with the same certainty what Hispanic voters are doing in Galveston County as to the degree of certainty we have for what Black and Anglo voters are doing." Day 10 Tr. 65:8-16. Accordingly, there is a "level of uncertainty with Latino vote estimates that's a little greater there. It can reflect issues like the heterogeneity of distribution." Day 10 Tr. 65:17-22.

422. Dr. Alford testified that "there are not a strong set of concentrated Latino precincts in Galveston County." He noted that "it's not just the density—the presence of a high-density precinct but rather—more broadly, the heterogeneity across precincts." Day 10 Tr. 67:22-68:2. When the population is consistent across precincts, this impacts how efficiently EI can extract an estimate. Day 10 Tr. 68:9-14. Accordingly, Dr. Alford noted that analysts cannot know with the same certainty what Latino voters are doing in Galveston County to the same degree of certainty as for Black and Anglo voters. Day 10 Tr. 68:8-16.

423. Finally, Dr. Alford testified that there is also a concern with the error rate

produced by Dr. Barreto's BISG analysis of Latino voter cohesion. Dr. Barreto's BISG analysis does contain an error rate. Day 10 Tr. 58:12-18. BISG is not terribly accurate at predicting whether an individual is African-American. Day 10 Tr. 59:3-9. BISG was developed to identify African American surveys, not Latinos because the surname analysis alone "is perfectly adequate" for that population. Day 10 Tr. 59:10-14.

**B. There Is Insufficient Evidence For Dr. Barreto's Theory That Race and Partisanship Are Intertwined Because He Relies On National Studies And Those Studies Do Not Support His Conclusion.**

424. In his expert report, Dr. Alford highlighted Dr. Barreto's and Mr. Rios' position that "primary elections are also not as probative a source of information about political cohesion, given the relatively low voter turnout and the skewed nature of the electorate." DX 305 at 7.

425. However, Dr. Alford noted that Dr. Barreto has "commented at length about the 2008 Democratic presidential primary," and found that African American voters supported President Barack Obama at approximately 80% while Latino voters supported Anglo candidate Hilary Clinton. In fact, Dr. Barreto found that "Latino support for the Anglo candidate over the minority candidate was particularly crucial in Texas, where they noted that without high Latino turnout and a 2-1 vote favoring Clinton, Obama would have won the state of Texas outright, and perhaps the nomination on March 4." DX 305 at 7 (citing Barreto, M., Fraga, L., Manzano, S., Martinez-Ebers, V., & Segura, G. (2008), "*Should They Dance with the One Who Brung 'Em*" *Latinos and the 2008 Presidential Election*, *Political Science & Politics* 41(4), 753-760 (2008)).

426. In his expert report, Dr. Alford observed that, rather than analyze elections,

Dr. Barreto “attempts to turn this clear evidence of party polarization in partisan general elections into evidence of racial polarization by citing a variety of national-level political science literature that they characterize as demonstrating that partisan voting itself should be treated as essentially racial in nature.” DX 305 at 7. But “the Barreto/Rios report does not offer any local analysis to buttress this speculative interpretation of older national level analysis, which is often directed at different matters than what is at issue here with regard to the current voting behavior in Galveston County elections.” DX 305 at 8.

427. For example, Dr. Barreto relies on a study that says “it is only among those who have negative racial attitudes or who are unwilling to support a Black president who leave the Democratic Party for the Republican Party.” DX 305 at 8. But as Dr. Alford shows in Figure 2, page 9 of DX 305, what Dr. Barreto describes was the situation in the 1950s—a time far-removed from current voter behavior. DX 305 at 8-9. Indeed, as Dr. Alford concluded, “over 90% of both Southern and non-Southern Whites are willing to vote for a Black candidate for President” In the present day. DX 305 at 8.

428. Likewise, Dr. Barreto states that research by Michael Tesler “demonstrates that white Americans who oppose intra-racial dating are more likely to identify with the Republican party.” DX 305 at 9. But what Tesler says is “that significant correlation of .11 is still not especially strong.” DX 305 at 10. In fact, a correlation of .11 is very weak and suggests that, at best, variation in opinion about interracial dating might account for only about 1% of the variation in party identification.” DX 305 at 10. Dr. Alford’s report observes that, in fact, Tesler’s “additional analysis focusing on opposition to interracial marriage suggests an impact too weak to actually shift anyone a meaningful distance on

the seven-point party identification scale.”

429. Dr. Alford notes in his report that, because White opposition to interracial marriage is now no longer statistically different from Black opposition to interracial marriage, “the impact of this measure of racism on party identification is very slight, and the proportion of the population that this applies to is now so small that even this slight impact is much reduced.” DX 305 at 10.

430. Finally, Dr. Alford underscores in his report that the most recent national study cited by Dr. Barreto is from 2020. While that study concludes that race and partisanship in the United States are inseparable, the study does not base its conclusions on an examination of voting behavior. DX 305 at 11-12. Instead, “it reflects the impact on a measure of feelings towards the opposite party after being treated unfairly by an anonymous player identified as being of a different race than the subject in an economic game involving sharing money.” DX 305 at 12.

**C. Sufficient Data Exists To Obtain Credible Estimates From Primary Elections; And Those Elections Generate Useful Information.**

431. At trial, Dr. Alford testified that Anglo Democrats participate in primaries at a higher rate than do Latino Democrats. Day 10 Tr. 133:12-16. See also Trounstine Second Corrected Report at ¶ 54 (PX 476) (stating that in the primary elections that Dr. Trounstine studied, Latino turnout was 2.2%, Anglo turnout was 3.1%, and African American turnout was 14.8%).

432. Dr. Alford testified that, ultimately (and despite primary elections having turnout rates lower than general elections), primary elections are still very useful to analyze

in determining whether RPV exists. Day 10 Tr. 23:11-24:3; 25:5-14. He pointed out that school board districts and small city elections have turnout rates in the single digits, and yet they are still studied and analyzed using ecological inference. Day 10 Tr. 23:11-22. Thus, there is sufficient data to estimate primary election results; the primary election results produce stable results, and they produce useful information. Day 10 Tr. 23:5-10. Accordingly, Dr. Alford concluded that primary-election results “can help sort of get a clearer picture of what happens absent that really strong party cue.” Day 10 Tr. 25:15-17.

433. Dr. Alford next testified that Dr. Barreto has analyzed primary elections in other cases while also analyzing general elections. In those cases where Dr. Barreto has analyzed primary elections, he did not comment on the difficulty of analyzing primary elections. Day 10 Tr. 53:24-54:10.

434. In these elections, particularly those discussed in the Baltimore County NAACP v. County of Baltimore case, Dr. Barreto identified the race of the candidate and drew conclusions from the race of the candidate as a signal to voters. Day 10 Tr. 54:11-21. In that case, Dr. Oskooii co-authored a report with Dr. Barreto where they included the Anglo vote in primary elections—something they declined to do in this litigation. Day 10 Tr. 55:9-21. In that report in that case, Dr. Barreto and Dr. Oskooii found that the Democratic primary election had the same level of RPV at exactly the same level as the general election. “And they say that’s evidence that there is actually racial voting independent of the influence of partisanship.” Day 10 Tr. 55:4-8.

435. Dr. Alford next testified about Dr. Trounstine’s analysis of primary elections, noting at the outset that she used Bayesian regression analysis—not a true Rows-by-

Columns analysis. Day 10 Tr. 26:6-18. By contrast, the method that Dr. Alford used (which uses a numerical distribution that always adds up to 100) is described as the gold standard. Day 10 Tr. 26:19-27:2. To analyze her data, therefore, Dr. Alford created sets of replication Rows-by-Columns results to compare with Dr. Trounstine's Bayesian regression results on exogenous elections. Day 10 Tr. 28:16-22.

436. Using Dr. Trounstine's techniques and definitions, Dr. Alford testified that Latinos and African Americans are cohesive in only 1 of 8 primary elections. Day 10 Tr. 29:13-21; 30:9-17. Using Dr. Alford's technique but keeping Dr. Trounstine's definitions, African Americans and Latinos are cohesive for the same candidate in 5 out of 8 primary elections. And in those 5 of 8 primary elections, Anglo voters are voting for the same candidates as Latino and African American voters. Day 10 Tr. 29:23-30:2. None of the primary elections on Table 3 of Dr. Alford's report show RPV. Day 10 Tr. 30:18-31:3.

437. Dr. Alford testified that the problem with the 60% cohesion threshold Dr. Trounstine adopts, is that her Bayesian regression analysis does not prevent out-of-bounds results (meaning that adding up the estimates for each candidate in election could result in a number higher than 100). It is therefore difficult to determine where the cutoff should be. Day 10 Tr. 33:5-34:4.

438. Dr. Alford testified that it is problematic for Dr. Trounstine to call elections racially polarized where Black and White voters vote for candidate A while Latino voters vote for candidate B—since the claimed minority group in this case is a coalition of Latinos and African Americans. Day 10 Tr. 34:12-35:3. This problem is particularly glaring where Latinos and African Americans choose different candidates, no matter how Anglo voters

vote. Yet, Dr. Trounstine would categorize those elections as racially polarized. Day 10 Tr. 35:20-36:12.

439. Dr. Alford also testified about Table 4 of his report, which depicts the results of the Democratic primary elections for Galveston County Commissioner. One out of six primary elections, using Dr. Trounstine's definitions and techniques, shows Latinos and African Americans cohesive for the same candidate. Day 10 Tr. 31:23-25, 32: 1-2. And the one election where Latinos and African Americans were cohesive, Anglo voters also voted for the same candidate. Day 10 Tr. 32: 3-7. Under Dr. Alford's technique, however, zero out of six elections are racially polarized. *Id.* at 32:11-14.

440. Beyond Democratic primary elections, Dr. Trounstine also analyzed ten non-partisan general elections to see if her "conclusions were not dependent upon the presence of partisan labels." Dr. Alford agreed that this is a reason to study non-partisan general elections. Day 10 Tr. 14-22. These elections are probative because turnout was much higher there than in primary elections: 14.9% for Latinos, 33.6% for African American voters, and 30.6% for Anglo voters. Trounstine Second Corrected Report at ¶ 57 (PX 476).

441. Importantly, the non-partisan general elections that Dr. Trounstine analyzed are both recent—from 2016 and 2020—and comprehensive. DX 305, Table 5 at 20. The elections include jurisdictions from League City in the northern part of the county, to Galveston City in the southern part of the county, as well as La Marque and Texas City in between. *Id.* These four jurisdictions account for 235,488 of Galveston County's 350,682 total population. Cooper Report at 8, Figure 1; *id.* at 13, Figure 4 (PX 386). La Marque and Texas City also account for the largest concentrations of African American and Latino

population in Galveston County. *Id.* at 13, Figure 4 (depicting that La Marque and Texas City are 60.92% and 59.81% African American and Latino total population respectively). Thus, the non-partisan general elections that Dr. Trounstine studied include a substantial portion of Galveston County's population.

442. On table 5, page 20 of Dr. Alford's report, Dr. Alford depicts the results of Dr. Trounstine's non-partisan general election studies along with his replication. Day 10 Tr. 39:24-40:6. Under Dr. Trounstine's techniques and definitions, Latinos and African Americans are cohesive for the same candidate in 5 out of 10 elections. Day 10 Tr. 40:7-22. But under Dr. Alford's replication, African Americans and Latinos are not cohesive for a single candidate in the ten non-partisan general elections. Day 10 Tr. 40:23-41:11.

443. Dr. Alford next analyzed Dr. Oskooii's results and conclusion. His report shows that, across primary elections in Galveston County, Anglo voters are generally voting consistently with African Americans and Latinos. DX 305, Table 2 at 14. But in elections where Anglo voters are not clearly supporting candidates supported by Latinos and African Americans, either the Anglo vote is split or the Latino/African American vote is split.

444. For example, in the 2018 election for Comptroller, the African American vote was evenly divided between the Anglo candidate (Mahoney) and the African American candidate (Chevalier). The same is true for Anglo voters, with Anglo voters slightly preferring the African American candidate (Chevalier). DX 305 at 14, Table 2.

445. A similar pattern can be observed in the 2018 primary election for Commissioner Land Office between Suazo and Morgan. The Anglo voters supported the



Latino candidate (Suazo) with 60.9% of the vote, while the African American and Latino vote were divided between the Latino candidate (Suazo) and the Anglo candidate (Morgan). DX 305 at 14, Table 2.

446. Also relevant is the 2018 Railroad Commissioner election between an African American candidate (Spellmon) and the Anglo candidate (McAllen). There, African American and Latino voters supported Spellmon, while Anglo voters were divided (but leaning towards Spellmon). DX 305 at 14, Table 2.

447. The Texas Supreme Court elections likewise follow this pattern. First was the Supreme Court Justice 8 election in 2020 between the Latino candidate (Triana) and the Anglo candidate (Kelly). There, Anglo voters joined African American and Latino voters in supporting the Latino candidate Triana. Then there was the Supreme Court Justice 7 election in 2020, which was between the African American candidate (Williams) and the Anglo candidate (Voss). In that election, Anglo voters joined with African Americans and Latinos in supporting the African American candidate Williams. DX 305 at 14, Table 2.

448. In sum, of the ten primary elections that Dr. Oskooii studied, eight were racially contested. In these eight elections, Anglo voters voted for the minority candidate seven times. (2020 elections: Supreme Court Justices 8, 7, 6, 4; 2018 elections: Comptroller, Railroad Commissioner, Commissioner Land Office). DX 305, Table 2 at 14.

449. Using a 60% threshold for cohesion, African Americans and Latinos are cohesive for the same candidate in only 6 out of 10 elections, “a far different pattern from that seen in the partisan general elections.” DX 305 at 14. And again, unlike the partisan general elections, Anglo voters were generally agreeing with Latinos and African

Americans. Dr. Alford concluded in his report that Anglo voters are certainly not blocking the African American and Latino candidates of choice. Table 2, DX 305 at 14.

450. Transitioning to Dr. Oskooii's general election results, Dr. Alford testified at trial that they show an "amazing regularity" and "very stable" voting patterns—with Anglos voting in the mid-80s for Republicans, African Americans voting in the mid-90s for Democrats, and Latinos voting in the mid-70s for Democrats. Day 10 Tr. 49:16-50:2. Dr. Alford further stated that his stability remains the same regardless of the race of the candidate. Day 10 Tr. 50:3-15.

451. Dr. Alford testified that there are two cues at issue in these general elections that Dr. Oskooii studied. One of those cues is party—i.e. the "D" or the "R" by the candidate. This cue can produce "remarkably stable estimates." The second cue is the race or ethnicity of the candidate "and it's simply not producing any variation." Day 10 Tr. 50:16-21.

452. Thus, Dr. Alford concluded, the pattern of general election results that Dr. Oksooii analyzed demonstrates partisan polarization. Day 10 Tr. 51:12-19. He testified that Figure 8 in Dr. Oskooii's report clearly shows this. He notes that "it provides an opportunity for voting on the basis of race or ethnicity to be—to play out, as well as voting on the basis of the partisan identity of the candidates. And I don't think the results are ambiguous." Day 10 Tr. 51:20-52:3.

### **iii. *Gingles* III White Bloc Voting Evidence**

#### **1. Dr. Matt Barreto**

453. Dr. Barreto testified that, based on academic literature, he believes racial

attitudes are inseparable from partisan attachment among all Anglo voters, regardless of geographical place. Day 3 Tr. 275:3-18. Specifically, he testified that the literature suggests White Republican voters in the United States harbor negative racial views of Latinos and African-Americans. Day 3 Tr. 277:23-278:5.

454. However, Dr. Barreto admitted that the studies he cited for this proposition are national (or, at best, regional) in scope. Day 3 Tr. 275:8-18. He acknowledged that none of the studies focused exclusively on Galveston County, and further, he admitted that he did not know whether any of the studies even included data from Galveston County. Day 3 Tr. 275:19-276:5.

455. These admissions by Dr. Barreto track with the observations made by Defendants' expert Dr. John Alford in his report. Dr. Alford's report zeroed in on the fact that Dr. Barreto provided no local analysis at all to support a claim that partisan polarization is "inseparable" from racial polarization. Alford Report at 7-8, DX 305. Instead, as Dr. Alford's report notes, Dr. Barreto simply referenced selected articles based on national samples that might or might not support some indirect impact of race on party at some point in time. Alford Report at 10, DX 305.

456. Having discussed the concept of race/party inseparability, Dr. Barreto next testified about the RPV analysis he conducted on the selected 29 general elections in Galveston County. With respect to the Rows-by-Columns numbers he reported, Dr. Barreto confirmed that White voters voted predominantly for the Republican candidate in all 29 elections. Day 3 Tr. 308:10-20. Indeed, in all the races reported under this analysis, the White vote share for the Republican candidate ranged from 76.2% to 85.4%. This included

the 2018 U.S. Senate race where White voters predominantly voted for the Latino candidate (Ted Cruz). Day 3 Tr. 308:21-309:15. By contrast, Latino and Black voters predominantly voted for the Democrat candidate in all 29 races that were analyzed (i.e. 70.5% to 84.8% for Latinos; 92% to 95% for African-Americans). Day 3 Tr. 309:22-301:11.

457. Next, Dr. Barreto testified about the RPV analysis he conducted in his rebuttal report using the BISG methodology. At the outset, Dr. Barreto admitted that he did not produce confidence intervals for voter cohesion using BISG—even though the program could have created them. Day 3 Tr. 313:11-314:19. When asked how one could assess the reliability of his BISG results without data on confidence intervals, Dr. Barreto simply replied that BISG has been historically accurate when used in other case studies. Day 3 Tr. 314:20-315:23.

458. With respect to the BISG numbers, Dr. Barreto confirmed that White voters voted predominantly for the Republican candidate in all 29 elections. Day 3 Tr. 322:21-323:22. Indeed, in all the races reported under BISG, the White vote share for the Republican candidate ranged from 85.7% to 92.9%. This included the 2018 U.S. Senate race where White voters predominantly voted for the Latino candidate (Ted Cruz). Day 3 Tr. 323:23-324:6. By contrast, Black voters predominantly voted for the Democrat candidate in all 29 races that were analyzed (range of 91.9% to 96% of Black vote share). Day 3 Tr. 324:14-325:1.

459. In reviewing these numbers, Dr. Barreto testified that White and minority voters were acting cohesively with respect to party. Indeed, he readily attributed the high cohesion numbers along party lines to the fact that the elections reported on were all

“partisan races.” Day 3 Tr. 323:15-22. By contrast, Dr. Barreto testified that cohesion levels dropped among Latino voters in his analysis of the 2014 County Judge race, where no Democrat ran. Specifically, he acknowledged that that the Latino vote was splintered 63.4 percent for the independent candidate in that race, and 36.6 percent for the Republican candidate. Day 3 Tr. 325:9-25.

## 2. Dr. Jessica Trounstine

### a. Dr. Trounstine’s analysis of primary election voting behaviors shows no consistent pattern of RPV, including when juxtaposed against Dr. Alford’s replication.

460. According to Dr. Trounstine’s estimation, in the May 2022 Democratic Primary Election for Comptroller of Public Accounts, African Americans and Latinos disagreed on the candidate of choice, with Anglo voters voting cohesively for the same candidate that African Americans voted cohesively for. Day 4 Tr. 233:6-18. These estimates conflict with Dr. Alford’s replication of the same race, which found that voters of all three races were cohesive for the same candidate. Day 4 Tr. 233:19-22.

461. In the 2022 Democratic primary election for U.S. House, Dr. Trounstine estimates that Latino voters were cohesive for the Anglo candidate while African American voters voted cohesively for the African American candidate, meaning they disagreed on the candidate of choice; furthermore, the Anglo vote was not above 60% support for any candidate. Day 4 Tr. 234:23-235:16.

462. In the 2022 Democratic primary election for Lieutenant Governor between three candidates, Dr. Trounstine again estimates that Latinos and African Americans

disagreed on their candidate of choice. Day 4 Tr. 235:22-236:11. The Anglo vote was under 50 percent for any of the three candidates—which shows a lack of White bloc voting elevating one particular candidate over the rest. Day 4 Tr. 236:12-16.

463. In the March 2022 Democratic Party primary election for Attorney General, Latinos and African Americans disagreed on their candidate of choice, and Anglo voters voted cohesively for a different candidate, meaning under Dr. Trounstine’s methodology this election would be categorized as racially polarized. Day 4 Tr. 237:12-20. By contrast, under Dr. Alford’s replication, Latinos, African Americans, and Anglos were all cohesive for the same candidate. Day 4 Tr. 237:21-24.

464. In the March 2022 Democratic Party primary election for Comptroller of Public Accounts, Latino voters and African American voters disagreed on their candidate of choice, while Anglo voters agreed with African American voters’ candidate of choice. Day 4 Tr. 237:25-238:12. But under Dr. Alford’s replication, Latinos, African Americans, and Anglos were all cohesive for the same candidate. Day 4 Tr. 238:13-16.

465. In the March 2022 Democratic primary for Commissioner of General Land Office, Latino, African American, and Anglo voters all disagreed on their candidate of choice. Day 4 Tr. 238:17-239:3. But under Dr. Alford’s replication, all three races were cohesive for the same candidate. Day 4 Tr. 239:4-8.

**b. Dr. Trounstine’s comparative analysis of nonpartisan general elections shows that removal of the partisan label disrupts the observed pattern of group cohesion and alleged RPV, and that voters select candidates who share their political orientation.**

466. Dr. Trounstine also conducted an analysis of nonpartisan general elections to determine if the same pattern of group cohesion in voters' candidates of choice she observed was still present when the partisan label was removed. Day 4 Tr. 250:17-23; 268:21-269:3.

467. In Dr. Trounstine's analysis of general elections for nonpartisan elections in Galveston County, African Americans and Latinos agreed on the same candidate of choice in just five out of ten elections. Day 4 Tr. 250:3-16; 256:20-25.

468. Dr. Trounstine categorized certain elections as "racially polarized" where neither Black nor Latino voters were cohesive for the same candidate, even in electoral races where Latinos and Anglos agreed on the same candidate or where Anglo voters were not cohesive for any candidate. Day 4 Tr. 252:19-253:6; 254:9-15.

469. Dr. Trounstine also classified an election for the Texas City Commission as racially polarized even when Anglo, Latino, and African American voters were all cohesive for different candidates, and even though she acknowledges Latino and African American voters "were not in a political coalition" in that race. Day 4 Tr. 254:16-255:7.

470. Dr. Trounstine's overall position is that voters in Galveston County select candidates who share their political orientation. Day 4 Tr. 259:22-260:4.

### **3. Dr. Kassra Oskooii**

- a. Dr. Oskooii did not analyze voters' motives for how they vote, but acknowledged that political orientation and loyalty could be a very important factor in explaining voting behaviors.**

471. Dr. Oskooii did not research party loyalty and voting patterns in Galveston

County in preparing his expert report, and has never conducted that research. Day 4 Tr. 313:9-14.

472. Dr. Oskooii also did not conduct an analysis of the individual motivations underlying the vote choice of from different demographic groups. Day 4 Tr. 314:2-9. He only looked at whether “minority voters favor candidates . . . that are disfavored by the majority racial group voters” regardless of the reason for that divergence. Oskooii Rebuttal Report ¶ 4.

473. Dr. Oskooii’s report indicates that the statistical methods he relies on to estimate vote choice by race are agnostic as to why voters support or oppose different candidates. Day 4 Tr. 316:5-12.

474. Dr. Oskooii has not offered any opinion regarding why voters vote for particular candidates. Day 4 Tr. 316:15-20. Dr. Oskooii does admit, however, that partisan loyalty could be a “very important factor” for explaining why at least some voters vote for the candidates they do. Day 4 Tr. 314:10-16.

**b. Dr. Oskooii’s Report includes examples showing that partisanship explains Anglo voting behaviors rather than race.**

475. Dr. Oskooii’s report contains examples of elections where Anglo voters vote at equivalent levels for both non-white and Anglo candidates, such as the 2018 election for the Commissioner of Texas General Land Office where Anglo voters voted for Republican George P. Bush, a Latino candidate, by generally equal or greater margins (87.8% in Precinct 1, 78% in Precinct 2, 92.% in Precinct 3, and 84.1% in Precinct 4) in comparison



with other Anglo candidates on the ballot in that same election. *See* Pls.’ Ex. 356, Oskooii Rpt. at 20, Fig. 12.)

#### **4. Dr. John Alford**

476. Dr. Alford testified that he interpreted the general election results analysis of Drs. Barreto, Trounstine, and Oskooii as depicting a pattern of partisan polarization that did not change based on the race of the candidate. Day 10 Tr. 68:24-69:9.

477. Dr. Alford observed that Latinos and African Americans vote cohesively in general elections for Democratic candidates. Day 10 Tr. 14:23-15:17. Under Dr. Oskooii’s general election analysis, Latinos consistently vote in general elections for Democrats in the low 70% range. Likewise, African Americans consistently vote for Democrats in the mid 90% range. Day 10 Tr. 49:16-50:2. Meanwhile, White voters vote cohesively for Republican candidates in general elections. Day 10 Tr. 14:23-15:17. Under Dr. Oskooii’s general election analysis, Anglo voters consistently vote for Republicans in the mid-80% range. Day 10 Tr. 49:16-50:2. Dr. Alford testified that this shows polarization among these groups—but along party lines, not on account of race. Day 10 Tr. 51:12-19

478. Dr. Alford testified that the stability of the partisan voting patterns in general elections remains the same regardless of the race of either the Republican candidate or the Democratic candidate. Day 10 Tr. 50:3-15. The race of the candidate impacts general election patterns elsewhere—but the race of the candidate does not produce any variation in the general election results in Galveston County. Day 10 Tr. 50:16-51:7

479. Dr. Alford concluded that, across general elections, the pattern that emerges from Dr. Barreto’s, Dr. Oskooii’s, and Dr. Trounstine’s analyses is that there is partisan

polarization, not racial polarization in Galveston County. Day 10 Tr. 70:22-71:19. Indeed, there only is a disturbance in the pattern of general election results when there is a corresponding disturbance in the two-party cue. Day 10 Tr. 21:21-22:5. When an election is held between a Democrat and a Libertarian, as opposed to a Republican, 80.61% of the white vote goes to the Democrat. Day 10 Tr. 20:20-21:8. Similarly, when an election is held between a Republican and an Independent, as opposed to a Democrat, 62.18% of the Latino vote goes to the Republican. Day 10 Tr. 21:9-22:17.

480. Dr. Alford testified that Anglo voters in Galveston County are voting Republican at consistent rates, regardless of the race of the candidate. Day 10 Tr. 19:6-20:10. In fact, in the 2018 U.S. Senate election in Texas, Anglo voters had an opportunity to vote for a Latino candidate or a White candidate, and they voted for Ted Cruz “at levels very similar to the level they vote for Anglo Republicans in other elections on that ballot.” Day 10 Tr. 53:1-16. Dr. Alford also noted that Anglo voters had an opportunity “in the Republican primary to nominate someone other than Ted Cruz. He had Anglo opponents in the primary. ... I think he won about 85% of the vote in the Republican primary in Galveston County. So Republicans in Galveston County are willing to support Ted Cruz in the primary against Anglos and in the general election against Anglos.” Day 10 Tr. 53:1-16

481. This is consistent with the fact that Anglo voters voted for George P. Bush (a Latino Republican, and 2018 Republican nominee for Commissioner Land Office) at the same rates as other Anglo Republican candidates in that race. See Oskooiii Expert Report at 51, Figure 8 (Ex. C) (PX 356 and PX 366) (depicting Anglo votes for Republicans

consistently between 80.1 and 86.5 with Anglo voters giving George P. Bush 84.6% of the vote).

482. Dr. Alford testified that Dr. Barreto's BISG analysis depicts the same pattern of partisan polarization in general elections, where Anglo voters consistent vote Republican, and Latino and African American voters consistently vote Democrat. Day 10 Tr. 68:23-69:9. Neither Dr. Oskooii or Dr. Barreto analyze primary elections using BISG.

483. Dr. Alford interpreted Dr. Trounstine's chart on endogenous elections in Galveston County to show that Black and Latino preferred candidates could be elected with the Black and Latino share of eligible voters at less than 50 percent. Day 10 Tr. 46:24-47:8. To do so, Dr. Alford analyzed Dr. Trounstine's scatterplot, which is reproduced as Figure 5 on page 22 of Dr. Alford's report. (DX 305 at 21-22).

484. As Dr. Alford detailed in his report, the intercept of the regression line is close to the 40% line, indicating that "the expected vote share for the preferred candidate of Black and Hispanic voters in a precinct with 100% Anglo voters would be very close to 40%, a level of crossover voting that doesn't suggest clearly polarized voting." DX 305 at 22. Furthermore, even in VTDs where there is less than 10% combined minority, meaning 90% Anglo VTDs, "there are numerous VTDs on the plot in the range above 50% and reaching well into the 80% range in terms of vote share for the preferred candidate of Black and Latino voters." DX 305 at 22. Ultimately, Dr. Alford testified at trial that he would simply not base any conclusion about voting in Galveston County on Dr. Trounstine's scatterplot. Day 10 Tr. 157:11-17.

### 5. Politics, not race, drive voting in Galveston County

485. In 1992, Galveston County was run by Democrats, and did not get its first majority of Republicans until 2010. Day 2 Tr. 42:11-16, 43:6-17. After 2010, two Democrats (Commissioners Holmes and Doyle) were on the Commissioners Court. Day 2 Tr. 43:2-5.

486. Black voters generally support the democrat candidate in general elections. Day 8 Trans. 173:8-13.

487. Constable Rose is a Democrat, has always been a Democrat, and has never voted for a Republican. Day 1 Tr. at 83:16-84:2.

488. Judge Pope is a Democrat, has always been a Democrat, has never voted for a Republican, has not met the Republican she would vote for yet (Day 2 Tr. 38:25-39:10, 41:13-18), and has been involved with the Galveston Coalition of Black Democrats, the NAACP, and the Texas Democratic Women's Organization. Day 2 Tr. 10:24-11:5. She has worked on Democratic campaigns. Day 2 Tr. 20:7-23. She is not a member of LULAC. Day 2 Tr. 39:21-22.

489. Commissioner Holmes testified that he is a Democrat and campaigns as a Democrat. Day 7 Tr. 45:8-11. He testified that he attends Democratic events and speaks to Democratic groups. Day 7 Tr. 45:12-15. Commissioner Holmes testified that he views the protection of Precinct 3 as a priority of the Democratic Party in Galveston County, and he believes "to the extent a fight is needed to save the precinct," Galveston County Democrats find it important. Day 7 Tr. 45:16-22.

490. Leon Phillips testified he is a Democrat, has always considered himself a

Democrat. DX 310 at 35:1-6. He has never voted for a Republican in Galveston County. DX. 310 at 36:7-9. He does not know of any Republican candidate he would vote for. DX 310 at 36:18-25. He agreed that political issues are more important when deciding who to vote for, than the color of the candidate's skin. DX 310 at 103:16-19.

491. Dr. Armstrong considers himself a Republican and is on the Republican National Committee representing Texas. He first ran for State Senate in 2020, but lost in the primary. Day 10 Trans. 187:8-23.

492. The Republican Party chairs elected Dr. Armstrong to be the candidate over three Anglo candidates. Day 10 Trans. 189:14-190:13. He had an endorsement from Chris Lane, who is an African American former city councilman in La Marque, in his bid for the State Senate. Day 10 Trans. 203:16-204:2.

493. Leon Phillips does not know Commissioner Dr. Robin Armstrong. DX 310 at 22-25. When asked if he has an opinion about Commissioner Armstrong, he testified, **"If you're an African American, how can you be a Republican?"** DX 310 at 37:3-7. When asked if there was anything else he thinks a judge should know, he asked why the commissioners would draw a map with lines similar to the lines in 2011 "that the judge basically threw out? Why would they do that again if it wasn't for a Republican takeover of Stephen Holmes' district?" DX 310 at 122:23-123:9 (emphasis added).

494. Ms. McGaskey decided to become a Democrat back in the 1980s. Day 1 Tr. at 127:3-5. She has served as the president of the Coalition of Black Democrats of Galveston County, and the Democratic party is the party that she believes reflects her values. Day 1 Tr. at 150:17-151:9. Ms. McGaskey testified that Lonnie Cox was a

Democrat back in 2002, and that he is a Republican now. Day 1 Tr. at 128:7-13.

495. Ms. Courville is a registered voter, votes in all elections, and is a registered Democrat. Day 2 Tr. 219:16-25. She votes for Democrats, and has not seen a Republican she would vote for yet. Day 2 Tr. 220:1-21.

496. Galveston County turned “red”—into a Republican majority—in 2010.

497. Commissioner Apffel testified that in 2011-2012, he lost his seat after 9 seats were consolidated into 4. Day 9 Tr. at 292:12-17. In 2014, he ran as a member of the Democratic Party and lost to Justice of the Peace Penny Pope. *Id.* at 292:12-17. In 2015, he testified that he ran as a member of the Republican Party for his seat on the Commissioner’s Court, which he won in 2016 and has held ever since that time. *Id.* at 292:19-293:3.

498. Ms. Courville testified that she remembers Judge Henry wanted to keep Galveston County red. Day 2 Tr. 250:17-251:4. She equates “red” with Republican. Day 2 Tr. 254:4-7. At her deposition, she testified that “red” is the Confederacy, that’s what she relates it to, and that is racist, and that she associates the Republican party, the red party, with the Confederacy from the U.S. Civil War. Day 2 Tr. 254:25-255:19. She agreed that “red means racist” were her words. Day 2 Tr. 257:16-21.

499. Constable Rose is aware that Commissioner Apffel used to be a Democrat, and is now a Republican. Day 1 Tr. at 92:24-93:2

500. Commissioner Giusti testified a lot of people have switched parties over the last few years to Republican, and for a lot of them it was just to win. Day 9 Tr. 99:5-7.

501. Commissioner Holmes testified that, in 2011, Commissioner Doyle’s

precinct was ultimately turned Republican in such a way where he would be unable to gain re-election as a Democrat. Day 7 Tr. 63:19-22.

502. Constable Rose testified that he does not believe Commissioner Holmes could be reelected if he ran in his current precinct because “it’s the north end of the County, and they normally vote Republican,” while Commissioner Holmes is a Democrat. Day 1 Tr. at 92:2-15.26. Ms. Henderson-Lofton testified that she does not believe Commissioner Holmes can be re-elected under the new map. Day 6 Tr. 193:4-14. She does not believe Commissioner Holmes could be re-elected because he is in a new area where he is not as well-known, and she believes the culture in his new precinct is not so receptive to Black or Hispanic people. Day 6 Tr. 193:15-194:8.

503. Commissioner Giusti testified that, as a candidate, it helps to have the support of the local Republican party. Day 9 Tr. 70:8-10.

504. In the 2011 redistricting process, Mr. Phillips supported a “clean lines plan.” DX 310 at 120:6-17; JX 8 at PDF pg.11. A community organization drew a map discussed in the article, which stated “Democrats, of course, would love to see that kind of map.” JX 8 at PDF pg.11. It went on to state that “Republicans control the commissioners court this time. Democrats controlled the commissioners court for decades past. Neither party has proved to be above politics each time districts are redrawn after each census.” JX 8 at PDF pg.11.

505. Mr. Doyle testified that he was elected as a Democrat. Day 7 Tr. 27:16-17.

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<sup>26</sup> Constable Rose clarified later that Commissioner Holmes represents the new Precinct 3. Day 10 Tr. 103:5-9.

He assumes a large number of Republicans have moved into the northern end of Galveston County, as there was a large population shift in north Galveston County. Day 7 Tr. 27:18-25. Mr. Doyle testified that Ryan Dennard, a Republican, won Mr. Doyle's Commissioners Precinct after he decided not to run for re-election. Day 7 Tr. 28:5-14.

506. Clerk Dwight Sullivan testified he may not have opponents his last three elections because a Democrat could not defeat him countywide. Day 10 Tr. 267:20-25.

507. After the November 12, 2021 meeting, Constable Rose talked with Tierr'ishia Gibson, the Democratic Party chair, as they were getting together with the DOJ at that time. Day 1 Tr. at 81:4-8.

508. Plaintiffs' expert Dr. Barreto acknowledges that his confidence intervals for Latinos are consistently between the low-20s to mid-30s in his EI analysis. With Spanish surname, it is in the mid-40s. Tr.283-84; 286:5-9, 19-22 (Day 3).

509. Dr. Barreto and Dr. Oskooii both acknowledge that the reason for broad confidence intervals is few majority Hispanic precincts. Tr. 288:5-12 (Barreto, day 3), Tr. 297: 23-25; 298:1-8 (Barreto, Day 3) 283:15-18 (Oskooii, Day 4).

510. Although Drs. Oskooii and Barreto testified that they have confidence in their point estimates, they also acknowledged that the confidence interval is derived from the standard error. Tr. 274:17-19 (Barreto, Day 3). A lower standard error means a lower confidence interval. And for the same point estimate, a higher standard error means a higher confidence interval. Tr. 279:3-12 (Barreto, Day 3); 251:13-19 (Trounstine, Day 4).

511. Such a broad confidence interval cannot be sufficient to trust this data. And they have not proven that the Latino point estimates are sufficiently credible.



**iv. Totality of the Circumstances or “Senate Factor” Evidence**

512. Plaintiffs presented experts on the Senate Factors.

513. Dr. Max Krochmal is a history professor and was proffered as an expert historian. Day 5 Tr. at 10 to 20. Plaintiffs tendered Dr. Krochmal as an expert of “the effects of official actions on minority communities and the interaction of minority communities, particularly in Galveston County, Texas. Day 5 Tr. at 21:4-7.

514. Dr. Krochmal outlined and acknowledged that each redistricting cycle between 1981 and 2021 had a different process and procedure. Day 5 Tr. at 125-159.

515. Dr. Krochmal wrote an editorial against the reopening of Fort Worth’s public schools in September 2020 . DX 292. He cites his editorial in his report. Day 5 Tr. at 21:5. He argues that only wealthy white people want to reopen schools using words like “the larger phenomenon of whiteness” and claims white people steamroll Blacks and Hispanic to get in person learning, “no matter the costs” to Black and Hispanics. Day 5 Tr. at 21 to 28. Dr. Krochmal goes onto state that “worse than their unacknowledged privilege” white people display “dripping paternalism and, yes, racism toward Black and Brown families.” Day 5 Tr. at 29-30.

516. Dr. Krochmal further writes that white people “need the schools open so that they can go back to their own jobs and hobbies, so that their own employees have free state supported childcare.” Day 5 Tr. at 31:11-15. He finished his editorial with the comment, “They really don’t care how many teachers and Black and Brown families they infect or kill to get the economy running again – to restore their profit margins to pre-COVID levels.” Day 5 Tr. at 31:25-32:3.

517. Dr. Krochmal states, “A coalition, by my definition, is actually two groups who are different, and sometimes may even strongly disagree, but they nevertheless find ways to work together and they value that working together and they prioritize it and act accordingly.” Day 5 Tr. at 67:25-68:4. This definition is not the definition of a coalition under the *Gingles* test.

518. Dr. Krochmal used a “fragmentary documentary record” to reach his opinions. Day 5 Tr. at 115:18-20.

519. Dr. Krochmal did not learn that the only real difference between the map the County submitted for pre-clearance in 2011 and the map the DOJ approved was the removal of the 2 precincts on Bolivar. Day 5 Tr. at 149:13-150:1.

520. Dr. Krochmal, despite a federal judge finding that the County’s JP redistricting in 2013 did not have racial intent, thinks that the JP redistricting in 2013 demonstrated racial both then and as to the 2021 commissioner’s court maps. Day 5 Tr. at 150:22-155:3. He excuses his opinion on “the long sweep of history.” Day 5 Tr. at 154:19-155:3.

521. Dr. Krochmal decided to testify about whether Commissioner Holmes was involved in redistricting. “So, yeah, I would say my expert opinion based on all the evidence I have seen, including what you represented today, is that he was not meaningfully involved in drawing the maps. It seems he was invited at a couple of different junctures. But, yeah, you know, it – and I would also say that – well, I think I’ll just leave it there. Yeah. I hope I answered your question. Day 5 Tr. at 177:25-178:7.

522. Dr. Krochmal had not seen the Holmes’ deposition, or the documents

Commissioner Holmes kept of conversations. When he was shown these documents and Map 1 drawn based on Commissioner Holmes instruction, the knowledge Commissioner Holmes had that Map 1 was a 55% minority-majority district, and Commissioner Holmes' failure to make a motion or otherwise engage in the meeting on November 12th, Dr. Krochmal was asked if any of this new information altered his opinion regarding whether Holmes was excluded from the process. Day 5 Tr. at 161:25-176:24. Dr. Krochmal change his testimony from "Commissioner Holmes was excluded from the redistricting process" to ". . . he believed he was not meaningfully included." Day 5 Tr. at 176:20-177:1.

523. Dr. Krochmal opines in his report that racism did not exist until enlightenment philosophers created in during the industrial revolution. Previously, racism didn't exist. In fact, races didn't exist until enlightenment philosophers created races. Therefore, according to Dr. Krochmal, the racism of white European philosophers created races. Day 5 Final Trans. 112:13-114:1. Neither races nor racism existed before white people invented it.

524. Dr. Krochmal testified that people can change races before he changed his mind and said "racial categories don't change just because you say you want to be in a different racial group." Day 5 Tr. at 114:20-115:7.

525. Dr. Krochmal attributes republicans as white voters voting for race. Day 5 Tr. at 118:23-25. White voters don't vote on issues. Day 5 Final Trans. 118:23-19:22.

526. Dr. Krochmal believes the growth of the republican party in the south is attributable solely to race and not issues. Day 5 Final Trans. 120:18-121:9. He denies knowing a list of minority elected Republicans including Dwight Jefferson, Eva Guzman,

David Medina and Dwight Sullivan. Day 5 Final Trans 122:10-123-9.

527. The fact that Commissioner Holmes had two outside sets of lawyers, the County's lawyers and a County drawn Map 1 which would have kept intact the minority-majority Precinct 3, Dr. Krochmal still believes the County acted with racial intent because of Mark Henry. Day 5 Tr. at 183:1-20.

528. Dr. Krochmal admits to having personal bias in his work. Day 5 Tr. at 43:16-44:24.

529. Dr. Krochmal also tweeted: "To Republicans who remain quiet or tacitly support Trump's immigration ban; history will remember you as cowards."

530. Dr. Krochmal admits he tweeted "A lawsuit against our maniac governor," and that he was referring to Governor Greg Abbott. Day 5 Tr. at 123:10-20. Dr. Krochmal admits he tweeted that "Who can now say the Republican Party isn't a vehicle of white power?"

531. The Court finds the bias of Dr. Krochmal to infect all of his opinions and report so as to render them unusable and according to Fed. R. Evid 702 disregards his report and testimony.

**1. Senate Factor 1: The extent of official discrimination touching a minority group's right to vote or register or participate in the electoral process**

532. Two consent decrees relating to voting have been entered in the past 31 years. They show that (i) the litigation leading to those orders is distant in time from the facts in this case, (ii) the County was eager to work to assist and strengthen minority involvement in voting and participating in the electoral process, and (iii) that minority involvement in

voting, and assistance with such involvement, has improved.

- i. The Expired 1992 Consent Decree. Galveston County entered into a consent decree in 1992 under Section 5, regarding Galveston County Justice of the Peace and Constable precincts. PX 563. Judge Pope testified the consent decree precipitated the creation of the first Precinct 2 she was elected to, and that she was the first Black woman elected as a Justice of the Peace in Galveston County. Day 2 Tr. 15:1-9, 16:8-10. Judge Pope testified she was reelected six times, and served for 26 years. Day 2 Tr. 9:3-23, 12:10-19, 14:14-16. She believes that having minorities elected as County officials has created more participation in the process among minorities. Day 2 Tr. 19:20-20:6.
- ii. The Expired 2007 Consent Decree. The expired 2007 Consent Decree expired in 2010; it related to the lack of use of Spanish under the minority language protections of the VRA. Day 10 Tr. 258:3-12. Galveston County entered into the 2007 Consent Decree “fully” committed to complying with all requirements under the VRA and the Help America Vote Act in future elections. PX 564 at 3. Even though the VRA did not require everything the County agreed to do in the 2007 decree, the County has continued policies under the decree even after it expired. Day 10 Tr. 258:18-259:4. For example:
  - i. Though under no obligation to do so under the VRA, the County has continued to deploy bilingual poll workers in every single voting location after the expiration of the decree in 2010. Day 10 Tr. 259:7-12. In some locations, up to five bilingual poll workers were deployed even though there was no requirement under the VRA to deploy a certain number of poll workers. Day 10 Tr. 259:13-16.
  - ii. The expired decree required Galveston County to have a Spanish Language coordinator in the Clerk’s office even though the VRA has no requirement to have a Spanish language coordinator. Day 10 Tr. 259:17-24. Even after the expiration of the decree, the Clerk continued to pay and maintain a Spanish language coordinator in the Clerk’s office to continue the expired obligations under the decree. Day 10 Tr. 259:25-260:13.
  - iii. The expired decree required Galveston County to have an investigative protocol for any complaints about Spanish materials or bilingual poll workers even though the VRA has no such obligation. Day 10 Tr. 260:14-23. Even after the expiration of the decree, the Clerk maintained the investigative and complaint procedure required by the expired decree even though the VRA has no such mandate. Day 10 Tr. 260:14-23. The voluntary continuation of mandates from the

expired consent decree of actions not required by the VRA is relevant and weighty evidence in favor of Defendants under Senate Factor One. Rather than exhibiting official discrimination, the opposite occurs. Continuing expired and non-statutory terms of the consent decree is evidence that the Defendants are doing things to make voting more accessible to minorities in ways that it is under no obligation to do so. These voluntary choices to help minority voters access the political system are choices starkly contrary to any history official discrimination, and Senate Factor One weighs heavily in favor of the Defendants.

533. Section 5 Actions. Because the standards under Sections 5 and 2 of the VRA are different, Section 5 actions such as past denials of preclearance or the 1992 Consent Decree, are not Senate 1 evidence.

- i. 2011 Preclearance Denial. The DOJ's denial of preclearance in 2011 is not evidence that Defendants engaged in official discrimination touching a minority group's right to vote or register or participate in the electoral process. On the contrary, under preclearance, the County *submitted* its proposed maps for review and approval, and repeatedly stated those maps would not be put into effect until approved by a court or precleared by the DOJ. For these reasons, the Fifth Circuit held the Plaintiffs in the 2011 litigation were not prevailing parties. Under this evidence, the Court does not weigh prior preclearance denials under Section 5 in favor of a Senate Factor 1 finding.

534. Too stale. Much of Plaintiffs' evidence is too stale weigh in favor of a Senate 1 finding for actions taken in 2021. For example, Judge Pope testified she studied sentencing practices in the 1980s, and found minorities were treated more harshly. Day 2 Tr. 36:6-15. Clerk Dwight Sullivan acknowledged that, in the distant past, Galveston County election officials did not always treat minorities equally Day 10 Tr. 241:15-16) but it is the philosophy of the Clerk's office to treat everyone equally and without any regard to politics. Day 10 Tr. 241:17-24.

535. Finally, Plaintiffs' own testimony does not support Senate Factor 1:

- i. Plaintiff Leon Phillips had no opinion on whether there was a history of official discrimination in Galveston County. DX 310 at 108:17-25.
- ii. Plaintiff Constable Rose admitted that he testified he was not aware of any discriminatory voting practices in Galveston County. Day 1 Tr. 87:10-19. At trial, while he testified there was a drop in polling locations in African American neighborhoods, he admitted he does not keep track of the numbers of polling locations and does not know why they change. Day 1 Tr. 88:23-89:4. He had no other examples of how he believed the County had hindered ability to vote. Day 1 Tr. 89:5-20.

536. County-wide elections are run by Dwight Sullivan. Sullivan is a Hispanic official who conducts the elections. He speaks Spanish and regularly uses his knowledge of Spanish to assist voters in his office. Day 10 Tr. 233:19-24. Clerk Dwight Sullivan has employees in his office that engage in official outreach to minority voters and groups such as Plaintiff NAACP so there are no perceived barriers to voting. Day 10 Tr. 241:25-242:22. For example, Wendy Fragoso, the elections chief in the Clerk's office attends NAACP events to answer questions and be available in her capacity as an election official. Day 10 Tr. 242:7-11. Another employee of the Clerk's office, Maxine Jones, also does outreach. Day 10 Tr. 242:18-22. Clerk Dwight Sullivan testified that he conducts pilot programs and takes voting machines into local schools to teach them about the electoral process and even run student council elections. Day 10 Tr. 242, 23-243:11. Sullivan has conducted these programs, for example, at Ball High Day 10 Tr. 243:5-7) as well as La Marque elementary. Day 10 Tr. 243:8-10. These outreach programs to increase understanding and accessibility to the electoral process are also relevant evidence under Senate Factor One weighing in favor of defendants. Instead of official discrimination, Galveston County officials are engaged in a deliberate program of official welcoming to the political process among

county students.

537. Rather than show official discrimination touching a minority group's right to vote or register or participate in the electoral process, testimony has showed the opposite. It has never been easier to vote in Texas than it is in 2023. Day 10 Tr. 245:16-17 (Sullivan). "We make voting as easy as possible," Sullivan testified. Day 10 Tr. 245:22. On the first day of trial, Plaintiff's witness Ms. McGaskey testified it is easier to vote now than it has ever been, since voters can go to any location and there is early voting. Day 1 at 157:2-9 (McGaskey); *see also* Day 2 Tr. 58:14-24 (Judge Pope testimony it is easier and more convenient to vote now than it has ever been).

538. The hard thing is not the County providing access to the polls. As Judge Pope testified (as someone who held office in the County for 26 years), the hard thing is getting voters out to the polls. Day 2 Tr. 58:14-24. As someone who has worked with campaigns, Plaintiffs' witness Ms. McGaskey agreed. Day 1 at 155:14-22 (a big problem was getting supporters to actually go and vote, and that it is like that for just about any candidate).

539. County-wide Voting. County-wide vote centers were adopted by affirmative vote of the Galveston County Commissioners Court after Clerk Sullivan conducted outreach to LULAC to gauge interest and assist implementation. Day 10 Tr. 239:10-25. LULAC supported the move to county wide voting centers according to Clerk Sullivan who conducted the outreach to LULAC. Day 10 Tr. 240:3-5. The adoption of County-wide voting centers (after coordinating with LULAC) is relevant and weighty evidence of the absence of official discrimination touching on voting in Galveston County under Senate Factor One. When faced with a choice under State law to adopt a county-wide voting



program, the County adopted County-wide voting, making it easier to vote. Day 10 Tr. 237:23-238:12. County Clerk Sullivan testified that County-wide vote centers make it easier to vote on both election day and early voting. Day 10 Tr. 238:13-16.

540. Mr. Jaworski testified that every time he votes, he brings his driver's license, and he's happy to see the volunteers there. Day 6 Tr. 185:10-12. He testified that he really likes the ability to vote at any voting location, and he compliments County Clerk Dwight Sullivan for that. Day 6 Tr. 185:13-17.

541. Ease of Registration. It is easy to register to vote in Galveston County. Day 10 Tr. 245,12-15 (Sullivan). Fact witnesses support this; they are registered to vote in the County; most have been registered for over 20 years, and agree it was a relatively easy process. Day 1 Tr. 55:20-:56:1, 82:20-25 (Constable Rose); Day 10 Tr. 194:17-21 (Dr. Armstrong); Day 2 Tr. 10:12-20 (Judge Pope), 219:16-25, 258:20-259:4 (Ms. Courville). No one testified that it is difficult to register to vote in the County. Dr. Armstrong has not heard any complaints from minorities in the community over the registration process or the inability to reach the polls or vote. Day 10 Tr. 194:17-21. Ease of voter registration and the ability of voters to use any voting location in Galveston County should have had a positive impact on minority voters' ability to cast votes in Galveston County. Day 10 Tr. 195:20-196:7 (Dr. Armstrong).

542. Ms. Henderson-Lofton testified that the NAACP is an advocacy group who educates a lot on voting rights and helps people get registered to vote, and it educates people on discrimination and advocates for those who have been discriminated against. Day 6 Tr. 199:15-200:2. She testified that the NAACP is a non-partisan organization, and

the Dickinson-Bay Area unit serves the northern part of Galveston County, which includes Dickinson and League City. Day 6 Tr. 200:4-7.

543. Commissioner Giusti has never heard of anyone in the County being unable to register to vote, or to vote, due to an action taken by the County. Day 9 Tr. 71:7-14.

544. Ease of Voting - Regular and Primary Voting. Fact witnesses also testified they vote regularly in the County, in primaries and general elections. *See* Day 1 at 83:4-15, 56:2-4 (Constable Rose). Mr. Compian testified that he votes religiously, tries to vote in every election that he is qualified to vote in, and he plans to vote in the future. Day 6 Tr. 63:23-64:4. Constable Rose's wife is also registered, and sometimes goes with him to vote. Day 1 Tr. 79:4-16. Constable Rose encourages all people to go vote. Day 1 Tr. 84:16-:85:3. Dr. Armstrong testified voting in Galveston County is relatively open and convenient. Early voting and the ability to vote at any of the voting locations in the County assists individuals in casting their votes and that option is there for the minority communities as well. Day 10 Tr. 195:1-19. County Clerk Sullivan's office even assists astronauts to vote from space. Day 10 Tr. 245:18-19.

545. Early Voting. Early voting lasts two weeks in Galveston County. Day 1 at 155:23-157:1 (McGaskey).

546. Mail-In Ballots. Clerk Dwight Sullivan testified that if a mail-in ballot required postage and the voter failed to affix it, his office would pay for the postage. Day 10 Tr. 245:25-246:6.

547. Polling Locations. Several witnesses testified that County residents can vote at any polling location. Day 1 Tr. 82:15-17 (Constable Rose), 155:23-157:1 (McGaskey).

Constable Rose has never missed voting in an election because of anything like a polling site closure. Day 1 Tr. 84:3-8. Clerk Dwight Sullivan testified that he has endeavored to keep polling places open in minority neighborhoods. Day 10 Tr. 246:12-18. He, for example, he keeps polling places open in Carver Park, among others. Day 10 Tr. 246:15-18. Another location he has fought to keep open is the Greater St. Matthews location in Hitchcock. Day 10 Tr. 248:22-249:9) This deliberate effort to maintain polling locations in minority neighborhoods weighs in favor of Defendants under Senate Factor One. Clerk Dwight Sullivan testified that sometimes he is unsuccessful in finding a polling place or keeping an existing site open because of security or logistical shortcomings. School safety concerns and concerns about church safety has made it difficult to keep all legacy polling sites open. Day 10 Tr. 248:12-20. Commissioner Appfel was not aware of any instance in his history on the Commissioner's Court that the request for an additional voting location was denied. Day 9 Tr. 299:15-23. Mr. Compian testified that there are situations where polling locations are used that have not been reviewed by the Democrat and Republican party chairs. Day 6 Tr. 83:17-84:5. Mr. Compian testified that there are peace officers at some voting locations, but not at all of them. Day 6 Tr. 88:20-89:4.

548. Spanish Language Materials. Mr. Compian testified that today all election materials used by Galveston County in voting locations are available in Spanish, as well as in English. Day 6 Tr. 82:3-6. He testified that he is aware of incidents in League City, in the past ten years, where materials were not available in Spanish, but he could not provide a specific date. Day 6 Tr. 82:12-83:13.

- i. County Judge Henry takes voter access to the polls seriously, and has not

heard a complaint to the County about being unable to vote in the last 10 years. Day 7 Tr. (Rough) 241:5-17.

- ii. There was no evidence of any County measures that made voting more difficult and County Judge Henry was not aware of any; rather, the County has made voting easier expanding voting to any location in the County, a process that has been in place for 10 years. Day 7 Tr. (Rough) 242:2-11.
- iii. No County-Caused Hindrance. Dr. Armstrong has not been hindered from voting in Galveston County. Day 10 Tr. 194:22-25. When people with disabilities had questions about how to get to the polls in the last voting cycle, they were directed how to get there and the County did not do anything to cause any difficulties. Day 1 Tr. 86:9-21 (Constable Rose).

549. Minority “Get out the Vote” Events at the Courthouse. Additional evidence favoring Defendants under Senate Factor One relates to events next to the courthouse.

- i. LULAC head Rob Quintero asked Galveston County to allow the use of county property for a Cinco de Mayo event. Day 10 Tr. 236:21-25, 237:1. A Cinco de Mayo event held next to the County courthouse has become a blend of a cultural festival and get out the vote effort organized, ironically, by LULAC. Day 10 Tr. 235:17-25; 236:1. The County Commissioner’s Court official vote to acquiesce to LULAC’s request to use county property to hold this event is powerful evidence favoring Defendants under Senate Factor One. Simply, instead of engaging in official discrimination, the Defendants have affirmatively done the opposite. They have officially voted to allow LULAC to use county property adjacent to open polling sites to have a cultural event that explicitly and purposefully creates opportunities to vote for LULAC allied voters. Day 10 Tr. 236:10-20. The Cinco de Mayo event is a small burden on the Defendants, yet they support it nonetheless. It results in various small disruptions such as the closure of streets and the closure of some parking at the county courthouse. Day 10 Tr. 237:2-9. County officials made an effort to collaborate with LULAC to allow the Cinco de Mayo event to occur year after year at LULAC’s request. Day 10 Tr. 237:2-8. The Cinco de Mayo event represents the opposite of official discrimination under Senate Factor One because participants need only walk about 30 seconds to vote in open polling locations adjacent to the LULAC requested event. (Day 10 Tr. 237:10-12.) This officially supported event increased the opportunities for minorities to vote. Day 10 Tr. 237:13-15.
- ii. LULAC and other groups have asked to expand the special events adjacent to open polling locations and the County Commissioners Court voted 5-0 to

approve an event for Dios de las Muertas. This would, like the Cinco de Mayo event, see disruptions on County property adjacent to the courthouse for a cultural event during open voting in the adjacent courthouse during the general election.

The Commissioners Court vote for these events is relevant and weighty evidence under Senate Factor One favoring Defendants. Not only did the County make itself accessible to Plaintiff LULAC, it allowed the use of county property adjacent to open polling locations for what ultimately served as a get-out-the-vote effort by LULAC. Rather than engaging in official discrimination touching on voting, again, the Defendants have done the opposite to make voting more accessible to minorities. Day 10 Tr. 237:13-15.

550. Plaintiffs also testified about voting at trial.

551. Ms. McGaskey first became a voter registrar for Galveston County in the 1990s and has served as one ever since. Day 1 at 124:21-125:2. She is a certified registrar, and had no impediment to becoming certified other than the time it takes. Day 1 at 153:21-154:21. She helps register and educate voters, she has gone to school districts to speak with students about registering to vote. Day 1 at 124:1-12. She testified she got some of the literature in Spanish to assist the Spanish-speaking community.” Day 1 at 124:13-18, 125:20-24. Other organizations like Save Our Hood and GIVERS also do voter registration and education. Day 1 at 125:8-16. Save Our Hood is a community organization that goes into neighborhoods to help individuals learn about housing, and GIVERS is a voter registration organization with Roxy Williamson that goes to events to assist with registration and education. Day 1 at 125:6-19. Ms. McGaskey is also a member of Our Lady Queen of Peace Catholic Church, through which she helped run a voter registration

drive. Day 1 at 153:6-17.

552. Ms. Courville works with the mainland branch of the NAACP on voting outreach programs and in educating parents about school programs. Day 2 Tr. 216:12-22. She has been continuously registered to vote while she lived in Galveston County. Day 2 Tr. 258:12-16. She always voted early to avoid the crowds whenever she voted at the polls. Day 2 Tr. 259:5-9. She agreed that in Galveston County people can vote at any site around the County during early voting. Day 2 Tr. 259:10-13.

553. Ms. Courville votes from her home in absentia, but goes down to the Carver Park voting site in Precinct 336 to observe, and the last time people needed help filling out ballots because they could not walk into the center, and in prior times there was curbside voting, this past time people had to call different people to get that to happen for them. Day 2 Tr. 222:10-223:9. She also testified that in the last cycle there was a problem with one of the voting machines and people went to a different location to vote. Day 2 Tr. 223:15-25. She testified that in this past voting cycle she had a mail-in ballot returned to her, and she called the County Clerk in charge of elections, Dwight Sullivan, to request help, and he asked her to come down to his office, and his office ensured her vote was counted. Day 2 Tr. 224:18-225:15. She also testified there was an issue with a flap on a mail-in ballot that some people would not fill out, and people at the Clerk's office would call voters to notify them to complete their ballots. Day 2 Tr. 225:20-226:11. Ms. Courville has never had problems with voter identification, but that there were people who could not afford state identification. Day 2 Tr. 226:25-227:6. personal ID cost TX She testified her neighbor had a child with autism and was frustrated with calling different numbers to vote curbside so

he went home. Day 2 Tr. 260:23-261:14. She also testified that Carver Park was closed during one election cycle, and was reopened in the next election cycle. Day 2 Tr. 277:13-278:2. She could not provide any names or specifics of people she believed were not able to vote. Day 2 Tr. 279:2-5.

554. Mr. Quintero testified that he preferred voting when voting precincts were in neighborhoods, so you could walk to vote, and he believed it was easier to vote when you had one voting location in your precinct versus the unified voting system. Day 6 Tr. 58:12-59:20. He testified that he has not personally had any problems voting or registering to vote in Galveston County. Day 6 Tr. 59:21-60:1.

555. Ms. Henderson-Lofton testified that she votes regularly, and she plans to vote in the future. Day 6 Tr. 191:17-20. She testified that when she lived in Texas City, she was in Commissioner Holmes precinct, which is where she started voting about 20 years ago. Day 6 Tr. 192:3-6. When living in Texas City, she would vote at the College of the Mainland or Carver Park. Day 6 Tr. 192:7-8. Ms. Henderson-Lofton did not know which Commissioners Court Precinct she lived in during her residence in League City, under the prior map. Day 6 Tr. 192:9-13. However, she currently resides in Commissioner Holmes precinct, under the 2021 adopted map. Day 6 Tr. 192:23-193:3. She testified that she has not personally needed to reach out to a Commissioner for assistance, but she testified that her family always turns to Commissioner Holmes. Day 6 Tr. 192:14-22. Ms. Henderson-Lofton testified she has heard complaints regarding voting. Day 6 Tr. 208:23. She testified that voting in Galveston County is efficient for her, but not for her 80-year-old grandmother. Day 6 Tr. 208:25-209:3. She testified that transportation to polling locations

is an issue in Galveston County, although she herself does not have that problem. Day 6 Tr. 209:6-22.

556. Mr. Quintero testified that LULAC gets calls all the time for racial discrimination, such as the Galveston Police Department executing a warrant on the wrong location. Day 6 Tr. 18:25-15. He testified that he believes in the Galveston Police Chief, and the warrant was valid, as it was signed by a judge. Day 6 Tr. 52:17-53:9. Mr. Compian testified that, in 2008, he was asked by individuals outside of the polling location whether he was born in this country when he tried to vote. Day 6 Tr. 91:22-92:7. The Court does not credit this as Senate 1 evidence.

557. Mr. Quintero testified that LULAC members have encountered the following barriers to voting: voter identification and transportation. Day 6 Tr. 18:1-6.

558. Mr. Compian testified that LULAC 151 filed complaints and communicated their displeasure to Cheryl Johnson's office regarding voter roll purges in Galveston County. Day 6 Tr. 105:6-11. He testified that LULAC national filed a lawsuit in response to actions taken within Texas to purge voter rolls. Day 6 Tr. 18:20-22.

559. Mr. Compian testified that there has been a difficulty understanding the concept of unified voting centers, but he testified that the County initiated outreach to LULAC, the NAACP, Gulf Coast Interfaith, the Black Ministers Alliance, and individuals to explain the concept. Day 6 Tr. 87:11-88:5. He testified that he has come to welcome these centers, but feels a sense of community has been lost that was present when voting within your precinct. Day 6 Tr. 88:6-11. He testified that the unified voting system permits people to participate in the democratic process. Day 6 Tr. 89:19-20. Mr. Compian testified



that he has helped members of his community register to vote. Day 6 Tr. 90:7-91:13. Mr. Compian testified that LULAC has alleged that there are not a sufficient number of unified voting locations per the requirements of the VRA, but he testified that he did not know whether there is a larger percentage of voting locations in minority areas. Day 6 Tr. 84:6-22.

560. Plaintiffs' expert Dr. Rocha ignored the type of evidence described above and chose not to speak with residents in the County about voting. Instead, he reviewed Section 5 objection letters back to 1976 to reach his Senate 1 conclusions. Day 5 at 201:23-206:13. His opinion did not change, even knowing the letters contain no finding of discrimination by the DOJ. *Id.* at 251:7-256:10. He agreed that a change from an at-large election method to single-member districts strengthens minority voting power, but still concluded that a DOJ letter objecting to the City of Galveston's change from electing city councilmembers from an at-large method to four single-member districts and two at-large seats. Day 5 204:15-16, 206:6-13, 258:23-261:22 (reviewing PX-4); *see also* Day 5 205:19-206:13 (reviewing JX 6, which includes no finding of discrimination by the DOJ). Based on the record at trial, the Court finds Dr. Rocha's methodology and conclusions lack credibility.

## **2. Evidence under Senate Factor 2: The extent voting is racially polarized**

561. As discussed in the *Gingles* II section above, Plaintiffs' evidence of RPV was entered in two forms—through expert testimony, and through lay testimony.

562. Plaintiffs' experts provided testimony about RPV but did not give weight to

preliminary or non-partisan elections. Additionally, Plaintiffs' experts revealed large confidence intervals in Hispanic voting patterns.

563. For these reasons, the Court finds the evidence weighs against a Senate Factor 2 finding.

**3. Senate Factor 3: The extent precincts used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices that may enhance the opportunity for discrimination**

564. The County does not have unusually geographically large election districts. Day 10 Tr. 240:20-241:6. In fact, the Texas Constitution requires four Commissioners Court precincts in Texas counties, and the United States Constitution requires that each of those precincts satisfy the one-man, one-vote requirement. County Clerk Sullivan testified the County does not use any test or device outlined in Senate factor 3, save for a state-mandated majority vote requirement. The county does not use anti-single shot provisions. Day 10 Tr. 238:16-22. He is unaware of any voting practice or device that enhances the opportunity for discrimination against minorities. Day 10 Tr. 241:7-10. He testified it is the philosophy of his office to treat everyone equally and without any regard to politics. Day 10 Tr. 241:17-24. As for voting practices that may enhance the opportunity for discrimination, Constable Rose testified he is aware that voters cannot vote for more than one candidate per race (sometimes called "bullet" voting). Day 1 Tr. 84:9-13.

565. In fact, the County's voting practices inhibit, rather than enhance, opportunity for discrimination. Texas has early voting and absentee voting for those who cannot vote on election day. The County unanimously adopted County-wide voting centers

so voters can vote from any polling location on both election day *and* during early voting. Day 10 Tr. 238:13-16, 239:3-8. County-wide voting helps mitigate against long lines at polling sites, and the County spent resources and funds to implement County-wide voting, even though it was under no obligation to do so. *Id.* at 240:6-20. County Clerk Sullivan is overseeing the construction of a new election office headquarters where the Mall of the Mainland used to be. Day 10 Tr. 246:19-247:1. The central location will make it closer to County voters to access election services, such as requesting absentee or mail-in ballots, or dropping off completed ballots. Day 10 Tr. 246:24-247:10. This new 30,000 square foot election office (Day 10 Tr. 246:22) will make it easier to vote.

566. The Court finds Senate Factor 3 weighs in favor of Defendants.

**4. Senate Factor 4: Whether minority candidates are denied access to candidate slating processes**

567. There is no evidence or allegation that a candidate slating process exists in Galveston County. On the contrary, County Clerk Sullivan has run for County-wide office four times. He is Hispanic. Day 10 Tr. 233:14. He has never experienced being denied access to any slating process, endorsement process or even excluded from any community organization where he might appear to seek support. Day 10 Tr. 235:7-16.

568. Dr. Armstrong has not found it difficult to become a candidate for office in Galveston County as a minority. He feels the process is open for minority residents. Dr. Armstrong has never heard any complaint that minority residents are unable to get on the ballot. Day 10 Tr. 197:14-16. He has never been denied the ability to run for office because of his race and is not aware of anyone in Galveston County that has. Day 10 Tr. 196:22-

197:11. As a candidate for office, Dr. Armstrong was never denied access to organizations such as the rotary or chambers of commerce. He is not aware of any individual who has expressed that they were denied access. He has spoken to those groups prior to and after being elected. Day 10 Tr. 197:17-198:1.

569. Constable Rose has never been denied the opportunity to participate in any primary because of his race, and does not know of any minority candidates in Galveston County who were denied the opportunity to participate in any primary because of their race. Day 1 Tr. 91:4-11. He is not aware of any minority candidates who have been denied the opportunity to participate in any Democratic or Republican events such as meetings, talks, or community events, because of their race. Day 1 Tr. 91:12-23.

570. County Judge Henry testified that the process to become a candidate in Galveston County is open to minority candidates and the parties do not have the ability to restrict participation. Day 7 Tr. (Rough) 242:12-24. Mr. Jaworski testified that in his experience in the City of Galveston it is very easy to become a candidate and get on a ballot, as it costs nothing and you do not need to procure signatures. Day 6 Tr. 185:24-186:1. He testified that minority candidates are not excluded from this process. Day 6 Tr. 186:2-5; Day 6 Tr. 187:5-9.

571. This factor therefore favors the defense.

**5. Senate Factor 5: The extent minorities bear the effects of discrimination in education, employment, and health that hinder their ability to participate effectively in the political process**

572. The majority of Plaintiffs' evidence centered on Senate Factor 5. In response

to a direct question from Plaintiffs' lawyer regarding whether the differences in wealth, education, home ownership, healthcare, criminal justice and racial tensions has an adverse effect on the ability of minorities to vote in Galveston County, Dr. Burch testified that there is no specific data in Galveston County. Day 2 Tr. at 87:18-88:10.

573. Plaintiffs largely testified that conditions have improved since the 1960s and 1970s. Judge Pope agreed that Galveston County is in a better place today. Day 2 Tr. 57:17-58:11.

574. In analyzing Senate factor 5, courts look to evidence that shows past discrimination has resulted in depressed political participation for minority citizens. *Clements*, 999 F.2d at 866-87. Plaintiffs offered evidence of a history of discrimination, and of socioeconomic disparities, but such proof "without more" is not sufficient evidence for Senate factor 5. *Clark*, 88 F.3d at 1399.

575. Generic testimony "that individuals of lower socioeconomic status were not as likely to vote as individuals of higher socioeconomic status" does not meet the legal threshold. *Clark*, 88 F.3d at 1399. In *Clark*, the Fifth Circuit held that it was insufficient that an expert "based her conclusion on political science literature, not 'an "intensely local appraisal" of the social and political climate' of" the jurisdiction." *Id.* at 1399.

576. It is undeniable that the state of the country, much less the County, in the 1960s made civil rights reforms, including preclearance under the VRA, a necessity. Plaintiffs entered testimony about their experiences under segregation in Galveston County, including in schools, at doctor's offices, in restaurants and in public transportation. *See* Day 2 Tr. 28:15-30:21 (Judge Pope); Day 6 Tr. 218:1-13 (Rev. Randall).

577. Ms. Courville testified that people in the former Precinct 336 face issues of affordable housing, access to transportation, clinics and doctor's offices, and even food. Day 2 Tr. 221:19-222:7. Judge Pope testified that she presided over truancy cases and was concerned that children were behind in school and many could not read; most of the truancy cases were minority children. Day 2 Tr. 32:10-33:17.

578. This testimony's probative value concerning the Galveston County Commissioners Court's liability under Section 2 of the VRA is limited. *Veasey*, 830 F.3d at 232 (stating that evidence of racial animus in individual Texas counties is not probative of racial animus in the state legislature).

579. Dr. Armstrong believes Black Galveston County residents are involved in the voting process and his impression is that African Americans tend to vote, percentage-wise, probably a lot more than other races. [Day 10 Trans. 196:8-13]. Ms. Henderson-Lofton and her family have lived in Galveston County for generations. 189:24-190:4. She testified that her grandfather, Johnny Henderson, did very impactful things for the historical Precinct 3, such as educating the community about voting. Day 6 Tr. 190:5-12.

580. Healthcare.

- i. The Galveston County Health District is in existence, and works to provide healthcare to people in the community who need it. Day 1 Tr. at 172:18-173:1.
- ii. As a commissioner, Dr. Armstrong has seen things the County does to assist minorities with healthcare, including the Coastal Health and Wellness clinics that help indigents of all races. [Day 10 Trans. 190:17-25]
- iii. Ms. McGaskey testified that Texas City Commissioner Felix Herrera helped ensure the Hispanic community was able to participate in obtaining vaccines, and a vaccination site was set up at a senior apartment complex. Day 1 Tr. at

119:19-120:9.

- iv. Judge Henry runs a veterans treatment court for military veterans having issues with the law and also drug and alcohol. They may be put through a treatment program. [Day 10 Trans. 191:23-192:8]
- v. The County is building a medical observation unit to assist individuals who have mental health problems, rather than having to take them to jail. They will be rerouted to the County facility. In Texas, there is a severe shortage of mental health facilities so the Commissioners Court has championed that facility. [Day 10 Trans. 191:1-22]

581. Education

- i. Ms. Lewis testified the County has a designated Registrar at high schools to register students as they become eligible to register to vote. Ms. Lewis said that they are at Ball High School all the time. Day 6 Tr. 144:5-13.
- ii. Edna Courville went to college with her husband, who was a coach and teacher. Day 2 Tr. 257:8-13. They returned to Galveston and had two daughters who both graduated from La Marque High School, who both achieved their Bachelor's and Master's degrees, and both became teachers. Day 2 Tr. 257:18-258:11.
- iii. Ms. Courville currently works as a part-time social worker for La Marque ISD—which was annexed by Texas City ISD due to the State of Texas' actions. Day 2 Tr. 215:19-22, 266:20-267:5. She believed La Marque ISD provided a good education to students. Day 2 Tr. 267:6-9. Ms. Courville testified the school water fountains were not working because the pipes were old, and that buildings had a lot of water damage in Hurricane Harvey, so the community passed two bonds to build new elementary schools, renovate one, and build a new high school. Day 2 Tr. 11-229:3.
- iv. Ms. McGaskey testified Texas City ISD built a vocational trade school to help kids. Day 1 Tr. at 115:18-116:7.

582. Policing and Law Enforcement

- i. In addition to the medical observation unit, the County has a juvenile justice program to improve the criminal justice system in Galveston County in addition to the mental health facility. [Day 10 Trans. 192:9-17]
- ii. Leon Phillips testified that, after Hurricane Ike, he was on the Galveston police civilian review board. DX 310 at 66:2-12. He did not believe the

Civilian Review Board was a racial issue. DX 310 at 85:3-5. He testified the board concluded the municipal police had targeted African Americans who lived between 25th and 53rd streets for tickets and arrests, based on statements from the police chief at that time. DX 310 at 65:21-66:12. He testified the purpose of the civilian review board was specifically to oversee police conduct. DX 310 at 67:13-16. In a 2007 article, Mr. Phillips stated, as Vice President of the Galveston County Coalition for Justice, that the municipal police department in Galveston contained “a few bad apples” but that he knew “too many good police officers for it to be an agency-wide problem.” DX 2 at 1. The Police Chief at the time of the article in 2007, Kenneth Mack, is African American and had served as Chief since 2003. DX 2 at 1. There was a meeting in July 2007 to discuss seven incidents involving overly aggressive officers, and Mr. Phillips stated at the time that “This is not a color thing,” as “Policy brutality is an issue that affects everyone.” DX 2 at 1-2. He did not believe it was an agency-wide problem in Galveston. DX 85 at 85:12-17, 86:8-15.

- iii. Mr. Phillips testified about the arrest of Donald Neely in 2019 by City of Galveston police officers.
  - i. Mr. Phillips believes Mr. Neely should have been treated for mental health issues rather than arrested.. DX 310 at 76:4-17; DX 31. Mr. Phillips testified that he wanted to see whether the arresting officers violated policy before deciding whether they should be punished. DX 310 at 76:18-25. He testified those officers were new to the mounted police, which used this method during Mardi Gras to maneuver people in custody to the police holding area for both the individual’s safety and the officers’ safety because they would be moving through a crowd. DX 310 at 77:1-14. He explained that these officers were new, and like the police chief said “they just made a stupid mistake,” it was captured on a picture, and there was a rush to judgment where no one considered it was the seventh time Mr. Neely had been arrested in the same place, and he had escalated from sleeping at a location to defecating on the porch of the parks board. DX 310 at 77:14-24. The city’s police chief implemented new policies or training after this incident. DX 310 at 78:3-15.
  - ii. Constable Rose clarified that the Neely arrest reflected on that one, isolated incident and he could not recall any others. Day 1 Tr. at 101:24-102:13.
- iv. Constable Rose testified about racial discrimination in policing; he was pulled over once, and his son was too. Day 1 Tr. at 67:16-68:25. He did not report his son being pulled over, he knew him personally, and chose to talk



to him instead. Day 1 Tr. at 94:14-15.

583. Housing

- i. Ms. Courville did grant program work to help recover after Hurricane Ike, through a County program. Day 2 Trans. at 266:2-12.
- ii. Leon Phillips testified he was part of a committee to study minority concerns in the City of Galveston, and worked with the mayor and others in that committee. DX 310 at 63:3-64:3. In 2006 the committee submitted no written documentation regarding building code enforcement in the city. DX 310 at 65:1-20. That work was with respect to building codes, and he could not remember through his work on the committee either finding or telling anyone that the committee found a pattern of discrimination against minorities. DX 310 at 68:23-69:11. He also testified, in response to being asked about whether race relations have improved over the past ten years, that as President of the Galveston Coalition for Justice he has seen fewer complaints against the City of Galveston's code enforcement or law enforcement officers, so "something's being done right." DX 310 at 101:3-15.
- iii. Witnesses testified about Hurricane Ike's destruction of public housing on the Island. It was a city-controlled program, not County. Former Mayor Joe Jaworski testified that Galveston had been awarded over 750 million dollars in funds from Housing and Urban Development at least in part for public housing to support those with low-to-moderate income. Day 6 Tr. 159:24-160:22. He made public housing a priority. *Id.* 162:2-163:3. The public housing that existed before Hurricane Ike had been there a long time and were in pretty bad shape. Day 6 Trans. at 174:2-16. Mayor Jaworski could understand that residents would not want a structure in a similarly bad shape, which would have nothing to do with the residents of these structure. Day 6 Trans. at 174:17-175:2. Texas Appleseed, a group out of Austin, had environmental concerns about the locations where the public housing was to be rebuilt, which held up the rebuilding process to an extent, and they have voiced similar concerns today. Day 6 Trans. at 176:13-177:14. He testified that he vaguely remembered the federal government or some entity lodging an objection to the use of the Oleander grounds to rebuild homes based on environmental concerns in 2012. Day 6 Trans. at 179:25-180:18. A mixed-income plan was supported by HUD, the Housing Authority, the Housing Authority client list, Commissioner Stephen Holmes and largely the African American and Latino communities. Day 6 Tr. 164:1-12. Commissioner Ken Clark opposed the plan, and he voted against the allocation for public housing to Galveston at the Houston-Galveston Area Council. Day 6 Tr. 165:4-166:1. He testified that Commissioner Clark lost the vote, so it did not delay any

rebuilding. Day 6 Tr. 171: 21-24. The rebuild of the Galveston Housing Authority mixed-income plan was essentially replaced as the issue on the mayoral ballot. Day 6 Tr. 167:18-22. After Hurricane Ike, the City of Galveston transported people to other cities, and there was no housing left after the storm because most of Galveston had over six feet of water in it—so housing was a big issue because there was no place for people to live. Day 2 Trans. at 33:15-34:6. It has been a slow process rebuilding the 569 units lost to the storm; Oleander Homes is being rebuilt, Magnolia Holmes and Cedar Terrace are rebuilt. Day 2 Trans. at 34:7-17. She testified there was a lot of pushback from the community to rebuilding projects, that the City of Galveston Housing Authority (Day 2 Trans. at 56:3-4) proposed freestanding homes, so it took some time to get rebuilt. Day 2 Trans. at 34:18-35:8. The County had nothing to do with public housing in the City of Galveston. Day 2 Trans. at 56:8-9.

584. Employment

- i. Edna Courville moved to the City of Galveston with her husband in 1968 and worked as a social worker at UTMB. Day 2 Tr. 211:9-21. She worked for over 30 years at Galveston ISD as a social worker. Day 2 Tr. 214:1-3.

585. Additional testimony. Mr. Phillips testified about a mural on a grocery store wall in 2020 depicting a scene from the movie *The Planet of the Apes* (DX 40), stating he could not say what “their thinking was” when some people found the mural to be discriminatory against African Americans. DX 310 at 73:5-25. He disagreed, and saw no racism in the mural. DX 310 at 74:1-75:15; DX 40 at 3. Mr Phillips testified about an opinion piece he wrote in May 2022 discounting rumors that the mayor of Galveston is racist, stating he has known the mayor and his wife for years, they are good people, and members of the Galveston chapter of the NAACP and many other organizations. DX170; DX 310 at 7-9. He closed his piece stating “**Let us not let the outsiders come in and tarnish the name of any of our great residents.**” DX 170.

**6. Senate Factor 6: Whether political campaigns have been characterized by overt or subtle racial appeals**

586. In the 20 years since Constable Rose has been politically active, he has not seen discriminatory campaigning in Galveston County. Day 1 Tr. 93:22-94:2.

587. County Clerk Dwight Sullivan testified that he is unaware of the existence of racial appeals in political campaigns. Day 10 Tr. 244:21-245:3. Sullivan has run for County-wide office four times, and he testified that he “has not seen any” racial appeals. Day 10 Tr. 244:21-245:3.

588. Judge Pope testified her 1992 campaign for Justice of the Peace was enjoyable, without any mudslinging. Day 2 Tr. 18:5-14.

589. Dr. Burch testified about an ad depicting an MS-13 gang member from Jackie Peden, who opposed Tax Assessor-Collector Cheryl Johnson. Day 2 Tr. 90:16-25; *see also* Day 6 Tr. 17:4-16 (Quintero testimony about ad). She said the ad made claims about illegal immigrant voting (Day 2 Tr. 90:23-25), and is aware that Jackie Peden lost her campaign. Day 2 Tr. 92:1-3. Dr. Burch did not credit the fact that Galveston County voters rejected this ad and Jackie Peden by electing Cheryl Johnson. Day 2 Tr. 92:4-8.

590. Dr. Burch briefly testified about “various ads” from Randy Weber, stating “Galveston County may have partially represented” the “county-comprised parts of the district,” but did not testify about what, exactly, in Representative Weber’s ads she believed to be racial appeals, other than describing them as “minority exemplars” and using “invasion” language. Day 2 Tr. 94:14-95:2. The Court cannot credit this as evidence under Senate factor 6 on this record.

591. Dr. Burch testified about a private text message from Yolanda Waters (an African American, a Galveston County elected official, and a Republican) that contained offensive language about a Black Republican man in her community. Day 2 Tr. 93:23-94:13 (reviewing PX 414 at 34). This was not connected to any campaign in the County, and the Court does not credit this as evidence that racial appeals are used in Galveston County campaigns.

592. Ms. Courville testified that, when asked whether she had seen any appeals based on race, she had put out signs for President Obama that were taken up, or would hear people say “not voting for him”, and she believed this was based on race because the candidate was Black. Day 2 Tr. 220:22-221:18. Mr. Quintero testified that he recalled discriminatory rhetoric used during President Obama’s candidacy. Day 6 Tr. 17:19-25. The Court does not credit these examples as evidence of the use of a racial appeal by campaigns in Galveston County.

593. Mr. Jaworski also testified that Marc Hoskins, an African American candidate, was elected “and everyone went after him based on an arrest record” he may or may not have had. Day 6 Tr. at 186:11-20. The Court does not weigh this in favor of Senate 6, as Mr. Hoskins was elected.<sup>27</sup>

594. The Court finds that the one instance of the Jackie Peden ad was an isolated incident that did not result in a win for Peden. *See Clements*, 999 F.2d at 879 (5th Cir.

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<sup>27</sup> His conviction is also public record of which the Court may take judicial notice. *U.S. v. Marc Marshall Hoskins*, No. 1:99-cr-00120-RAS-WCR (E.D. Tex. 2000). Defendants ask that the Court take such notice. *See Fed. R. Evid.* 201 (courts must take judicial notice upon request if supplied with the necessary information, and may take judicial notice at any stage of the proceeding).

1993) (en banc) (two racial appeals, one of which resulted in the election of a Black candidate in both the Republican primary and the general election, were isolated incidents).

This factor does not weigh in favor of Plaintiffs.

**7. Senate Factor 7: The extent minorities have been elected to public office in the jurisdiction**

595. Several of the Plaintiffs are elected officials:

- i. Constable Derreck Rose, who is Black, has been an elected Galveston County Constable for Precinct 3 continuously since 2006, and has been re-elected for every four-year term since. Day 1 Tr. 63:8-24, 94:16-23. His 2006 election was opposed in the Democratic primary (he won), and he has run unopposed since that time.
- ii. Dwight Sullivan, who is Hispanic, is the Galveston County Clerk (Day 10 Tr. 232:4, 233:14); he ran countywide against Doug Godinich, an Anglo Democrat in 2010 and won. Day 10 Tr. 233:8. He has been reelected three times, in 2014, 2018 and 2022. Day 10 Tr. 233:18.
- iii. Judge Pope is African American, a lawyer, and served as an elected Justice of the Peace for Galveston County for 26 years, beginning in 1992. Day 2 Tr. 9:3-23, 12:10-19, 14:14-16. She ran seven times, was opposed the first time and in two later primaries. Day 2 Tr. 39:23-40:18. She beat Doug Godinich in 2006, and she beat Darrell Apffel, who is white, back when he ran as a Democrat in 2014. Day 2 Tr. 40:19-41:8.
- iv. Mr. Compian (LULAC representative) was elected to and currently serves as a councilmember in District B in the City of La Marque, and he serves as Mayor Pro Tem in La Marque. Day 6 Tr. 64:11-13, 121:6-8, 64:5-13. La Marque City Council. Mr. Compian is aware of several other members of the minority community who were also appointed to government positions, board positions, or membership positions. Day 6 Tr. 92:8-94:13.
- v. Constable Michael Montez, who is Hispanic. Day 10 Tr. 255:21-25.

596. Several minority elected officials are currently serving:

Commissioner Stephen Holmes (Black)	Commissioner Precinct 3, first appointed 1999
Commissioner Dr. Robin	Commissioner Precinct 4, elected 2022

Armstrong (Black)	
Judge Patricia Grady (Hispanic)	Judge, 212th Judicial District Court (2014-present) <sup>28</sup>
County Clerk Dwight Sullivan (Hispanic)	Galveston County Clerk (2011-present) (Day 10 Tr. 232:4, 233:14-18)
Melba Anderson (Black)	Texas City ISD School Board Member
Mable Pratt (Black)	Texas City ISD School Board Member
Nakisha Paul (Black)	Texas City ISD School Board Member
Tony Combs (Black)	Hitchcock ISD School Board Member
Dr. Shirley Price (Black)	Hitchcock ISD School Board Member
Jessica Rodriguez (Hispanic)	Dickinson ISD Trustee, Board of Trustees
Arturo Sanchez (Hispanic)	Clear Creek ISD Trustee, Board of Trustees
Jay Cunningham (Black)	Clear Creek ISD Trustee, Board of Trustees <sup>29</sup>
David H. O'Neal, Jr. (Black)	Galveston ISD Trustee, Board of Trustees <sup>30</sup>
Thelma Bowie (Black)	Texas City Council Commissioner at Large <sup>31</sup>
Abel Garza, Jr. (Hispanic)	Texas City Council Commissioner at Large <sup>32</sup> (Day 2 Tr. 272:7-273:6)
Felix Herrera (Hispanic)	Texas City Commissioner Pct. 2 <sup>33</sup>
Dedrick Johnson, Sr. (Black)	Texas City Mayor <sup>34</sup>
DeAndre' Knoxson (Black)	Texas City Council <sup>35</sup> (Day 2 Tr. 272:7-273:6)
Dorthea Jones Pointer (Black)	Texas City Council <sup>36</sup> (Day 2 Tr. 272:7-273:6)
Sharon B. Lewis (Black)	Galveston City Council <sup>37</sup>
Ron Morales (Black)	Dickinson Mayor <sup>38</sup>
Hon. Billy A. Williams, Jr.	Galveston County Justice of the Peace, Pct. 3

<sup>28</sup> Day 10 Tr. 253:17-23.

<sup>29</sup> Day 10 Tr. 254:24-255:4.

<sup>30</sup> Day 9 Tr. 71:22-72:2.

<sup>31</sup> DX 291 at 6; Day 1 Tr. 131:4-133:1; Day 10 Tr. 253:1-4.

<sup>32</sup> DX 291 at 6.

<sup>33</sup> DX 291 at 6; Day 1 Tr. 119:19-24.

<sup>34</sup> Day 1 Tr. 131:4-133:1; Day 10 Tr. 252:21-25.

<sup>35</sup> Day 2 Tr. 271:7-9.

<sup>36</sup> Day 2 Tr. 273:2-6; DX 291 at 6; Day 10 Tr. 253:5-10.

<sup>37</sup> Day 2 Tr. 273:7-11, Day 6 Tr. 112:3.

<sup>38</sup> PX 412 at 24, 3rd paragraph.

(Black)	(2018-present) <sup>39</sup>
Robert C. Williams (Black)	Hitchcock City Commission (elected 1973) <sup>40</sup>
Lynn Ellison (Black)	Texas City Commissioner (elected 1978)
Thomas Carter (Black)	Texas City Commissioner (elected 1978)
Tarris Woods (Black)	Galveston City Council Member <sup>41</sup> (Day 2 Tr. 273:12-274:1)
Fidencio Leija (Hispanic)	Santa Fe City Council <sup>42</sup>
Isaac Saldaña (Hispanic)	Kemah City Council <sup>43</sup>
Teresa Vazquez-Evans (Hispanic)	Kemah City Council <sup>44</sup>
Johnnie Simpson, Jr. (Black)	Dickinson City Council <sup>45</sup>
William H. King, III (Black)	Dickinson City Council <sup>46</sup>
Kimberley Yancy (Black)	La Marque City Council <sup>47</sup>
Keith Bell (Black)	La Marque City Mayor <sup>48</sup>
Andre Perkins (Black)	Hitchcock City Council <sup>49</sup>
Mary Combs Demby (Black)	Hitchcock City Council <sup>50</sup>

597. Many minority candidates have been elected to public office in Galveston County. Among them are:

<sup>39</sup> Day 1 Tr. 94:16-23; Day 10 Tr. 255:5-11.

<sup>40</sup> PX 412 at 20, second paragraph. The next two elected officials are also referenced here.

<sup>41</sup> Day 9 Tr. 71:5-72:9; Day 9 Tr. 72:3-9.

<sup>42</sup> DX 291 at 6; Day 10 Tr. 251:14-19.

<sup>43</sup> DX 291 at 6.

<sup>44</sup> DX 291 at 6.

<sup>45</sup> DX 291 at 6.

<sup>46</sup> DX 291 at 6; Day 10 Tr. 252:1-4.

<sup>47</sup> DX 291 at 6; Day 1 Tr. 131:4-133:1; Day 10 Tr. 252:7-10.

<sup>48</sup> DX 291 at 6; Day 10 Tr. 252:11-14.

<sup>49</sup> DX 291 at 6; Day 10 Tr. 252:15-20.

<sup>50</sup> DX 291 at 6.



Official	Office
Fidencio Leija	Santa Fe City Council (Hispanic)
Isaac Saldaña	Kemah City Council (Hispanic)
Teresa Vazquez-Evans	Kemah City Council (Hispanic)
Johnnie Simpson, Jr	Dickinson City Council (Black)
William H. King, III	Dickinson City Council (Black)*
Joe Compian	La Marque City Council (Hispanic)
Kimberley Yancy	La Marque City Council (Black)
Keith Bell	La Marque City Mayor (Black)
Andre Perkins	Hitchcock City Council (Black)
Mary Combs Demby	Hitchcock City Council (Black)
Dedrick Johnson, Sr.	Texas City Mayor (Black)
Thelma Bowie	Texas City Council (Black) Commissioner At-Large
Abel Garza, Jr.	Texas City Council (Hispanic) Commissioner At-Large
DeAndre' Knoxson	Texas City Council (Black)
Felix Herrera	Texas City Council (Hispanic)
Dorthea Jones Pointer	Texas City Council (Black)
Sharon B. Lewis	Galveston City Council (Black)

\* William King, III ran for Galveston County Judge in 2022.

DX 291 at PDF p.6.

598. Several more minority elected officials have served within the County in the past:

Hon. Frank Carmona (Hispanic)	Judge, 212th Judicial District Court (1994-2002); Galveston County Commissioner (1970-1990) <sup>51</sup>
Hon. Wayne Johnson (Black)	Galveston County Commissioner, Precinct 3 (1988 -1999) <sup>52</sup>
LaTonia Wilson (Black)	Galveston County District Clerk (2006 - 2012) <sup>53</sup>
Gerald Burks (Black)	County Treasurer (1994-2002) <sup>54</sup>
Hon. Michelle Slaughter (Hispanic)	Judge, 405th Judicial District Court (2013-2018) <sup>55</sup>
Hon. Roy Quintanilla (Hispanic)	Judicial District Court Judge (former), Galveston County Court at Law (former) <sup>56</sup>
Constable Terry Petteway	Galveston County Constable, Precinct 2 (1992-

<sup>51</sup> Day 2 Tr. 15:10-16:7, 23:25-24:8; Day 5 Tr. 75:18-22.

<sup>52</sup> Day 2 Tr. 15:16, 16:22, 24:4-11, 56:19-23; Day 6 Tr. 220:3-14.

<sup>53</sup> Ms. Wilson was elected in 2006 after running against Anglo opponent John Ford. Day 2 Tr. 22:24-23:5.

<sup>54</sup> PX 412 at 33 ¶ 5.6; Day 2 Tr. 22:24-23:5.

<sup>55</sup> Day 6 Tr. 57:25; 253:24-254:4.

<sup>56</sup> Day 2 Tr. 22:24-23:5; Day 6 Tr. 16:16, 55:6-9, 55:14; Day 10 Tr. 254:5-10.



(Black)	2017) <sup>57</sup>
Constable Earl Tottenham (Black)	Galveston County Constable (former) <sup>58</sup>
Hon. Sonny James (Black)	(former) Galveston County Justice of the Peace <sup>59</sup>
Chris Lang (Black)	(former) La Marque City Council Member (Day 9 Tr. 71:15-21; Day 2 Tr. 273:12-274:1)
David O'Neal (Black)	(former) Galveston City Council Member (Day 9 Tr. 71:24-72:2)
Cornelia Harris Banks (Black)	(former) Galveston City Council Member (Day 9 Tr. 72:10-15)
Kimberly Yancy (Black)	(former) La Marque ISD School Board Member <sup>60</sup>

599. Mr. Quintero testified that he recalled Frank Carmona being elected to the Commissioners Court, and it was a monumental to him. Day 6 Tr. 44:8-45:7.

600. Dr. Armstrong recalls Latonia Wilson is a Black woman who ran as a Democrat against Republican John Ford for Galveston County District Clerk in 2006 and won that election. She was the Galveston County District Clerk until around 2010. Day 10 Trans. 198:4-25.

601. Marc Hoskins, an African American candidate, was an elected official. Day 6 Tr. at 186:11-20.

602. Wayne Johnson, who was Black, was elected as a Galveston County Commissioner in 1988; he was an advocate for his neighborhood and helped improve parks and recreation. Day 6 Tr. 220:3-14. He served as Commissioner of Precinct 3 until he passed away in 1999.

<sup>57</sup> Day 2 Tr. 22:15; Day 7 at 32:13-18; Day 10 Tr. 255:12-19.

<sup>58</sup> Day 1 Tr. 94:16-95:5.

<sup>59</sup> Day 2 Tr. 16:18-29, 15:10-16:7, 23:25-24:8.

<sup>60</sup> DX 291 at 6.

603. In the 1990s into the early 2000s, there were several Black elected officials, including Judge Pope, Constable Terry Petteway, Sonny James, Earl Tottenham who was Constable of Precinct 3, Latonia Wilson who was District Clerk, and Gerald Burks who was County Treasurer. Day 2 Tr. 22:11-23:2. There was also Roy Quintanilla, who was Hispanic and a former County Court Judge. Day 2 Tr. 23:2-4.

604. Dr. Burch looked at only 2 elections in reviewing the evidence for Senate Factor 7, the ability of minorities to be elected to office. Day 2 Tr. 96:7-21. Dr. Burch testified that no minorities were elected to office other than Commissioners Johnson and Holmes. Day 2 Tr. 97:6. The Court does not credit her testimony on this factor.

605. Dr. Rocha has limited knowledge of Galveston County, conducting research on public schools in the County approximately 20 years ago, where he spoke with only one person while pursuing his Ph. D which was granted from Texas A & M in 2006. Day 5 Tr. 194:14-195:1. On cross examination Dr. Rocha admitted that he failed to include Dr. Robin Armstrong, a black Commissioner elected to the County Commission in 2022, in his report. When asked if he believed that the omission of Dr. Armstrong as a black elected official rendered his report inadequate, he responded that he should have included Dr. Armstrong. Dr. Rocha also testified that he did not research the ability of minority candidates to be elected to jurisdictions within Galveston County. Day 5 Tr. 245:11-251:6. For these reasons, the Court does not credit Dr. Rocha's testimony on this factor.

606. The Court finds this factor weighs in favor of Defendants.

**8. Enhancing Factor: (Reduced weight) Officials' significant lack of responsiveness to minority concerns**

607. In addition to the evidence recounted under Senate Factor 1, above, Mr. Phillips testified that he has no knowledge of any elected official in Galveston County being unresponsive to the needs of minority residents. DX 310 at 109:10-16.

608. Reverend Randall testified that former County Judge Jim Yarbrough was very helpful and involved in Reverend Randall's community, and he was County Judge until 2010. Day 6 Tr. 222:21-223:2. He testified Mark Henry met with him and other Black pastors and constituents at a church breakfast. Day 6 Tr. 223:3-20. Since Reverend Randall was not the person getting in contact with Judge Henry, he does not know why there was not another breakfast after that. Day 6 Tr. 223:21-224:1.

609. Reverend Randall testified that Commissioner Johnson was involved with the community, and that when Stephen Holmes became commissioner, that he was responsive to the minority community. Day 6 Tr. 220:15-221:19. He testified that Commissioner Holmes helped Black churches during the pandemic by participating in calls with pastors and helping organize testing and vaccine sites. Day 6 Tr. 221:20-222:20.

610. Before redistricting, Constable Rose reached out to Commissioner Apffel for assistance with County commissioner issues, and testified Commissioner Apffel was responsive to those issues. Day 1 Rough Tr. 55:20-56:2. He testified that he knows Commissioner Apffel well, that he coached Commissioner Apffel's son in Little League, and that they have always conversed. Day 1 Rough Tr. 73:8-11, 87:4-11. Constable Rose has not reached out to Commissioner Apffel about issues during his time as a resident of

Precinct 1. Day 1 Rough Tr. 56:3-9. However, he knows Commissioner Apffel and feels he could call him if he needed anything in his precinct, and that he would do so if it would help the people of Galveston County. Day 1 Rough Tr. 78:16-22.

611. Commissioner Giusti testified that, as a County Commissioner, most calls received involve drainage, ditches and roads, and sometimes mosquito control. Day 9 Tr. 75:23-76:7. The County enters into agreements with a lot of cities in the County to allow the County to work with them on roads and drainage issues. Day 9 Tr. 76:11-18. He has helped the City of Hitchcock by having road materials donated. Day 9 Tr. 76:19-77:3. The Hitchcock Community Center requested help with a parking area needing improvement, and the County donated material to the City of Hitchcock so they could assist. Day 9 Tr. 78:4-13. The County has helped on a multi-million-dollar road project in La Marque, and matched funding for that project by approximately \$1 million. Day 9 Tr. 77:4-78:13. The County donates to libraries every year, and the County library system has all libraries included, so residents of any city can go to any library in the County without paying additional fees. Day 9 Tr. 79:2-12. The libraries provide internet access to residents in Galveston County. Day 9 Tr. 79:13-17.

612. Judge Pope testified that it is important for minorities to advocate for minority communities on the Commissioners Court, and that apart from Commissioner Apffel she does not believe the other commissioners have a clue about what goes on in minority communities. Day 2 Tr. 36:16-37:2. While Judge Pope testified that, for the most part, she does not believe the Commissioners Court is responsive to the needs of the Black and Hispanic communities in Galveston County (Day 2 Tr. 26:12-24), she could not think

of any examples until she was asked by Plaintiffs' counsel whether she agreed the 2011 and 2021 redistricting cycles were examples. Day 2 Tr. 27:8-12.

613. From his experience on the Court, Dr. Armstrong feels that the Commissioners Court is responsive to the needs of minorities. Part of his precinct covers minority voters and he is an open book to hear about those needs. Day 10 Tr. 192:18-193:3.

614. Language Assistance. Commissioner Giusti hired his assistant in part because she is bilingual, and she often helps translate for not only Commissioner Giusti's constituents, but for everyone in the building, from the Constable's office, to the Justice of the Peace court, to the tax office. Day 9 Tr. 80:17-24. Commissioner Holmes testified he serves Spanish-speaking citizens so he has materials translated and the office next to his has Spanish speakers who can interpret when needed. Day 7 Tr. (Rough) 41:10-42:11.

615. Healthcare.

- i. The County provides indigent healthcare through Coastal Health and Wellness Center who are front-line providers. The County moved the indigency level from 26% to 100% of the federal poverty line; Judge Henry believes he made the motion. Day 7 Tr. (Rough) 234:17-23. Raising the indigency level increases the number of people eligible for the service. Day 7 Tr. (Rough) 235:3-15. Mr. Compian testified that LULAC 151 has dealt with issues regarding access to indigent healthcare, and with LULAC's and collaborating organizations' advocacy, the Court voted to increase the qualifying level for indigent care to 100 percent of the poverty level. Day 6 Tr. 69:16-70:14. He testified that it was a unanimous vote by the Commissioners Court, and he is not aware of any subsequent effort to reduce the percentage. Day 6 Tr. 85:12-22.
- ii. The County has started mental health court for people having mental health issues needing treatment rather than being in jail. Day 7 Tr. (Rough) 237:13-238:4

616. Witnesses at trial testified that Commissioner Holmes is responsive to

minority concerns, such as being helpful in increasing the qualifying level for indigent care. Day 6 Tr. 70:15-71:19 (Compian); Day 6 Tr. 22:7-23 (Quintero).

617. Library. The County provides funds for library services to be open to everyone throughout the County through \$550,000 yearly expenditure to Rosenberg Library. Day 7 Tr. (Rough) 235:16-21

618. The County complied with bail requirements before mandated by the State and magistrate arrestees every twelve hours to allow them to potentially post bail and get out of jail quicker. Day 7 Tr. (Rough) 235:24-237:12

619. Statue

- i. Commissioner Holmes testified that some people in Galveston County wanted the confederate statue removed from the grounds of the old courthouse in Galveston, but he was the only member of the Commissioners Court to support its removal, so the motion to remove died for lack of a second and the statue remains in place today. Day 7 Tr. (Rough) 57:25-58:12.
- ii. Commissioner Giusti did not vote to remove the Confederate statue in front of the courthouse because he thinks statues are there for history, but the County took the plaque down, which Commissioner Giusti could see would be offensive to a lot of people. Day 9 Tr. 83:16-84:14. Commissioner Giusti has worked with a local historian in Hitchcock to discuss how the 722 Moody courthouse square could be enhanced to honor the birthplace of Juneteenth, and got architectural drawings donated to show how four statues could be erected in honor of Juneteenth. Day 9 Tr. 84:15-8. Commissioner Holmes is not in favor of the project. Day 9 Tr. 85:9-15.
- iii. On the confederate statue, there was a request to remove it without consideration of where to move it to, but the focus really became the plaque, which was removed because the feedback Judge Henry received was the plaque was the offensive part of the statue so they removed it at Judge Henry's direction. Day 7 Tr. (Rough) 240:8-25.
- iv. As opposed to the statue at the courthouse, Mr. Phillips testified about the bronze statute of Jack Johnson was placed on the property of Old Central in

2014 (DX 28), and stated the African American Heritage Committee and the Historical Foundation and the City of Galveston were the major players in getting the statute erected. DX 310 at 71:4-72:10.

620. Border Assistance.

- i. Commissioner Holmes testified that he disagreed that the events at the border constituted an emergency in Galveston County. Day 7 Tr. (Rough) 58:15-59:23.
- ii. Commissioner Giusti voted to send assistance to the border. Day 9 Tr. 85:16-22. His opinion is that when Galveston County has a storm and needs help, a lot of agencies send first responders to help, and sending help to the border is similar, since Kinney County has only six deputies. Day 9 Tr. 85:23-86:8. The Kinney County Sheriff has expressed thanks for the help from Galveston deputies, who provide law enforcement help, which “a lot of it is really helping people,” and the local ranchers have even volunteered their ranches to house the deputies. Day 9 Tr. 86:14-87:14. Galveston County money is not funding this. Day 9 Tr. 87:15-17.
- iii. Mr. Quintero testified that the vote regarding the American Rescue Plan Act funds being used to police the Mexican border was held at the Galveston County Annex in League City. Day 6 Tr. 20:24-21:2. He testified that he has not attended any other meeting at the League City location, including the November 12, 2021 meeting. Day 6 Tr. 21:3-7. He testified that he did not have enough notice of the meeting to change his schedule to attend the November 12, 2021 meeting because he found out on the same day. Day 6 Tr. 21:8-13; Day 6 Tr. 24:15-17.
- iv. Judge Henry voted for the measure to provide assistance to officers at the border because the State asked for assistance. As of today, the program costs the County nothing. Day 7 Tr. (Rough) 238:13-239:4
- v. Assistance at the border with personnel is scheduled through Deputy Constable Jimmy Fullen who coordinates housing for available deputies anywhere from six to eight at a time are helping Kinney County sheriff’s staff. The County Commissioner, Sheriff and County Judge have all told Judge Henry thank you for the support by Galveston County. Day 7 Tr. (Rough) 239:7-25
- vi. Funds were not actually sent down to the border. Day 7 Tr. (Rough) 240:1-4
- vii. Mr. Phillips testified about the Dignified Resignation statute in front of the courthouse. DX 310 at 79:5-10. He had previously agreed, when he spoke

with an individual on the island about getting the statute cleaned up, to use all the influence he had to keep anybody from messing with the statue. DX 310 at 79:11-22. He also testified he was “50/50” on the idea of having the statue removed. DX. 310 at 79:23-25.

- viii. Dr. Armstrong testified that Galveston County has the highest death rate by drug overdoses in Texas and much of it is accidental overdose attributable to Fentanyl. Day 10 Tr. 193:4-16. There is a lot of evidence that’s been shown that Fentanyl being manufactured overseas gets to the United States through Mexico. Day 10 Tr. 193:17-24. The flow of Fentanyl in from Mexico and the high overdose death rates in Galveston County is a reason why it makes sense for Galveston County to participate in border protection and assistance to peace officers down in that region. Day 10 Tr. 193:25-194:4.
- ix. Mr. Quintero testified that he objected to the Commissioners Court allocation of \$3 million to border assistance, but he does not know how they are applying it, and he is unaware of how they are paying the deputies and constables there. Day 6 Tr. 34:24-35:4. He testified that he could have used that funding at the GCCAC, as he was director at the time. Day 6 Tr. 20:12-23. Mr. Quintero testified that he was aware that the Texas Housing Department brought action against GCCAC in 2021 alleging that the organization was not spending its allocated funds that were meant to help citizens in the community, and that the funds were retracted and their eligibility to participate in certain federal programs was removed. Day 6 Tr. 28:2-29:16; Day 6 Tr. 30:5-13.

621. Minority Events The County allows LULAC to use County facilities on an annual basis. Day 7 Tr. (Rough) 234:6-9. Mr. Quintero testified that Galveston County has allowed LULAC to use County property and facilities for events. Day 6 Tr. 46:9-47:5. He testified that some voter registration groups have asked to attend these events, and on occasion these events are held next to polling locations when elections were being held. Day 6 Tr. 47:10-48:5. Mr. Quintero testified that an outside, private group opposed LULAC’s use of this space because they believed it would prevent people from accessing the poles, but he testified that LULAC encouraged people to vote, as it was a non-partisan election. Day 6 Tr. 49:5-15.



- i. Mr. Compian testified that despite grumblings he is grateful to the Commissioners Court for providing access to County facilities to LULAC for events. Day 6 Tr. 86:22-87:3.
- ii. Mr. Compian testified that Galveston County's allowance of LULAC's use of County facilities for two events does not change his opinion of the adopted map, which he testified "devastated his community." Day 6 Tr. 107:6-11.

622. Constable Rose testified Stephen Holmes has been responsive to his constituents' needs regardless of race. Day 1 Rough Tr. 88:2-9. Ms. Courville testified Commissioner Holmes has been responsive to the minority community, senior citizens, and assistance after Hurricane Ike with help to open the senior citizen building. Day 2 Tr. 235:14-236:22. He assisted with transportation for senior citizens to get to the grocery store, and Ms. Courville would go to him for help with school transportation for field trips. Day 2 Tr. 237:5-25. Commissioner Holmes assisted Ms. Courville's recommendation of Joe Compian to fill Sonny James' position as Justice of the Peace while Judge James was ill. Day 2 Tr. 238:2-239:6. She believes Commissioner Holmes' vote not to send constables to the border represented her community, and she believed the Commissioner Court's decision as the perfect example of how money could have been used to assist people in the County, including with housing, transportation, or food for Latinos and African Americans. Day 2 Tr. 239:7-240:14. She did not know whether money was actually sent to the border, and does not know what constables down there are doing. Day 2 Tr. 268:16-269:5.

623. Criticisms of Dr. Armstrong.

- i. Dr. Burch criticized Dr. Armstrong for "potentially dangerous treatment" of patients during COVID-19, even though she is not a medical doctor. Day 2 Rough Tr. 195-8. Dr. Armstrong testified knew the treatment he provided was not dangerous. Day 10 Tr. 186:20-187:5.

- ii. Reverend Randall knows of Commissioner Armstrong, and knew his father, who was a community advocate. Day 6 Tr. 228:2-25. He testified he thinks Commissioner Armstrong's father would be ashamed of him for not being the kind of leader his father was. Day 6 Tr. 229:1-10. Dr. Armstrong is aware of Pastor Randall's testimony that Commissioner Armstrong's father would be ashamed of him. Dr. Armstrong knew his father well. His father would be proud of him and to see the progress that has been made and that someone from the other party can serve the African American community just as well as anyone else. Day 10 Tr. 200:23-201:19 Dr. Armstrong expects to continue his father's advocacy for and service to the community. He learned from his father to be a man of service and true to his convictions in service to the community and on the Commissioners Court. Day 10 Tr. 199:22-200:19.
- iii. Even though Commissioner Armstrong was born and grew up in Ms. Courville's community, she does not believe he is part of her community now. Day 2 Tr. 264:22-265:9. She does not believe he will be responsive to her community. Day 2 Tr. 240:25-241:5. He grew up attending McKinney Memorial United Methodist Church in La Marque, and Ms. Courville suggested he serve as a trustee on a foundation but he did not attend meetings. Day 2 Tr. 241:8-242:9.

**9. Enhancing Factor: (Reduced weight) Tenuous policy underlying use of challenged electoral procedure**

624. The Commissioners Court weighed several interrelated issues when redistricting, and as discussed above, they did so on a compressed timeline.

625. Apart from balancing the population, the Commissioners' goals included keeping their homes in their respective precincts, cleaning up the precinct boundaries, and creating a coastal precinct. The Court also finds that the Commissioners also considered the resulting political constituency that redistricting effected.

626. There are two areas of the County that face the sea: Galveston Island and Bolivar Peninsula. An August 29, 2011 article on redistricting discussed County Judge Mark Henry's consideration of:

. . . comments from Bolivar Peninsula residents who insist that the four

unincorporated communities on the peninsula have more in common with residents on Galveston Island, and that any map should keep the island and Bolivar in the same precinct.

JX 3 at 2 (top left column, “Redistricting”). This was a starting point for Judge Henry’s belief that was reinforced over time. Day 7 Tr. (Rough) 180:14-181:2

627. Counsel for the County in 2011 reviewed this article and attempted to incorporate those comments into a draft Commissioners Court plan “1A” that reduced the number of commissioners with seaward boundaries from 3 to 2. PX 45 at 1, 8.

628. In 2011, preclearance was still in place for jurisdictions within the State of Texas. As discussed above, the DOJ objected to the proposal, and a settlement map was reached that had three commissioners with seaward boundaries. DX 4.

629. Commissioner Appfel testified that during a September 8, 2021, phone call attended by Judge Mark Henry, Paul Ready, Dale Oldham, and Tyler Drummond, which served as a sort of “kick off” meeting upon receipt of the 2021 census data, Judge Henry discussed the concept of the coastal district that he’d come up with in efforts to equal the population through potential redistricting. Day 9 Tr. 304:12-305:1. To Appfel, the “coastal precinct concept” made sense because the geographical location of the areas included in the grouping shared the same issues and concerns related to beach front property subject to GLO oversight, which could all be addressed by one individual if gathered together into one precinct. *Id.* at 309:13-310:9. Commissioner Appfel testified on cross examination that, while the “coastal precinct” was just a concept on the initial phone conference and no maps were presented, he did believe it could be a problem for Commissioner Holmes, which did concern him. *Id.* at 371:18-372:14. Commissioner Appfel testified the first time he was

presented with “Map 2” was at an in person meeting with Dale Oldham, Tyler Drummond, Paul Ready, and Ken Clark (with the demographer appearing by zoom), following an initial phone meeting that occurred on September 8, 2021. Day 9 Tr. 305:19-23. He testified the “Map 2” proposal included the “coastal precinct concept” discussed at the September 8, 2021 meeting. *Id.* at 305:17-21.

630. Coastal boundaries within the County carry unique issues that require coordination with state and federal agencies such as the Texas General Land Office (“GLO”) and the U.S. Army Corps of Engineers.

631. Judge Henry had feedback on the coastal precinct in 2011, but being new, he did not appreciate how big a deal that might be. Day 7 Tr. (Rough) 178:10-16. Over the course of years, it became obvious there are so many programs that only impact the coastline. And the County deals with them infrequently that it is hard to have two or three commissioners remain sharp on GOMESA and CPRA and other programs that are specific to the coast. From an efficiency standpoint, having one commissioner who could keep track of all that and then tell the County about deposits and uses of funds specific to the area. Day 7 Tr. (Rough) 178:10-179:1. Judge Henry thought having a single commissioner dealing with similar issues of where the County has money to do something at the coast is more efficient, as one commissioner can answer to Bolivar and Galveston constituents and come to the Court with the requests and recommendations. Day 7 Tr. (Rough) 182:4-13.

632. The similarities between the Bolivar and what the City of Galveston experiences include seaweed, beach rakes, turtle-excluding devices, uncapped oil wells, GOMESA and CPRA, which are federal programs, beach access points, and beach parking

program. Day 7 Tr. (Rough) 181:18-182:3, Day 9 Tr. 80:6-16. Both Bolivar and the Island have a lot of tourism, and the fishing and seafood industries are big in both areas. Day 9 Tr. 102:10-23.

633. Commissioner Giusti's work in Bolivar is more than other areas because it is unincorporated, and while he helps with drainage and roads as in other parts of the precinct, he also helps with beach erosion issues. Day 9 Tr. 103:2-11. He works with the General Land Office on beach erosion and cleaning issues. Day 9 Tr. 103:12-17. The County maintains the seawall and owns the beach pocket parks as well. Day 7 Tr. (Rough) 182:14-20. There is a beach on the West end of Galveston Island that the County also has to ensure is maintained. Day 9 Tr. 103:18-23.

634. Bolivar's voting population is smaller than that in the rest of Precinct 2. Day 9 Tr. 101:21-102:1. It is an ongoing issue that Bolivar residents want more representation, and Commissioner Giusti believes that joining Bolivar and the Island into one County precinct will help, because Bolivar has many of the same issues as on the Island. Day 9 Tr. 102:2-11.

635. Plaintiffs' witness Dr. Burch had never been to Galveston before she testified at trial, and is not familiar with coastal issues. She disbelieved the importance of a coastal district, and testified it was possible to have a coastal precinct without eliminating Precinct 3, and that no one was clamoring for a coastal precinct. Day 2 Tr. 104:7-105:5. She is not a demographer or *Gingles* expert, Dr. Burch testified about maps she did not draw to provide opinions on Galveston County's redistricting process, opining beyond the scope of her expertise that a map could be drawn with both a coastal precinct and a minority-

majority precinct. Day 2 Rough Tr. 124:9-126:16.

636. The Court finds the policies considered were not tenuous.

**v. Intentional Racial Gerrymandering (14th Amendment) Evidence**

**1. Mr. William Cooper**

637. Mr. Cooper testified that the 2021 Map has a population deviation that is lower than all but one of his Illustrative Plans. Day 3 Tr. 101:7-23. For example, his Illustrative Plan 1 has a population deviation of 1.69%, which is higher than the 2021 Map's population deviation of 1.05%. Day 3 Tr. 103:21-104:1. Meanwhile, his Illustrative Plans 3 and 3A both have a population deviation of 3.53%—which is also higher than the 2021 Map. Day 3 Tr. 104:14-19; 105:7-20. The only plan he proposed with a lower population deviation than the 2021 Map was Illustrative Plan 2, which has a population deviation of 0.57%. Day 3 Tr. 108:12-16.

638. Mr. Cooper also testified that the 2021 Map contains 4 voter precinct (VTD) splits, and that this is a reasonable amount of splits. Day 3 Tr. 106:1-15. Most of the other maps proposed have only slightly fewer VTD splits than the 2021 Map, but those all have higher population deviation scores. Day 3 Tr. 111:10-13. For example, the County's Map Proposal 1 has 3 VTD splits. Day 3 Tr. 107:22-25. Meanwhile, Mr. Cooper's Illustrative Plan 1 has 1 VTD split Day 3 Tr. 108:1-3, while his Illustrative Plans 3 and 3A both have 2 VTD splits. Day 3 Tr. 110:5-18. In other words, these Illustrative Plans split fewer VTDs than the 2021 Map, but those plans also have higher population deviation than the 2021 Map. Day 3 Tr. 110:22-111:3. On the other hand, Mr. Cooper's Illustrative Plan 2 has 9 VTD splits—five more than those present in the 2021 Map. Day 3 Tr. 108:17-21. So, even

though Illustrative Plan 2 has a lower population deviation than the 2021 Map, it includes several more precinct splits. Day 3 Tr. 111:4-9.

639. Mr. Cooper further testified that, while some of his Illustrative Plans have low population deviation and fewer VTD splits, they don't unify Galveston Island with the Bolivar Peninsula as the County wished to do. Day 3 Tr. 111:10-15. For example, his Illustrative Plan 1 does not unify the coastal region at all Day 3 Tr. 108:9-11, while Illustrative Plan 2 unifies most (but not all) of the coastal area with a few precinct splits in the City of Galveston. Day 3 Tr. 109:3-11. Of all of his proposals, only Illustrative Plan 3 unifies the coastal region of the County. Day 3 Tr. 109:12-15.

640. In terms of compactness, Mr. Cooper testified that he does not have a problem with the compactness score of the 2021 Map, and stated that he thinks the score is reasonable. Day 3 Tr. 111:16-24. Indeed, Mr. Cooper testified that it is not possible to draw a compact majority-Black or majority-Latino Commissioners Court precinct. Day 3 Tr. 112:23-113:7. This is borne out by population trends in the County over the preceding decade.

641. As Mr. Cooper testified, the total population of Galveston County increased by nearly 60,000 from 2010 to 2020; this was the largest population growth decade-by-decade since 1990. Day 3 Tr. 113:22-114:15. Of this growth, the Latino population in the County increased by over 23,000 (2.87% increase from 2010 to 2020) Day 3 Tr. 115:10-21, while the Black population grew by nearly 4,000 (0.48% decrease from 2010 to 2020). Day 3 Tr. 116:14-117:11. And, as a matter of geography, Mr. Cooper acknowledged that the League City area has grown and accounts for one-third of the population of Galveston

County according to the 2020 numbers. Day 3 Tr. 120:3-24.

642. Mr. Cooper next testified about the specifics of his Illustrative Map 1. He observed that Illustrative Map 1 splits the coastal region between Commissioner Precincts 1, 2, and 3, and confirmed that it is a least-changes plan that largely mirrors the 2012 Benchmark Plan. Day 3 Tr. 121:10-20. Illustrative Map 1 contains several features that indicate race was the predominant consideration in the line-drawing process.

643. For example, Mr. Cooper acknowledged that there are approximately 750 people from League City who are included in Precinct 3 under his Illustrative Plan 1, while the rest of that jurisdiction is in Precinct 1. Day 3 Tr. 123:15-124:9. Meanwhile, Illustrative Plan 1 features a sliver across from Pelican Island that was cut out from Precinct 3. Day 3 Tr. 126:2-127:1. Illustrative Plan 1 also has a narrow neck below Highway 3 just below Dickinson Day 3 Tr. 128:4-23, and near League City, it has a nose pointing out to Interstate Highway 45 Day 3 Tr. 129:8-23. Mr. Cooper acknowledged that the narrow neck and nose features in Illustrative Plan 1, which contain heavily Black and Latino populations, likely lowered that map's compactness scores (Reock is 0.017; Polsby-Popper is 0.11). Day 3 Tr. 129:24-130:7. Finally, Mr. Cooper testified that, for Illustrative Plan 1, he added two pockets of majority Black and Latino voting-age populations to Precinct 3 that lie along Highway 1675 near La Marque. Day 3 Tr. 131:21-132:18.

644. Next, Mr. Cooper testified about his Illustrative Plan 2. He confirmed that Illustrative Map 2 is a least-changes plan with a nearly-unified coastal region (but which is somewhat split between Commissioner Precincts 2 and 3). Day 3 Tr. 137:1-13. Illustrative Map 2 also contains several features that indicate race was the predominant



consideration in the line-drawing process.

645. For example, on Galveston Island, Illustrative Map 2 carves out a narrow strand along Seawall Boulevard for Precinct 2 and places the rest of the area around Highway 2005 into Precinct 3. Day 3 Tr. 139:9-140:6. Meanwhile, along Highway 3 toward Dickinson, Illustrative Map 2 picks up a couple of areas with higher populations of Black and Latino voters. Day 3 Tr. 142:15-143:1.

646. Mr. Cooper then testified about his Illustrative Plan 3. He confirmed that Illustrative Plan 3 fully unifies the coastal region of the County into Precinct 1 Day 3 Tr. 143:10-15. It likewise appears that Illustrative Map 3 contains features indicating that race was the predominant consideration in the line-drawing process.

647. For instance, Illustrative Plan 3 features an arm of Precinct 3 that reaches eastward into Texas City, along Highway 674 toward the bay. Day 3 Tr. 143:25-144:10. The end of that arm has a “thumbs-up” portion adjacent to Moses Lake, which completely cuts off sections of Precinct 1 on either side. Day 3 Tr. 144:11-24. Mr. Cooper could not confirm that his intent in drawing this portion of the map was to ensure population equality in Illustrative Plan 3. Day 3 Tr. 144:25-145:20.

## **2. Dr. Owens**

648. Dr. Owens testified that he stands behind the opinion in his expert report that the Illustrative Plans proposed by Mr. Cooper, Dr. Rush, and Mr. Fairfax are all racial gerrymanders. Day 9 Tr. 256:1-18. Although each of those experts testified that race was not a predominant consideration in their drawing of the maps, Dr. Owens pointed out that they did rely on “least changes” methodology. Day 9 Tr. 256:19-257:14. This means their

maps were keyed to the Benchmark Plan (where race had been a major consideration due to the fact that it was a VRA Section 5 map). Day 9 Tr. 258:1-25.

649. Dr. Owens testified that certain features of Mr. Cooper's Illustrative Map 1 are suspect. For example, Dr. Owens pointed out that when Mr. Cooper shifted two VTDs from Precinct 2 to Precinct 3 around La Marque—supposedly to equalize population—he also allowed himself an “extension” to capture additional minority voters in the Bayou Vista area. Day 9 Tr. 260:14-19. Likewise, Dr. Owens pointed out that Mr. Cooper split Galveston Island into three Precincts—and in doing so, selectively worked around a concentrated Latino population in VTD 225 along Highway 6. Day 9 Tr. 261:4-262:1.

650. Dr. Owens testified that aspects of Mr. Cooper's Illustrative Map are suspect. For example, he noted that Mr. Cooper gave Precinct 2 contiguity on Galveston Island through a tiny strip of beach. That strip of beach is so narrow that weather patterns could impact the Precinct's contiguity. On this point, he testified that “it's not normal for map-drawers to use areas of beach. Often, in this case, you might combine something. If it's going to be a community of interest, it will have a population with it.” Day 9 Tr. 263:5-264:1.

651. Dr. Owens testified that Mr. Cooper's Illustrative Plan 3 also has some suspect features. For example, he pointed out that Precinct 1 forms a hook around Texas City and is only contiguous across the Moses Lake floodgate. Dr. Owens emphasized that this feature of contiguity for Precinct 1 is a “stretch.” Day 9 Tr. 264:25-265:9. Dr. Owens also confirmed the statement in his report noting that the Precincts in Mr. Cooper's Illustrative Plan 3 might be more compact if the community of interest in Dickinson was

joined with a community in League City—where populations are more similar. Day 9 Tr. 265:13-19.

652. Dr. Owens testified that Mr. Fairfax’s Illustrative Plan also raised suspicion about what motivated its creation. Specifically, Dr. Owens testified that Mr. Fairfax’s decision to shift VTD 218 into Precinct 3 was based on racial considerations—since it was not the best choice for increasing that Precinct’s compactness. Dr. Owens reiterated the statement in his report that, had Mr. Fairfax shifted VTD 223 instead of VTD 218, Precinct 3’s compactness score would have been ameliorated. Day 9 Tr. 270:5-271:20.

### **3. Thomas Bryan**

653. On Thursday, October 14, Mr. Gordon contacted Mr. Bryan to determine his availability to draw precincts for the Galveston County Commissioners Court. Day 8 Tr. 226:4-21. On a phone call the following day, Mr. Gordon instructed Mr. Bryan to draw two different maps.

654. For the first map, what Mr. Bryan called a “least-change map,” Mr. Gordon instructed Mr. Bryan to minimize population deviation while changing as little other characteristics as possible and maintaining whole precincts. For the second map, what Mr. Bryan called a “four Republican map,” Mr. Gordon instructed Mr. Bryan to “explore the possibility of balancing Republican performance across each of the four districts,” while still maintaining whole precincts and minimizing population deviation. Day 8 Tr. 228:13-20. As originally conceived, therefore, the goals of the four Republican map were to optimize political performance, maintain equal population, and minimize precinct splits. Day 8 Tr. 236:11-21.

655. Mr. Bryan began with the Benchmark Plan. Day 8 Tr. 229:14-22. Because he was directed to draw a map with partisan advantages, Mr. Bryan used Texas precinct data, which included “political performance data,” rather than the U.S. Census Bureau precinct data, which did not include political performance data. Day 8 Tr. 231:17-232:13. Mr. Bryan testified that he used these data to “build the four Republican districts,” i.e., “make the four Commissioners Court precincts Republican,” at “the direction of Mr. Gordon at the first day of the project.” Day 8 Tr. 233:16-25.

656. On October 16, 2021 Mr. Bryan informed Mr. Gordon and Mr. Jason Torchinsky that he anticipated he would be able to meet their goal of balancing population with minimal precinct splits and “get four strong” Republican districts. Day 8 Tr. 236:25-237:16. Using data from the 2020 U.S. Senate race in Texas, Mr. Bryan calculated the share of votes cast for the Republican candidate in each of the new precincts in his four Republican map. Day 8 Tr. 245:18-246:20. The precinct with the lowest Republican performance registered 54 percent, and the precinct with the highest Republican performance registered 68 percent. Day 8 Tr. 246:21-247:1.

657. Mr. Bryan testified that part of the initial work product he created on October 16, 2021 included an analytic spreadsheet displaying the underlying data for the least-changes and 4R maps he drew. The creation of this spreadsheet is a “standard template” for Mr. Bryan in the course of his redistricting work. Day 8 Tr. 239:18-240:7.

658. The initial analytic spreadsheet from October 15, 2021 included racial demographic data that was automatically generated by the software Mr. Bryan used, after he had drawn the maps. Day 8 Tr. 242:10-15. Mr. Bryan testified that the data was only

included in the spreadsheet “to maintain rigor and consistency” and to ensure “the quality control of our database.” Day 8 Tr. 242:16-243:2.

659. The initial analytic spreadsheet also included data describing the population deviation by Precinct in each of the maps Mr. Bryan drew. Given the instructions he had received regarding prioritizing population equality, Mr. Bryan highlighted these numbers on the spreadsheet as a way of drawing attention to the importance of the information they conveyed, Day 8 Tr. 244:20-245:14

660. Mr. Bryan testified that he did not consider race in drawing these initial maps. He stated that race did not predominate, affect, or play any factor in drawing the lines of the least-changes plan. Day 8 Tr. 249:7-15. Nor did he have any racial demographic data present on his screen while drawing the lines of the least-changes plan. Day 8 Tr. 249:16-19. Likewise, race did not predominate or play any factor in drawing the lines of the four Republican map. Day 8 Tr. 249:20-23. Mr. Bryan did not have any racial demographic data present on his screen while drawing the lines of the four Republican plan. Day 8 Tr. 249:24-250:1.

661. On October 17, 2021, Mr. Bryan met with Mr. Dale Oldham to discuss the draft least-changes and four Republican plans. Day 8 Tr. 248:1-7. At this point, the drafting became an iterative process in which Mr. Bryan would deliver draft plans to Mr. Oldham, Mr. Oldham would provide feedback and directions for changes, and Mr. Bryan would implement those changes. Day 8 Tr. 250:15-22.

662. Throughout the drafting process, Mr. Bryan was singularly focused on the goals, stated from the beginning, of minimizing population deviation and optimizing

Republican performance. He testified that he consistently “tracked the political performance of each commissioner court precinct” pursuant to his “original direction.” Day 8 Tr. 255:9-17. Indeed, on the analytic spreadsheet he developed on October 17, 2021, Mr. Bryan highlighted the cells displaying the political performance data of the maps he drew. He testified that the highlighting was intended to “train the eyes of our clients into which numbers are important for decision-making and developing the rest of the plan.” Day 8 Tr. 255:1-8.

663. While Mr. Oldham often requested that Mr. Bryan adjust specific VTDs, move specific pieces of geography, or draw lines in a specific way, Mr. Bryan understood those directions to “complement” the initial direction from Mr. Gordon to minimize population deviation and optimize Republican performance. Day 8 Tr. 301:8-302:3; Day 9 Tr. 59:2-15. And although Mr. Bryan was never instructed to consider additional factors such as communities of interest or public concerns, Mr. Bryan understood the directions he received from Mr. Oldham to reflect “all of the desires and priorities of his clients.” Day 9 Tr. 45:6-46:4.

664. Mr. Bryan produced several iterations of the least-changes and four Republican plans—which included the “minimum change,” “Optimal D,” and “Optimal Geo plans.”<sup>61</sup> Each iteration inched closer to the goal of optimizing Republican performance while reaching a target of 2.5 percent population deviation. Day 8 Tr. 256:24-257:11. For example, the lowest performing Precinct under the 4R Plan was at 53%, while

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<sup>61</sup> Mr. Bryan testified that the labels for these plans had no particular meaning. He was using different suffixes to distinguish one map from the other. [Day 8 Tr. 259:17-260:1.]

under the Optimal D Plan it was at 56%. Day 8 Tr. 254:17-25.

665. With respect to these intermediate iterations of the maps, Mr. Bryan emphatically testified that race did not predominate or play a factor in his line-drawing, and that he did not have racial demographic data on his screen while drafting these maps. Day 8 Tr. 252:1-11; 261:1-6. Indeed, on the October 17<sup>th</sup> iteration of the analytic spreadsheet, Mr. Bryan even removed racial demographic data from the spreadsheet because “it was clear that the only demographic variable that mattered in the development of these plans was . . . population deviation.” Day 8 Tr. 258:11-24.

666. Mr. Bryan presented his draft maps to Galveston County officials on October 19, 2021. Day 8 Tr. 261:23-262:6. During the meeting, Mr. Bryan reported the population and political performance numbers for both of his draft maps. Day 8 Tr. 263:7-264:6. This included the minimum change plan, which had significantly lower Republican performance numbers than the Optimal D plan, with one precinct as low as 37 percent Republican performance. Day 8 Tr. 264:7-16.

667. Mr. Bryan did not share any racial demographic data about the maps to the County officials during the October 19 meeting. Day 8 Tr. 265:5-9. It is, however, extremely likely that he showed those in attendance the political performance numbers. And Mr. Bryan did share the total population numbers. Day 8 Tr. 262:25-263:14. Additionally, Mr. Bryan shared the political performance numbers of the minimum change plan (which included a Democrat-performing district for Commissioner Precinct 3). Day 8 Tr. 263:24-264:16.

668. After the October 19, 2021 meetings, the maps underwent another iteration

of changes. Mr. Bryan renamed the least changes map to Map 1 and the Optimal D/Optimal Geo map to Map 2. Day 8 Tr. 261:2-11. At this point, Mr. Bryan had nearly equalized the population in Map 2, reaching a population deviation of 0.8 percent. Day 8 Tr. 267:25-268:12. While the analytics spreadsheet for these maps contained racial demographic data, Mr. Bryan testified that it was his standard practice to include this information in near-final iterations as part of a “package of information . . . about the characteristics of the population” in the plan. Day 8 Tr. 268:17-269:19. At this point, Mr. Bryan considered Maps 1 and 2 “largely completed” and began the quality control process to ensure the maps and statistics were correct. Day 8 Tr. 269:20-270:14.

669. Mr. Bryan presented Maps 1 and 2 to Galveston County officials in a second meeting on October 22, 2021. Day 8 Tr. 174:10-19. Mr. Bryan is certain that he discussed the population deviations and political performance data of both maps at this meeting. Day 8 Tr. 276:17-21; 277:14-19.

670. Although Commissioner Holmes’s contemporaneous notes reflected that racial demographic data was presented at the meeting, Mr. Bryan could not recall discussing the racial demographic data of Maps 1 and 2. Day 8 Tr. 276:22-277:6. While the data may have been shown as part of the analytics spreadsheet, Mr. Bryan asserted that he had no reason to discuss racial demographic data since “it wasn’t the purpose” or “anything that drove the drawing of these maps.” *Id.* Mr. Bryan is, however, certain that he showed or discussed the results of his political performance analysis because political performance was one of two criteria given for the drawing of Map 2. Day 8 Tr. 278-7:13.

671. The political performance number was so important that Mr. Bryan



highlighted the cells on the analytic spreadsheet for Maps 1 and 2 that was used in the October 22<sup>nd</sup> meeting with the Commissioners. Day 8 Tr. 277:23-278:6. He also took political performance data he had at the precinct level and disaggregated it down to the census block level. This was his due diligence to verify that his political performance numbers were accurate. Day 8 Tr. 279:1-17. The results of his disaggregation were shown to the attendees of the October 22, 2021 meeting. Day 8 Tr. 281:12-19.

672. With respect to Maps 1 and 2, Mr. Bryan again testified that race did not predominate or factor into the drawing of any lines. Day 8 Tr. 282:1-9. Mr. Bryan did not have racial demographic data on the screen while drawing Maps 1 and 2. Day 8 Tr. 282:17-22.

673. In sum, Mr. Bryan's testimony shows that race never played a factor in drawing the Galveston County Commissioners Court precincts. Neither Mr. Oldham nor Mr. Gordon ever asked Mr. Bryan to factor race into any of the maps discussed above. Day 8 Tr. 286:8-13. Nobody from the County asked Mr. Bryan to factor race into any of the maps discussed above. Day 8 Tr. 286:14-17. And Mr. Bryan himself did not use racial demographic data to modify any precinct lines in any of the maps discussed above. Day 8 Tr. 286:8-13.

674. Politics did, however, motivate the line drawing. Mr. Bryan testified that he "extensively" used political performance data throughout the redistricting process to modify lines in every iteration of the maps he developed with Mr. Oldham. Day 8 Tr. 286:22-25.

#### 4. Lay Witness Testimony Relating to Intent

675. Leon Phillips testified he had no idea whether the commissioners intended to discriminate against Black and Latino voters. DX 310 at 61:21-62:5. When asked what he believed, he testified that he believes **“the Republican party is attempting to take over Galveston County.”** DX 310 at 61:21-62:9.

676. The County considered several factors in redistricting, including compliance with requirements under the 14th Amendment, a unified representation of Galveston Island and Bolivar Peninsula, geographically compact commissioners court precincts, minimizing splits in voting precincts, each precinct including the commissioner’s residence, and the partisan composition of the districts. Day 7 Tr. (Rough) 192:18-194:23; PX-593.

677. The County hired Dale Oldham in 2021.

678. Mr. Oldham had no memory loss of Galveston County and said he would help with redistricting in 2021 for the same fee from 2011. Day 7 Tr. (Rough) 174:6-14.

679. All of the other commissioners received letter correspondence from another law firm seeking to be considered for the redistricting work, and any commissioner could have put on an agenda item to consider another law firm. Day 7 Tr. (Rough) 279:1-18.

680. Any commissioner has the right to place an item on the Commissioner Court agenda. Day 7 Tr. (Rough) 337:14-17.

681. Commissioner Holmes testified that you cannot get or organize votes from two commissioners, but you can discuss a vote with one other commissioner. Day 7 Tr. 137:21-24. He testified that he did not ask any other commissioner or Judge Henry to vote with him either for or against any map. Day 7 Tr. 139:19-24.

**a. Timing**

682. In April of 2021, Judge Henry assumed that if the schedule mirrored 2011 process, that the County would have public hearings. Day 7 Tr. (Rough) 175:11-17.

683. Meetings were not held in April, June, July and August because there were no maps. In 2011, the County has the proposed maps that people could look at and see. But in 2021, the County had nothing. Day 7 Tr. (Rough) 175:21-25.

684. COVID played a role in timing with census data and as Judge Henry recalls, the initial release in August of 2021 was not terribly useful and they cleaned it up in August or September of 2021. Day 7 Tr. (Rough) 176:4-13.

685. The County did not hold meetings between April of 2021 and August when the data was released because there was nothing to show people. All the County could really say was the County has grown in population. Day 7 Tr. (Rough) 177:1-7.

686. Once Mr. Oldham was getting the data he needed, the County had a meeting with him and at some point Judge Henry told Oldham about his desire to have a coastal precinct. In his meeting with Oldham, Commissioner Apffel and Paul Ready that could have been on September 8, 2021, Judge Henry gave Oldham criteria that any map must be legally compliant, legally defensible, equalize the population and then with those things done, coastal precinct. Day 7 Tr. (Rough) 181:3-17.

687. Judge Henry's understanding is that Mr. Oldham met with each of the commissioners by phone in September shortly after Judge Henry's initial meeting with Mr. Oldham with Mr. Oldham inquiring as to what each commissioner would like to see in redistricting. Day 7 Tr. (Rough) 186:1-10.

688. Judge Henry's understanding was that after getting input from all of the commissioners after October 22, 2021, that Mr. Oldham would produce the final or next-to-final version of the maps within a week or so. Day 7 Tr. (Rough) 199:22-200:11.

689. Mr. Oldham came to Galveston County in October and sat down with Judge Henry to review the maps. Day 7 Tr. (Rough) 186:20-187:13.

690. The maps Mr. Oldham brought looked pretty similar to the two that the County ended up with, Map 1 and Map 2. Day 7 Tr. (Rough) 187:25-188:4.

691. In DX-98 Drummond emailed Mr. Oldham and Holtzman Vogel on October 28, 2021 asking for final maps. Day 7 Tr. (Rough) 203:14-204:15.

692. Prior to receiving the maps on October 29, Judge Henry believed it was taking longer than it should and was operating under the belief that adoption needed to happen around November 20th so the County needed them in hand to have a quorum and post public meetings. Day 7 Tr. (Rough) 203:4-13.

693. Judge Henry assumed the County would have had to have maps adopted by the opening of the filing period in 2021 generally around November 20. Day 7 Tr. (Rough) 174:15-21.

694. After Mr. Oldham was done gathering information, talking to commissioners and showing them maps, the County had every intention of having public meetings after receiving the final drafts. Day 7 Tr. (Rough) 202:5-13.

695. As soon as the maps were received, Judge Henry's staff was directed to put them up on a website where people can see them and make it easy to provide comment. Day 7 Tr. (Rough) 205:19-24.

696. The County provided a maps on the County website and link so that people could give the County feedback on the maps. All of that was done in four hours of receiving the maps. Day 7 Tr. (Rough) 206:6-23. The webpage (JX-29) with the proposed maps did not include a picture of the existing map, but the existing map with current precincts were still on the county's website. Day 7 Tr. (Rough) 320:25:321:9.

697. County staff provided Judge Henry with summary tabulations and feedback on the website comments from which he noted overwhelming support of Map 2. Day 7 Tr. (Rough) 323:13-24.

698. Judge Henry is aware of no effort or intention by the County in October of 2021 to adopt the maps as soon as they were received. Day 7 Tr. (Rough) 205:4-13.

699. The plan after receiving the maps was for the County to have at least one meeting for feedback and if there is participation the County might have another meeting within the timeline the County thought it was working under. Day 7 Tr. (Rough) 207:10-23.

700. JX-34 is an advisory the County received dated November 1, 2021 stating that the Secretary of State required maps by November 13. Day 7 Tr. (Rough) 209:16-;210:1-13.

701. Until receiving the notice in JX-34, Judge Henry assumed the County would have to get maps adopted before the filing deadline for primaries, which he thought was generally the last week or so in November. Day 7 Tr. (Rough) 210:17-23.

702. Receiving the notice accelerated the planning for meetings and the County had no time for back-to-back meetings, but the County's next challenge was trying to get

a quorum or three commissioners for a public meeting, but the County could not get them together until, initially, November 9th. But, when that date did not work out, the meeting was set for November 12th. Day 7 Tr. (Rough) 211:4-24.

703. Judge Henry felt the County's options were limited as November 2nd was an election day and the County would not have time to post a meeting that week. The County worked on trying to get a quorum and preferably all five members together the week after that. Day 7 Tr. (Rough) 212:13-21.

704. The website was open and receiving comments from the public at this time. Day 7 Tr. (Rough) 211:25-212:2.

705. Between November 2nd and the November 13th deadline, Judge Henry's staff was working to coordinate commissioner's schedules and trying to find a time they were available. Day 7 Tr. (Rough) 213:7-15.

706. Judge Henry would have preferred to discuss the maps at the November 12, 2021 meeting, but the County did not have them in time to make the posting for the November 1 agenda. Day 7 Tr. (Rough) 303:3-8.

**b. Separate Meetings with Redistricting Counsel**

707. Judge Henry issued no instructions to Mr. Oldham was not to speak with any commissioner. Mr. Oldham was both accessible and willing to assist commissioners with changes to the maps and Judge Henry expected to hear from any commissioner that was unable to communicate with Mr. Oldham Day 7 Tr. (Rough) 229:5-13.

708. Judge Henry did not recall being told by a commissioner or Mr. Oldham what other commissioners said in meetings. Maybe Commissioner Apffel needed a street moved

to catch his house. Day 7 Tr. (Rough) 186:11-16. But Judge Henry recalls Commissioner Apffel may have mentioned that he wanted to make sure he did not have to move. Day 7 Tr. (Rough) 182:12-183:2.

709. Judge Henry never heard anything of substance on the maps during other commissioner's meeting with Mr. Oldham and his involvement was minimal in terms of what Mr. Oldham was telling commissioner or what the commissioners were telling Mr. Oldham in gathering information. Day 7 Tr. (Rough) 200:20-201:12. Judge Henry did not recall hearing about specific changes requested by commissioners. Day 7 Tr. (Rough) 196:18-20.

710. Judge Henry did not speak with Holmes about changes to Precinct 3. Day 7 Tr. (Rough) 299:2-8.

711. Judge Henry did not attend a meeting with Mr. Oldham and Commissioner Holmes or hearing about any results of that meeting. Day 7 Tr. (Rough) 197:22-198:8.

### **c. Requests for the Maps**

712. Judge Henry made it clear that Mr. Oldham should make himself available to commissioners if they had changes during the process. Day 7 Tr. (Rough) 228:23-229:4. Mr. Oldham did so, and provided his cell phone number in case, for example, Commissioner Holmes wanted to discuss the map proposals.

713. Mr. Oldham was instructed to meet with all of the other commissioners to show them the maps for changes. Day 7 Tr. (Rough) 196:1-16. Judge Henry understood that Mr. Oldham was going to get input from every commissioner. Day 7 Tr. (Rough) 183:24-184:13. Mr. Oldham was not instructed not to speak to certain commissioners, or

put certain people's wishes over others. Day 7 Tr. (Rough) 184:19-25. He did not ask Mr. Oldham to only prepare two maps. Day 7 Tr. (Rough) 290:22-24.

714. Judge Henry's preference was for the one that had a single coastal precinct because of the coastal precinct area. Day 7 Tr. (Rough) 190:15-21. His request for a coastal precinct was really his only request other than being legally compliant. He does not know anything about Mr. Oldham's use of demographic or race data in changing maps or the redistricting process. Day 7 Tr. (Rough) 183:13-23.

715. For the coastal precinct, Judge Henry wanted to make sure Commissioner Giusti was okay handling a coastal precinct. Day 7 Tr. (Rough) 298:16-299:1.

716. Judge Henry also asked him to make sure every commissioner stayed in their precinct, meaning they don't have to move, and that the maps are legally defensible. Day 7 Tr. (Rough) 190:22-191:2.

717. Based on 2022 numbers, Galveston County is approximately 66% Republicans and 34% Democrat. Day 7 Tr. (Rough) 191:21-25.

718. The political results were not a primary concern for Judge Henry. He would have seen what Mr. Oldham expected the elections to produce for the maps and that was fine with Judge Henry as well, but it was not the primary driving force. Day 7 Tr. (Rough) 191:3-14.

719. Consideration of the political performance of either map was secondary for Judge Henry. Day 7 Tr. (Rough) 232:12-15.

720. In considering Map 2, if it ultimately ended up election Republicans in all four precincts, that would not hurt Judge Henry's feelings. Day 7 Tr. (Rough) 192:10-14.



721. Commissioner Apffel testified that he never witnessed anyone instruct Dale Oldham to use or consider racial data in designing the potential maps, nor did he recall ever seeing, reviewing, considering or using the racial makeup or demographics of any area or resulting precinct. Day 9 Final Tr. 310:21-311:13.

**d. Advice from the Experts**

722. No formal redistricting criteria was adopted in 2011 because either the County was instructed not to by counsel, or there is no reason to; if counsel had told the County to adopt criteria, Judge Henry is sure the County would have. Day 7 Trans. 167:22-168:4.

723. Judge Henry's understanding was that both Map 1 and Map 2 were legally compliant when posted. Day 7 Tr. (Rough) 325:4-10.

724. Judge Henry was told, and believed, that the pre-existing Precinct 3 was very gerrymandered in order to keep it as a majority-minority district. Day 7 Tr. (Rough) 295:6-15.

725. If counsel proposed a map that looked to be a gerrymander or racial gerrymander with a coastal precinct, counsel's indication that it was legally compliant would have been a big factor for Judge Henry. Day 7 Tr. (Rough) 312:8-12.

**e. Politics – Not Race**

726. Constable Rose testified that he believed the 2021 redistricting was both *politically* and racially motivated; at his deposition, he testified that he believed the 2021 redistricting cycle was politically motivated. Day 1 Tr. at 98:16-99:10.

727. Since the make up of the County is highly Republican, Judge Henry is not in

any danger in terms of electability so Judge Henry really did not have a huge role in terms of partisanship as it relates to maintaining his seat. Day 7 Tr. (Rough) 201:17-202:4.

**f. November 12, 2021 Meeting and Vote**

728. Regular meetings held monthly must be held in the County seat in Galveston and special meetings which were held between the regular meetings were held at the League City location. Day 7 Tr. (Rough) 218:4-219:5.

729. The meeting that fell on November 12, 2021 was a special meeting. Day 7 Tr. (Rough) 219:6-10.

730. Ms. McGaskey viewed the maps online. Day 1 Tr. at 143:1-144:13. She called Commissioner Holmes to ask about redistricting a couple of months in advance; she was told they had not started yet. Day 1 Tr. at 157:19-158:5. She learned about the November 12, 2021 meeting because she saw it on the website and read about it in the newspaper. Day 1 Tr. at 158:6-11.

731. The County set the location of the November 12, 2021 meeting as a special meeting. All special meetings for the last five or six years have been at the North County Annex. The County started having some meetings there in 2012 and in case of hurricanes and the commissioners seemed to prefer it as closer to commissioner residences or business. It also made sense to use the League City Annex for residents due to County growth in the northern part of the County. Day 7 Tr. (Rough) 216:12-218:3.

732. Clerk Dwight Sullivan is an ex-officio member of Commissioners Court. Day 10 Tr. 243:20-24. He testified that it is not a deviation of procedures to conduct special meetings at the League City office for Commissioners Court. Day 10 Tr. 243:25-234:1-8.

He testified that the meeting in November 2021 to adopt maps took place in the League City office of Commissioners Court and the decision to hold the meeting there was not a deviation from procedures because all meeting that are not the regular monthly meeting take place in League City. Day 10 Tr. 244:9-13. He said that most of the population of the county lives closer to League City on the north side of the county. Day 10 Tr. 244:14-16.

733. At the time of setting the special meeting on November 12, Judge Henry did not have a thought as to how many people might show up. Day 7 Tr. (Rough) 219:16-25.

734. No one suggested to Judge Henry that maybe the League City annex is not the right location because it is not big enough. Day 7 Tr. (Rough) 220:1-7.

735. The County had never before had an attendance problem at the League City Annex meaning they have never been able not to accommodate everyone. Had a commissioner suggested that there may be a large turnout or an organized effort to have 100 people there, the meeting could have been held at Walter Hall Park down the road. Day 7 Tr. (Rough) 220:8-21.

736. It was not Judge Henry's intention to limit public participation by using the League City Annex. Day 7 Tr. (Rough) 220:22-24.

737. The meeting was not set at the League City Annex under the belief that the parking was bad. Day 7 Tr. (Rough) 221:3-5.

738. Judge Henry expected IT would have microphones set up for the meeting, but they did not know it was an issue until they got there. Day 7 Tr. (Rough) 221:6-8.

739. The meeting was set at the League City Annex as part of the County's usual process. Day 7 Tr. (Rough) 221:9-12.

740. The League City Annex could seat 60 to 70 people. It was never full before that day. There is an overflow room next to it that had access to stream the meeting. Day 7 Tr. (Rough) 221:21-222:8.

741. Meetings are typically streamed and have been since the technology made it easier. Streaming meetings is one way of having an open government and providing citizens with the ability to access the meeting without attending. Day 7 Tr. (Rough) 222:12-223:2.

742. Judge Henry was surprised and caught off guard by the attendance at the November 12th meeting. Day 7 Tr. (Rough) 223:3-9.

743. Judge Henry's feeling is that the Court wants the public there, but the Court must be able to conduct its business. Attendees have to be at a tone and level that everybody can be heard that wants to address the Court during public comment period. Day 7 Tr. (Rough) 223:16-224:3.

744. Constables are always there just like any other court. Day 7 Tr. (Rough) 224:4-14.

745. One of the reasons that you need people to be quiet, particularly in a meeting location that does not have microphone operating, is so that both the Commissioners Court can hear and the public can hear. Day 7 Tr. (Rough) 224:15-20.

746. No one ever warned the Court to expect a large turnout. Day 7 Tr. (Rough) 224:21-23.

747. There is normally very little commentary back-and-forth between the Commissioners Court and people making comments. Commissioners are also trained to be

careful about open meeting violations if having dialogue that is not limited to a noticed topic on the agenda. Day 7 Tr. (Rough) 225:2-16.

748. No person who attended the meeting that wanted to speak did not have the opportunity to do that. Day 7 Tr. (Rough) 225:17-20.

749. No one was prevented from putting their name on the list to speak and Judge Henry assistant, Linda, went through the hallway to ask whether anyone else wants to speak who hasn't spoken yet. Day 7 Tr. (Rough) 226:2-11.

750. Each speaker is usually given 3 minutes to speak and the same was true for the November 12 meeting, although the Court usually will allow people to speak a little longer. Day 7 Tr. (Rough) 226:12-20.

751. Judge Henry also asks whether there is anyone left in the room who wanted to speak after the list was completed. Day 7 Tr. (Rough) 226:21-227:2.

752. Judge Henry reviewed the comments from the website prior to the meeting and read into the record at the end of the meeting that the comments were 2 to 1 in favor of map 2, the coastal precinct map, over map 1. Day 7 Tr. (Rough) 227:16-25.

753. Had commissioners discussed reasons that Map 1 was a better map, Judge Henry was open to that. Day 7 Tr. (Rough) 325:17-23.

754. Prior to Commissioner Holmes' talk during the November 12 meeting, he never told Judge Henry that Holmes had his own maps. Holmes never suggested to Judge Henry that he had some maps that might work for the County. Day 7 Tr. (Rough) 228:3-22.

755. Judge Henry decided to vote for Map 2 after making the motion to approve

it. He wanted a the coastal precinct, but he went into the meeting willing to listen to anyone, considered comments made at the meeting, and it was his thought process that while the County had to come out of the meeting with a map, it could have been either Map 1 or Map 2. Day 7 Tr. (Rough) 229:22-230:17.

756. Judge Henry voted for Map 2 because he believed it will bring efficiency he hoped for to the coastal precinct. Day 7 Tr. (Rough) 230:22-24.

757. In voting for Map 2, it was not Judge Henry's intention to remove Commissioner Holmes. Judge Henry still believes Holmes could win in the current Precinct 3 if he switched parties. A number of candidates have done that and as the incumbent, he would probably start off as the front-runner. Day 7 Tr. (Rough) 243:8-21.

758. Judge Henry gave consideration to whether he might have voted for Map 1 if the public supported it in the website comments or during the discussion at the meeting. Day 7 Tr. (Rough) 230:25-231:11.

759. Had Holmes asked Judge Henry to consider Map 1, he would have had a hard time saying no. Holmes has never asked Judge Henry for a thing in 12 years. But he never asked. Day 7 Tr. (Rough) 231:12-19.

760. The County timely submitted the adopted map to the State of Texas. Day 7 Tr. (Rough) 231:20-22.

761. In voting for Map 2, Judge Henry did not intend to discriminate against Commissioner Holmes or the public in any way. Day 7 Tr. (Rough) 231:23-232:1.

762. Before or after the vote, Judge Henry did not give consideration to the racial breakdown of any precincts in Map 1 or Map 2, other than that the maps would comply

with the Voting Rights Act. He the County was complying with the law in adopting Map 2. Day 7 Tr. (Rough) 232:2-10.

763. Judge Henry does not recall knowing that Map 1 would have elected Commissioner Holmes at the time of the vote. Day 7 Tr. (Rough) 232:16-19.

764. Judge Henry has known Holmes for the 12 years he's been in office and believes they agree on putting employees first and taking care of the aging population Day 7 Tr. (Rough) 232:20-233:1.

765. Judge Henry and Holmes vote together 90% of the time. Holmes is the second most fiscally conservative guy on the Court and Judge Henry does not want to get rid of somebody with that view. Day 7 Tr. (Rough) 233:13-23. Commissioner Holmes never discussed with Judge Henry whether he might vote for Map 1 or Map 2 and Judge Henry is aware of no advocacy by Holmes at all. Day 7 Tr. (Rough) 229:14-21.

## **vi. Intentional Vote Dilution (14th Amendment) Evidence**

### **1. Mr. Thomas Bryan**

766. Mr. Thomas Bryan testified regarding his role in drawing the precinct maps for the Galveston County Commissioners Court. Mr. Bryan is a professional demographer with decades of experience in the U.S. Census Bureau and his own consulting company. Day 8 Tr. 216:17-217:23.

767. On Thursday, October 14, Mr. Phil Gordon of Holtzman Vogel, contacted Mr. Bryan to determine his availability to draw precincts for the Galveston County Commissioners Court. Day 8 Tr. 226:4-21. Mr. Gordon asked Mr. Bryan to draw maps as quickly as possible. Day 8 Tr. 228:4-12. The project was to be completed in three days—

a very quick turnaround, given that Mr. Bryan would be traveling home from a family vacation trip to Hawaii. Day 8 Tr. 226:22-227:9. Indeed, Mr. Bryan testified that “it was an unusually tight deadline to have.” Day 9 Tr. 36:1-6.

768. Mr. Gordon instructed Mr. Bryan to draw two different maps. For the first map, what Mr. Bryan called a “least-change map,” Mr. Gordon instructed Mr. Bryan to minimize population deviation while changing as little other characteristics as possible, maintaining whole precincts, and minimizing the splitting of precincts. For the second map, what Mr. Bryan called a “four Republican map,” Mr. Gordon instructed Mr. Bryan to “explore the possibility of balancing Republican performance across each of the four districts,” while still maintaining whole precincts and minimizing population deviation. Day 8 Tr. 228:13-20.

769. Mr. Bryan wasted no time. He began drafting the four-Republican plan and the minimum changes plan while still on vacation with his family and when on the flight home. Day 8 Tr. 235:25-236:10. To ensure that Mr. Bryan effectuated the goals of the four-Republican plan, he used the Texas precinct level data as opposed to the Census data. This is because the Texas precinct level data has the political performance data while the Census data does not. Day 8 Tr. 232:4-13. Mr. Bryan completed a first draft of maps that he was ready to share by October 16, 2021 at 5:25 PM, just as he returned from vacation with his family. Day 8 Tr. 235:25-236:10.

770. Mr. Bryan testified that he did not have racial demographic data on his screen at any point during the drafting of the various iterations of the maps. Day 8 Tr. 249:16-19; 250:2-5. Mr. Bryan could not recall anyone specifically directing him to not have racial



demographic data on the screen as he drew the precincts. Day 9 Tr. 22:15-20. Rather, this was a standard practice of Mr. Bryan's consulting business and a key component of Mr. Bryan's redistricting software. Day 9 Tr. 19:20-20:15.

771. Mr. Bryan also repeatedly testified that he in no way considered race in drawing the precinct lines. Day 8 Tr. 249:7-15; 252:1-10. Mr. Bryan even removed racial demographic data from the maps' analytic spreadsheets because "it was clear that the only demographic variable that mattered in the development of these plans was . . . population deviation." Day 8 Tr. 258:13-22.

772. Mr. Bryan moved very quickly to produce maps that conformed with the County's goals of minimizing population deviation and optimizing Republican performance. In fact, Mr. Bryan more than met the 2.5 percent population deviation goal in just two days. Day 8 Tr. 257:4-11.

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Respectfully Submitted,

HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIAK PLLC

GREER, HERZ & ADAMS, L.L.P.

Dallin B. Holt  
Texas Bar No. 24099466  
S.D. of Texas Bar No. 3536519  
Jason B. Torchinsky\*  
Shawn T. Sheehy\*  
dholt@holtzmanvogel.com  
jtorchinsky@holtzmanvogel.com  
ssheehy@holtzmanvogel.com  
15405 John Marshall Hwy  
Haymarket, VA 2019  
P: (540) 341-8808  
F: (540) 341-8809

By: /s/ Joseph Russo  
Joseph Russo (Lead Counsel)  
Fed. ID No. 22559  
State Bar No. 24002879  
jrusso@greerherz.com  
Jordan Raschke  
Fed. ID No. 3712672  
State Bar No. 24108764  
jraschke@greerherz.com  
1 Moody Plaza, 18th Floor  
Galveston, TX 77550-7947  
(409) 797-3200 (Telephone)  
(866) 422-4406 (Facsimile)

*\*admitted pro hac vice*

PUBLIC INTEREST LEGAL  
FOUNDATION

Joseph M. Nixon  
Federal Bar No. 1319  
Tex. Bar No. 15244800  
J. Christian Adams\*  
South Carolina Bar No. 7136  
Virginia Bar No. 42543  
Maureen Riordan\*  
New York Bar No. 2058840  
107 S. West St., Ste. 700  
Alexandria, VA 22314  
jnixon@publicinterestlegal.org  
jadams@publicinterestlegal.org  
mriordan@publicinterestlegal.org  
713-550-7535 (phone)  
888-815-5641 (facsimile)

Angie Olalde  
Fed. ID No. 690133  
State Bar No. 24049015  
2525 S. Shore Blvd. Ste. 203  
League City, Texas 77573  
aolalde@greerherz.com  
(409) 797-3262 (Telephone)  
(866) 422-4406 (Facsimile)

*Counsel for Defendants*

*\*admitted pro hac vice*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was served to all counsel of record via the ECF e-filing system on September 11, 2023.

*/s/ Angie Olalde* \_\_\_\_\_

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