EXHIBIT E
REPORT OF DR. ALLAN J. LICHTMAN FOR THE QUESADA PLAINTIFFS

FEBRUARY 28, 2014
I. Statement of Purpose

1. I have been asked to consider whether the redistricting plan for U.S. Congress enacted by the Texas State Legislature in 2013 (Plan C235) and signed into law by Governor Rick Perry intentionally discriminates against the voting rights of the state’s African American and Hispanic minorities. I have also been asked to review the 2012 election results for CD 33 and to assess whether the district performed as an effective district for minority voters in 2012 under Plan C235. I have also reviewed the illustrative plan (C238) in considering whether the 2013 plan fairly reflects minority population growth in North Texas and fully cures the intentional discriminatory fracturing of the minority population in the DFW region. I have also examined the issue of proportionality and the discriminatory effects of the 2013 plan in other regions of the state. My expected fee in this matter is $400 per hour. I have enclosed an updated CV and a table of cases in which I have provided written or oral testimony.

II. Evidence and Methodology

2. The report draws upon sources standard in historical and social scientific analysis. These include scholarly books, articles and reports; newspaper and other journalistic articles; demographic information; election returns; court opinions, briefs, and reports, government documents; and scientific surveys. In assessing intentional discrimination this report follows the methodological guidelines of the United States Supreme Court in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977). In that case, the Court focused on five distinct factors that are relevant to ascertaining intentional discrimination: (1) discriminatory impact, (2) historical background, (3) the sequence of events leading up to the decision, (4) procedural or substantive deviations from the normal decision-making process, and (5) contemporaneous viewpoints expressed by the decision-makers. The report will consider
each of these factors in turn. It uses these factors methodologically only to assess intentional
discrimination in the state’s congressional redistricting plans, not to reach any legal conclusions.
Sources are footnoted throughout the report.

III. Qualifications

3. This study draws on my experience in voting rights litigation and expertise in political
history, political analysis, and historical and statistical methodology. I am Distinguished
Professor of History at American University in Washington, D.C., where I have been employed
for 40 years. Formerly, I served as Chair of the History Department and Associate Dean of the
College of Arts and Sciences at American University. I received my BA in History from
Brandeis University in 1967 and my Ph.D. in History from Harvard University in 1973, with a
specialty in the mathematical analysis of historical data. My areas of expertise include political
history, electoral analysis, and historical and quantitative methodology.

4. I am the author of numerous scholarly works on quantitative methodology in social
science. This scholarship includes articles in such academic journals as Political Methodology,
Journal of Interdisciplinary History, International Journal of Forecasting, and Social Science
History. In addition, I have coauthored Ecological Inference with Dr. Laura Langbein, a
standard text on the analysis of social science data, including political information. I have
published articles on the application of social science analysis to civil rights issues. This work
includes articles in such journals as Journal of Law and Politics, La Raza Law Journal,
includes the use of quantitative and qualitative techniques to conduct contemporary and
historical studies, published in such academic journals as The Proceedings of the National
Academy of Sciences, The American Historical Review, The International Journal of

5. My book, White Protestant Nation, was one of five finalists for the National Book Critics Circle Award for the best general nonfiction book published in America. My most recent book, FDR and the Jews, was published under the Belknap Imprint of the Harvard University Press, reserved for works of special significance and lasting impact. This book was an editor’s choice book of the New York Times in 2013, the winner of the most prestigious prize in American Jewish Studies, the National Jewish Book Award, and a finalist for Los Angeles Times Book Prize in history (prize winner announced, April 2014).

6. I have worked as a consultant or expert witness for both plaintiffs and defendants in more than eighty voting and civil rights cases. These include several cases in the state of Texas. In the U. S. Supreme Court case, League of United Latin Am. Citizens (LULAC) v. Perry, 548 U.S. 399 (2006), the majority opinion written by Justice Kennedy authoritatively cited my statistical work several times. The three judge court in the District of Columbia in the Section 5 litigation on the 2011 State of Texas redistricting plan also cited my work multiple times in support of their finding that this plan intentionally discriminated against minority voters (State of Texas v. United States and Eric H. Holder, 887 F. Supp. 2d 133, 138-39 (D.D.C. 2012), at 46, 49, 128, and 132). State of Texas My work includes more than a dozen cases for the United States Department of Justice and cases for many civil rights organizations. I have also worked as
a consultant or expert witness numerous times for state and local jurisdictions, including the state of Texas.

IV. Discriminatory Impact

7. In considering the discriminatory impact of the 2013 Texas plan for Congress, it is important to consider demographic changes in the state of Texas since the 2000 Census. From 2000 to 2010 the total population of Texas rose from 20,851,820 to 25,145,561, an increase of 20.6 percent that netted Texas an additional four Congressional seats – no other state gained more than two new districts. Thus, in the post-2010 redistricting, the state had the opportunity to draw 36 rather than the previous 32 districts.

8. Latinos and African Americans accounted for most of Texas’s population growth since 2000 that led to this expanded number of districts. And all minority groups combined counted for nearly all of Texas’s population growth. African Americans and Latinos accounted for 78.7 percent of the Texas total population growth between 2000 and 2010. All minorities combined accounted for 89 percent of the Texas total population growth since 2000; Anglos accounted for only 11 percent of that growth. As a result of their rapid population growth, African Americans and Latinos have come to comprise nearly a majority of the Texas’s total population in 2010 – 49.6 percent. All minority groups combined comprise a majority of Texas’s total population – 54.6 percent, with Anglos in the minority. With respect to voting age population, African Americans and Latinos also accounted for 70.3 percent of the growth in Texas’s voting age population. As a result of the disproportionate growth in Texas’s minority population, African Americans and Latinos in 2010 Census comprised 45.2 percent of Texas’s voting age population and minorities overall combined comprised 50.3 percent. In addition, according to the most recent compilation of the US Census American Community Survey, African Americans and
Latinos also comprise 39.5 percent of the state’s citizen voting age population, which translates proportionately into more than 14 congressional districts (.395 * 36 = 14.2). African Americans comprise 13 percent of the citizen voting age population, which translates to 4.7 districts (.13 * 36 = 4.7) and Hispanics comprise 26.5 percent which translates proportionately to 9.5 districts African Americans (.265 * 36 = 9.5). Taken together, all minorities comprise 43 percent of the 2010 citizen voting age population, which translates proportionately into 15.5 districts (.41 * 36 = 15.5) and Anglos comprise 57 percent, which translates proportionately into 20.5 Anglo districts (.57 * 36 = 20.5).¹

9. In contrast to these demographic realities, the initial 2011 Plan C185 adopted in Texas created only 10 voting-age majority-minority districts in which minority voters had an effective opportunity to elect candidates of their choice. That left 26 districts in effect controlled by whites, thus over-representing whites by five and a half districts.

10. The 2013 Texas Plan C235 only partially addressed this disproportion. It creates 11 majority-minority districts in which minority voters clearly have the effective opportunity to elect candidates of their choice. Seven of these districts are controlled by Hispanic voters (CD15 - Hinojosa, CD16 – O’Rourke, CD20 – Castro, CD28 – Cuellar, CD29 – G. Green, CD34 – Vela, CD35 – Doggett). Four of these districts are controlled by African American voters (CD9 – A Green, CD18 – Jackson Lee, CD30 EB Johnson, CD33 – Veasey). Another potential minority-opportunity district, CD 23, was not fully restored as an effective district (see the analysis of majority-Hispanic CD 23 below). It creates 25 districts that are in effect controlled by white voters, thus over-representing whites by four a half districts. Even if CD 23 were not included in

the count, 24 districts would still be controlled by whites, an overrepresentation by three and a half districts.²

11. In addition, the 2013 Plan C235 retained the configuration of Travis County and surrounding counties which resulted in the dismantling of a minority crossover district anchored in Travis County (previous CD25) that in past elections has enabled minorities to elect candidates of their choice to Congress in coalition with Anglos. This district is majority-minority in total population, but falls just short of a majority in its voting age population (45.1 percent). However, this is an effective crossover district that provided minority voters the ability to elect candidates of their choice. A number of the experts testifying in the initial Perez v. Perry trial agreed that Travis County is an exception to the general pattern in Texas of Anglo voters voting against the candidates of choice of African American and Hispanic voters in general elections.³ In Travis County there is generally more than sufficient Anglo crossover votes to elect minority candidates of choice.

12. These findings are confirmed by an endogenous and exogenous election analysis that focuses on prior Congressional District 25. The endogenous analysis examines actual congressional election results in existing CD 25; the exogenous analysis examines reconstituted statewide elections in this district. The exogenous analysis considers the same five 2008 and 2010 general elections explored in my Perez report. These contests incorporate a mix of candidates of different races, including a black Democrat vs. a white Republican (2008 president), two Latino Democrats vs. white Republicans (2008 Senate and 2010 Lt. Governor), a white Democrat vs. a white Republican (2010 governor), and a white Democrat vs. a black

² The minority ability districts are CD9, CD15, CD 16, CD18, CD20, CD23, CD28, CD29, CD30, CD33, CD34, and CD 35.
Republican (2008 State Supreme Court Justice). With respect to the endogenous test, Democratic candidate Lloyd Doggett prevailed in every congressional election held in CD 25 since 2004. Likewise, the results of the reconstituted election analysis reported in Table 1 show that the Democratic candidate prevailed within existing CD 25 in four of five contests. Thus the endogenous win rate for minority voters in CD 25 is 100 percent and the exogenous win rate is 80 percent. Clearly, CD 25 is a prior district that presented minority voters with an effective ability to elect candidates of their choice.

13. Under the state’s 2013 Plan C235, CD25 remains dismantled (as Texas proposed dismantling it in their 2011 map) and Travis County is divided into five districts, with no more than a quarter of the county’s population in any one of these districts: 24 percent in CD10, 13 percent in CD17 18 percent in CD21, 24 percent in CD25, and 21 percent in CD35. Under the state’s plan, Austin (population 791,000 in 2010), within Travis County, is the largest city in the nation not to have a congressional district anchored within its boundaries. As Map 1 indicates, the slicing up of Travis County was not justified by traditional redistricting principles, but rather was the result of bizarre and distorted shapes for districts.

14. The discriminatory effects of the 2011 Plan C185 are further demonstrated by examining the Dallas County and Tarrant County region in north Texas. In its initial 2011 plan C185, the state created bizarrely configured congressional districts, especially CD 12, CD 26, and CD 33 in this region, which indicates a predominantly racially-driven redistricting with the intent to fragment Hispanic and African American communities in order to avoid creating effective minority ability to elect districts. Instead, minority voters are stranded in white-dominated districts in which they have no ability to elect candidates of their choice to

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<table>
<thead>
<tr>
<th>Plan C100</th>
<th>Governor</th>
<th>Lt. Governor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Perry-R 41.1%</td>
<td>Dewhurst-R 48.1%</td>
</tr>
</tbody>
</table>

Winning Percentage in Bold

### 2008 General Election

<table>
<thead>
<tr>
<th>Plan C100</th>
<th>President</th>
<th>U.S. Senate</th>
<th>Sup Ct Chief</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>McCain-R 39.5%</td>
<td>Cornyn-R 40.7%</td>
<td>Jefferson-R 38.9%</td>
</tr>
<tr>
<td></td>
<td>Obama-D 59.8%</td>
<td>Noriega-D 55.4%</td>
<td>Jordan-D 55.7%</td>
</tr>
</tbody>
</table>

Winning Percentage in Bold
Congress. Under the 2011 state-passed Plan C185, the only effective majority-minority district in the entire Dallas and Tarrant County region is CD 30. However, the creators of the state-passed plan packed this already effective minority voters’ ability to elect district with additional minorities whose votes are not necessary to provide minorities the ability to elect candidates of their choice. By increasing the minority population of CD 30 the state deliberately created a heavily packed district that wastes many minority votes. Thus, the 2011 plan (C185) exhibited both the cracking and packing of minority communities. The plan also removed from the African-American District 30 its economic centers, and district office.

15. Moreover, the state-passed 2011 Plan C185 in the Dallas-Tarrant region failed to respond to the population changes there. Since 2000 the Latino population in Dallas and Tarrant Counties has grown by 83.7 percent (more than 440,000 persons), the African American population by 34.1 percent (more than 179,000 persons), and population of other minorities by 12.0 percent (more than 63,000 persons). In contrast the white population in Dallas and Tarrant Counties has declined by 29.8 percent (more than 156,000 persons) since 2000. African American and Latinos now comprise a majority of the population of these two counties, equal to 52.6 percent. Anglos comprise only 41 percent of the population.5

16. The failure of the State’s 2011 plan in this region to reflect the minority population growth is only partially corrected by the 2013 congressional Plan C235. This plan creates one additional effective majority minority district in the Dallas/Tarrant region, CD 33. This district under Plan C235 has a minority voting age and citizen voting age majority, with the largest

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MAP 1
TRAVIS COUNTY UNDER THE 2013 STATE CONGRESSIONAL PLAN
minority group comprised of Hispanics (41.4% Hispanic CVAP, 30.0 percent African American CVAP). However, it is not possible to judge the performance of a district based on demographics alone. As the US Supreme Court has instructed in *Thornburg v. Gingles*, “a searching practical analysis” is required that includes turnout and bloc voting analysis. Given that African Americans turn out in this area of the state in Democratic primary elections at much higher levels than Hispanics and that most whites participate in Republican primaries, the overwhelmingly politically cohesive voting patterns of African Americans are able to dominate the parties and nominate the candidate of their choice. In turn, in general elections, African American and Hispanic voters coalesce as a strong voting majority to elect the nominee from the Democratic primary.

17. This functioning of CD 33 under the 2013 Plan C235 as an effective African American ability to elect district is corroborated by an ecological regression analysis of the 2012 Democratic primary and general elections in the district. The results of this analysis are reported in Tables 2 through Table 5 below. According to Table 2, African Americans are an overwhelming majority of voters turning out for the 2012 Democratic primary and a clear majority of voters turning out for the 2012 Democratic runoff. According to Table 3, a substantial majority of African Americans (nearly two-thirds) backed the African American candidate Marc Veasey in the primary and were virtually unanimous in their support of Veasey in the runoff election. Veasey finished first in a field of some dozen candidates in the primary with 36.8 percent of the vote. He then prevailed in the runoff over Hispanic candidate Domingo Garcia with 52.7 percent of the vote cast in that election. According to Tables 4 and 5, both

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6 For a description of this standard methodology see, Allan J. Lichtman, “Report on the 2012 Democratic Primary, Democratic Runoff and General Election for Congress in Texas Congressional District 33, 29 May 2013, submitted in *Perez v. Perry*. Tables 2 to 5 below are taken from this report.
Table 2  
Ecological Regression Estimates of the Percentage of Anglos, African Americans and Latinos Among Voters Participating in the 2012 Democratic Primary and Runoff Elections for Congress In Texas Congressional District 33

<table>
<thead>
<tr>
<th>Racial Group</th>
<th>2012 Democratic Primary</th>
<th>2012 Democratic Runoff</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>% of Voting Age Population</td>
<td>% of Voting Age Pop Turning Out in Election</td>
<td>Percent of Voters</td>
</tr>
<tr>
<td>Anglo</td>
<td>18.9%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>African American</td>
<td>18.2%</td>
<td>14.8%</td>
<td>64%</td>
</tr>
<tr>
<td>Latino</td>
<td>62.8%</td>
<td>2.4%</td>
<td>36%</td>
</tr>
</tbody>
</table>
Table 3
Ecological Regression Estimates of African American Voting for African American Candidate Veasey: 2012 Primary and Runoff Elections for Congress in Texas Congressional District 33

<table>
<thead>
<tr>
<th>Election</th>
<th>% of African American Voters for Candidate Veasey</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012 Democratic Primary</td>
<td>65%</td>
</tr>
<tr>
<td>2012 Democratic Runoff</td>
<td>100%</td>
</tr>
</tbody>
</table>
Table 4  
Ecological Regression Results for 2012 General Election for Congress  
In Texas Congressional District 33  

<table>
<thead>
<tr>
<th>Candidate</th>
<th>% of Anglo Voters for Candidate</th>
<th>% of Black Voters for Black Candidate</th>
<th>% of Latino Voters for Black Candidate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veasey, Democrat</td>
<td>19%</td>
<td>99%</td>
<td>95%</td>
</tr>
<tr>
<td>Bradley, Republican</td>
<td>78%</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Lindsay, Green</td>
<td>3%</td>
<td>1%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Table 5  
Ecological Regression Estimates of the Percentage of Anglos, African Americans and Latinos Among Voters Participating in the 2012 General Election for Congress In Texas Congressional District 33  

<table>
<thead>
<tr>
<th>Racial Group</th>
<th>% of Voting Age Population</th>
<th>% of Voting Age Pop Turning Out in Election</th>
<th>Percent of Voters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anglo</td>
<td>18.9%</td>
<td>41.2%</td>
<td>32%</td>
</tr>
<tr>
<td>African American</td>
<td>18.2%</td>
<td>55.7%</td>
<td>41%</td>
</tr>
<tr>
<td>Latino</td>
<td>62.8%</td>
<td>10.8%</td>
<td>27%</td>
</tr>
</tbody>
</table>
both African American and Hispanic voters overwhelmingly backed Veasey in the 2012 general election and together comprised about two-thirds of the voters in that election. Veasey prevailed in the general election over Republican Chuck Bradley, winning 72.5 percent of the vote.

18. The creation of a second effective African American opportunity district in the Dallas/Tarrant region brings to four the number of such districts in the 2013 Plan C235 (CDs 9, 18, 30, and 33). This is much more closely in line than the 2011 Plan C185 (three effective African American congressional districts) with the African American citizen voting age population of 13 percent in Texas. As noted above, this percentage translates into 4.7 districts. However, the new plan falls short of creating any effective Hispanic opportunity district in the Dallas/Tarrant region, failing to reflect the enormous growth of the Hispanic population in the region documented above and that some 1.4 million Hispanics resided in Dallas and Tarrant counties in 2010, comprising a third of the total population. The 2013 Plan C235 also fails to correct the intentional fragmentation of the minority population in this north Texas region. In addition, with only 7 total effective Hispanic opportunity districts, the 2013 Plan C235 falls far out of line with the Hispanic citizen voting age population of 26.5 percent, which as noted above, translates to 9.5 districts.

19. Illustrative Plan C238 shows that it is possible to maintain CD 33 as an effective African American opportunity district, while creating an additional effective Hispanic opportunity district, CD 3, in the Dallas/Tarrant region. Maps 2 and 3 below show that there are large and reasonably geographically compact African American and Hispanic communities in the Dallas/Tarrant region and that it is possible, due to the heavy concentration of African American and Hispanic population areas, to draw two African American and one Hispanic effective opportunity districts in this part of North Texas. Map 4 also shows how Plan C238
MAP 2
DALLAS/TARRANT AFRICAN AMERICAN CONCENTRATIONS, BROWN SHADINGS AND THREE MINORITY OPPORTUNITY DISTRICTS

C238 - Anchia - 3 DFW Minority Districts

African American Racial Shading
MAP 3
DALLAS/TARRANT HISPANICS CONCENTRATIONS, GREEN SHADINGS AND
THREE MINORITY OPPORTUNITY DISTRICTS

C238 - Anchia - 3 DFW Minority Districts
corrects the packing and cracking of minority communities that still were retained from Plan C185 in the 2013 state plan C235. Under Plan C 238, CD 33 is actually strengthened as an
effective African American opportunity district compared to the 2013 state Plan C235, with a
citizen voting age population for African Americans of 37.4 percent, compared to 17.4 for
Hispanics. In two recent competitive statewide Democratic primaries with African American
candidates, these candidates prevailed overwhelmingly in CD 33 under Plan C238. Barack
Obama won 70.8 percent of the 2008 Democratic presidential primary vote in CD 33 and African
American Candidate Bill Burton won 65.1 percent of the 2010 Democratic primary vote for
Land Commissioner. In addition, every candidate emerging from the statewide Democratic
primaries in general elections since 2006 has prevailed in CD 33, typically by wide margins.
Thus, African Americans are able to elect the candidate of their choice at every stage of the
political process in CD 33 under plan C238.7

20. Plan C238 also creates an additional effective Hispanic opportunity district in the
Dallas/Tarrant region, CD 3. This new district 3 remedies the intentional fracturing of the
Hispanic population under the 2011 and 2013 plans. Table 6 below reports the voting age and
citizen voting populations of CD 3 under Plan C238. The effectiveness of CD 3 for Hispanic
voters is demonstrated in Table 7, which reports the results in CD 3 of recent competitive
Democratic primary elections in CD 3. In every instance the Hispanic candidate in such a
primary gained a majority of the vote within CD 3, with the exception of the 2006 primary for
Lt. Governor, where the lead Hispanic candidate received a plurality and two Hispanic
candidates combined won 61 percent of the vote.

7 Demographic reports and reconstituted elections from the Texas Legislative Council.
Table 6
Demography of Congressional District 3 (Plan C238)

<table>
<thead>
<tr>
<th>Plan C238</th>
<th>Percent Anglo VAP</th>
<th>Percent Black VAP</th>
<th>Percent Hispanic</th>
<th>Percent Black + Hispanic VAP</th>
<th>Percent Other VAP</th>
<th>Percent Combined Minority VAP</th>
</tr>
</thead>
<tbody>
<tr>
<td>CD 3</td>
<td>23.2%</td>
<td>10.5%</td>
<td>63.6%</td>
<td>73.5%</td>
<td>3.2%</td>
<td>76.8%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Percent Anglo CVAP</th>
<th>Percent Black CVAP</th>
<th>Percent Hispanic CVAP</th>
<th>Percent Black + Hispanic CVAP</th>
<th>Percent Other CVAP</th>
<th>Percent Combined Minority CVAP</th>
</tr>
</thead>
<tbody>
<tr>
<td>CD 3</td>
<td>37.2%</td>
<td>14.6%</td>
<td>44.9%</td>
<td>59.5%</td>
<td>3.3%</td>
<td>62.8%</td>
</tr>
</tbody>
</table>
### Table 7
Reconstituted Primary Elections in Congressional District 3 (Plan C238)

#### 2006 Democratic Primary

<table>
<thead>
<tr>
<th>Plan C238</th>
<th>LT. GOVERNOR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Alvarez (H)</td>
</tr>
<tr>
<td>CD 3</td>
<td>43.0%</td>
</tr>
</tbody>
</table>

#### 2008 Democratic Primary

<table>
<thead>
<tr>
<th>Plan C238</th>
<th>UNITED STATES SENATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Noriega (H)</td>
</tr>
<tr>
<td>CD 3</td>
<td>60.0%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Plan C238</th>
<th>SUPREME COURT 7</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cruz (H)</td>
</tr>
<tr>
<td>CD 3</td>
<td>54.0%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Plan C238</th>
<th>SUPREME COURT 8</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yanez (H)</td>
</tr>
<tr>
<td>CD 3</td>
<td>61.6%</td>
</tr>
</tbody>
</table>

#### 2010 Democratic Primary

<table>
<thead>
<tr>
<th>Plan C238</th>
<th>LT. GOVERNOR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Chavez-Thompson (H)</td>
</tr>
<tr>
<td>CD 3</td>
<td>54.0%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Plan C238</th>
<th>LAND COMMISSIONER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Uribe (H)</td>
</tr>
<tr>
<td></td>
<td>57.6%</td>
</tr>
</tbody>
</table>
21. Additional discriminatory effects of the 2013 Plan C235 are evidenced in CD 23 in the region extending from San Antonio west to El Paso. In order to protect incumbent Quico Canseco who was overwhelmingly opposed by Hispanic voters in CD 23, the initial 2011 Plan C185 reduced the opportunities for Hispanic voters to elect candidates of their choice in that district. According to an ecological regression analysis by Dr. Lisa Handley, Canseco received only 11 percent of the Hispanic CD 23 vote in 2010, with his Democratic opponent Ciro Rodriguez winning 87 percent and the remainder going to minor candidates. In contrast, Canseco won 83 percent of the white vote in CD 23, compared to only 11 percent for Rodriguez. The decision-makers in Texas knew full well that to protect Canseco they had to draft new CD 23 in a way that prevented its Hispanic voters from electing their candidate of choice. 8

22. Texas officials had experienced this scenario before. In 2002 a Hispanic Republican Henry Bonilla had prevailed in CD 23 with only 8 percent of the Hispanic vote. To protect Bonilla, Texas decision-makers redesigned CD 23 to limit the effectiveness of the Hispanic vote. In LULAC v. Perry, the US Supreme Court found that CD 23 violated Section 2 of the Voting Rights Act. In 2011, Texas decision-makers knew again that to bolster the new Republican incumbent Canseco they had to thwart the will of the overwhelming percentage of Hispanic voters. But in an attempt to mask another voting rights violation, they knowingly and intentionally reduced the effectiveness of the Hispanic vote without reducing the Hispanic voting age percentage in the district. In its September 2011 article on results of the post-2010 redistricting, The Hill ranked Canseco third among all incumbents in the nation most helped by redistricting. The article noted that, “Republicans were careful when they redrew the district not

8 Dr. Lisa Handley, “A Section 5 Voting Rights Analysis of the Proposed Texas Congressional Plan,” 19 October 2011, for US Department of Justice.
to bring down the district’s Hispanic percentage in order to avoid violating the Voting Rights Act, which protects minority voters, but craftily switched out high-voting Democratic Hispanic areas with areas that have lower turnout. If the district stands up to legal scrutiny, Canseco will be in a better position heading into next year’s election.” Dr. Handley found in her analysis that the Texas decision-makers had succeeded in the attempt to negate the effect of the Hispanic vote in CD 23, which she concluded was no longer an “ability district” for Hispanic voters. Even the state of Texas’s own expert Dr. John Alford testified that CD 23 “is probably less likely to perform than it was, and so I certainly wouldn't count and don't [and] haven't counted the 23rd as an effective minority district in the newly adopted plan.”

23. The 2013 congressional Plan C235 does not fully restore Hispanic voting opportunities in CD 23. Hispanic candidate of choice Democrat Pete Gallego prevailed in CD 23 in 2012 with a bare majority 50.3 percent of the vote, compared to 45.5 percent for Canseco and 4.1 percent for two minor white candidates. However, according to reconstituted election analysis, CD 23 as configured in the 2013 Plan C235 scores lower for the candidate of choice of minority voters in every one of ten benchmark elections as compared to CD 23 in the pre-2011 plan, the district that Canseco won in 2010 with only 11 percent of the Hispanic votes.

24. A discriminatory effect on minorities in the congressional plan can also be seen in Hispanic-majority districts like CD20. Both the initial 2011 Plan C185 and the 2013 Plan C235 remove from this district such iconic places as the Alamo, City Hall, the federal courthouse, and the Henry B. Gonzalez Convention Center. Although these institutions were transferred to another Hispanic district, this decision by Texas shows insensitivity to the people of CD 20, the


10 The reconstituted election analysis can be found in Stephen Ansolabehere, Analysis of Congressional District 23 Under Plan C100 and C226, filed in Perez v. Texas, Civil Action, 11-CA-360-OLG-JES-XR.
first congressional district in Texas history to elect a Hispanic candidate of choice of Hispanic voters to the United States Congress.\(^{11}\)

V. Historical Background

25. The state of Texas has a long and ongoing history of discrimination against minorities that has substantially impacted the opportunity for African Americans and Hispanics to participate fully in the political process and elect candidates of their choice. A study of this history by F. Chandler Davidson, Radoslav Tsanoff Professor of Public Affairs Emeritus at Rice University, an authority on Texas history, politics, and voting rights, “Racial discrimination is a basic feature of Texas history.”\(^{12}\) Examples affecting voting include:

* Laws as early as 1845 prohibited Mexicans from organizing political rallies or serving as election judges.

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

* After the Reconstruction period that enfranchised African Americans in the late nineteenth and early twentieth centuries, white dominated governments sharply curtailed African American and Hispanic political rights through the poll tax, the gerrymandering of legislative


\(^{12}\) Declaration of F. Chandler Davidson, Report on the History of Vote Discrimination Against Citizens of Color in the State of Texas, Exhibit A, Submission No. 2011-2775: Comment Under Section 5 of the Voting Rights Act. This declaration is based largely on published work. Davidson notes, “This declaration is taken largely from an article I wrote in the Handbook of Texas Politics. See (http://www.tshaonline.org/handbook/online/articles/wmafr.)
districts, restrictive registration laws, and the all-white Democratic primary.

* In the election of 1964 as part of so-called “Operation Eagle Eye,” Republican operatives circulated information in black neighborhoods in Houston which falsely warned that authorities could arrest voters who had an outstanding parking ticket or traffic conviction.\(^\text{13}\)

* African American and Hispanic political rights advanced after the U.S. Supreme Court invalidated the white primary in 1944 and especially after the elimination of the poll tax by constitutional amendment in 1963 and the passage of the Voting Rights Act in 1965.

* However, the opportunity for African American and Hispanics to participate fully in the political process met with considerable resistance in late twentieth century and twenty-first century Texas.

* In 1975, Congress found that Texas’s history and ongoing discrimination against minorities justified including Texas under Section 5 of the Voting Rights Act, which required preclearance from the U.S. Department of Justice for all changes in electoral arrangements, including voting requirements and redistricting.

* Since the 1970s minorities have successfully sued the state of Texas and its subdivisions numerous times to eliminate illegal vote dilution.

* In every redistricting since the 1970s, courts have found that at least one of Texas’ statewide redistricting plans violated the Voting Rights Act or the Constitution.

* From the post-1980 redistricting – the first in which Texas was covered under Section 5 -- through the post 2000 redistricting-- the United States Department of Justice has interposed an objection to at least one of Texas’ statewide redistricting plans for congress or the state legislature. It is the only state with this consistent record of objections to such statewide plans.

* The Department of Justice has interposed more objections in Texas than in any other state covered under Section 5.

* In the post-2010 redistricting, Texas was the only state in the union to have any one of its statewide congressional or state legislative plans rejected under Section 5. It had all three statewide plans rejected under Section 5 by the DC District Court, two of which (Congress and State Senate) were found to be the products of intentional discrimination.

* Until halted by intervention from the U. S. Justice Department and the federal courts between 2004 and 2008, students at the mostly African American Prairie View A&M University in Waller County, Texas had been the target of vote suppression efforts by county officials. The students, however, did not get an on-campus polling place until 2013.14

* In the 2008 and 2009 elections, officials in Runnels County, Texas defied a long-standing US Justice Department order (under Section 5 of the Voting Rights Act) to assign one bilingual poll worker to each of its five voting precincts. In 2008 at least half of the polling places did not have a bilingual worker and in 2009 none of the polling places had a bilingual worker.15

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These are merely examples of Texas’ long and ongoing history of discrimination against minority voters, a history that is uncontestable.

VI: Sequence of Events

26. The Republican-dominated legislature in Texas enacted and the Republican Governor signed its statewide redistricting plans in 2011 at the same time that state Republicans enacted or sponsored other measures that minority legislators and advocacy groups insisted had the intent or effect of discrimination against minorities. Examples include the strictest voter identification law in the nation and legislation that would stop state aid to local governments within Texas that prohibit police officers from inquiring about the immigration status of any person arrested or legally detained, regardless of the matter involved. This bill was supported by Governor Rick Perry and passed both chambers, along party lines, although not in the same form to secure final enactment. It sparked protests from Latino organizations and Latino legislators. In the words of Hispanic State Senator Carlos Uresti, “I shouldn't have to prove my citizenship because my skin is a little darker than yours,” he said. “This bill is hurtful, it's ignorant and it's offensive.” A special session of the Texas legislature that year also enacted as a rider on a must-pass budget bill legislation that will require people to prove U.S. citizenship or legal residence before they can renew or get a Texas driver's license. Hispanic critics noted that the bill would be burdensome to U.S. citizens and legal residents, lead to racial profiling, and force undocumented immigrants who are long-time residents either to drive without licenses or face deportation. Representative Eddie Rodriguez (D-Austin), vice chairman of the Mexican American Legislative Caucus, said the legislation is “more comprehensive and more invasive than sanctuary cities ever was. It's a much bigger net.” Luis Figueroa, legislative attorney with the Mexican American
Legal Defense and Educational Fund, said, “Tying immigration to driver's licenses is going to continue to be a disaster.”

27. Debates over the Texas voter ID law, the redistricting plans, and the immigration-related laws, took place under conditions of extreme racial tension and polarization in Texas, according to contemporaneous news reports. A news article entitled “Racial Tensions Wrack Capital,” by the Amarillo Globe-News, on June 17, 2011 noted, “Racial tensions flare up every now and then at the State Capitol. But few times in recent history has the tension lasted as long as it did this week.” A week later the editor of the San Antonio Express-News noted “Is it just me, or is the distinct scent of ethnic and racial tension in the air more than usual in San Antonio, blowing down Interstate 35 from the state capitol?” At a time when Hispanic growth is redefining Texas and the nation, he said, “It seems like a really bad time, then, to return to a time defined by racial, ethnic and education inequality, just when we can clearly see the future, a shared future.”

28. After the passage of its congressional and state legislative redistricting plans in 2011, the state of Texas recognized that its plans were unlikely to gain Section 5 preclearance from the United States Department of Justice. As a result, it bypassed the Justice Department and on July

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19, 2011 petitioned the federal District Court for the District of Columbia (DC Court) for a declaratory judgment upholding its plans. On August 28, 2012 the DC Court issued its ruling denying preclearance to Texas’ State Senate, State House, and congressional plans. The Court found that the State House and congressional plans were retrogressive of minority voting opportunities and that the state of Texas had passed the State Senate and congressional plans with the intent to discriminate against minority voters.\(^{18}\) (I am not citing the DC Court’s ruling or its findings described below for any legal precedent or offering it as such; but rather, following *Arlington Heights*, I cite is only as an integral part of the sequence of events leading to adoption of the 2013 Texas congressional plan.)

29. The Court did not just rule that Texas had failed to meet its burden to prove a lack of intentional discrimination. Rather the Court ruled affirmatively that Texas had intentionally discriminated against minorities in adopting its 2011 redistricting plans for State Senate and Congress. With respect to the congressional plan the Court reached this unanimous conclusion: “But because we agree that the plan was enacted with discriminatory purpose, we reach this issue as an alternative, unanimous basis to deny preclearance for the Congressional Plan.” (*Texas v. Holder*, at 38). The Court additionally stated, “Although we have already concluded that the Congressional Plan cannot be precleared under section 5’s effect prong, we are also persuaded by the totality of the evidence that the plan was enacted with discriminatory intent.” Beyond the evidence that it considered the Court also stated, “The parties have provided more evidence of discriminatory intent than we have space, or need, to address here.” (*Texas v. Holder*, at 42).

30. Also important in understanding the sequence of events that led to passage of the

\(^{18}\) The Court did not reach the issue of intentional discrimination in the State House plan but stated, “Because of the retrogressive effect of the State House Plan on minority voters, we do not reach whether the Plan was drawn with discriminatory purpose. But we note record evidence that causes concern.” *Texas v. Holder*, at 70.
2013 plan are the proceedings in the three-judge court in the U. S. District Court for the Western District of Texas (San Antonio Court). On September 6, 2011 a month and a half after Texas’ petition to the DC Court, the San Antonio Court began hearings on challenges to Texas’ State House and congressional redistricting plans filed under Section 2 of the Voting Rights Act (the congressional case is *Perry v. Perez*, No. 11-715). On September 28, 2011 the San Antonio Court issued a date for trial on challenges to Texas’s State Senate plan (the hearing is not held, see below). On November 26, 2011 the San Antonio Court issued an interim congressional plan and shortly thereafter Texas Attorney General quickly asked for a stay from the US Supreme Court. On December 9, 2011 the Supreme Court ordered a stay for all interim Texas redistricting plans. The Court heard oral arguments in early January 2012 and on January 20, 2012 issued an order vacating the San Antonio Court’s orders for implementing interim plans and remands the matter for further proceedings.

31. The Supreme Court did not decide the merits of Texas’ initial 2011 redistricting plans or rule on the merits of the San Antonio Court’s interim plans under the Constitution or the Voting Rights Act. It ruled only that the interim plan did not give sufficient deference to the preferences of the Texas legislature in enacting its initial 2011 plans. Even though the initial 2011 plans had not been precleared -- the DC Court had not yet ruled on Texas’s petition for a Section 5 declaratory judgment -- the San Antonio Court should not “prejudge the merits of the preclearance proceedings.” Thus, at the time of the Supreme Court order it was as yet undetermined whether the state’s 2011 plans passed muster under the retrogression and intent standards of Section 5.

32. Following guidance from the US Supreme Court, on March 19, 2012 the San Antonio
Court issued new interim State House, State Senate, and congressional plans for the 2012 elections. These plans were closely based on the state’s initial 2011 plans. The San Antonio Court order made clear that the plans being ordered were interim, and did not include any final ruling on any pending voting rights or constitutional claims.

33. Then on August 28, 2012 the DC Court issued the ruling described above, answering the unanswered question at the time of the Supreme Court’s ruling and the implementation of the new interim plans. The DC Court answered the Supreme Court’s question about the legality of the Texas plans in the negative, denying preclearance to all three Texas plans.

34. Despite this ruling, given time constraints, there was no choice at that point but to go forward with the new interim plans, the legality of which would be determined by further proceedings of the San Antonio Court. The state of Texas also appealed the DC Court’s denial of preclearance to the US Supreme Court. Eventually, the Supreme Court vacated the DC district court’s ruling and remanded the case to the DC Court, which eventually dismissed the case. On May 27, 2013, Governor Rick Perry called the Texas legislature, dominated by a substantial Republican and overwhelmingly Anglo Republican majority, into special session for the sole purpose of enacting the interim redistricting plans used in the 2012 elections, including the congressional Plan C235. These plans were based upon the state’s 2011 redistricting plans which the DC Court had found intentionally discriminated against minorities with respect to Congress – the focus of this report. With respect to Congress these plans had resulted in the election of Republicans 24 of the state’s 36 seats (67 percent) and the elections of whites in 26 seats (72
35. The San Antonio Court did not have the benefit of the DC Court’s ruling at the time that it implemented the plans for the 2012 elections and intended them to be interim only, with further litigation to take place. At the time when Governor Perry called the Special Session, the US Supreme Court had not addressed Texas’ appeal of the DC Court’s denial of preclearance and the Supreme Court had not yet ruled on legality of the preclearance sections of the Voting Rights act pending in an Alabama case, *Shelby County v. Holder*. The same logic that benefitted Texas in the modification of the San Antonio Court’s initial interim plans should have applied here. The only ruling on the state’s 2011 redistricting plans, on which the San Antonio Court’s new interim plan was based, was the negative ruling of the DC Court. The state could not presume that the US Supreme Court would overturn this ruling or if it did so whether it would overrule the DC Court’s finding of intentional discrimination regarding the congressional plan. The State should have shown some deference to or consideration of the substantive findings made by the DC Court, but the state proceeded anyway to enshrine the congressional interim plan into law “as is”.

36. On June 13, 2013, during the special session, the State Senate enacted on a party-line vote the interim congressional Plan C235, the exact plan used for the 2012 elections and the House followed suit with a party-line vote on June 21. On June 23 the Senate accepted House amendments and completed the enactment of the congressional plan. This was still before any ruling in *Shelby v. Holder*, which the Supreme Court released two days later on June 25, 2013 (*Shelby County v. Holder*, 133 S. Ct. 2612 (2013)) and invalidated the preclearance requirement of the Voting Rights Act, vacating the DC Court’s ruling. The *Shelby* decision, of course, had no

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bearing on whether the congressional plan that the Texas legislature had adopted passed muster under the Voting Rights Act or the Constitution.

VII. Procedural or Substantive Deviations

37. The enactment of the 2013 congressional Plan C235 was marked by several procedural and substantive deviations from usual practice. First, the legislation was enacted not in regular session but in a special session of the Texas legislature. According to the handbook on Texas politics published by the University of Texas “The purpose of a special session is to focus attention on a particular problem or to respond to a particular crisis.” There certainly was no crisis or particular problem regarding redistricting in May or June of 2013. The presidential primary was two years down the road, and the legislature would reconvene more than a year in advance; the interim plan was available for the 2014 midterm elections. The proceedings were still open before the San Antonio Court. Rather, the only rationale for a special session was to give the interim congressional plans, based on a prior state plan found to be intentionally discriminatory, the legitimacy of state enactment. For those pushing for enactment of the interim plan, special sessions also have the advantage of less public focus and attention. Special sessions also put pressure on low-paid legislators as they divert attention from their primary professions and personal lives. University of Texas handbook concluded that, “Not surprisingly, special sessions are unusual, and many of them have yielded political wrecks.”21 During the past twenty years there have only been twelve special sessions of the Texas Legislature, all of them called by Governor Rick Perry.22

38. Governor Perry called the special session of May 2013 for the express and limited

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22 Legislative Reference Library of Texas, Special Sessions and Years, http://www.lrl.state.tx.us/sessions/specialSessions/specialsessionYears.cfm.
purpose to “Consider legislation which ratifies and adopts the interim redistricting plans ordered by the federal district court as the permanent plans for districts used to elect members of the Texas House of Representatives, Texas Senate and United States.”

He put adoption of the interim plan as a priority above the state’s transportation needs, which Perry said were urgent, and was the subject of two later special sessions. In Governor Perry’s words, “When it comes to transportation, the stakes facing our state could not be higher, and a failure to act now could take years — if not most of a decade — to correct, as traffic congestion increases and harms our quality of life.”

39. It is standard practice in considering redistricting plans for the Texas legislature to hold public hearings across the state. The Senate and House did authorize such hearings, but only on short notice, given the constricted time frame of a special session. Despite objections from minority legislators the hearings were held only in limited areas of the state: Austin, Houston, Dallas, and Corpus Christi. The Texas House, for example, issued hearing notices May 28, 2013 for a hearing to be on June 1 on June 4 for hearings to be held on June 6 and June 10, and on June 12 for hearings to be held on June 17 and June 18.

40. The Republican Senate majority in the Special Session also disregarded usual practice by suspending the two-thirds rule that requires 21 Senators to vote to suspend the rules to bring a bill up out of order. With 19 members in the 31-member Senate, Republicans fall two votes short of the 2/3rds majority. Legislatures under standard practice invoke the two-thirds rule by bringing up so-called “blocker bills.” It requires a two-thirds suspension of the rules to jump

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23 Ibid.
other legislation ahead of such bills. According to the Legislative Reference Library of Texas, blocker bills and the two-thirds rule are a “Texas Tradition.”

For almost half a century, blocker bills have routinely been placed at the top of the Senate's Daily Calendar, which in effect forces a suspension of the regular order of business on every bill. Blocker bills are bills that are introduced and passed out of committee as early as possible in a legislative session in order that they may occupy the first positions on the calendar. They are not intended to be worthy of serious consideration or passage. The sole purpose of a blocker bill is to ensure that at least two-thirds of the membership have an interest in debating a measure before it can come to the floor. Bills that do not enjoy substantial support cannot make it past the blocker bill.

Though it has been set aside on rare occasions, this practice -- known as the "two-thirds rule" -- has been an honored tradition in the Senate. Among other things, it is generally acknowledged that the Senate's two-thirds rule fosters civility, a willingness to compromise, and a spirit of bipartisanship.²⁶

41. The Texas State Senate also took the unprecedented step of inserting into redistricting bills not yet fully reviewed in the courts, language affirming that the maps complied with the Voting Rights Act. Ironically, the Senate agreed to an amendment offered by Hispanic Senator Judith Zaffirini (D-Laredo) to remove such language from the State Senate bill on which there was no minority opposition, but rejected the amendment as applied to the controversial State House and congressional bills. “This amendment is different because it takes on a different context in this matter,” said Kel Seliger (R-Amarillo), Chair of the Senate Redistricting Committee.²⁷

42. This professed commitment to the Voting Rights Act is likely pretext. First, as noted by the DC Court in the redistricting litigation, federal courts have found that the state of Texas

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²⁶ Legislative Reference Library of Texas, “The Two-Thirds Rule.”
²⁷ The Texas Tribune, “Senate Backs Interim Maps Over Democrats' Objections,” 14 June, 2013,
has repeatedly violated the Voting Rights Act from the post-1970 through the post-2000 redistricting. As also noted above, uniquely among all states, the US Justice Department has objected to at least one of Texas’ statewide redistricting plans since the post-1980 redistricting. In the post-2010 redistricting, Texas was the only state in the union to have any one of its plans for US Congress, State House, and State Senate rejected under Section 5; all three were rejected by the DC Court. In addition, as documented above, the interim plan for Congress continues to have a discriminatory effect on minorities.28

43. Second, the overwhelming majority of the Texas Republican Party’s white voter base opposes court enforcement of the voting rights act in redistricting matters. In a remarkably on-point question for redistricting, the CCES 2012 survey asked the following:

The Voting Rights Act requires states that have significant black and Hispanic population to create districts that have a majority of minority voters so that these groups have the possibility of electing candidates they prefer. The courts will have to decide challenges to this law in the upcoming year. What describes your views? The courts should uphold the Voting Rights Act. The courts should NOT uphold the Voting Rights Act.” (emphasis in original)

The CCES found that 70 percent of white Texas Republicans affirmed that the “the courts should NOT uphold the Voting Rights Act.”29

44. Although the legislative leadership ruled cosmetically that the legislature could make changes in the interim redistricting plans, it followed closely the initial call of Governor Perry to adopt the plans intact. The Republican majority in the Texas legislature pushed through along party lines the interim congressional redistricting plan with no changes and the State House plan
with some changes, despite both procedural and substantive objections from minority advocacy groups and minority members of the legislature.\(^{30}\)

**VIII. Contemporaneous Viewpoints Expressed by the Decision-Makers.**

45. Viewpoints expressed by decision-makers and their supporters regarding the adoption in 2013 of the interim plans for Congress are pretextual, concealing the intent to adopt plans based on a 2011 plan found to intentionally discriminate against minorities and, as documented above, that continues to have a discriminatory effect on minorities. Republican State Representative Dan Huberty (R-Kingwood), for example, a supporter of the 2013 congressional Plan C235 stated in his June 28, 2103 newsletter that, “That court [DC Court] found that Texas had not met its burden under Section 5 of the Voting Rights Act to demonstrate that the maps were not enacted with a discriminatory intent.” In fact, as indicated above, the DC found affirmatively that Texas had intentionally discriminated against minorities in enacting the 2011 congressional plan, not just that Texas had failed to prove the negative.\(^{31}\)

46. In a March 8 letter to House Speaker Joe Straus and the Senate's presiding officer, Lt. Gov. David Dewhurst, Texas’ Attorney General urged passage of the interim congressional and state plans used for the 2012 elections. He wrote that, “These maps already have the approval from the federal judges overseeing this litigation. Enacting the interim plans into law would confirm the legislature’s intent for a redistricting plan that fully comports with the law, and will insulate the State’s redistricting plans from further legal challenge.”\(^{32}\) However, as indicated above, these were interim plans only and their review was still ongoing. When ordered as

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interim plans by the San Antonio Court, the Court specifically stated that it was not making any final ruling on pending voting rights claims. Also, at the time of the adoption of the interim plans, the San Antonio Court did not have the DC Court’s ruling on intentional discrimination and its detailed findings of fact.

47. In response to Abbott’s claims, a letter from the Texas House Democratic Caucus signed by every member representing a majority-minority district stated, “The interim State House and Congressional plans retain many of the illegal and discriminatory features of the legislatively adopted plans. In light of this, we stand united in opposition to the interim State House and congressional plans being used in any election going forward.” Trey Martinez Fischer, Chairman of the Mexican American Legislative Caucus, similarly wrote in a May 29, 2013 letter to Drew Darby, Chair of the House Select Committee on Redistricting that, “This legislature can end any uncertainty regarding the election schedules by meeting in earnest with minority advocates and negotiating a remedial map that will answer all the objections found at every level of the federal judiciary. Enacting the interim maps will not do that.”

33 Attorney General Abbott, Governor Perry, and the Republicans that control the legislature ignored this and many other objections by minority legislators and leaders to adoption of the interim plans.

48. In a tweet sent out during the 2013 public redistricting hearings Kel Seliger, Chair of the Senate Redistricting Committee, indicated how lightly he regarded public input. This is not surprising given the intent all along to enact the interim plans regardless of public response. Seliger tweeted on June 6, 2013: “In redistricting hearing. One witness said gerrymandering started in 2008, another in 2003. Moon landing was faked.”

34 Ironically, this redistricting chair that mocked citizens at the public hearing and insisted that Texas’ 2013 State House and

34 Kel Seliger@kseliger, 10:30am – 6 June 2013.
congressional plan conformed to the Voting Rights Act was sufficiently out of touch with minorities in Texas that he did not know the minority composition of his own State Senate district. The following is from the transcript of the DC redistricting trial:

Attorney J. Gerald Hebert: What percentage of minorities are in your district, do you know that?

Kel Seliger: I don't.

Hebert: You don't know what the percentage of Latinos are in your district?

Seliger: No. I think it's 30 to 40 percent.

Hebert: What percentage of blacks are in your district?

Seliger: I don't, I think it's somewhere between 12 and 20.

Hebert: Twenty percent, 12 to 20 percent?

Seliger: Yes, sir.

Hebert: Would you be surprised to learn that it's only 5 percent, Senator?

Seliger: Yes, I would be a little surprised.

Hebert: Well, that's what the exhibit shows and I'll get that number for you.

Judge Collyer: So your testimony would be on your own understanding of the population of your district that it has a majority of minorities, blacks and Hispanic? Were those the numbers you just gave?

Seliger: Incorrectly, yeah, I thought it could possibly be.35

49. In this media-savvy age political leaders generally avoid racially charged comments, especially regarding redistricting plans that will be under review by federal courts. Nonetheless, several Republican members of the Texas delegation to the US House of Representatives made

remarks consistent with their constituents’ rejection of civil rights enforcement. Members of Congress have a deep stake in and influence over the congressional redistricting plan. During a US House Judiciary hearing in July 2013 on a bill to limit the implementation of federal regulatory actions by allowing third-party interventions, Texas Republican member of the US Congress Louie Gohmert objected to an amendment from Democrat Steve Cohen of Tennessee to prevent third-party intervention on matters involving racial discrimination. Gohmert’s response compared civil rights for minority Americans with rights for fish, snails, lizards, prairie chickens, and insects:

There is nobody in this chamber who is more appreciative than I am for the gentleman from Tennessee and my friend from Michigan standing up for the rights of race, religion, national religion of the Delta Smelt, the snail darter, various lizards, the lesser prairie chicken, the greater sage grouts and so many other insects who would want someone standing for their religion, their race, their national origin and I think that’s wonderful.  

50. Other Texas Republican Representatives in Congress have expressed similar views about voting rights. In June 2013 Texas Republican Representative Kenny Marchant in expressing opposition to overhauling the immigration laws said, “If you give the legal right to vote to 10 Hispanics in my district, seven to eight of them are going to vote Democrat.” A day after Marchant’s comments were reported, at a national Republican meeting on immigration, another Texas Representative Michael Burgess questioned the wisdom of providing citizenship to “11 million undocumented Democrats.” These sentiments about Hispanics are consistent with the views of the Texas white Republican base. According to the 2012 CCES study, 75 percent of

white Republicans surveyed in Texas opposed “granting legal status to all illegal immigrants who have held jobs and paid taxes for at least three years, and not been convicted of any felony crimes.” In addition, the same survey found that 65 percent of white Texas Republicans would deny automatic citizenship to American-born children of illegal immigrants,” contrary to the Constitution, as affirmed by the Supreme Court.”

51. Another relevant example, this time regarding African American voting, comes from Ken Emanuelson, although not a public or party official, he is a leader of the Tea Party with close ties to the Dallas County Republican Party. In May 2013 he was leading a meeting of Battlefield Dallas County, a group dedicated to turning out Republican voters. John Lawson, Pastor of Children of God Ministry in Dallas, asked Emanuelson, “What are the Republicans doing to get black people to vote? Emanuelson responded, “Well, I'm going to be real honest with you. The Republican Party doesn't want black people to vote if they're going to vote nine to one for Democrats.” Emanuelson later said that this was his personal opinion only and not the official position of the Texas Republican party.

52. The survey results and the occasionally candid remarks of Texas Republican leaders indicate the strategy of the predominantly white Republican Party in Texas. Rather than shifting their approach to consider minority voters’ interests, the Party is intentionally concerned with impeding voting opportunities for minorities to bolster electoral outcomes favorable to Texas Republicans and maintain their power.


53. Attorney General Abbott and other Texas Republican leaders involved in redistricting have used partisanship and states’ rights in defense of Texas redistricting. In an interview with Fox news in July 2013, defending Texas’ voter ID law and redistricting plans, he accused the Obama Justice Department of waging a political vendetta against Texas. Abbott said, that the Obama administration is “trying to sow racial divide as opposed to unity. And they’re using the legal system as sword to wage political attacks rather than as a shield to protect against wrongdoing.” He added that the Administration is, “using legal tools to achieve political ends, and we’re just not going to tolerate it. … This has electoral college math all over it.” Republican US Senator from Texas John Cornyn similarly charged that federal Voting Rights Act lawsuits in Texas are “part of the long-term strategy of this administration is to try to turn Texas blue. And so they are engaging in this kind of bogus political activity to try to raise concerns with regard to things like minority voting that simply aren’t supported by the evidence. I think this is to create a false impression that somehow minority rights are not being protected, which they are.” In rhetoric reminiscent of the then Democratic South’s states’ rights defense of segregation and Jim Crow discrimination decades ago, Republican US Representative Blake Farenthold tweeted in July 2013, “Attorney General Holder is trying to a wage a war on Texas & states' rights” and “DOJ's push to overturn #TX voting laws: the govt's latest attempt at trying to tell states what they can & can't do.” This notion that enforcement of the Voting Rights Act represents an unwarranted intrusion on states’ rights, comports with the views of the 75 percent of white Texas Republicans who affirm that the courts should not uphold the Voting Rights Act.39

54. These claims by Texas leaders are relevant here because litigating voting rights issues in court could help “turn Texas blue” only by removing impediments to the opportunities for minorities in Texas to participate fully in the political process and elect candidates of their choice. The remarks of Texas Republican leaders indicate their determination to not let that happen. These remarks also highlight the isolation of Texas on voting rights issues. The Obama Justice Department precleared every redistricting plan enacted by every other Section 5 state with Republican governors and Republican dominated state legislatures. It did not litigate redistricting plans in such non-Section 5 swing states as Wisconsin and Pennsylvania, where Democrats hotly objected to the maps produced by Republicans. Texas stands alone today as it has previously in its history of voting rights violations in its statewide redistricting plans.

55. In an August 2013 brief submitted in Perez v. Texas, Attorney General Abbott acknowledged that in its redistricting plans Texas had knowingly inflicted “incidental effects” on minorities for the larger goal of protecting the political fortunes of Republicans:

DOJ’s accusations of racial discrimination are baseless. In 2011, both houses of the Texas Legislature were controlled by large Republican majorities, and their redistricting decisions were designed to increase the Republican Party’s electoral prospects at the expense of the Democrats. It is perfectly constitutional for a Republican-controlled legislature to make partisan districting decisions, even if there are incidental effects on minority voters who support Democratic candidates.40

This is the same rationale held by supporters of the Texas Poll Tax when repeal of the tax was on the ballot in November 1963. According to the Dallas Express at the time: “All the power

40 DEFENDANTS’ RESPONSE TO PLAINTIFFS AND THE UNITED STATES REGARDING SECTION 3(C) OF THE VOTING RIGHTS ACT, Perez v. Texas, 26 August 2013, p. 19.
structure [then white Democrats] knew that if we voted out the poll tax this state would have to
go liberal; so in order to keep it conservative, they had to keep the poll tax.” Scholars have long
known that when Texas first enacted the poll tax in 1901, the tax generally restricted the
franchise of poor Texans who might vote Republican or join insurgent movements that
challenged the Democratic Party establishment. By the logic of Attorney General Abbott’s claim,
the disenfranchisement of African Americans – who were disproportionately poor -- under the
poll tax was an “incidental effect.”

56. Attempts in the Attorney General’s to refute findings of intentional discrimination in
the forging of its congressional plan do not withstand scrutiny. The brief notes that the
congressional plan in Congressional District 23 helped a Hispanic who was also a Republican,
attempting “to protect incumbent Hispanic Republican Quico Canseco by making his district
more Republican, while ensuring that the district maintained a sufficient Hispanic voting
majority to retain its status as an ‘ability’ district under section 5 of the Voting Rights Act and an
‘opportunity’ district under section 2.”

57. Attorney General Abbott’s analysis is based on a fundamental confusion. The history
of the Voting Rights Act and the Fourteenth Amendment indicate their design to protect the right
of voters to elect candidates of their choice free of discrimination, not the political fortunes of
officeholders or candidates who happen to be minorities but are not the candidates of choice of
minority voters.

41 Dallas Express, “Texas Does Not Want Voter Participation in Government,” 23 November 1963,
42 Texas Brief, p. 25.
58. The Texas brief also cites the dismantling of CD 25 in refutation of intentional discrimination against minorities: “The district of Congressman Lloyd Doggett—the only white Democrat in the Texas congressional delegation elected in a majority-white district—was completely dismantled in an attempt to drive him from office.” First, as demonstrated above, Doggett’s district was not “majority-white.” CD 25 has a majority-minority total population and falls just short of a majority (45.1 percent) in voting age population. Doggett has been the overwhelming candidate of choice of minority voters in CD 25 and has gained election through cohesive minority voting and crossover votes from whites. By intentionally dismantling this district, Texas decision-makers thwarted the opportunity of minorities in CD 25 to elect their candidate of choice. The fact that Doggett happens to be white is irrelevant. Minority candidates of choice can be of any race. In a further demonstration of his appeal to minority voters, in 2012 Doggett won another congressional term in the majority-Hispanic voting age (70.6% minority voting age) 35th congressional district. Nonetheless, the dismantling of CD 25 negatively affected large numbers of minorities. In 2010 the district included 408,814 minority persons now scattered among five different districts.

59. The removal of the economic centers and district offices from black-majority districts and the removal of iconic landmarks from Hispanic-majority District 20 in the 2011 plan also cannot be explained by partisanship alone. These decisions did not affect the partisan composition of these districts.

60. Attorney General Abbot also published a recent Op Ed in the Washington Times entitled “Obama’s scheme to take over Texas” in which he sought to defend the Texas redistricting plans against what he calls the partisanship of the Obama administration on voting rights. He says, “The administration’s foray into Texas voting rights is just another page in that
political playbook.” He says that to benefit Democrats the administration has “made empty charges of racial discrimination” and hurts Hispanic Republicans, and that Republicans were making inroads into Hispanic voters. Repeating the states’ rights arguments long used to defend discrimination against minorities, claiming that “The Constitution makes elections the states’ business, not the federal government’s.” He also says that after the Shelby County decision citizens can still pursue voting rights litigation that “cost the aggrieved voter nothing.”

61. The Op Ed is filled with telling admissions. The Attorney General fails to mention that a three-judge court (including two judges appointed by Republican presidents) unanimously found that Texas had intentionally discriminated against minorities in its redistricting plans. He does not acknowledge that Hispanic Republicans, like former US Representative Canseco, have been overwhelmingly rejected by Hispanic voters and were elected with the votes of white Republicans. When the federal court ruled that the Texas congressional plan intentionally discriminated against minorities it cited among considerable other evidence the so-called “nudge memo” where a Republican plan drawer describes the effort to create districts with a relatively unchanged Hispanic population percentages, but which intentionally diminish the Hispanic voting strength. Abbott should know that elections are not just the business of the states; both the Constitution and the Voting Rights Act have long protected minorities from discrimination in the electoral process by the individual states. As indicated above, Texas has a long and extensive history of violating minority voting rights. He fails to note that the lead plaintiffs in the litigation against Texas redistricting plans are in fact minority groups such as the League of United Latin American Citizens, the Mexican American Legislative Caucus and the NAACP. He fails to recognize that the litigation involving Texas redistricting resulted from the state’s own decisions and is not repeated in other Republican states or in the crucial swing states in
presidential elections. Abbott also cites the decision in the Shelby case that invalidated the formula used to determine the state’s covered under Section 5 of the Voting Rights Act. The decision did not vacate or reverse the factual findings of the DC Court of intentional discrimination in the Texas redistricting plans. Citizen lawsuits, moreover, are not costless to aggrieved parties. It is extremely difficult, expensive, and time consuming to challenge a statewide redistricting plan in court, especially against a state like Texas that is willing to spend many millions of dollars in defense of its plans.

62. In effect, Attorney General Abbott and other Republican leaders in Texas have constructed an internally self-justifying rationale for intentionally discriminating against minorities. It is OK for Texas’ Republican majority to discriminate against minorities in redistricting because that is in the partisan interests of the Republican Party and consistent with states’ rights. It is not OK for the United States Department of Justice to uphold minority voting rights under the Voting Rights Act or the Constitution because that is in the partisan interest of the Democratic Party interferes with state business.

63. In a remarkable statement Republican Senator Rand Paul of Kentucky, one of the party’s most prominent national conservative leaders recently warned Texas Republicans that its hostility to minorities is counterproductive and that they will lose their grip on Texas unless they change their approach. Senator Paul, who grew up in Texas and whose father Ron Paul was a long-serving member of the Texas congressional delegation and a candidate for the Republican presidential nomination, said at an early February 2014 dinner held by the Harris County Republican Party, “What I do believe is Texas is going to be a Democrat state within 10 years if we don’t change. That means we evolve, it doesn’t mean we give up on what we believe in, but it means we have to be a welcoming party.” He added, “We won’t all agree on it, but I’ll tell you,
what I will say and what I’ll continue to say, and it’s not an exact policy prescription … but if you want to work and you want a job and you want to be part of America, we’ll find a place for you.”

64. A week later, Attorney General Abbott, the leading candidate for the Republican nomination for governor signaled his disregard for Paul’s warning when he invited rock performer Ted Nugent, notorious for his bigoted anti-minority tirades, to join him as a featured guest on a campaign tour. During the 2012 campaign Nugent said, “If Barack Obama becomes the president in November, I will either be dead or in jail by this time next year,” which prompted a visit from Secret Service agents. He called President Obama a “sub-human mongrel” and a “chimpanzee.” Nugent said that, African Americans cannot “honestly celebrate the legacy of Dr. King” until they “admit to the self-inflicted destructo-derby they are waging and begin to tell their liberal Democratic slave drivers to take a hike.” He denigrated the slain Florida teenager Trayvon Martin as a “racist gangsta wannabe.” He advocated shooting dead on sight armed undocumented immigrants: “In an unauthorized entry, armed, like they are right now, invading our country, I'd like to shoot them dead.” A candidate cannot choose those who decide to support him, but he does choose those he decides to campaign with, a decision that is carefully made.

65. Abbott is not the only Texas Republican leader to associate himself with Ted Nugent. Current Texas Governor Rick Perry included a performance by Nugent at his 2011 inaugural celebration. Sid Miller, a former Republican member of the Texas House has appointed Nugent

the Treasurer of his campaign for State Agriculture Commission. Although Miller was no longer in the legislature during 2013, he did support and vote for Texas’ 2011 state-level redistricting plans. He was also head of the House Republican Caucus and a co-sponsor of the Texas voter identification bill.\textsuperscript{45}

Conclusions

66. Following the \textit{Arlington Heights} methodology, the discriminatory effects of the 2013 congressional Plan C235, the sequence of events leading to its adoption, and the actions and statements of Republican leadership involved in redistricting decisions all point to discriminatory intent in the adoption of this redistricting plan. Based on my more than forty-years’ of experience as a historian and my work in more than 80 voting rights cases, my conclusion is that Texas’ leaders have intentionally followed a strategy of discrimination against minorities in its congressional redistricting plan. The weight of the evidence indicates that these leaders have chosen to advance their political prospects not by appealing to minorities, but by intentionally restricting minority voting opportunities and political power and rallying a white base that does not believe in enforcing the Voting Rights Act. By enacting redistricting plans that restrict opportunities for minorities and their candidates of choice, the decision-makers in Texas created a win-win situation for themselves politically. Even if they lost in the courts they would be no worse off and perhaps better off than if they had adopted a map conducive to minority concerns or which fairly reflected the fast-growing minority population. Moreover, as evidenced above, they turn defeat into political advantage by using it to rally their base and assail the Obama

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administration. This is precisely what has come to pass in Texas, uniquely among all states in the post-2010 redistricting process.

67. The Legislature was presented with credible demonstration plans – such as Plan C238 and others - that it could have used to guide configuration of a Texas congressional plan that eliminated the vestiges of intentional discrimination that were retained in Plan C235. State leaders rejected the pleas of legislators who represent majority minority districts, minority advocacy organizations, minority community leaders and minority voters themselves to conduct an intentionally exclusive discriminatory process to reach the pre-ordained decision to enact Plan C235.
Signed this 28th day of February 2014

Allan J. Lichtman