Expert Report

February 28, 2014

To: David Richards, Jose Garza and Luis Vera

From: George Korbel

re: Perez v Perry etc.

At your request I have looked at the Texas House redistricting plan currently in effect known as H358. I have also looked at the current Congressional District plan C 235. In the case of the State House of Representatives you asked me to look in particular at West Texas, Central Texas, Dallas County, Tarrant County and Fort Bend Jackson and Wharton Counties. In the case of Congress you asked me to look at South and Southwest Texas and the Dallas Tarrant area. I have filed an earlier Expert Report in this matter. In particular you requested that I look at the so called White, Senate or Gingles factors and the enhancing elements that are suggested.

You should consider this as my preliminary analysis or expert report. It is subject to changes based on information developed during the process of discovery including my review of any expert’s reports provided by Defendant’s experts.

Gingles I Standard

The fundamental question in a section 2 vote dilution case such as this is whether, as a result of the a redistricting minority voters "have an equal opportunity to participate in the political processes and to elect candidates of their choice." Thornburg v. Gingles, 478 U.S. 30,

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color. . . .

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion of the population.


In Gingles (supra), the Supreme Court held that the use of a voting procedure would not impede "the ability of minority voters to elect representatives of their choice" unless there is a White bloc voting majority that would "usually be able to defeat candidates supported by a politically cohesive, geographically insular minority group." 106 S. Ct. at 2765. This test has been broken into three parts:

first that the group is sufficiently large and geographically compact to constitute a majority in a single member district; second, that it is politically cohesive and third, that the white majority votes sufficiently as a bloc to enable it usually to defeat the minority’s preferred candidate.


1. Sufficiently large and geographically compact to constitute a majority in a single member district

The test used to determine if the Gingles Districts are “sufficiently large.”
The test that I use is the ability to draw districts that fit within the deviation plan of H358. If a the minority community is sufficiently concentrated that they comprise more than half of the Citizen Voting Age Population (CVAP) of a District would that would fit within the deviation range I consider it “sufficiently large.:

The test used to determine “geographic compactness.”

A. The test used to determine if the Gingles Districts are “sufficiently large.”

The test I use is to determine size is to ask the question does the deviation of the district fit within the deviation plan of H358. If a plan can be drawn in which the minority Community would constitute more than half of the Citizen Voting Age Population (CVAP) of a District would fit within the deviation range of an existing plan or within the range of other plans approved by the Courts then I consider it “sufficiently large.”

B. The test used to determine whether districts are “geographic compactness.”

The Courts do not seem to have set out a test of compactness. I employ a comparison test. A district will be considered to be geographically compact based on the three definitions of compactness that are available in the State redistricting software (Redappl).

Although there many tests for compactness that have been determined over the years, the state included three in the RedAppl software these are:

Area Rubber Band
Perimeter to area
Population rubber band
I asked the Legislative Council prepare a excel spreadsheet of the three test scores by each of the districts in plan H358. Then I took the spreadsheet and added the three scores together for each district thus creating a fourth measure. \(^1\)

I sorted the districts in Plan H358 by each of the four compactness scores. I then could take each *Gingles* district and compare the four compactness scores with the current plan.

I consider a *Gingles* districts to be “very compact” if all four of the scores fit within the range of scores for the current plan (h358). I judge a district as “geographically compact” if at least one of the scores fits within the range of current plan (h358). I do this because the three compactness scores measure different things. It is not uncommon for a district to be highly compact under one or two of the tests and much less compact under the other tests. Each of the House *Gingles* Districts I have determined to be “highly compact.”

I have prepared a series of *Gingles* demonstration plans for South Texas Congressional. Each of these maps meets the Hispanic CVAP Standards and Districts are within the range of compactness of the other plans in the Congressional Districts. In the earlier hearings LULAC and the NAACP also presented public plans that deal with the Dallas and Tarrant County districts.

I have also prepared a series plug in House maps for several areas of the state. These include

1. The Midland Ector mix (Districts 81-82)
2. The Bell Lampasas mix (Districts 54 and 55)
3. The Fort Bend Wharton and Jackson mix (Districts
4. The McLennan Brazos mix.(Districts
5. The Tarrant County mix
6. The Dallas County mix

\(^1\) I could do this because the scoring on each test is from 0 to 1.0. The higher the level of compactness the higher the score.
7. Harris Mix

Additional maps are being worked on currently for districts in the Nueces County mix and the Lubbock County mix. At present the Perez Plaintiffs are relying on the *Gingles* Demonstration districts that have been made public by the Mexican American Legislative Caucus.

For your convenience I attach these maps and relevant citizenship data. In each of these maps minorities make up a Citizen Voting Age Population (CVAP) majority. 2/ The maps are created so that they can plug into the existing state House plan without disturbing any other district (s).

Each of the *Gingles* Demonstration districts are both compact and contiguous. I have prepared the *Gingles* Demonstration plans using the 2010 voting precincts but each could easily be modified to fit the 2013 precincts.

Once again these plans are for demonstration purposes as required by *Gingles I*. A plan which was intended to be used for elections might well be changed in a number of ways to fit local contingencies or procedural issues. If the current House Plan is found to violate Section 2 of the Federal Voting Rights Act a Court has the equitable power to design a remedy. I have testified in several cases and participated in negotiations between the parties to reach agreed redistricting plan. In my experience in most cases a final remedy plan adopted by the court is the result of such negotiations.

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2/ In all of these plans minority voters also make up a majority of the Population and the Voting Age Population.
West Texas Districts 81 and 82 (Midland Ector Mix)

This mix involves 9 counties with a total population of 332,918 persons. Over the past decade, the Anglo population in this 9 county area declined by 8,498 while the minority population grew by over 46,000. Hispanics comprised 43,281 (94.0%) of the minority growth. In the earlier considerations of this matter, a Gingles demonstration district was proposed by the MALC Plaintiffs which reached a 50% Hispanic CVAP majority. It required the slight rearranging of other West Texas Districts.

At this point we have new data on Citizen Voting Age Population (CVAP) which represents essentially the CVAP population in 2010. At this point a geographically compact district can be drawn which involves only House Districts 81 and 82. This map has been made public as the Perez Plaintiffs map H360. Map H360 cuts only 1 2010 VTD. This cut is very minor involving only a few people. It would be possible to cut no VTDs however the map would be slightly less compact. As drawn in this demonstration or Gingle district, House District 81 is more than 50% Hispanic CVAP and is almost 60% minority CVAP. All that has to be done is to combine the Southside of Midland and Odessa. The district has essentially the same compactness scores contained in the current plan.

BELL AND LAMPASAS COUNTIES (Districts 54 and 55)
This is a two county mix that produces 2 districts. The population of the two counties is 329,912. Anglos make up less than half of the population.

Under the Benchmark plan this mix included not only Bell and Lampasas but also Burnet
County. Since this area is growing significantly faster than the state rate, Burnet County was removed. This left District 54 with a population of 153,702. Had the State added only 12,000 persons to District 54, it would have fit within the deviation range of H358. Instead the state removes 32,903 persons (from the city of Killeen). On the map, the area removed looks small but represents 20% of the population of a House District. **Significantly that small area was more than two thirds minority.**

After removing those 32,903 primarily minority persons from District 54, the State turned around and added 46,937 persons who had not been in the district before. **This area added was almost two thirds Anglo.**

In the adopted plan instead of leaving Killeen whole in District 54, the State essentially gerrymandered the minority population by unnecessarily fragmenting the city and minority population. Once again, had Killeen been left intact it would have been slightly smaller than a House District. If you add that part of Fort Hood which is in Bell County\(^4\) as well as a small population from Harker Heights a small city which adjoins Killeen, a district essentially draws itself which is more than 50% Black and Hispanic CVAP. Plaintiffs have offered Public Plans 364 and 365 which are drawn in a slightly different manner. In both plans Killeen is maintained intact\(^5\) and District 54 has a CVAP population of more than 50% Black and Hispanic. In each

\(^3\) Midland, Ector, Andrews, Crane, Dawson, Martin, Upton, Ward and Winkler.

\(^4\) Fort Hood is divided between Bell and Coryell counties.

\(^5\) Actually, the City of Killeen has a number of small fingers with no population that extend out highways. Finger annexations are used by Cities in Texas to maintain extraterritorial jurisdiction. In these two plans have removed those finger annexations. In some areas the Census geography does not allow the connection of some of these areas. It would however be possible to include them in District 54 but this would require a definition that is not based on
case the districts in the benchmark plan and the *Gingles* Demonstration plans are in the same range of compactness and within the same deviation range as in the current plan.

It is significant that in this mix the fastest growing area is Killeen. Instead of leaving it in a single district as in the Benchmark plan, the state chose to split Killeen. With Killeen whole, it is almost impossible to create a district without a majority minority CVAP.

As with the District 81 and 82 *Gingles* Demonstration districts, this *Gingles* plan for House Districts 54 and 55 could be plugged into the current plan without any effect on any other district state wide.

Plaintiffs also have another plan which is in the process of being made public with part of Fort Hood that is in adjoining Coryell county (District 59) with Killeen and the balance of Fort Hood which is in Bell County. In my view this would be the most logical way to do it if one was paying attention to communities of interest. It would also be a plug in district and would affect only 3 House Districts.

**The McLennan Brazos Mix** (Districts 14 56 and 57) McLennan, Brazos, Falls, Limestone and Robertson Counties

The Benchmark Plan for Districts 56 and 57 including McLennan County is much the same as it was when the plan was originally drawn in 1975 by the Federal Courts Order in *Graves* III. As such it has elected the minority candidate of choice from its creation up until the 2010 elections census geography.
when the minority candidate of choice was defeated.

Under the benchmark District 56 was maintained entirely in McLennan County. That part of District 57 which is in McLennan County comprised over half of an ideal district. It was heavily minority and most of those minority persons were in the City of Waco. Under the Benchmark plan, this heavily minority area from McLennan County was added to four smaller counties (Falls, Robertson, Leon and Madison ), These four Counties to which it was attached were only 38% minority population. Under this Configuration the minority consistently elected their candidates of choice.

After the 2010 census the McLennan County Mix was radically altered. Leon and Madison Counties were removed and Limestone and parts of Brazos County were added.

The adopted House plan splits the minority population that was in District 57 and adds it to District 56. The plan reduces the minority concentration in District 57 and instead of being a District where the minority community was able to elect the representative of their choice it became a District where the minority preferred candidate was very unlikely to be elected.

The Gingles Demonstration Plan offered by the Plaintiffs essentially takes that part of District 57 that was in the Benchmark plan and adds it to Limestone Falls, and Robertson and a part of Brazos County and that produces a 50% plus CVAP district. Again these 3 Districts could be plugged into H358 without affecting any of the other Districts in the plan.

The Fort Bend Wharton Jackson Mix.

Under the Benchmark plan were three Districts (26, 27 and 28) in Fort Bend and Wharton Counties. Under this plan, one district (27) elected a minority candidate. It essentially connected that part of Fort Bend County which includes the portion of the City of Houston in
Fort Bend County with the heavily minority area around the City of Rosenberg. Since this is one of the fastest growing areas in the state, all of these three districts were significantly over populated. District 27 was the most overpopulated at more than 225,000 and almost 75% of the District was minority.

Under the 2010 Census information, by adding Jackson County, it is possible to create 4 House Districts in the three county area.

During the decade 2000-2010, although there was Anglo growth, it was primarily minority growth that produced then new District 85.

In drawing these 4 districts the Anglo population in District 26 (which was trending heavily minority) was increased by making the District significantly less compact. Then the Black percentage in District 27 which had consistently elected a minority was increased. This was accomplished by adding minorities from Benchmark 27 and removing the heavily Hispanic areas in and around Rosenberg.

The heavily Hispanic areas around Rosenberg were then attached to Anglo dominated rural Wharton and Jackson Counties.

As a result of this effort, even though the population in these three Counties is over half minority and even though the minority growth was larger than that of the Anglos, only one District was drawn which will likely produce minority candidates of choice.
Harris and Dallas

In Harris and Dallas Counties, minority residents comprise over half of the population and in each county, the Anglo population declined over the past decade. All growth came from the minority residents of these two counties. It is significant that had the minority population grown at the same rate as the Anglo population the Dallas County it would have lost an additional 2 to three districts. Harris County would have lost as many as 4 more districts. In spite of this, minority representation remained essentially the same as it was in the benchmark plan.

Dallas County has a lightening bolt district 105 which includes a wrap around district 104. It begins the split in the Dallas minority community much like the lightening bolt district in the Congressional part of this case. Then the balance of the minority community and the fast growing areas of the Northern and East Central parts of the county divide minority community. If one eliminates the lightening bolt the Dallas Gingles Districts in the Perez Plaintiffs plan are fairly simple to draw.

District 101 has contained virtually the entire city of Mesquite, in Dallas County, since single member districts were ordered in the 1970s. The minority growth in the area for the past decade has been significant. Under the benchmark District 101 had elected their candidate of choice, Robert Miklos, in 2008 and it was carried by President Obama, Rick Noriega running for the Senate and other minority candidates of choice. Under the plan on submission, the City of Mesquite was split up and the district number even moved to another county.
Heavily minority precincts in south Mesquite and Balch Springs (pcts. 1314, 3402, 3410, 3308, 3404 and 3408) were packed into HD 110 (over 90% combined minority).

The remainder of heavily minority precincts in south Mesquite (Pcts. 3407, 3409, 3400, 3314, 3313, 3317 and 3405) were diffused by submersion into HD 113, an Anglo controlled district anchored by the affluent lakeside community of Rowlett on the north and the rural Anglo community of Seagoville in the south.

Other emerging minority growth areas in Mesquite (numerous pcts) were diffused into a radically reconfigured HD 107, Anglo controlled and anchored by north Mesquite Anglos and the affluent White Rock Lake area of Dallas.

Finally, three north Mesquite minority precincts (1304, 1308 and 1309) were packed into HD 100 (80% combined minority) and the dissection was complete.

**District 105 located experienced a drop in the Anglo Voting Age population to less than 40%**.

Several minority candidates of choice were successful in including the President and Rick Noriega.

Precinct splits took a long finger of heavily Hispanic blocks (now pcts. 4653, 4654 and 4659) to be packed into HD 103 A clear “lightning bolt” reached down into the former HD 106 to add concentrations of Anglo voters.

A bizarre hook from Hispanic majority HD 104 reached around the lightning bolt to pack in Black voters (pct. 4513) to keep them out of HD 105.

Finally, politically potent Black precincts (Pcts. 4628, 4632 and 4648) were removed from north Irving to be submerged in Anglo controlled HD 115.
During the past decade the minority community in District 102 which is generally located in Dallas and Garland, increased to a minority majority. Several minority candidates of choice were successful. In the House plan before the Court, the politically active old African-American community of Hamilton Park (Pct. 1003) was removed to Anglo controlled HD 114 along with pct. 1041. Other heavily minority precincts in Garland and North Dallas (pcts. 1038, 1042 and 1707) were removed to HD 112, another Anglo controlled district anchored in Richardson.

Finally, numerous Anglo precincts were added from Richardson (pcts. 2500, 2503, 2504, 2505, 2506, 2507, 1502, 1503, 1504, 2513, and 2514). No minority candidates of choice carried this new configuration.

In Tarrant County, although the Anglo population grew slightly, the minority population provided the lion’s share of the decade growth. Had the minority population grown at the same rate as the Anglo population, the County would have lost at least one House seat. Nevertheless the number of districts in which minority voters would be able to elect the representatives of choice has also remained constant.

Tarrant County also has a Fish Hook district, HD 93, which runs from the heavily Anglo Northwestern part of the County to the mid cities area which has become heavily minority and appears to be continuing to so grow. District 93 plucks several heavily minority precincts from the mid cities area and ties them in with the Suburban northern portion of the county. When one eliminates this Fish Hook, the Gingles districts can be drawn.

Benchmark House District 93 included parts of Arlington and Grand Prairie and by 2010 the Anglo Voting Age Population had dropped to less than 40%. Minority voters successfully elected their
candidate of choice, Paula Pierson, in 2006 and 2008. Obama, Noriega, White and other minority favorites easily carried the district.

In both H283 and H358 the state packed much of the HD 93 minority population into the new HD 101 (a district that is 75% combined minority, B+H+O) and then employed another lightning bolts stretching across the county to connect a portion of the mid cities area to suburban Tarrant County.

Nueces County and Surrounding Counties

As the record of this case clearly indicates, Nueces County has consistently maintained two Hispanic majority HCVAP districts. In fact in the benchmark plan prior to 2011 redistricting, the Nueces County districts included two HCVAP district contained entirely within Nueces County and a third district that combined Nueces and Aransas Counties.

As mentioned above, I have reviewed putative Gingles districts for the Nueces County area as well. These districting plans, developed by MALC, include two majority Hispanic Citizen Voting Age population districts in the Nueces County area, either by combining population from Kleberg County or San Patricio County into the mix. These plans can be found on the Texas Legislative Council web cite and are identified as Plans H329, H111, H205. In addition this Court developed a plan that meets this criteria as well in its first interim plan, H298. These districts have essentially the same compactness scores contained in the current benchmark plan.

2. Politically Cohesive Minority Community

I have not been asked to handle this part of the case. However from the earlier testimony there is clear evidence of minority voter cohesion in each of the areas discussed in this Report.

3. Racial polarization

Again I have not been asked to look at racially polarized voting and others have testified on that matter in earlier hearings. All of the studies which have been done so far in this case
have indicated that the White or Anglo community usually votes for Anglo or White Candidates over minority Candidates. In each of the areas where a Gingles Districts are proposed, this polarization appears to be sufficiently large to usually defeat the minority preferred candidates.

A white bloc vote that normally will defeat the combined strength of minority votes plus white "crossover" votes is said to be legally significant white bloc voting. Gingles at 50-51. If these conditions are not present, then the challenged electoral practice cannot be considered as the cause of the minority's inability to elect its preferred candidates. Id. at 50.

Sanchez v. Bond, 875 F.2d 1488, 1492 (10th Cir., 1989)

Sometimes, terms such polarization have charged connotations. However, in this analysis, Plaintiffs need not prove why polarization takes place only that it does. This is because Section 2 of the Federal Voting Rights Act directs that it is the effect and not the cause that is important.

Totality of the Circumstances

If the Gingles three-part threshold is met, plaintiffs have been directed to show that under the "totality of the circumstances," minority voters do not possess the same opportunities to participate in the political process and elect representatives of their choice enjoyed by other voters. (footnote omitted)(emphasis added) S.Rep. at 28, U.S. Code Cong. & Admin. News 1982, p.206. See also Clark, 88 F.3d at 1396 ("it will be only the very unusual case in which the plaintiffs can establish the existence of the three Gingles factors but still have failed to establish a violation of § 2 under the totality of the circumstances"), and in the Senate Report of the 1982 Amendments to the Act. Jenkins v. Red Clay Consol. School Dist. Bd. of Educ., 4 F3d 1106, 1116 (3d Cir. 1993) (While it would be a highly unusual case in which a plaintiff successfully proved the existence of the three Gingles factors and still failed to establish a violation I cannot rule out that possibility entirely.) See also Baird v. Consolidated City of Indianapolis, 976 F.2d 357, 359 (7th Cir.1992), cert denied, 113 S.Ct.2334, 124 L.Ed.2d 246 (1993)
I will proceed to look at the White/Zimmer/Senate factors with the considerations set out in Clark, Baird and Jenkins.

The Factors

In Gingles the Supreme Court held that the dilutive effect of Anglo Block voting can be intensified by a number of factors including "the presence or absence of other potentially dilutive electoral devices such as the majority vote requirement, designated posts, and prohibitions against bullet [single shot] voting..." 478 U.S. at 56. These aggravating matters, variously referred to as White, Zimmer or Senate factors. Holder v. Hall, 512 U.S. 874, 954 (U.S., 1994) The 1981 Senate Report on the legislation which is the legislative history of Section 2 inventories some of these factors:

1. the extent of any official history of discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or to otherwise participate in the democratic process.

2. The extent to which voting in the state or political subdivision is racially polarized.

3. The extent to which the state or political subdivision has used unusually large 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 the members of the minority group bear the effects of discrimination in such areas as education, employment and health which hinders their ability to participate effectively in the political process.

6. whether political campaigns have been characterized by overt or subtle racial appeals.

7. the extent to which the minority group have been elected to public office in the jurisdiction.


The Senate Committee was careful to stress that:

[T]here is no requirement that any particular number of factors be proved, or that the majority of them point in one way or the other." S.Rep. at 29, U.S. Code Cong. & Admin. News 1982 p 207. Rather the Committee determined that "the question of whether the political processes are equally open depends upon a searching practical evaluation of the 'past and present reality.'" Id. at 30, U.S. Code Cong. & Admin News 1982 p 208. (footnote omitted), and on a "functional" view of the political process. Id. at 30, n. 120, U.S. Code Cong. & Admin News 1982, p 208.


1. History of Discrimination

It is not necessary to find that this discrimination still takes place but only has it taken place in the past. As the Supreme Court noted in LULAC v Perry

The District Court recognized .the long history of discrimination against Latinos and Blacks in Texas, Session, 298 F. Supp. 2d, at 473, and other courts have elaborated on this history with respect to electoral
processes. Texas has a long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process. Devices such as the poll tax, an all-white primary system, and restrictive voter registration time periods are an unfortunate part of this State’s minority voting rights history. The history of official discrimination in the Texas election process stretching back to Reconstruction led to the inclusion of the State as a covered jurisdiction under Section 5 in the 1975 amendments to the Voting Rights Act. Since Texas became a covered jurisdiction, the Department of Justice has frequently interposed objections against the State and its subdivisions. See e.g. Vera v. Richards, 861 F. Supp. 1304, 1317 (SD Tex. 1994) (citations omitted). See also Vera, 517 U. S., at 981.982; Regester, supra, at 767.769. In addition, the political, social, and economic legacy of past discrimination for Latinos in Texas, Session, supra, at 492, may well hinder their ability to participate effectively in the political process. See e.g. Gingles, 478 U. S., at 45 (citing Senate Report factors).

It is significant that no decade has passed since 1970 that the Courts have not found Texas Redistricting plans to violate both Federal and sometimes state law.

That history continues to this day. For example in the time that has passed since this case was filed there have been many findings of racially polarized and the Attorney General has determined that Federal Observers should be sent into several Counties and cities to observe elections. See e.g.

**Hubbard v. Lonestar Community College District**, 4:13-cv-01635 filed June 4 2013) (After limited discovery, the parties negotiated a settlement with 9 single member districts. The District Court held a settlement hearing and Approved the settlement in November of 2013.

**Rodriguez v Harris County**, civ 4: 11 2907 (August 2013) (“In this case there is no dispute that
Latino voters ... are politically cohesive. at 89”; “In light of the evidence discussed above and the statistical evidence of racial bloc voting, discussed infra, the Court finds that Latinos ... are politically cohesive.” at 93; “The regression results of the endogenous elections indicate that Anglos voted as a bloc to defeat the Latino-preferred candidate. This evidence is further supported by the regression analysis of the exogenous elections.” at 101; “Accordingly, the regression evidence presented shows: (I) a clear and consistent relationship between the race of the voters and their candidate preference; and (ii) that Anglos are usually able to defeat the Latino-preferred candidate.” at 102; “voting in Harris County is very racially polarized.” at 123; “While some... imagine that barriers to voting have been eradicated..., the record here is replete with evidence to the contrary.” at 158); 114)

_Fabela et al v. City of Farmers Branch_, 3:10-CV-1425- 2012 ("Plaintiffs have proved that the City Council elections in 2007, 2008, 2009, and 2011 were …racially polarized."

"Hispanics in Farmers Branch have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." )


April 8, 2013 Section 5 Objection Letter from the Thomas E Perez, Assistant Attorney General to Melody Thomas Chappell, Beaumont ISD school attorney

Submission of referendum election to change the School Trustee election system from Seven single member districts to five single member districts and two elected at-large. ("There is overwhelming evidence that both the campaign leading to the election as well as the issue itself carried racial overtones with the genesis of the change and virtually all of its support coming from white residents. A statistical analysis of the election confirms the extreme racial polarization that the issue created. Black voters cohesively voted to maintain the current method of election and white voters voted cohesively for the proposed change. We estimate over 90 percent of white voters, but less than 10 percent of black voters, supported the change."

An examination of at-large elections for the Beaumont City Council also proved informative because of the overlap in population and the similarity in demographics. There, we found racial cohesion among black voters at levels similar to those identified in the school district election. More significantly, we found significant racial polarization and the same unwillingness of white voters to support a black-preferred candidate, with little evidence of crossover voting by white voters in the city’s at-large council races.

“In the past ten years, numerous black-preferred candidates have sought municipal office in the city. With the sole exception of one candidate, African Americans have been unable to elect candidates of choice to the city’s at-large
council positions. Our analyses showed that this candidate only received about eight percent of the non-black vote in both the 2007 and 2011 elections, placing second to last among non-black voters in 2011. [matter omitted] [O]ur analyses demonstrate that this candidate’s election was dependent on single-shot voting, in which black voters withheld their votes for the second at-large city council seat in both 2007 and 2011, voting only for this candidate. The statistical and anecdotal evidence therefore confirm that this one candidate’s experience is not indicative of black-preferred candidates’ prospects for success in at-large elections. See Texas v. United States, 2012 WL 3671924, at *22-23 (D.D.C. Aug. 28, 2012) (three-judge court) (isolated electoral success by one candidate is insufficient to demonstrate that minority voters have the consistent ability to elect their preferred candidates of choice).”

April 8, 2013 Section 5 Objection Letter from the Thomas E Perez, Assistant Attorney General to Melody Thomas Chappell, Beaumont ISD school attorney. (Finds that State Court Order shortening terms and ordering an election out of time violated Section 5 of the Voting Rights Act).

May 13, 2013 Department of Justice sent Federal Election Monitors to monitor elections in cities of Corrigan, Farmers Branch, Irving and Orange, Texas, to ensure compliance with the Voting Rights Act of 1965.

March 12, 2012 Section 5 Objection Letter from the Thomas E Perez, Assistant Attorney General to Keith Ingram, Director of Elections

“[T]he state has not met its burden of proving that, when compared to the benchmark, the proposed requirement will not have a retrogressive effect, or that any specific features of the proposed law will prevent or mitigate that retrogression. Additionally, the state has failed to demonstrate why it could not meet its stated goals of ensuring electoral integrity and deterring ineligible voters from voting in a manner that would have avoided this retrogressive effect...”

March 12, 2012 Section 5 Objection Letter from the Thomas E Perez, Assistant Attorney General to Trey Traynor attorney for Galveston County”

With regard to the election for justices of the peace and constables, there are eight election precincts under the benchmark method. Each elects one person to each position, except for Precinct 8, which elects two justices of the peace. The county has proposed to reduce the number of election precincts to five, with a justice of the peace and a constable elected from each.

Our analysis of the benchmark justice of the peace and constable districts indicates that minority voters possess the ability to elect candidates of choice in Precincts 2, 3 and 5. With respect to Precincts 2 and 3, this ability is the
continuing result of the court’s order in *Hoskins v. Hannah*, Civil Action No. G-92-12 (S.D. Tex. Aug. 19, 1992), which created these two districts. Following the proposed consolidation and reduction in the number of precincts, only Precinct 3 would provide that requisite ability to elect. In the simplest terms, under the benchmark plan, minority voters in three districts could elect candidates of choice; but under the proposed plan, that ability is reduced to one.

**November 5, 2012 General Election** Department of Justice sent Federal Election Monitors to Dallas County, Texas; Fort Bend County, Texas; and Jefferson County, Texas to ensure compliance with the Voting Rights Act of 1965. http://www.justice.gov/opa/pr/2012/November/12-crt-1312.html

**May 29, 2012 Municipal Elections** Department of Justice sent Federal Election Monitors to monitor elections in Dallas County, Galveston County, Jasper County, Jefferson County and Harris County per Attorney General’s certification. Federal observers sent to Fort Bend County which is subject to a court order entered in 2009, which requires the jurisdiction to comply with the minority language and assistor of choice requirements of the Voting Rights Act, as well as the requirements of the Help America Vote Act. http://www.justice.gov/opa/pr/2012/May/12-crt-677.html

**Voting For America v Andrade** CA-G-12-44 (ED Tx 2012) (Preliminary Injunction against statute limiting ability of Volunteer Voter Registrars (VDR) to register voters “VDRs duly appointed and trained in another county will be among those able to accept and submit applications to a registrar in a different county.... [and] VDRs may mail, rather than personally deliver, the applications they collect, as federal law requires. *Voting for America v Andrade* 12-40914 (Fifth Circuit August 6, 2012) (Injunction stayed pending appeal)

**Hernandez et al v. Nueces County, Texas et al.** Filed: February 10, 2012 as 2:2012cv00047 Updated: December 10, 2012 14:12:37; (Section 5 enforcement action, dismissed when Nueces County made changes in the county redistricting that had been objected to.)

**Petteway, et al. v. Galveston County, Texas, et al.** (Filed: November 14, 2011 as 3:2011cv00511) Section 5 enforcement action. County agreed to remedy the dilution in the Commissioners precincts. In addition, the County agreed to hold the elections in 2012 under the benchmark plan and then try the issues on the reduction of Justices of the Peace from 9 to 5. The JP/Constable part of the case has now been tried and is pending decision)

**2 Extent to which Elections are Polarized**
This has been discussed in connection with the Gingles factors. This evidence is being offered by others.

3. The Use of Procedures which Enhance the Potential for Discrimination.

A. The size of the districts

These are essentially features of the election process that have been found in the academic literature and by Courts to make it more difficult for protected minority voters to elect the representatives of their choice. The ultimate modifier, and the one which is mentioned first is the size of the district. Only the California House Districts are larger than those in Texas.

B. This District has Majority Vote Requirement.

4. If there is a candidate slating process, whether the members of the minority group have been denied access to that process.

This part of the test asks whether there is a slating group and if so, do minority group members have access to it. 6/ Plaintiffs do not lose anything if there is no slating group. Rather

6  / This slating group gloss grows out of the Dallas County situation in White v. Register where the Dallas Committee for Responsible Government (DCRG) had a virtual lock on picking successful candidates. This was due in part to the fact that Dallas elected eighteen state representatives at large in a county of more than 1.3 million persons. None of the state's witnesses, even the Dallas County Democratic Chairman, could name all of the representatives from Dallas. As a result, the evidence indicated, people relied in large part upon the slating of the well respected businessmen who made up the D.C.R.G. The Supreme Court found that D.C.R.G. "a white-dominated organization [had] effective control of Democratic Party Candidate slating." White v. Register, (supra) 412 U.S. at 766-67. Since, with only one exception, only Democratic candidates were elected to the legislature from Dallas County, the real election contest in Dallas took place when candidates attempted to obtain slating from the D.C.R.G. Accordingly, the Court inquired into whether minority residents of Dallas County had real access to this "white-dominated" slating process.

This is much like the "Jaybird Primary" considered by the U.S. Supreme Court in Terry v. Adams, 345 U.S. 461 (19530 in which the "Jaybird Democratic Club" met and held a pre-primary nomination process in which Black residents were not allowed to participate.
this test is placed in the formula to insure that Courts considering claims of this sort pay careful attention to the of slating groups when they have effective control elections. In most cases, there are various organizations which endorse candidates but it is unusual to find a group which is so powerful that its slate is virtually a lock on election. See e.g. *U.S. v. Dallas County Alabama Commissioners*, 739 F. 2d 1529, 1539 (11th Cir. 1984), *United States v. Marengo County*, 731 F. 2d 1546, 1569 (11th Cir. 1984). I have not isolated a slating group as described by the Courts in the Galveston County context.

5. The Current Effects of Discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process

Courts and Political Scientists have looked to this current economic and social situation for three purposes:

This lower socio-economic status gives rise to special group interests centered upon those factors. At the same time, it operates to hinder the group's ability to participate in the political process and to elect representatives of its choice as a means of seeking governmental awareness of and attention to those interests. *Gingles v. Edmisten*, 590 F. Supp. 345, 363 (E.D. North Carolina 1984) affirmed in relevant part sub nom *Thornburg v. Gingles*, 92 U.S. 25, 106 S. Ct. 2572 (1986).

The social and economic situation of minorities in minority residents of the state on general and the discrete areas in particular is an excellent example of the current effects of past discrimination. I have examined the available data from both the most recent American Community Survey. Hispanic and African American residents of the state as a whole and the areas discussed do significantly less well in the traditional examples that have been identified by
the Courts as important to political participation. A series of charts indicating this analysis is attached to this report. These charts isolate the Counties and Districts in those Counties at issue. In every situation the minority population is significantly lower on all levels of social analysis. Minorities comprise a disproportionate percentage of the functionally Illiterate, non-high School graduates.

In the area of economic well being, the minority community represents a disproportionate percentage of the poverty population, of those who rely on food stamps and of those who make an income of less than $25,000 a year. Stated otherwise the level of Hispanic and African American poverty is multiple times that of Whites. The per capita income of the minorities is in the range of half that of Whites. Whites comprise in the range of 80% of the families with incomes over $50,000. Minority unemployment is in the range of twice that of Whites.

The attached exhibits demonstrate a vast differential in social and economic status.

I have not looked for a "causal nexus between the depressed socio-economic status of the minority community and a lessening of their opportunities to participate in the political process."

Id. at n. 23:

Courts have recognized that disproportionate educational, employment, income level and living conditions arising from past discrimination tend to depress minority political participation. Where these conditions are shown, and where the level of black participation in politics is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation. S.Rep. No. 417 at 29 reprinted in 1982 U.S.C.C.A.N. at 207 n.114.

Stated Otherwise, the Fifth Circuit has stressed:

The Supreme Court and this Court have recognized that disproportionate educational, employment and living conditions tend to operate to deny access to political life. [matter omitted] It is not necessary in any case that a minority prove ... that these economic and education[al] factors have "significant effect" on political access.... Inequality of access is an inference which flows from the existence on economic and educational inequalities.

Congress has directed that where there is clear evidence of socio-economic or political disadvantage, the burden is not on the plaintiffs to prove that this disadvantage is causing reduced political participation, but rather on those who deny the causal nexus to show that the actual cause is something else. *Cross v. Baxter*, 604 F. 2d 875, 881-882 (5th Cir. 1979), *Kirksey*, (supra) 554 F. 2d at 144-46; *Zimmer*, (supra) 485 F. 2d at 1306.

6. Whether political campaigns have been characterized by overt or subtle racial appeals.

This is another gloss which seems to have grown out of the Dallas County portion of *White v. Register* (supra). In that case, Plaintiffs demonstrated that in Dallas County, the D.C.R.G. slating group had utilized racial tactics to identify and defeat Black Candidates that it had not slated.

Since Blacks have Anglo-Saxon sounding surnames, it was important in a County the size of Dallas to identify the Black candidates to effectuate the racial prejudice of the White Community. No similar evidence was produced in the Bexar County portion of *White* where the minority candidates had all been Mexican Americans who are self identified by their surnames. Our experience has been that it in elections districts such as the one at issue here the members of the community are sufficiently known that it is unnecessary to identify persons as Hispanic.

As time passes, few of the cases, even in the deep South, identify this element. See e.g. *United States v. Dallas County Alabama*, 739 F. 2d 1529, 1539 (11th Cir. 1984). See also *United States v. Maringo County*, 731 F. 2d 1546, 1571 (5th Cir. 1984).
8. The extent to which the minority group have been elected to public office in the jurisdiction.

If you exclude Dallas, Tarrant and Harris and look only at the West Texas, Central Texas and Fort Bend etc. mix although these Counties have an Anglo population minority. This area elects 11 members in the Texas legislature but my analysis shows that minorities will be able to elect a candidate of choice in only 1 of the 11 districts. This population and representation incongruence will only increase because of the continuing large minority growth coupled with the essential Anglo decline in population.

In Harris and Dallas Counties, minority residents comprise over half of the population and in each county, the Anglo population declined over the past decade. All growth came from the minority residents of these two counties. It is significant that had the minority population grown at the same rate as the Anglo population the Dallas County would have lost 3-5 members of the legislature and Harris would have lost 2-3. In spite of this, minority representation remained the same as it was in the last plan.

In Tarrant County, although the Anglo population grew slightly, the minority population represented virtually all of the growth. Had the minority population grown at the same rate as the Anglo population, the County would have lost at least one House seat. Nevertheless the number of districts in which minority voters would be able to elect the representatives of choice has also remained constant.

Lack of Responsiveness
It is well established that the issue of unresponsiveness is considerably less important under the results test of Section 2. Indeed in the *Gadsden County* case the Fifth Circuit completely ignored it.

Responsiveness or lack thereof, goes to proving discriminatory intent in the maintenance of the electoral system... It has nothing to do with impact. "Whether current officeholders are responsive to black needs and campaign for black support is simply irrelevant to that inquiry."

*Mcmillan v. Escambia County*, *(Escanbia 1)* 638 F. 2d 1239, 1249 (5th Cir. 1981)  
*N.A.A.C.P. v. Gadsden County School Bd.*, 691 F. 2d 978, 983 (5th Cir. 1982)

In the *Maringo County* case the Plaintiff, Department of Justice, offered no responsiveness proof. The 11th Circuit noted that:

Unresponsiveness is of limited importance under Section 2 for two reasons. First, Section 2 protects the access of minorities not simply the fruits of government but to participation in the process itself. Accordingly, evidence that officials meet the functional needs of minority citizens does not overcome the evidence that the minorities are excluded from political participation. Second, responsiveness is a highly subjective matter and this subjectivity is at odds with the emphasis of Section 2 on objective factors. The Senate Report states that "defendants’ proof of some responsiveness would not negate plaintiff’s showing by other, more objective factors enumerated here that minority voters were nevertheless shut out of equal access to the political process." 1982 Senate Report at 29 n. 116, U.S. Code Cong. & Admin News 1982, p. 207 n. 116. The authors of the Senate Report apparently contemplated that unresponsiveness would be relevant only if the plaintiff chose to make it so [footnote omitted] and although a showing of unresponsiveness might have some probative value, a showing of responsiveness would have very little.

*Id.*

Tenuousness of the Policy
This factor has been found by courts to be significantly more important when applying the Constitutional intent rather than the Section 2 statutory results test. *United States v. Marengo County*, (supra) 731 F.2d at 1571. It centers on the question of what neutral justifications can the Defendants offer for the maintenance of the system. *Id.* The question of policy: 

is less important under the results test: "even a consistently applied neutral policy would not negate a plaintiff's showing through other factors that the challenged practice denies minorities fair access to the process.” 1982 Senate Report at 29 n 117, U.S. Code Cong. & Admin. News 1982, p. 207, n 117.

*Id.*

**The Congressional Issues** 
I incorporate, my reports testimony in the earlier hearings in this matter as well as in Texas v United States together with all of the Exhibits in those cases. I incorporate the *Gingles* plans that LULAC introduced and the *Gingles* Plans I have recently made public under my name.

Texas received an unprecedented 4 new Districts. Had the minority growth been the same as that of the Anglo population Texas would have lost 2 and perhaps 3 Congressional Districts. That is to say that the minority growth represents 6 to 7 Congressional seats (4 that Texas gained and 2-3 it was able to retain. Yet the original Congressional redistricting resulted in a situation in which the number of districts where minorities would have been able to represent their candidates of choice would have remained the same. In the changes that resulted from this Court’s interim order an additional District was created where minorities will be able to elect the representatives of choice. This, although an improvement is nowhere near what one would anticipate from the vastly disproportionate growth.

**Conclusion**
It is my opinion, based upon the three *Gingles* considerations and the factors identified in the legislative history of Section 2 that the facts in this case indicate that the currently designed plans for State House and Congress make it more difficult for minority residents to participate in the political process and elect the representatives of their choice and that the challenged State House and Congressional redistricting plans violate Section 2 of the Voting Rights Act.
Disclosure under Federal Rules of Civil Procedure/Background of Witness

I have looked at the local rules and find no reference special local provision relating to expert disclosure. I have not written any articles in the last ten (10) years and I have testified in seven (7) cases in the past four (4) years.

Although I am a lawyer, I have also been an adjunct faculty member in the Department of Political Science and Geography and have taught a course on the redistricting process. I have testified in a number of at-large vote dilution cases beginning in 1971 with the district court trial of *Graves v. Barnes*. In *Graves* my testimony was used to identify the socio-economic, historical, and other such considerations that used to test for the degree of vote dilution which are sometimes referred to as *White, Zimmer* of Senate factors. Articles I have written or testimony which I have given have been cited by numerous Federal Courts including three occasions by the Supreme Court in interpreting the Voting Rights Act,

I was also called upon to prepare plans of apportionment to demonstrate various ways that a jurisdiction can be divided into districting arrangements. Plans which I drew or collaborated upon were used in the *Graves/White* litigation to split formerly at-large legislative

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districts in all Texas urban areas including Bexar (San Antonio), Dallas, Travis (Austin), El Paso,
McClennan (Waco), Nueces (Corpus Christi), and Lubbock counties. 9/

I was responsible for or significantly involved in negotiation which led to the drawing of
single member districting plans used after litigation for a number of the Cities in Texas including
Houston10/, San Antonio, and Waco.  I also testified as an expert in litigation after the 1981,and
the 1991 redistricting of the Texas legislature.  In 1981, I was the expert witness for the effort
which led to the invalidation of the entire Texas legislative plan on a combination of State
Constitutional and Fourteenth Amendments theories.

Much of the Texas House redistricting which followed was based upon plans which I
drew or collaborated upon.  After the 1990 Census, I testified in state court in a successful effort
to invalidate the 1991 apportionments of the House, Senate and Congress using the Texas
Constitution's Equal Rights Amendment.11/  The District Court ordered plans into effect which I
offered in litigation and the 1990 redistricting plans used by Texas for the House, Senate and
Congressional Districts are the result of negotiation which followed using the plaintiffs plans
which I sponsored as the essential element.

9/ Although I had been named as an attorney in the case, with the agreement of the defendants, I
participated in the first trial of the case (Graves I) as an expert witness on issues of remedy
(creation of single member districts) polarization and cohesion.  In addition I did a number of
socio-economic studies on the majority and minority communities and the
history of discrimination in Texas.  In later stages, (Graves II and Graves III) I functioned as a the lead
counsel for the Hispanic plaintiffs and intervenors.

10/ Leroy v. City of Houston, No. H-75-1731 (S.D.Tex. 1975) (Leroy I); Greater Houston Civic
H-78-2174 (S.D.Tex. 1979) (Leroy II); In re Houston, 745 F.2d 925 (5th Cir. Tex. 1984); Leroy
(S.D. Tex. 1984); Leroy v. Houston, 648 F. Supp. 537 (S.D. Tex. 1986); Leroy v. Houston, 831
F.2d 576 (5th Cir. Tex. 1987) cert. denied, 486 U.S. 1008, 108 S. Ct. 1735, 100 L. Ed. 2d 199
(1988) (Leroy IV); Leroy v. Houston, 906 F.2d 1068 (1990) (Leroy V)

11/ During the effort to pass the Federal Equal Rights Amendment, the Texas legislature not only
ratified the proposal but the voters overwhelmingly installed it a part of our Constitution.  It was
argued that the rights guaranteed under our Constitution were similar to but stronger than those
in Section 2 of the Federal Voting Rights Act or the Fourteenth Amendment.
I have testified in a number of cases in both State and Federal Court which have been litigated in the Southeast Texas including *Perez v. Pasadena Ind. Sch. Dist.*, 958 F. Supp. 1196 (S.D. Tex. 1997). In that case, the district court found:

Plaintiffs also offered the testimony of George Korbel as an expert witness on the Gingles threshold, as well as on the Zimmer factors. [matter omitted] Korbel is a recognized voting rights expert, whose focus is on the non-statistical analysis of elections and the factors that influence their outcome.

The court finds that ...Mr. Korbel is an expert in the field of non-statistical voting rights analysis.

*Perez* 958 F. Supp. at 1204 (S.D. Tex. 1997)


After the 2000 Census I acted as coordinator and expert in redistricting by a number of jurisdictions including the Houston Community College District, the Houston ISD, the San Antonio ISD, the San Antonio Community College, the City of San Antonio, Webb County (Laredo), Gregg County (Longview), Cameron County (Brownsville), Red River County, the San Marcos ISD, the Bexar Metropolitan Water District, Uvalde County, Bastrop County, Hays County and Val Verde County

was involved as a lawyer and also as a witness before both the House and Senate Committees in the successful effort to extend the special provisions of the Voting Rights Act of 1965 to cover Texas. My testimony on the historical pattern of discrimination is generally credited as forming the basis for the legal argument to include Texas and has been cited by several federal courts including the Supreme Court in the interpretation of Sections 2 and 5 of the Act. In 1982, I again offered Congressional testimony in support of the adoption of the new provisions for Section 2 of the Voting Rights Act. As the legislative history indicates, the effort was to install the legal analysis which resulted from *Graves/White*

Most recently I have testified in State Court concerning the redistricting of the Beaumont ISD, in Federal Court concerning the Pasadena ISD, the Galveston County Commissioners and Constables. I was involved in drawing and negotiating the districts in the settlement of a Federal
Court Action in case against the Lone Star Community College District (population of just under 2,000,000 persons. I testified at the settlement hearing held by the Court to adopt the plan. I have testified in the earlier hearings that have been held in this matter and in the parallel case which was tried in the District Court for the District of Columbia. I am currently acting in the capacity of expert witness in redistricting matters in both the state and Federal Court matters against the Beaumont ISD. I am also acting as an expert witness in the case of LULAC v. The Edwards Aquifer Authority. I was a witness in the suit against the Lone Star Community College District and negotiated the plan drawn to adopt single member districts. I testified in the settlement hearing which was held in November of last year. Late last year I testified in a case against the Pasadena ISD and against Galveston County. I was involved as a lawyer and also as a congressional witness in the successful effort to extend the special provisions of the Voting Rights Act of 1965 to cover Texas. My testimony on the historical pattern of discrimination is generally credited as forming the basis for the legal argument to include Texas and has been cited by several federal courts including the Supreme Court in the interpretation of Sections 2 and 5 of the Act. In 1982, I again offered Congressional testimony in support of the adoption of the new provisions for Section 2 of the Voting Rights Act. As the legislative history indicates, the effort was to install the legal analysis which resulted from Graves/White.