

In the Supreme Court of the United States

Terry Petteway, et al.,
Applicants,

v.

Galveston County, Texas, et al.,
Respondents

**RESPONSE TO EMERGENCY APPLICATIONS
TO VACATE STAY**

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Applicants for Cause No. 23A521 are Terry Petteway, Constable Derrick Rose, and the Hon. Penny Pope (Petteway). The Petteway Applicants were plaintiffs in the district court and Appellees in the Fifth Circuit Court of Appeals. Applicants for Cause No. 23A523 are Dickinson Bay Area Branch NAACP, Galveston Branch NAACP, Mainland Branch NAACP, Galveston League of United Latin American Citizens Council 151, Edna Courville, Joe A. Compian, and Leon Phillips (NAACP). The NAACP Applicants were plaintiffs in the district court and Appellees in the Fifth Circuit Court of Appeals. While the United States of America (DOJ) is an Appellee in the Fifth Circuit, it did not file an application to vacate the stay, here.

Respondents are Galveston County, Texas, the Galveston County Commissioners Court, Galveston County Judge Mark Henry, and Galveston County Clerk Dwight Sullivan, in their official capacities (Galveston County). Respondents were the defendants before the U.S. District Court for the Southern District of Texas.

The proceedings below are:

1. *Petteway, et al. v. Galv. Cnty.*, No. 3:22-CV-00057 (consolidated with Nos. 3:22-CV-00093 and 3:22-CV-00117) (S.D. Tex.) (Oct. 13, 2023 injunction (Petteway & NAACP Apps' Appdx. C) and final judgment (Petteway & NAACP Apps' Appdx. D); Oct. 15, 2023 denied stay request (Petteway & NAACP Apps' Appdx. E); Nov. 30, 2023 Order imposing Judicial Map (Petteway & NAACP Apps' Appdx. J));
2. *Petteway, et al. v. Galv. Cnty.*, No. 23-40582 (5th Cir. Oct. 18, 2023 temporary administrative stay (Petteway & NAACP Apps' Appdx. F) and twice renewed through November 28, 2023, when panel opinion was vacated and the Fifth Circuit granted en banc review (Petteway NAACP Apps' Appdx. H); on December 7, 2023 Appellants/Respondents' opposed motion for stay pending appeal granted (Petteway & NAACP Apps' Appdx. H)).

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondents represent that they do not have any parent entities and do not issue stock.

Dated: December 11, 2023

Respectfully submitted,

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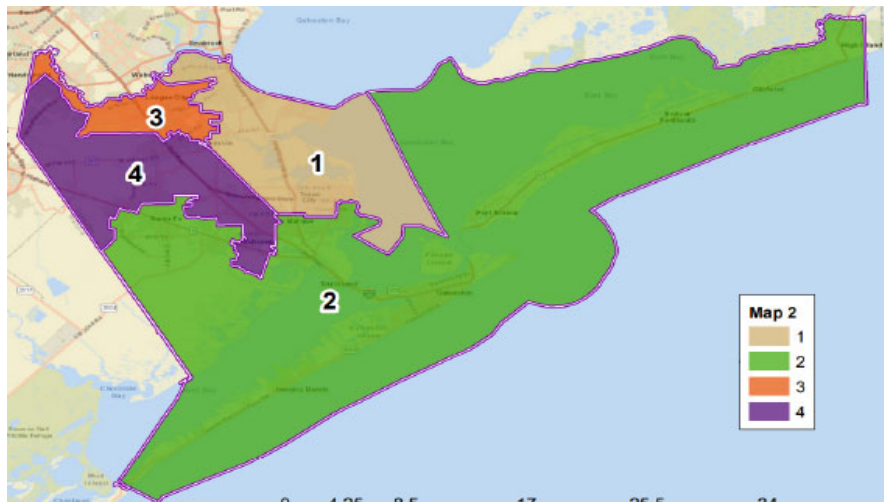
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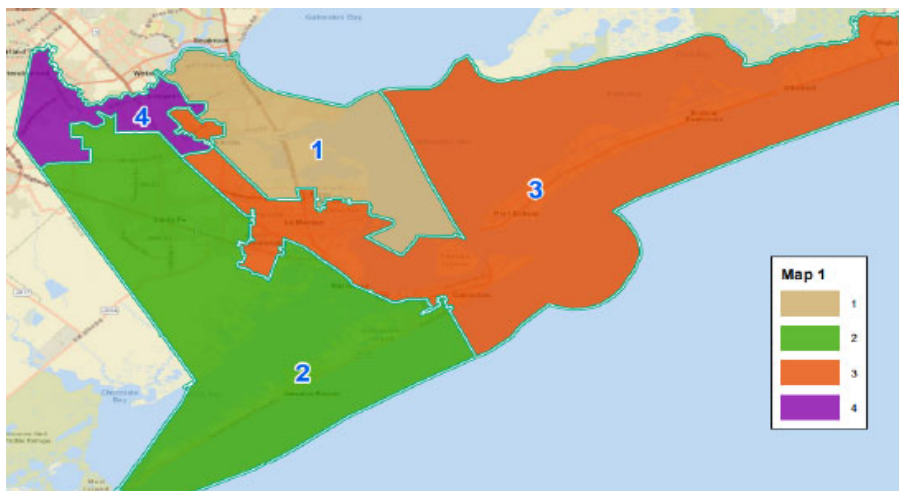
TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT AND JUSTICE FOR THE FIFTH CIRCUIT:

Respondents file this response to the NAACP and Petteway parties’ separate emergency applications to vacate the Fifth Circuit’s en banc stay order.

Last November, Galveston County voters elected their County Commissioners for Precincts 2 and 4 under this map enacted in 2021 (“Enacted Map” or “Map 2”):



Respondents’ Appdx. 8. Without a stay pending appeal, elections for Galveston County Commissioners Precincts 1 and 3 will be held in November 2024 under this Judicial map, also called Map 1 (“Judicial Map” or “Map 1”):



Id. The Fifth Circuit’s en banc stay order should remain in place pending appeal, for the reasons discussed herein and summarized below:

1. **Coalitions are not a protected class under Section 2 of the VRA.** The en banc Fifth Circuit considered and granted a stay after considering the circumstances, effect of late changes to election boundaries, and the likelihood of Respondents’ success on appeal. This case asks whether a coalition of two distinct minority groups—neither of which is sufficiently numerous on its own—may aggregate to raise a VRA claim. Such claims are unsupported by Section 2 and necessarily subordinate one minority group’s voice to that of another’s, risking loss of each group’s unique identity in support of a larger *political* goal—a problem identified by the Fifth Circuit panel in their recently vacated opinion. Petteway & NAACP Apps’ Appdx. B at App-9-11.
2. **Stay standards in election cases.** In considering a stay pending appeal, federal appeals courts must consider the case and circumstances. A stay standard arising from a court’s general exercise of jurisdiction and authority is not a tool for allowing courts to change district boundaries close to an election when those boundaries have been in place for over two years, **and** a majority of the appellate court does not see a likelihood that Applicants’ theory will succeed upon appellate review.
3. **Federal Judicial Voter Disenfranchisement.** The Enacted Map has already been used to elect County Commissioners for Precincts 2 and 4; Applicants never sought to enjoin use of the Enacted Map for that 2022 election. If not stayed pending appeal, the district court’s mandatory injunction to implement the Judicial Map will deprive some Galveston County residents of the ability to vote for their County Commissioner for at least four years.
4. **A “Results” Only Case.** This is a Voting Rights Act (“VRA”) results-only appeal. Be it descriptions of invidiousness, or erroneous conjecture about what findings were challenged on appeal and why, no amount of argument will change that this is only a Section 2 results case on appeal. The district court did not find intentional discrimination and expressly “declin[ed] to reach” any such finding. Petteway & NAACP Apps’ Appdx. D at 170 ¶ 430. ***No plaintiff appealed from that decision.*** And Applicants’ story provides no equitable basis to reverse an en banc stay order.

BACKGROUND AND PROCEDURAL HISTORY

Applicants’ sole claim on appeal, subject to the stay order, is a Section 2 VRA results claim. On October 13, 2023, after a bench trial, the district court issued its

findings and final judgment, and a mandatory injunction aimed to replace the Enacted Map that had been in place for 650 days and had already been used for one round of elections.¹ Simultaneously arguing that *Purcell* supports their claim, and that the Fifth Circuit cannot issue a stay order based on *Purcell*, Applicants erroneously claim the timeline favors implementation of the Judicial Map more than halfway through the candidate filing period for an election, whose primary occurs early in 2024. Then, presuming they are entitled to remand to seek a ruling on other claims even if minority coalitions do not provide them a remedy, Applicants ignore that they never filed a cross-appeal or otherwise sought to preserve their Constitutional claims, and did not request that relief in the Fifth Circuit. When properly considered, the Fifth Circuit’s en banc stay order is appropriate and should remain intact.

I. Galveston County’s background and politics

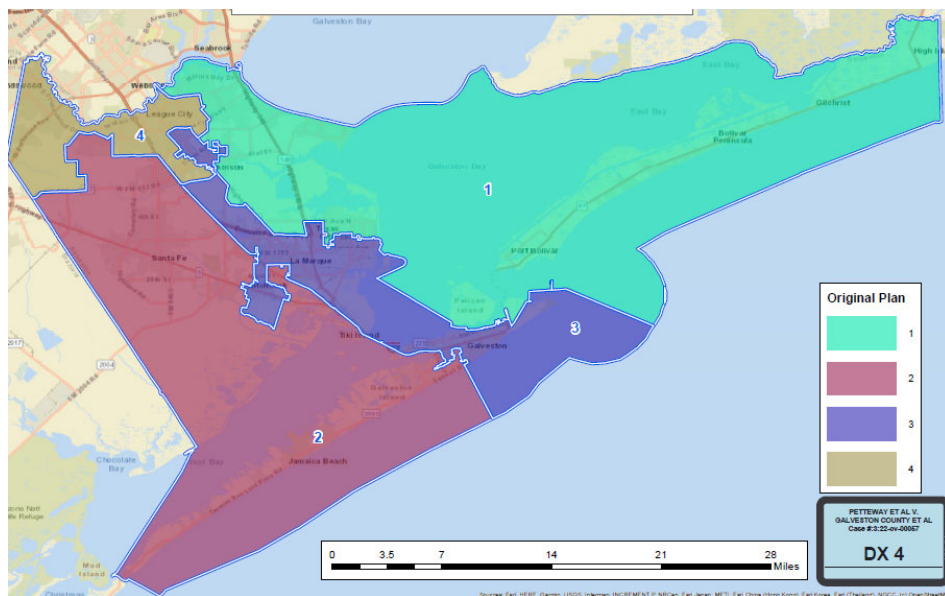
Galveston County residents generally voted majority Democrat until 2010, when rising populations in the northern suburbs helped shift the overall political landscape to Republican. Galveston County Judge Mark Henry, a Republican, was first elected in 2010, and has served as County Judge ever since. Petteway & NAACP Apps’ Appdx. D at App-33 ¶ 28. The County has historically been mostly Anglo² and, since 2010, is mostly Republican. Petteway & NAACP Apps’ Appdx. D at App-71, 73.

¹ The November 2022 elections elected commissioners from Precincts 2 and 4.

² Respondents’ Appdx. 7 at App-52.

II. In the last pre-*Shelby* redistricting cycle, the DOJ favored Galveston County Black voters over Galveston County Latino voters, causing the County’s Latino community to object to the last redistricting map that Applicants want to maintain with the least possible change.

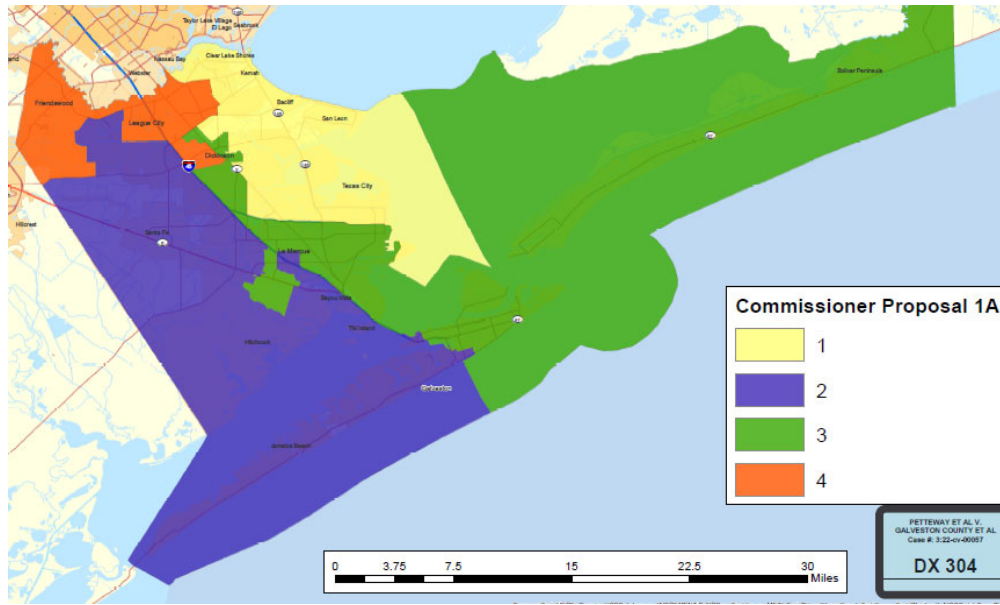
Before *Shelby County*,³ Galveston County was subject to Section 5 preclearance, and through years of anti-retrogression policies, the Department of Justice largely created Galveston County Commissioner Precinct 3. Through DOJ mandates, Precinct 3 was drawn as a majority-minority precinct which has looked, over time, much like the center purple strip in the image below (“2011 Map”):



Respondents’ Appdx. 1.

In 2011, ten years before the maps in this dispute, the County submitted the following map for preclearance:

³ *Shelby County v. Holder*, 570 U.S. 529, 553 (2013).



Respondents’ Appdx. 3. The proposed change was, primarily, the inclusion of Bolivar Peninsula and Pelican Island⁴ in Precinct 3. Before the DOJ issued any response to this submission, some of the same plaintiffs in this case sued to enjoin the use of any unprecleared map. *See Petteway v. Henry*, 738 F.3d 132, 135 (5th Cir. 2013). Though the County had not implemented the proposed map, and repeatedly assured the court it would not do so, the suit’s procedural entanglements included a temporary restraining order; that order was vacated by a three-judge panel. *Id.* When it finally did respond, the DOJ criticized placing Bolivar Peninsula into Precinct 3, contending it reduced the Black percentage of the electorate in that precinct while increasing the Hispanic and Anglo populations. Respondents’ Appdx. 4 at App-19.

The County promptly entered into discussions with the DOJ and negotiated a new plan that the DOJ precleared. Respondents’ Appdx. 9 at App-97. During those

⁴ These are sparsely populated areas of the County, both of which are accessible from within the County by ferry, only.

negotiations, the DOJ decreased the Hispanic population and increased the Black population in Precinct 3. Respondents' Appdx. 5 at App-24.

Latino community leaders wrote to the DOJ in 2012 to express the Galveston County Latino community's resentment at the DOJ's unequal treatment of Latinos in the negotiated map. They stated the map "absolutely does not recognize the growth of the Latino population in [Galveston] County," and that the DOJ's concern with only Black percentages leads "**our Latino congregations and organizations . . . to believe that the DOJ places a greater value on the voting rights of African Americans.**" Respondents' Appdx. 5 at App-24 (emphasis added). They also argued the map "**undervalues Latinos.**" Respondents' Appdx. 6 at App-46 (emphasis added).

Despite concern that the agreement was "repugnant" to Latinos, the DOJ precleared the plan, which became the 2011 Map. Of note, the bubble at the top of the purple Precinct 3 in the 2011 Map captures Commissioner Holmes⁵ residence, since he must live within the precinct he serves.

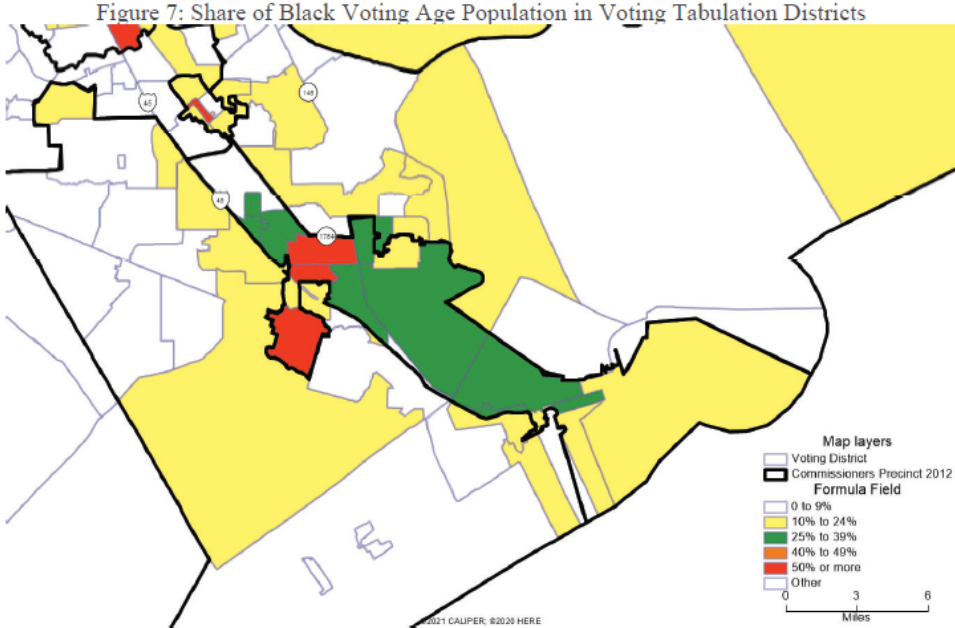
III. Applicants cannot raise a VRA challenge unless they do so as a coalition of two distinct minority groups.

Neither the Black nor Hispanic population in Galveston County is sufficiently numerous to form a majority-minority precinct. Petteway & NAACP Apps' Appdx. D at App-48 ¶ 74. 19.2% of the citizen-age voting population, or "CVAP," is Latino, and

⁵ Commissioner Stephen Holmes, who is one of two Black members of the Commissioner's Court, and the only Democrat, has served as Galveston County's Precinct 3 Commissioner since 1999. Petteway & NAACP Apps' Appdx. D at App-33 ¶ 27 & App-124-125 ¶ 311. Oddly, the trial court found Commissioner Holmes was excluded from the redistricting process—even though his own notes describe his involvement in detail. Respondents' Appdx. 2.

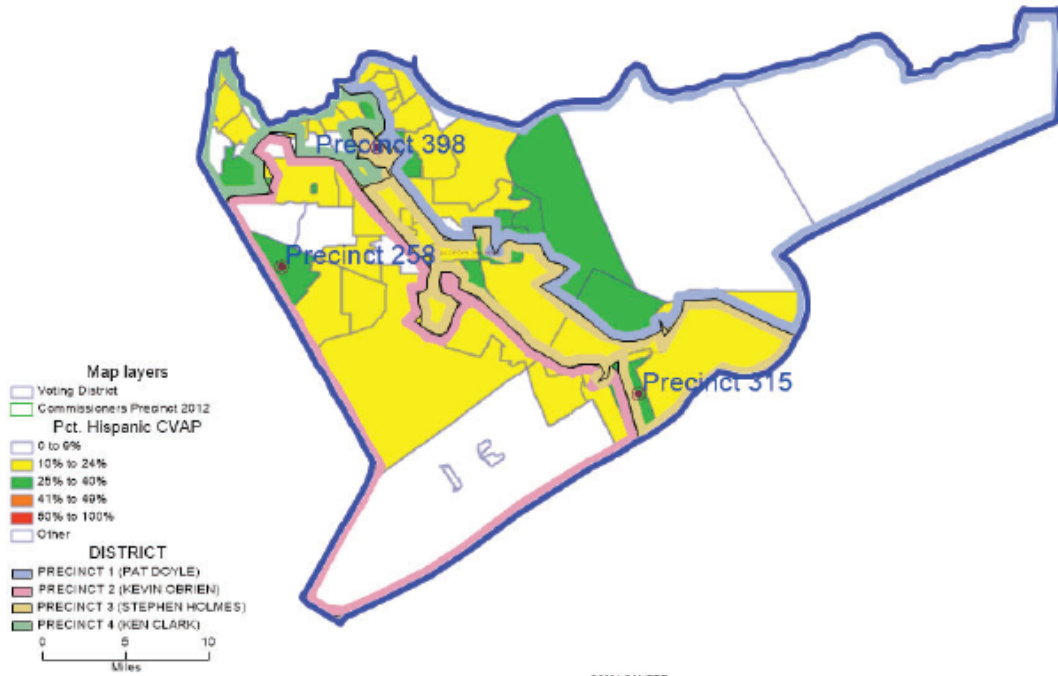
12.75% is Black. Apps' Appdx. D at App-74 ¶ 154; Respondents' Appdx. 10 at App-106. Latino CVAP has grown in the past 10 years, while Black CVAP has decreased.

There is no dispute that the Black and Latino communities are distinct minority groups in Galveston County. Black and Latino residents do not generally live in the same areas. The County's Black population is largely concentrated along a central corridor through the County, stretching from the mainland to Galveston Island:



The Hispanic population, by contrast, is evenly dispersed throughout the County, and not highly concentrated in any single area. Petteway & NAACP Apps' Appdx. D at App-89 ¶ 197; Petteway & NAACP Apps' Appdx. D at App-48 ¶ 73.

Dispersion of Hispanic CVAP
in each VTD in Galveston County,
Overlay 2012 Benchmark Map



Respondents' Appdx. 7 at App-55 (showing dispersion of Hispanic CVAP in each voting tabulation district on the 2011 Map, with yellow at 10-24% and green at 25-40%).

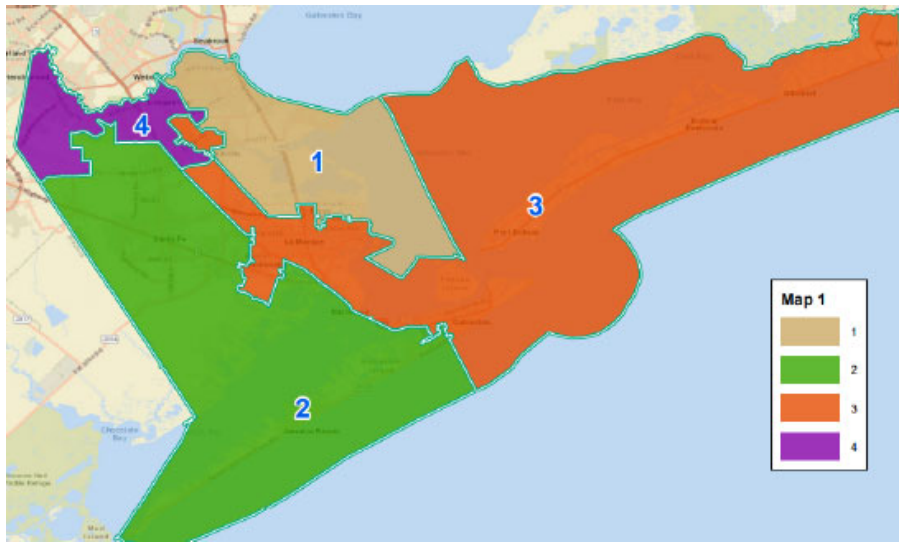
The differing dispersions between the Black and Latino minority groups are important and highlight a significant problem with minority coalitions. The Black population in Galveston County is roughly 13% and Latino population is roughly 25%. Respondents' Appdx. 11 at App-124; Petteway & NAACP Apps' Appdx. D at App-46 ¶ 68. Yet, because of the configuration of Precinct 3 in the Court's Judicial Map 1, the Black voting population has greater influence over the candidate to be elected in

Precinct 3, as Black voters outnumber the rest of the Democrat voters⁶ and can proportionally influence results of primaries in Judicial Map Precinct 3.

IV. 2021 Redistricting

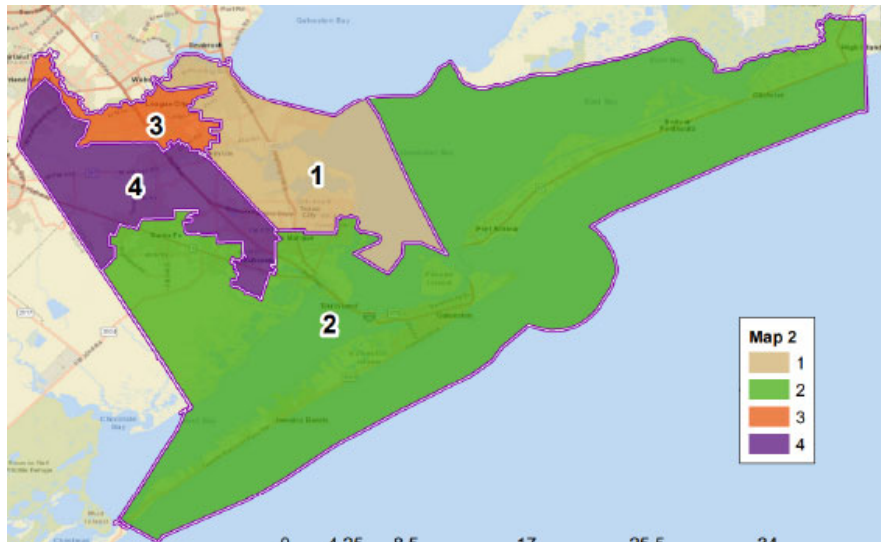
In 2021, after *Shelby County*, the County faced a new problem: what protection from legal exposure would it have since Precinct 3 had been drawn predominantly on the basis of race? It hired redistricting counsel to assess and assist. With a demographer, counsel generated two map proposals—a “least change” map (which is Map 1), and a coastal precinct map (which is Map 2):

The Map 1 Proposal (“Judicial Map” or “Map1”)



⁶ According to the district court, experts agree that few Anglo voters participate in Democratic primaries. Petteway & NAACP Applicants’ Appdx. D at App-72 ¶148. Anglo voters are therefore unlikely to defeat the candidate of choice of Black voters.

The Map 2 Proposal (Enacted Map or Map 2)



Respondents' Appdx. 8. Both proposed plans kept the Commissioners within their precinct boundaries as required by Texas Constitution article. 16 Section 14. Under Map 2, the incumbent Democrat for Precinct 3 is less likely to be reelected, considering the political makeup of the County and of Map 2 Precinct 3. *See* Petteway & NAACP Apps' Appdx. D at App-71, App-73, App-144-145 ¶¶ 144, 149, 370.

Both Map 1 and Map 2 were presented to all Commissioners. Each proposal went through the same timeline and process.⁷ Though Commissioner Holmes knew he would be reelected under Map 1, **he never told his constituents or the public this crucial fact.** Respondents' Appdx. 9 at App-85-87, App-89-91 & App-93-95. So the public did not support it. Instead, many objected to it and some asked that Map 1 be changed back by taking out the sparsely populated Bolivar Peninsula area, an

⁷ Due to the late release of Census data, the process for drawing and implementing new maps was compressed, and the maps were posted online for public comment. Respondents' Appdx. 8.

unincorporated part of the County that did not alter expected Democrat election outcomes. Respondents' Appdx. 9 at App-99-100. At trial, experts testified Map 1 included "30.86% Black and 24.28% Latino by CVAP" (Petteway & NAACP Apps' Appdx. D at App-48 ¶ 75, App-144-145 ¶ 370), even though Latino CVAP in the County is much higher than Black CVAP.

Although favorable to him, Commissioner Holmes did nothing to seek adoption of Map 1, not even tell his constituents that it likely would have elected him. As a result, Map 1 failed politically.⁸

V. Procedural History—Different Paces for Trial and Appellate Timelines

A. Applicants sued in April 2022 and did not seek a preliminary injunction or to enjoin use of the Enacted Map for the 2022 elections.

Five months after the County adopted the Enacted Map in November of 2021, Applicants and the DOJ filed separate suits that were later consolidated. They claimed the Enacted Map illegally diluted the Black and Latino vote. None of the three sets of Plaintiffs sought an injunction and instead conducted full trial discovery, each with their own set of overlapping experts and proposed maps.

Trial eventually began in August of 2023, almost two years after the County adopted the Enacted Map and three months before opening of the candidate-filing period for election under Commissioner Precinct 3. As evidenced by their experts' proposed least-change plans, Applicants essentially argue that Section 2 contains a

⁸ Redistricting counsel for the County described both map proposals as "legally defensible." But, in being legally defensible, the County was not concerned that Maps 1 and 2 met the *Gingles* preconditions. Those elements and that burden rests on the plaintiff in asserting a VRA claim.

no-retrogression standard. Taking that argument to its logical result, Applicants would have a nation-wide federal mandate imposed upon localities to draw only least-change districting plans, presumably *ad infinitum*.⁹ Applicants have even argued that Respondents somehow were obligated under *Purcell* to file a declaratory judgment action to obtain a ruling on an unfiled coalition claim “*before* engaging in redistricting.” No. 23A449, Petteway App’n at 33 (Nov. 16, 2023). If what they meant was that Respondents were required to obtain federal court clearance for their districting maps post-*Shelby*, they are clearly wrong.

B. The district court entered judgment on the VRA Section 2 results claim only, and Applicants only sought affirmance on appeal, therefore not preserving any other relief or constitutional challenges.

Following a bench trial, the plaintiffs obtained relief on their VRA results claim. The district court entered a final judgment ordering a new plan with “supporting expert analysis” be submitted within seven days; alternatively, the court would implement a least-change illustrative plan from the DOJ’s expert. When Respondents pointed out that this plan drew a Republican commissioner out of his precinct, the district court amended its order, extended the deadline to fourteen days, and ordered Respondents to either submit a revised plan or implement the Fairfax Plan or Map 1. Petteway & NAACP Apps’ Appdx. E at App-177. Both of the least-

⁹ The Petteway Applicants practically admit this when they argue that a stay somehow judicially sanctions “the intentional destruction of a long-standing and historically important majority-minority district, one that Section 5 of the VRA had held in place when many of these same officials tried to destroy it in 2011” Petteway App’n at 23. Not only do they invent “intentional destruction” in their argument—a holding that never occurred—they praise Section 5 as a non-retrogressive mandate and attempt to squeeze a Section 5 review into a Section 2 framework.

change plans favor a Democrat for County Commissioner Precinct 3 over a Republican. The Court expressly declined to rule on any claims involving discriminatory intent and made no such finding. Petteway & NAACP Apps' Appdx. D at App-97 ¶ 228. No plaintiff appealed to alter that decision.

C. The Fifth Circuit has kept a stay of the district court's injunction largely in place pending its review.

On October 17, 2023, four days after final judgement was entered, Respondents appealed to the Fifth Circuit, sought an emergency stay pending appeal, and requested a temporary administrative stay which the Fifth Circuit reasonably implemented. On November 10, 2023, after expedited briefing and oral argument, a panel affirmed the district court's judgment—but only after providing reasoned criticism of opinions permitting minority coalition claims, and urging that the en banc court consider the matter. Petteway & NAACP Apps' Appdx. B at App-12. The panel extended the administrative stay pending the en banc poll. Petteway & NAACP Apps' Appdx. A at App-5.

The candidate filing period for the November 2024 election opened on November 11, 2023. On November 16, 2023, the Petteway Applicants asked Justice Alito to vacate the stay (No. 23A449); that application was dismissed as moot after the Fifth Circuit, on November 28, 2023, vacated the panel's opinion and granted en banc review. Respondents' Appdx. 12; Petteway & NAACP Apps' Appdx. H.

On November 30, 2023, the district court ordered implementation of the Judicial Map, and on December 1, 2023, Respondents renewed their pending and opposed motion to stay. Petteway & NAACP Apps' Appdx. J. That motion was granted

on December 7, and Applicants sought to vacate it here, the following day. Petteway & NAACP Apps' Appdx. K.

Applicants' focus is on Commissioner Precinct 3, for which the longtime Democratic incumbent, Commissioner Stephen Holmes, has served. At the time of this Response, and according to the Texas Secretary of State, Commissioner Holmes has registered as a candidate for Commissioner Precinct 3 and, due to his address, can run under either the Enacted Map or the Judicial Map. A Republican candidate filed for Commissioner Precinct 3 while the Enacted Map (Map 2) was in place. He does not live within the boundaries of the Judicial Map's Precinct 3. At this time, no Republican has filed for Commissioner of Precinct 3 who is eligible under the Judicial Map due to residency restrictions. Therefore, an election under that map will most likely guarantee Commissioner Holmes' reelection in 2024.

D. The upcoming primary election requires preparations that need to be complete in early January.

The primary election is on March 5, 2024, 86 days away. The timeline to implement any map change is much shorter: early voting for the primary begins February 20, 2024 (72 days away), the clerk's deadline to mail primary election ballots to overseas voters under Texas Elections Code § 86.004(b) is January 20, 2024 (62 days away), and finalizing and ordering primary ballots is recommended to be completed by January 3, 2024 (24 days away).¹⁰ The candidate filing period closes

¹⁰ See Tex. Sec'y State, Important Dates for the Party Conventions, Primary Elections and General Election, *available at*

<https://www.sos.texas.gov/elections/candidates/guide/2024/dates2024.shtml>.

December 11, 2023, (the day this Response is filed). A change in maps at this time will require the County to check and change as appropriate the precinct (and voter tabulation district) assignments for a sizable segment of Galveston County's 250,000+ registered voters. The County may not meet statutory deadlines for registrations, voter registration certificate delivery, and ballot preparation and certification for the primary elections if the stay is vacated. While the NAACP Applicants contend the County has never discussed any hardship or confusion due to changes in maps (NAACP App'n at 25), that is not true. *See* Respondents' Appdx. 13 at App-183, Respondents' Appdx. 14 at App-204-205. More importantly, the affected registration, mailing and balloting deadlines are more sensitive at this point. Applicants' request to vacate should be denied to obviate late-change issues, as eleven Fifth Circuit judges determined.

ARGUMENT

To vacate the en banc stay order, Applicants must show (1) this Court will likely grant review upon final disposition in the Fifth Circuit, (2) there is a “fair prospect” this Court will reverse, and (3) there is a likelihood of irreparable harm should emergency relief be denied. *See Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers).

I. The Fifth Circuit’s en banc order staying the district court’s injunction is appropriate, and should not be vacated.

A. Appellate courts have the power to stay a district court’s injunction pending appeal to prevent the “premature enforcement of a determination which may later be found to have been wrong.”¹¹

An appellate court’s power to stay enforcement of a judgment pending appeal (here, an **injunction** that alters a duly enacted districting map that has been in place for over 650 days) is “part of [the appellate court’s] traditional equipment for the administration of justice.” *Scripps-Howard Radio v. F.C.C.*, 316 U.S. 4, 9-10 (1942). This “traditional equipment” gives appellate courts the ability “to prevent irreparable injury to the parties or to the public resulting from the premature enforcement of a determination which may later be found to have been wrong.” *Id.* Depriving courts of appeal of this ability, without regard to the circumstances of the case or the current state of the law as they are able to write it, would undermine not only their power, but the very reason they have that power in the first place.

¹¹ *Scripps-Howard Radio v. F.C.C.*, 316 U.S. 4, 9-10 (1942).

In 2006, the Court refused to allow a district court to enjoin voter identification procedures that had been approved by state voters weeks before an election. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). The Court explained the court of appeals had to weigh not only the harms that would flow if an injunction was or was not issued, but also “considerations specific to election cases” and the court’s “own institutional procedures.” *Id.* Considerations such as voter confusion, incentive to stay away from the polls, and conflicting orders are issues specific to election cases, and those concerns “increase” as elections draw closer. *Id.* Additionally, as Justice Stevens noted in his concurring opinion, there was little data about the impact of the laws in that case, and permitting their use would allow for a better understanding (as opposed to mere speculation) about their effect and utility. *Id.* at 6 (Stevens, J., concurring).

Three years later, this Court addressed whether a federal statute enjoined an appellate court’s authority to stay a deportation order; a divided Court held it did not. *Nken v. Holder*, 556 U.S. 418, 436 (2009). An appellate court’s “inherent” power to abate an order while the court “assesses the legality” of that order derives from courts’ authority to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” *Id.* at 426 (quoting All Writs Act, 28 U. S. C. § 1651(a) and *In re McKenzie*, 180 U. S. 536, 551 (1901)). Courts of appeal should consider, “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially

injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Id.* at 426. The first two factors are the “most critical.” *Id.* Arguing, therefore, that an en banc court cannot consider the likelihood of success in light of its own power to issue or overrule prior opinions, actually contradicts *Nken’s* standard.

Enjoining the enforcement of state law “in the thick of election season” is improper. *Dem. Nat’l Comm. v. Wis. State Legis.*, 141 S. Ct. 28 (2020) (Roberts, C.J., concurring). That is, an appeals court must consider in its stay analysis whether there is “federal intrusion on state lawmaking processes.” *See id.* Judge Oldham, in his concurring opinion in support of the stay order, acknowledges this important issue:

If we did not stay this “extraordinary departure from the traditional course of relations between the States and the Federal Government,” the people of Galveston would have to endure an entire election cycle under a “federal intrusion into sensitive areas of state and local policymaking.”

Petteway & NAACP Apps’ Appdx. K at App-203-204 (Oldham, J., concurring) (internal quotations omitted).

Federal district courts therefore should not ordinarily “enjoin state election laws in the period close to an election” and “federal appellate courts should stay injunctions when, as here, lower federal courts contravene that principle.” *Merrill v. Milligan*, 142 S. Ct. 879, (2022) (Kavanaugh, J. concurring).

This is because any change close to an election deadline will cause a ripple effect that can interfere with local administration of the election—the order changing the procedures or boundaries must be reviewed and implemented, voters and election officials must be informed. *Dem. Nat’l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). Here, the alteration of precinct boundaries now carries even greater

disruption to processes already completed or ongoing: to implement the Judicial Map, local County administration must first assess and reassign residential and tabulation district data for each of the thousands of voters whose precinct information changes and then reprint and distribute voter registration certificates to the County's registered voters reflecting the appropriate precinct in which the voter lives, and create, test and distribute ballots, including, significantly, mail-in ballots. As Justice Kavanaugh has explained,

It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a federal district court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent.

Id.

Applicants' argument on *Purcell*—that they are entitled to the district court's injunction changing the Enacted Plan at the end of the candidate filing period—“defies common sense and would turn *Purcell* on its head.” *Id.* An appellate court must have the power to consider and correct a lower court's injunction—in light of the circumstances of the case before it, both legally and factually. *See id.* at 32. “Otherwise, appellate courts could never correct a late-breaking lower court injunction of a state election rule.” *Id.*

Oddly, Applicants argue that the Fifth Circuit could not consider applicable *Purcell* standards that warn courts not to change local election laws close to or during election processes; they even argue the Fifth Circuit cannot consider *Purcell* because it was somehow waived. Petteway App'n 4, 27 (citing *Rose v. Raffensperger*, 143 S. Ct. 58 (2022) (Mem.)). *Rose* does not stretch to where Applicants seek to take it. In

Rose, the applicants moved for a preliminary injunction (something Applicants chose not to do here), and at the hearing on that request, the Secretary told the district court “for the record” that “we may appeal based on the merits, but we won’t make an appeal based on *Purcell*,” meaning whether the election is too close. *See* No. 22A136, Aug. 14, 2022 Application to Vacate Stay, at 4-5.¹² The County made no such argument or concession in this case.

Nor is the Court of Appeals’ inherent authority under the All Writs Act so tightly belted, as Applicants claim. The Court of Appeals is familiar with the law and facts, and may issue a stay based on arguments of counsel and its own consideration of applicable standards under the law. Any argument to the contrary is an invitation to completely preclude sua sponte stay orders. *See, e.g., Latta v. U.S. Dep’t of Educ.*, 653 F. Supp. 3d 435, 439 (S.D. Ohio 2023) (discussing inherent authority of courts to issue stay orders, including sua sponte stay orders citing, inter alia, *Collins on Behalf of Collins v. Barry*, 841 F.2d 1297, 1299 (6th Cir. 1988) (sua sponte staying appellate proceedings pending the outcome of a Supreme Court case)).

But even if Courts of Appeals’ authority were limited, Respondents argued in their original emergency motion for stay that the district court’s two-week deadline to adopt a new map just before the candidate filing period was too short,¹³ the Petteway Applicants extensively discussed *Purcell* in their response in the Fifth

¹² No. 22A136, Aug. 14, 2022 Application to Vacate Stay, at 4-5, *available at* https://www.supremecourt.gov/DocketPDF/22/22A136/233394/20220814185113753_Final%20SCOTUS%20Emergency%20Application%20to%20Vacate%20Stay.pdf.

¹³ *See* Respondents’ Appdx. 15 at App-226, 230-231, 240-241.

Circuit,¹⁴ and Respondents addressed that analysis in their reply. Respondents’ Appdx. 13 at App-183. There is no surprise here. Moreover, creating a “waiver” argument in this context would lead to absurd results, such as precluding courts from considering the very same rapidly changing circumstances that they must consider when assessing a stay request.¹⁵

While Circuit Justices have the ability to dissolve stays entered by courts of appeals, such stays are “entitled to great deference[,]” and that power “is to be exercised ‘with the greatest of caution and should be reserved for exceptional circumstances.’” *O’Connor v. Bd. of Ed. of Sch. Dist. 23*, 449 U.S. 1301, 1304 (1980) (Stevens, J., in chambers). Here, the stay issued following the careful consideration of the en banc Fifth Circuit court, supported by **eleven** judges, and should not be vacated.

B. The status quo favors a stay, not a change to the Enacted Map right before the 2024 primaries.

In arguing the Fifth Circuit’s stay is improper, Applicants twist the timeline to their story.

In reality, the Enacted Map was constantly in effect from January 1, 2022 until October 13, 2023—**650 days** before the district court’s injunction. During those 650

¹⁴ Respondents’ Appdx. 16 at App-458-459, 463-466.

¹⁵ Nor does it make any sense that, when a defendant opposes any change to an enacted districting plan throughout litigation, that same defendant could somehow waive a *Purcell* argument by agreeing to a specific date for trial.

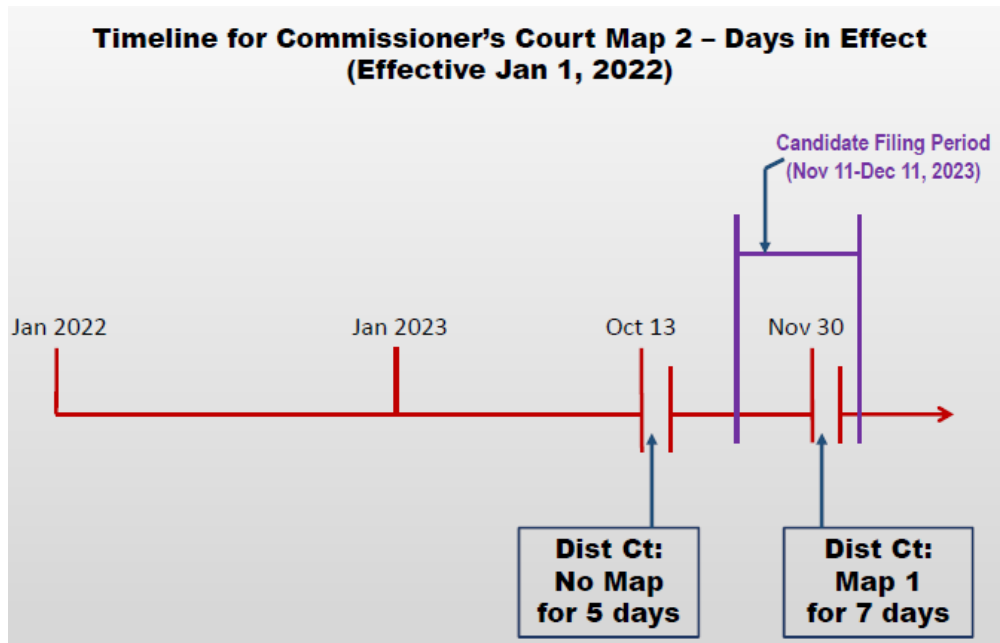
days, Applicants never sought to stay use of the Enacted Map, even for the 2022 elections.¹⁶

The district court's October 13 injunction introduced confusion into the upcoming election process, leaving the County with no map for 5 days, less than a month before the candidate filing period opened. On October 18, 2023, the Fifth Circuit entered a temporary administrative stay permitting the Enacted Map to continue in place during a 42-day period, through en banc review being granted on November 28, 2023. Applicants' then represented to this Court that the Fifth Circuit's November 28, 2023 order did not "terminate" the temporary administrative stay. When the Fifth Circuit pointed out that the stay had terminated, Applicants moved for emergency entry of a remedial plan with the district court on November 30, 2023. All the while, Respondents' original motion for stay pending appeal was still pending.

Hours after Applicants filed and more than halfway through the candidate-filing period (19 days), the district court ordered the Judicial Map to take effect in Galveston County. The Fifth Circuit's en banc stay order entered December 7, 2023 continued the Enacted Map in place for the last four days of the candidate filing period. During this entire process, the Judicial Map, which Applicants claim is the way to minimize County confusion and work leading to the upcoming primary

¹⁶ In fact, the 2022 election is when Dr. Robin Armstrong, who is Black, was elected as Commissioner for Precinct 4. He was appointed to represent Precinct 4 after the sitting commissioner passed away, was elected by Republican Party chairs over several Anglo candidates, and then elected to office in November 2022 under the Enacted Map, with no Democrat opponent. Petteway & NAACP Apps' Appdx. D at App-72-73 ¶ 148.

elections, replaced the Enacted Map 2 for only seven days, and was put in place more than halfway through the candidate filing period.



The confusion or contradiction in this case is more the result of Applicants' rushed attempts to change the duly Enacted Map so close to the primary elections. Applicants argue both sides when they contend that (1) the general election is too far off for *Purcell* to apply, and (2) the December 11, 2023 close of the candidate filing period is too imminent to permit Galveston County's Enacted Plan to remain in force pending appeal. To be fair, it is the Fifth Circuit's stay that maintains the status quo: it provides for use of the duly Enacted Map that was in place for 650 days before judgment, under which elections have occurred, and which was in place for the majority of the month-long time period for candidates to file to run for office. The stay order provides continuity rather than confusion, and should therefore not be vacated.

II. The parties agree the minority coalition issue is important and may work its way to this Court—but the Fifth Circuit has yet to complete its review, and Respondents oppose certiorari before judgment.

Respondents' lone agreement with Applicants is that, following the Fifth Circuit's en banc outcome, one side or the other will likely seek further review. This Court has not directly ruled on the minority coalition issue. *See Bartlett v. Strickland*, 556 U.S. 1, 13-14 (2009) (declining to address “coalition-district claims in which two minority groups form a coalition to elect the candidate of the coalition’s choice”); *Perry v. Perez*, 565 U.S. 388, 398-99 (2012) (creating a coalition district is likely not necessary to comply with VRA Section 5); *Grove v. Emison*, 507 U.S. 25, 41 (1993) (declining to rule on the validity of coalition claims writ large). The circuit courts of appeal are split on whether the VRA permits sub-majority minority coalition claims. The Sixth Circuit rejects such claims. *Nixon v. Kent Cnty.*, 76 F.3d 1381, 1387 (6th Cir. 1996). The Fourth and Seventh Circuits have voiced similar concerns about the legitimacy of minority coalitions. *See Hall v. Virginia*, 385 F.3d 421, 431-32 (4th Cir. 2004); *Frank v. Forest Cnty.*, 336 F.3d 570, 575-76 (7th Cir. 2003). The First Circuit has also expressed concern over the issue. *Metts v. Murphy*, 347 F.3d 346, 359 (1st Cir. 2003), *vacated on reh’g. en banc*, 363 F.3d 8 (1st Cir. 2004). The Eleventh and Second Circuits appear to permit minority coalitions. *Pope v. Cnty. of Albany*, 687 F.3d 565 (2nd Cir 2012); *Citizens of Hardee Cty. v. Hardee Cnty. Bd. of Comm’rs*, 906 F.2d 524, 526 (11th Cir. 1990).

This Court may grant review of any final decision in the Fifth Circuit to provide

a clear resolution of this issue. Respondents and Applicants part ways from there.¹⁷

Respondents oppose Applicants' request to grant certiorari before the full court in the Fifth Circuit has the opportunity to consider and rule on this issue. *See* 28 U.S.C. § 2101(e). While this case presents an important issue, it does not warrant skipping full review by the Court of Appeals. *See U.S. v. Nixon*, 418 U.S. 683, 686-87 (1974) (certiorari granted before judgment in case involving the President and “because of the public importance of the issues presented and the need for their prompt resolution”); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (involving Executive Order directing the seizure and operation of most U.S. steel mills); *U.S. v. Mine Workers*, 330 U.S. 258 (1947) (involving nationwide strike of coal mine workers).

III. The Fifth Circuit panel is not demonstrably wrong in ordering en banc review or a stay.

A. Respondents are likely to succeed on the merits.

Coalitions of distinct racial groups are not protected under the Section 2 of the VRA because they attempt to use Section 2 as a tool to advance cross-racial political goals. But, the VRA does not permit race to be used as a proxy for political parties. And, nothing more clearly reveals the political nature of a coalition's claim than its structure and effect—beginning with the pretense of addressing an aggregation of

¹⁷ While the NAACP Applicants appear to argue that the issue of whether intentional discrimination cases require proof under *Gingles I* is at issue, it is not. Again, there is no intentional discrimination finding in this case, and the legal question concerns whether distinct minority groups can form a coalition and bring a VRA claim, not an unpreserved issue of whether intentional conduct somehow obviates a compactness assessment under *Gingles I*.

distinct minority groups as a single entity. The link among such a coalition (as here) is not race, it is political *ideology*, which the VRA clearly does not protect. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2500 (2019).

Here, Black and Latino Democrats in Galveston County (thus excluding Dr. Armstrong and other minority Republicans and elected officials in the County) oppose a Republican majority. The coalition claim therefore focuses not on equally open processes closed off **on account of** race, but to increase their joined political voice. While such aggregation may address political goals, it is a stretch of the VRA's text, purpose and constitutional bounds.

Applicants contend that existing law compelled the Fifth Circuit to deny a stay pending appeal, since the panel affirmed the district court's injunction. They forget that the panel's opinion has since been vacated. Nor is an en banc Court of Appeals bound by Circuit precedent they intend to revisit. As Chief Judge Richman explained, argument that a change-in-the-law cannot support a stay did not prevent entry of a stay in *Merrill. Petteway & NAACP Apps' Appdx. K* at App-212. And, as further discussed herein, *Grove* is not precedent on minority coalitions raising Section 2 claims. *See Grove v. Emison*, 507 U.S. 25, 41 (1993) (“[a]ssuming (without deciding) that it was permissible for the District Court to combine distinct ethnic and language minority groups for purposes of assessing compliance with § 2, when dilution of the power of such an agglomerated political bloc is the basis for an alleged violation, proof of minority political cohesion is all the more essential”).

B. Section 2 does not protect sub-majority, aggregate coalitions.

This Court has repeatedly rejected sub-majority and political-alliance VRA plaintiffs. Coalitions of distinct minority groups acting as one group are another sub-majority variant not protected by the VRA.

i. The VRA’s text shows coalition claims are not protected.

The text of the VRA does not support aggregate sub-majority claims. It protects against the denial or abridgment of a citizen’s right to vote “on account of race or color, or in contravention of” protections established for language minorities. 52 U.S.C. § 10301(a) (emphasis added). The statute establishes a violation if it is shown that processes leading up to nomination or election “are not equally open to participation by members of a class of citizens” who are protected under subsection (a).” 52 U.S.C. § 10301(b). The text is singular—“a class of citizens.”

While Applicants contend that singular words include the plural, they downplay the importance of context. *See* 1 U.S.C. § 1 (general interpretive rules “unless the context indicates otherwise”). “A class” cannot be determined in isolation—and it is undisputed here that the coalition for which Applicants advocate is comprised of two distinct minority groups. Nor does the “last antecedent” rule apply here, as there is no immediate, last antecedent phrase. *See Barnhart v. Thomas*, 540 U.S. 20, 26 (2003). Applicants’ citation to the singular-plural canon equally fails to resolve the issue here. Their simplistic application of singular-plural construction is unworkable. The phrase “class of citizens” already contemplates multiple citizens within a class, and the construction provides no instruction that separate “classes” may be aggregated. *See F.D.I.C. v. RBS Sec. Inc.*, 798 F.3d 244, 258-59 (5th Cir. 2015).

As Applicants concede, Congress does not “hide elephants in mouseholes.” *See Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001). Equating this situation to *Whitman*, minority coalition claims are the elephant. Congress neither alters fundamental details of a regulatory scheme in vague or ancillary provisions nor implicitly created minority coalition claim elephants in such an important area of the law—in fact, Congress nowhere prescribes such a claim under the VRA.

The Fifth Circuit addressed this issue, acknowledging in its stay order that courts must be certain of Congressional intent “before finding that federal law overrides the usual constitutional balance of federal and state powers.” Petteway & NAACP Apps’ Appdx. K at App-204 (Oldham, J., concurring) (internal quotation omitted). Applicants also cite *Chisom*, which resulted in clarification that the VRA applied to “representatives” who include elected judges, just as the pre-1982 version of the VRA had. *See Chisom v. Roemer*, 501 U.S. 380, 403 (1991). The same is not true for Applicants’ claims. Coalitions were not protected under the original enactment, and were not silently made a protected aggregate class in 1982.

ii. Section 2’s legislative history shows coalition claims were not contemplated.

Section 2 of the VRA was enacted in 1965 and amended in 1982. No fair reading of the Senate and House reports from 1982 support the notion that a racial coalition was anticipated, or protected.

As explained in the Senate Report for the 1982 amendments, the legacy of the VRA stems from the need to combat the denial of Black Americans’ voting rights. S. Rep. No. 97-417, 97th Cong., 2d Sess. 5 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177,

182.¹⁸ Once statutory bars to Black citizens’ ability to vote were lifted, other means of discrimination in voting followed—violence, harassment, literacy tests, and other types of screening. *Id.* Eventually, there was a “dramatic rise in registration” among Black citizens, and then “a broad array of dilution schemes [that] were employed to cancel the impact of the new black vote.” *Id.* at 6. The 1982 amendments were meant to “make clear that plaintiffs need not prove a discriminatory purpose in the adoption or maintenance of the challenged system of practice” to establish a VRA violation. *Id.* at 27.

The amendments also show “Congress clearly walked a fine line” in its work to “codify the results test for vote dilution claims while expressly prohibiting proportional representation for minority groups.” *See LULAC v. Clements*, 999 F.2d 831, 896 (5th Cir. 1993) (“*Clements*”) (Jones, J. concurring). A results-based VRA claim will therefore sometimes fail because a minority will lack sufficient population to create a majority single-member district. *Id.* However, “opportunistic minority coalitions” can circumvent this numerosity requirement to seek a remedy prohibited under the VRA, which is “possibly unconstitutional”—court-mandated proportional representation. *Id.*

The Senate Report shows that Congress envisioned Section 2 protections to provide Black citizens an equal chance at effective political participation. Of course, the VRA applies to any denial or abridgement of a citizen’s right “to vote on account

¹⁸ The Court discusses this history in *Brnovich v. Dem. Nat’l Comm.*, 141 S. Ct. 2321, 2332 (2021).

of race or color.” 42 U.S.C. § 1973(a). The Report, however, nowhere indicates that the VRA was meant to allow different minority groups to form into a single coalition to raise a VRA claim. Such claims would greatly expand and increase the impact and rate of VRA claims. *See, e.g., Rucho*, 139 S. Ct. at 2502 & 2507 (discussing “unprecedented expansion of judicial power” by ultimately asking federal courts to “take the extraordinary step of reallocating power and influence between political parties”).

Such a stretched interpretation of the VRA contradicts the statute’s intent to eliminate racially discriminatory structures (*see* S. Rep. No. 97-417 at 54, discussing a jurisdiction’s ability to end Section 5 coverage), since expanding claims to a coalition of multiple races is potentially unlimited in scope. This logical conclusion is evident in Senate Report references to a single class of VRA plaintiffs. In fact, one of the few instances in which the Senate Report explicitly references racial groups that the amended Section 2 would affect speaks in the disjunctive, using “or,” not “and.” In cataloging how the amendment would undo *Mobile v. Bolden*,¹⁹ the Senate Report explains that an intent requirement “asks the wrong question,” since VRA claims challenge electoral systems that operate “today to **exclude blacks or Hispanics** from a fair chance to participate” S. Rep. No. 97-417 at 36 (emphasis added). The Report, which serves as the seminal document courts have turned to for interpreting the 1982

¹⁹ *Mobile v. Bolden*, 446 U.S. 55 (1980), *superseded by statute as stated in Jones v. City of Lubbock*, 727 F.2d 364 (5th Cir. 1984).

amendments to Section 2, nowhere references the concept of a multiracial, or Black-Hispanic, fusion claim.

The House Report on the 1982 amendments likewise mentions racial groups discretely, giving no indication of any intent to lump different minority voting groups together to raise a claim under Section 2. Like the Senate Report, it primarily discusses Black voters, but when it mentions other groups, it does so distinctly. For example, the Committee recognized that, before 1965, “the percentage of black registered voters in the now covered states was 29 percent” and white registered voters was 73%, while:

[t]oday, in many of the states covered by the Act, more than half the eligible black citizens of voting age are registered, and in some states the number is even higher. Likewise, in Texas, registration among Hispanics has increased by two-thirds.

H.R. Rep. No. 97-227 at 7 (1981). The Report contains several examples discussing minority voters separately, providing distinct examples of black, Hispanic, Native American, and other groups’ situations under the VRA’s provisions. *See id.* at 14-20.

Had Congress, in its 1982 reformulation of the VRA, intended to permit coalition claims, it would have done so expressly. It did not. Had it meant to apply a single claim to different **races**, it would have said so. *See, e.g., Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991) (citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65 (1989) and *U.S. v. Bass*, 404 U.S. 336, 349 (1971) (in “traditionally sensitive areas” like statutes that affect “the federal balance,” courts rely on the statute’s clear or plain statements to assure “that the legislature has, in fact, faced, and intended to bring into issue, the critical matters involved in the judicial decision”).

Applying a statute's plain statements acknowledges "that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory*, 501 U.S. at 461.

iii. The Fifth Circuit stay seriously questions the merits of minority coalition claims under the VRA.

The Fifth Circuit has historically permitted minority coalition claims. *See Clements*, 999 F.2d at 864; *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989); *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989); *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988) (per curiam). Despite that precedent, the stay order issued en banc seriously questions the merits of minority coalition claims. As Judge Oldham stated in his concurring opinion, **the County has shown a likelihood of success on the merits**. Petteway & NAACP Apps' Appdx. K at App-204-205 (Oldham, J., concurring) (internal quotation omitted). He reconfirms that "we must be certain of Congress' intent before finding that federal law overrides the usual constitutional balance of federal and state powers." *Id.* at App-204. Yet, the language of minority coalitions under the VRA is far from unambiguous. The Court further expressed doubt over a reading that includes minority coalitions stating, "[Applicants] would read § 2 to require race-based redistricting with no logical endpoint." *Id.* at App-205. All told, the County has shown likelihood of success. *Id.*

Even the prior Fifth Circuit precedent involving minority coalitions contained strong and well-reasoned opposition. *See LULAC v. Midland ISD*, 812 F.2d 1494 (5th Cir. 1987) (Higginbotham, J., dissenting), *vacated on reh.*, 829 F.2d 546 (5th Cir. 1987); *see also Campos v. City of Baytown, Tex.*, 849 F.2d 943, 945 (5th Cir. 1988)

(per curiam) (Higginbotham, J., dissenting from denial of reh. en banc); *Clements*, 999 F.2d at 894 (Jones, J., concurring).

As Judge Higginbotham explained, the question is whether “Congress intended to *protect* [] coalitions” rather than whether the VRA prohibits them. *Campos*, 849 F.2d at 945 (Higginbotham, J. dissenting on denial of reh.). No such Congressional intent can be deduced. *Id.* Furthermore, the notion “that a group composed of [different minorities] is itself a protected minority” “stretch[es] the concept of cohesiveness” beyond its intended bounds to include political alliances, undermining Section 2’s effectiveness. *See id.* That is, assuming that a coalition “is itself a protected minority is an unwarranted extension of congressional intent.” *Id.*

Analyses from sister circuits also address a lack of Congressional support or authority from this Court permitting coalition claims. The Sixth Circuit has rejected the validity of coalition claims under Section 2. *Nixon*, 76 F.3d at 1387. The *Nixon* court relied on the “clear, unambiguous language” of Section 2 and the legislative record concluding that minority coalitions were not contemplated by Congress. *Id.* at 1386. If Congress had intended to extend protection to coalition groups, it would have invoked protected “classes of citizens” instead of a (singular) protected “class of citizens” identified under the Act. *Id.* at 1386-87. Because Section 2 “reveals no word or phrase which reasonably supports combining separately protected minorities,” the Sixth Circuit concluded that coalition claims are not cognizable. *Id.* at 1387. It expressly disagreed with *Campos* as an “incomplete [and] incorrect analysis.” *Id.* at 1388, 1390-92 (noting the difficulties of drawing district lines for minority coalitions,

and that permitting coalition claims would effectively eliminate the first *Gingles* precondition). As discussed above, the Fourth and Seventh Circuits have voiced similar concerns. *See Hall*, 385 F.3d at 431-32; *Frank*, 336 F.3d at 575-76.

Citing the dissenting opinion in *Nixon*, Applicants ask whether VRA claimants must pass “some sort of racial purity test,” and whether a community that is racially both Black and Hispanic must be segregated from a community that is non-Hispanic Black. App’n at 27 (citing *Nixon*, 76 F.3d at 1401 (Keith, J., dissenting)). This question forgets that the VRA arose to secure the voting rights of Black citizens and that, at the same time it was passed, other titles in the Civil Rights Act outlawed segregation in businesses, public places, and schools. The entire premise of the VRA, and indeed of many civil rights statutes of its era, is protection based upon a racial classification. The VRA requires individual parsing along racial lines, much of which is typically driven by Census-reported data. Increasing the number of different minority groups within a single coalition to raise one VRA challenge not only facilitates confusion (as questions of racial classification are multiplied by the number of minority groups aggregated into one coalition), but shifts the focus from each minority’s circumstances to an aggregate coalition’s political concerns.

The Fourth Circuit’s discussion in *Hall* highlights this concern—permitting multiracial coalitions to bring VRA claims would transform the statute from a source of minority protection to an advantage for *political* coalitions, and a redistricting plan that prevents political coalitions among racial or ethnic groups “does not result in vote dilution ‘on account of race’ in violation of Section 2.” *Hall*, 385 F.3d at 431. This

Court has cited *Hall* favorably. *Bartlett*, 556 U.S. at 14-15. In *Frank*, which involved an Indian tribe’s vote dilution claim brought with Black voters challenging a single-member municipal voting district, the Seventh Circuit acknowledged the circuit split, observed the “problematic character” of coalition claims, but avoided ruling on the issue and, instead, rejected the claim based on a lack of evidence that the two groups had a mutual interest in county governance. *See Frank*, 336 F.3d at 575.

The real question at the time of enactment was not whether a mixed-race VRA claimant could be a member of a class of Black, non-Hispanic citizens; that was also not the question at the time of the 1982 amendments. The original (and continued) goal or aspiration, just as it is under the Constitution, is to reach “a political system in which race no longer matters.” *See Shaw v. Reno*, 509 U.S. 630, 657 (1993). As we get closer to that goal, fewer Section 2 cases will be successful. *See Allen v. Milligan*, 599 U.S. 1, 29 (2023) (“as residential segregation decreases—as it has ‘sharply’ done since the 1970s—satisfying traditional districting criteria such as the compactness requirement ‘becomes more difficult’” and therefore fewer Section 2 cases will be successful).

Judge Jones discussed this, looking to the VRA’s history and text: the statute first protected Black voters, then was expanded to reach language minorities—separately identifying them as persons of Spanish Heritage, American Indians, Asian Americans, and Alaskan natives. *See Clements*, 999 F.2d at 894 (Jones, J., concurring). That the VRA separately identified these groups shows that Congress “considered members of each group and the group itself to possess homogenous

characteristics” and “[b]y negative inference,” *did not* indicate that these groups “might overlap with any of the others” or with Black voters. *Id.* The VRA also discusses the protection of a “class of citizens” and “a protected class”—had Congress meant to expand VRA coverage to “classes” comprised of minority coalitions, it would have done so explicitly. *See id.*

The legislative history’s comparison of discrimination faced by language minority citizens with that experienced by Black citizens explains why the VRA’s protections apply to language minority voters. It is an unfounded leap to go from there to holding the VRA allows different minority groups to join together to present a single claim under the VRA—especially where none is expressly permitted by the statute.

iv. This Court has rejected sub-majority and political alliance claims.

Without the potential to elect a candidate of choice, there is no wrong, no remedy—and no VRA claim.

1. *LULAC v. Perry* rejected sub-majority influence districts.

In *LULAC v. Perry*, the Court rejected influence districts, where minority voters could not elect a candidate of their choice, though they could play a substantial, if not decisive, role in the electoral process. *LULAC v. Perry*, 548 U.S. 399, 446 (2006) (“*LULAC I*”). Where a proposed influence district does not give a minority group the opportunity to elect a candidate of their choice, a Section 2 claim is not stated—or else “it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions.” *Id.* While Applicants comparing the Enacted Map

to “tinkering” in *LULACI*, they forget their own goal (as witnesses testified at trial) was to obtain the reelection of Commissioner Holmes in Precinct 3.²⁰

2. *Bartlett* rejected sub-majority crossover districts.

In *Bartlett*, the Court ruled that crossover districts contradict the VRA’s mandate, because the VRA requires proof that minorities “have less opportunity than other members of the electorate to . . . elect representatives of their choice.” *Bartlett*, 556 U.S. at 14 (quotation omitted). In a crossover district, minority voters make up less than a majority but “might be able to persuade” voters “to cross over and join with them.” *Id.* A minority group could “join other voters—including other racial minorities, or whites, or both—to reach a majority and elect their preferred candidate.” *Id.* But as less than a majority, a minority group “standing alone ha[s] no better or worse opportunity to elect a candidate than does any other group of voters with the same relative voting strength.” *Id.* Recognizing a Section 2 claim where a minority group cannot elect a candidate without assistance from others “would give minority voters ‘a right to preserve their strength for the purposes of forging an advantageous political alliance.’” *Id.* at 14-15 (quoting *Hall*, 385 F.3d at 431 and *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993) (minorities in crossover districts “could not dictate electoral outcomes independently”).

²⁰ Section 2 affords minorities a right to equal opportunity to elect “representatives of their choice,” which is different than a right to elect representatives of their choice. 52 U.S.C. § 10301(b). Section 2 does not confer on minority groups the right to elect their ideal candidate; that is a right no one in the political system enjoys. See *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994) (“minority voters are not immune from the obligation to pull, haul, and trade to find common political ground”).

With crossover district claims, courts would have to “make predictions or adopt premises that even experienced polling analysts and political experts could not assess with certainty, particularly over the long term.” *Id.* at 17. Those judicial inquiries—including what percentage of white voters supported minority-preferred candidates in the past, how reliable will crossover votes be in the future, what types of candidates have both white and minority support and whether that trend will continue, how did incumbency affect voting, and whether those trends depended on race—“are speculative” and the answers to these questions “would prove elusive.” *Id.* *Bartlett* explained the VRA does not create a requirement to draw election districts based on these types of inquiries, these questions go well beyond the typical fact-finding entrusted to federal district courts by entering into “highly political judgments” that courts are “inherently ill-equipped” to make. *Id.* The crossover district sub-majority problems are only heightened when one considers that Section 2 applies nationwide, to every jurisdiction that draws election districts, and every type of election. *Id.* at 17-18. *Bartlett* cautioned:

There is an underlying principle of fundamental importance: We must be most cautious before interpreting a statute to require courts to make inquiries based on racial classifications and race-based predictions.

Id. Instead, an objective, numerical test is much less fraught: “Do minorities make up more than 50% of the voting-age population in the relevant geographic area?” *Id.* This same advice applies here—rather than trudging through the deep waters of whether a coalition of minority voters form a community of interest, or whether they will *continue* to comprise a coalition in the future. For example, will Hispanic voters continue along a trend of voting for more Republican candidates, while Black voters

continue to support Democrats, and how will incumbency or candidate Spanish surnames affect voter cohesion? A simple test of whether a single minority group makes up more than 50% of a particular area is what the VRA envisioned, and what *Gingles* tests.

The same problems with a crossover district are present with a coalition minority district, and more. There is no line as to how many minority groups could join to form a VRA claim—beyond a Black and Hispanic coalition, plaintiffs could raise any combination or number of minority voter groups. Such claims would almost certainly constitute *political*, rather than racial minority, coalitions.

Even though the Court did not rule on coalition claims in *Grove*, Justice Scalia’s opinion is no ringing endorsement of coalition claims. As he explained,

. . . even if we make the dubious assumption that the minority voters were “geographically compact,” there was quite obviously a higher-than-usual need for the second of the *Gingles*^[21] showings. Assuming (without deciding) that it was permissible for the District Court to combine distinct ethnic and language minority groups for purposes of assessing compliance with § 2, when dilution of the power of such an agglomerated political bloc is the basis for an alleged violation, proof of minority political cohesion is all the more essential.

Grove, 507 U.S. at 41.

v. *Rucho* instructs that federal courts are not equipped to apportion political power.

Finally, *Rucho* reminds that the federal judiciary is not equipped to apportion political power. Minority coalitions, for which the glue is political alliance, are comprised of distinct sub-majority groups, and therefore cannot bring a VRA claim.

²¹ *Thornburg v. Gingles*, 478 U.S. 30 (1986).

There is no right to proportional representation, or even a guarantee that redistricting “come as near as possible” to proportional representation—that argument is “clearly foreclose[d]” under Section 2’s express language and this Court’s case law. *See Rucho*, 139 S. Ct. at 2499.

Distilling the Court’s cases into one unwavering point, without the opportunity to elect a representative of a minority group’s choice, there is no claim for harm—or relief available—under the VRA.

vi. The VRA is not a vehicle for maximizing political strength.

A significant hazard in recognizing a minority “coalition district” VRA claim is that treating a coalition of separate minority groups as a single minority stretches *Gingles* cohesiveness to include political alliances, which Section 2 does not protect and the Fifteenth Amendment cannot reach. The Court has made clear that partisan vote dilution claims are not actionable. *See Rucho*, 139 S. Ct. at 2500. Racial gerrymandering does not review whether a “fair share of political power and influence” has been apportioned, but “asks instead for the elimination of a racial classification. A partisan gerrymandering claim” on the other hand “cannot ask for the elimination of partisanship.” *Id.* at 2495-96.

Section 2 does not require or provide that a minority group’s political strength be maximized. Rather, reapportionment “is primarily the duty and responsibility of the State[s],” not the federal courts. *Allen*, 599 U.S. at 29. Section 2 limits judicial action to “instances of intensive racial politics where the excessive role of race in the electoral process denies minority voters equal opportunity to participate.” *Id.* (cleaned up).

Bartlett rejects any argument that minority groups have special protection under the VRA to form *political* coalitions. *Id.* at 15 (“minority voters are not immune from the obligation to pull, haul, and trade to find common political ground”) (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994)). Simply stated, the VRA “does not impose on those who draw election districts a duty to give minority voters the most potential, or the best potential, to elect a candidate by attracting crossover voters.” *Id.* at 15.

Federal courts lack the power to apportion political power, or “vindicat[e] generalized partisan preferences.” *Id.* at 2499-2501. The impropriety of using Section 2 to gain political ground is unmistakable. *See e.g., Clements*, 999 F.2d at 854 (“§ 2 is implicated only where Democrats lose because they are black, not where blacks lose because they are Democrats”).

C. Applicants insist on arguing intentional discrimination when no intent finding exists—and the equities do not favor vacating a stay.

Applicants contend the equities counsel against keeping a stay in place. There is no denying that a federal court’s intrusion into state—or here, *county*—governance is unwarranted absent proper authority. Allowing such intrusion prefaced on a minority coalition wades too far into connections based on political ideologies to be appropriately characterized as a VRA claim.

Applicants do not bother wrestling with the upcoming primary races, for which early voting begins February 20, 2023. They apparently believe implementation of a map that the County has been forced to deal with for seven total days and which the County is not currently subject to will be effortless; they do not consider the time or

work required to implement and generate ballots based on district voting tabulation districts, which depend upon the data behind the design of commissioner precinct boundaries. They do not address the fact that the Judicial Map was not voted for by **any** Commissioner, and was not supported as drawn by any County residents.

Applicants repeat that the district court carefully considered the merits after a bench trial. Judge Higginson picked up on that argument in his dissent. Petteway & NAACP Apps' Appdx. K at App-216-219. But,

[i]f careful District Court consideration sufficed for an appellate court to deny a stay, then appellate courts could usually end the stay inquiry right there. That is not how stay analysis works. Contrary to the dissent's implication, the fact that the District Court here issued a lengthy opinion after considering a substantial record is the starting point, not the ending point, for our analysis of whether to grant a stay.

Merrill, 142 S. Ct. at 882 (Kavanaugh, J., concurring). Not only do Applicants misstate whether intentional discrimination was ever found by the district court (it was not), they attempt to use their misstatements of the district court's findings as a basis for vacating an en banc stay order.

Applicants gloss over the fact that the findings and related conclusions only extend so far as a VRA Section 2 results claim. Petteway & NAACP Apps' Appdx. D at App-165 ¶ 420. The Fifth Circuit proceedings rest on the legitimacy of a VRA effects claim. There was no intentional discrimination finding made, or appealed.²²

²² The Petteway Applicants use the phrase "intentional discrimination" 21 times in their 44-page filing. The district court, in its 157-page findings and conclusions, used "intent" only 19 times. Apart from repeating legal standards, the district court mentioned that intent claims brought against the County in 2013 were **dismissed** from the bench (¶180), and that there was "no need to make findings on intentional discrimination" (¶427). One statement touted by Applicants is a reference to a DOJ objection letter from 2012 about perceived procedural

Even Applicants repeated efforts at reframing the case and references to words such as “stark”, “jarring”, and “mean-spirited,” do not establish intentional racial discrimination or have any bearing on the question at issue here: i.e., does the VRA apply to minority coalition claims. Applicants not only disregard the trial court’s findings, they disregard this Court’s recent reminder that Section 2 “turns on the presence of discriminatory effects, not discriminatory intent.” *Allen*, 599 U.S. at 25. Applicants additionally disregard their failure to appeal the district court’s decision, leaving only their Section 2 results claim at issue on appeal. Finally, there is **no** support for the NAACP Applicants’ comment that the Enacted Plan was drawn with the devious purpose of trying to change the law. NAACP App’n at 16. That is wholly unfounded rhetoric in Applicants’ tale.

Contrary to Applicants’ representations, there are significant facts countering their views. Dr. Armstrong, who is Black, was elected by local Republicans to serve as their candidate for Precinct 4. Applicants disregard him because he is a Republican. Two County-elected, Hispanic district court judges have served in the past five years. Four Black and two Latino individual plaintiffs throughout the course of this case were elected officials in Galveston County. It is easier to vote now in Galveston County than ever—residents can vote at any available voting location anywhere in the County (a program the County opted into when it was first made available in Texas), voter registration is an easy process, and early voting lasts two

deficiencies that “could be viewed as evidence of intentional discrimination” (§233)—but the district court did **not** state that it found evidence of intentional discrimination.

weeks. Applicants’ Appdx. D at App-78 ¶ 164. The elected County Clerk (also a Republican) is Hispanic; he confirmed his office will cover any unpaid postage for mail-in ballots because he “want[s] every vote to count.” *Id.* ¶ 165. Election materials are provided in English and Spanish for all elections. *Id.* ¶ 166. The County also “collaborates with LULAC and allows them to use [C]ounty property for its Cinco de Mayo event” which is also a “get-out-the-vote effort.” *Id.* ¶ 168. Applicants’ attempts to create a discriminatory intent finding fail and, in any event, lend nothing to a stay analysis for a VRA results claim.

Applicants’ misdirection and, respectfully, Judge Higginson’s dissent from the stay order, do the very thing federal courts are instructed **not** to—look beyond the case at hand to justify judicial tinkering in local election plans. Judge Higginson even cites a 1944 opinion, presumably to support allowing a district court, in 2023, to modify Galveston County redistricting plans.

Allowing the County to proceed with the Enacted Map, which has been in place now for over two years and through the first half and end of the candidate filing period, is appropriate. *See Maryland*, 567 U.S. at 1302 (permitting stay to allow state to continue to enforce statute pending conclusion of petition for writ of certiorari); *see also Abbott v. Perez*, 138 S. Ct. 2305, 2319 (2018) (noting Court granted stay of district court orders).

IV. Respondents will suffer irreparable harm if their duly Enacted Map is enjoined—especially where there are serious questions about the viability of their claim in the first place.

The Constitution grants States the privilege of protecting voting rights of all of its citizens without regard to their race. It also reserves to the States the power to

redistrict. “[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland*, 567 U.S. at 1303 (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). Applicants claim there is no irreparable injury in imposing a map presented to the Commissioners Court—and not adopted by that Court, ignoring this rule. In 2011, the DOJ rejected the incorporation of Bolivar Peninsula into Precinct 3 when proposed by the County. The DOJ then negotiated only slight population shifts to reach a settlement for the 2011 Map. In 2021, without a Section 5 preclearance requirement or retrogression, the plaintiffs sued to maintain what is in effect a least-changes requirement, and extend federal control over local districting. But whether they can join distinct minority groups to form one claim under the VRA is an important threshold issue that, as the Fifth Circuit panel opined, should not be allowed.

CONCLUSION

If the basis for a federal court’s intrusion into state and local government is questionable (as here, where a coalition claim was brought under the VRA), a stay is particularly appropriate.

The VRA protects equal access to voting processes for minority citizens. The problem with a coalition theory is its pretense that several minority groups (or multiple classes of minority citizens) are one. Where a class of minority citizens do not have sufficient CVAP to elect a candidate of their choice, an amalgam of two

separate classes of minority citizens together—who have distinct backgrounds, ethnicities, concerns, and even languages, but share **political** ideologies—does not meet the VRA’s statutory intent. The VRA is too important to be misused for political gain, and the Constitution’s guarantee of state sovereignty is too fundamental to allow political coalitions to wield federal power over localities. Applicants have not shown any exceptional circumstance to reverse any stay, and their emergency applications should be denied.

Respectfully submitted,

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Nos. 23A521 & 23A523

In the Supreme Court of the United States

Terry Petteway, et al.,
Applicants,

v.

Galveston County, Texas, et al.,
Respondents

**APPENDIX TO RESPONDENTS'
RESPONSE TO EMERGENCY APPLICATIONS
TO VACATE STAY**

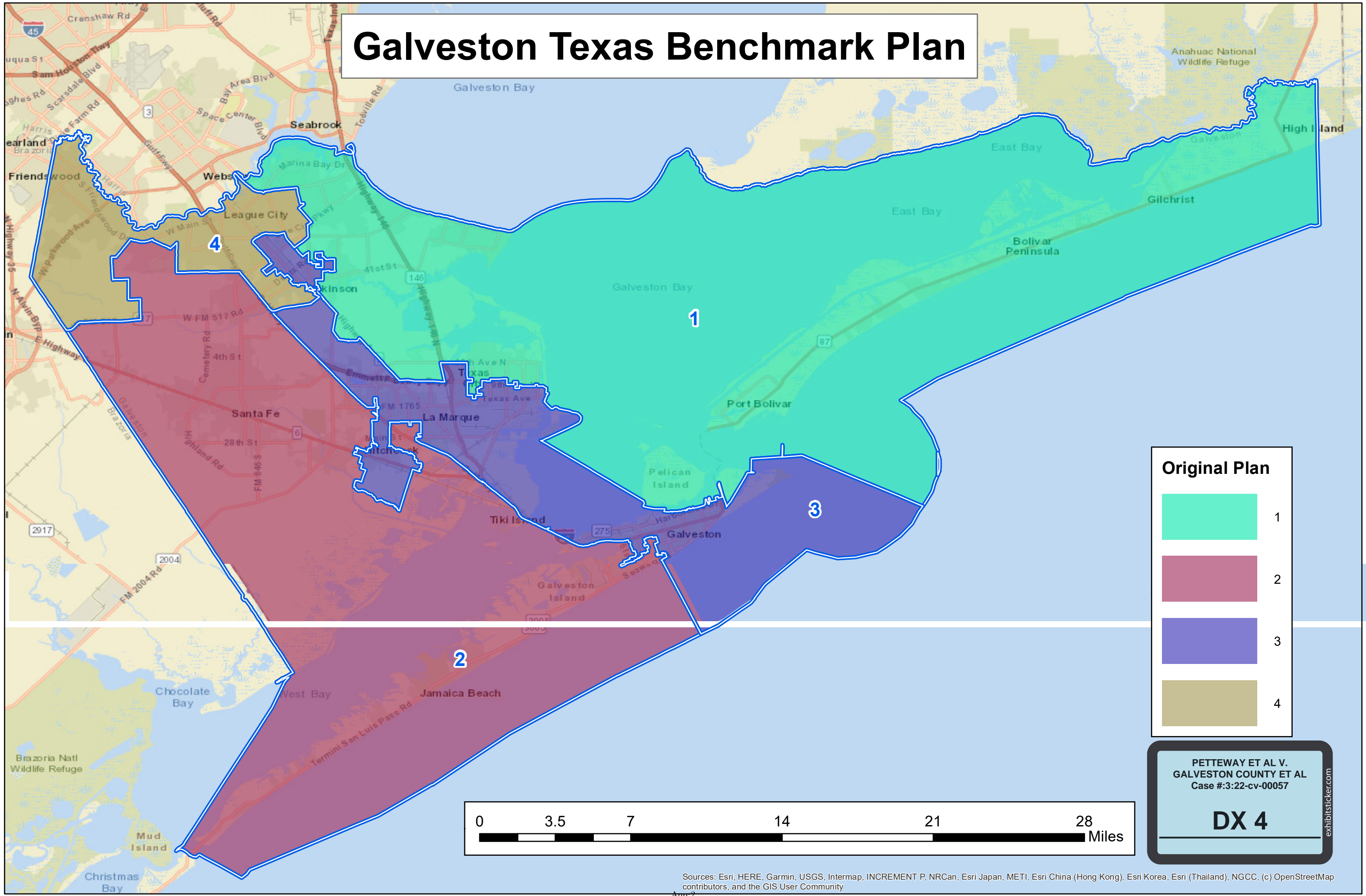
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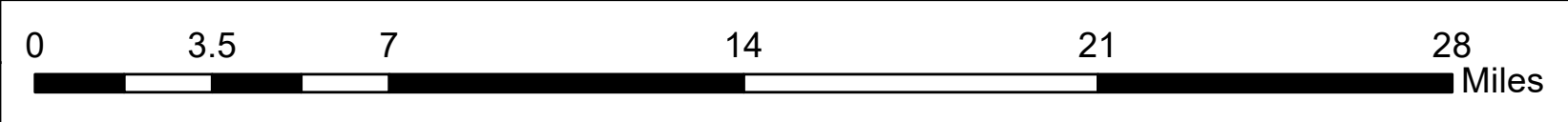
APPENDIX 1

Galveston Texas Benchmark Plan



Original Plan

	1
	2
	3
	4



PETTEWAY ET AL V.
 GALVESTON COUNTY ET AL
 Case #:3:22-cv-00057

DX 4

exhibitsticker.com

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

APPENDIX 2

Conference Call Dale Oidham + Paul Ready

~~Assumptions of Estimate~~

- * Address I plan on running from
- * Need to gain 8,000 people
- * 87,670.5
- * Deviation is still 10%
- * Fuzz in census numbers
- * Keeps asking me what assets I would like to have
- * All
- * They have already spoken with event other member of the court
- * I believe event other member of the court has seen maps with updated data
- * Paul Ready says Filer Drummond has the updated data and he will call + ask him to send it to me
- * Did not even talk about Restrictive Principles



9/21/20

Asked ENS. weeding if they
can run precinct data

① Pct 192

Boundary to south of Pct is 21st St. Draw line from
Dickinson Avenue to TEXAS AVE. make it part of 341 or 391
make it part of 341

② Pct 144

Boundary to south is FM 517. Draw line from California
Down 517 to Owens Drive to Melvin Utter Drive

③ Pct 142

Boundary Down Palmer HWY from 25th St to 29th St north
makes it part of Pct 343

④ Pct 232

* Either split Pct at I-45 from Batou to Vanhook or
move the entire Pct

Alternatives

Ⓐ Pct 439

Extend Batou from Sunset to Deats Rd. makes it
part of Pct 389

Ⓑ Take in remainder of St. Edwards Green

10/19/21

Meetings w/ Dale Olohan + Paul Ready - Mt Office 9:00AM

- Olohan presented 2 maps on his laptop
- * 1st map had Pct 3 picking up all of the Island currently in Pct 1, Pelican Island + all of Bolivar.
- * 2nd map had Pct 3 going no further south than Dickinson + majority of Pct 3 was League City + appears part of Friendswood.
- * Olohan said he would send copies of maps + data

Zoom meetings w/ Jed Webb, Joe Giusti,

10/22/21

+ Paul Ready, Zack Davidson, Dale Olohan + Demographer

* Webb, Giusti + Davidson at Calder Road

* I connected on the FERRY

* Olohan connected from South Carolina

* Ready not sure where he or demographer were located

* Showed 2 maps. Same I saw on 10/19/ from Mt Office

* Showed population + racial data

* I asked Ready to get copies of maps + data

10/29/21

Tyler Drummond

Spoke w/ Tyler. He called me as he was driving to Dallas. Informed me that maps would be going up on the County website that DAY. Said that there would be 2 maps displayed. The 2 maps that O'Brien had shown me before. I asked about a timeline for this redistricting process & he said that one would be set. He said there would be a place for public comment on website. I asked was this a contest to see which map would get more votes & he said no.

11/2/21

Tyler Drummond. Spoke w/ him & he said they were trying to set a special meeting for next Tuesday, 11/9/21, to vote on the redistricting maps. He said Clark would be out the rest of week & Giusti would be out next Weds & Thurs. He said maybe I could convince them at the next Tues meeting to not support map 2 & maybe get if the vote postponed to next Friday. Said SOS had sent email stating maps must be ^{sent} rec'd by 11/13/21

11/4/21 Tyler called said they were still working on setting the meetings posted for next Tuesday. Said that Nathan from our engineering department was finalizing the maps & trying to get it ready. Said he was gonna send DIANA home & have her come back on Saturday mornings to get it posted.

11/5/21 Tyler called me Saturday morning. Said the meeting
was probably going to be next Friday 11/12/21 b/c maps were
still not ready.

Appl'd to Rose on

10/21/20

"~~Doesn't look good for Holmes~~"

"~~It is~~ There are a
couple maps floating around,
It's not looking good for Holmes"

11/9/21

12:58pm

* Got a call from Commissioner Appfel about redistricting maps. He wanted to let me know that he would be voting to support map 2. He said the Judge (Henry) would jump out & make a motion to approve map 2. Said he was inclined to support that motion for political purposes. I informed him that map 2 was discriminatory to the minority voters currently in pct 3. He stated that the minority population currently in pct 3 was divided fairly evenly amongst all pct's in map 2 & that Dale Oldham told him this was a legal map. Also informed me that Mike Guarino called him & chastised him for supporting map 2. I told Comm Appfel that map 2 clearly runs afoul of section 2 of the Voting Rights Act & I ~~did~~ did not want the members of Comm Court to vote Friday & act like they ~~did~~ did not know this map is discriminatory. He talked about what Harris County was doing to Republican members of their Comm Court by changing their pct's. I told him this was not about Republican or Democrat, but about the protections guaranteed to minority groups in the VRA. He said he was going to call Dale Oldham & ask if this map 2 was in fact discriminatory. Comm Appfel also asked if I sided the NAACP on 'em. Told him I've had no conversations with the NAACP.

Speakers

11/12/21
Comm Court
Vote on MAPS

- ① TOMMY WATKINS - Stephen Holmes Justice for Stephen Holmes
- ② COLLEY JACKSON - Speaks About the people vote for MAP 2 to keep Gov Cnty Red
- ③ ELIJAH: Represent the people no to MAP 2
- ④ EVELYN McBRANIC: MAP is D'shonorable + Does NOT Represent people PLPS AWAY AT DEMOCRACY
- ⑤ WINDFORD GILMORE: To citizens lines drawn to delete Stephen Holmes. REDRAW MAP
- ⑥ DEBRA JONES - Extract County where Damon Holmes Represent Two Propositions RACISM IS NOT DEAD. WE THE PEOPLE ^{protect}
- ⑦ ANDEE RATHSO - Done w/ Tortuous intent. Right time to DO THIS
- ⑧ LILLIAN McGEOWN - Black Nurses Association. Neither map be Accepted
- ⑨ BARBARA ANDERS - Maintains NAACP. Both MAPS BAD. DCS Rejected Bolivar in 2011
- ⑩ DR. ANNETTE SINKS: Comm did not Get Luck on their own
- ⑪ NAOMI PAPPAS - Republican Pet chair. Government's BAD
- ⑫ HANNAH MELTZER - Neither Dem nor Republ. MAPS Racist + you know it. How much will we spend on another lawsuit
- ⑬ EONIA COONVILLE: PC Destroys Pet 336. Selfish + Arrogant DISRESPECT people.
- ⑭ PASTOR JERRY LEE: MAPS Discriminatory. Trust fellow man Right mov'ns the Goal post. Will have to answer to God
- ⑮ HENRY GOMEZ:
- ⑯ WENDY LANGHAM: No intention of changing map on getting input Politicians picking Voters.
- ⑰ NAKISHA PAUL: Preserve Precinct. Relationship b/w you and your const understands Experiences. Keep neighborhoods together.

- 18 Pastor King: Appalled this court w/ submit a map
One vote 1 person, not a small room full of people standing
Do the right thing
- 19 Judith Oppenheim: Friendswood 15th Representing myself + husband
"Keep Calvestar Red text" One party maps no good. Elections have
been games. Calling out names for points this. maps were
Rejected 10 yrs ago.
- 20 Derrick Johnson: Can't believe we are here discusses this.
Done things for ALK + Brown populations
- 21 Joseph Mitchell:
- 22 Heidi Gosow: would be rejected by pre-announced
- 23 ~~Sharon~~ ^{Right} ~~Watt~~: I sense this court came here a disabled network.
- 24 Lucretia Coffey: 45% courts minorities. Attempt to dilute minority vote.
meeting time conflicts w/ peoples jobs. Lack of democracy
Debra Bar Area NACCP
- 25 Roxie Williamson: Suther coalition for social justice. Not going down
without a fight.
- 26 Stephanie Swanson: Pet 3 people have worked together.
Blks + H form coalition district. Courts uphold coalition districts
Remove Bolivar from map.
- 27 Pastor Bedford: Been here 71 years. When I came here we
had no rights. Mainland Economic Alliance
- 28 Debra Warren: If you fine us up you'll see us at polls
- 29 Mary Steadham: Tear maps up + do what's right ^{judged}
- 30 Tera Gibson: man 2 ridiculous. Even plaintiffs fields
- 31 Leon Phillips: GAV Coalition for Justice. Signs up banner
- 32 Keith Hedley: Be good stewards of all constituents
- 33 Pastor Kendall: GSM decision will make us stronger

34) Timmy Sikes: Same thing going on 23 years ago, going on
today. God not sleeping

35) Linda Alcorn: Ran 1986 B/c no representation!

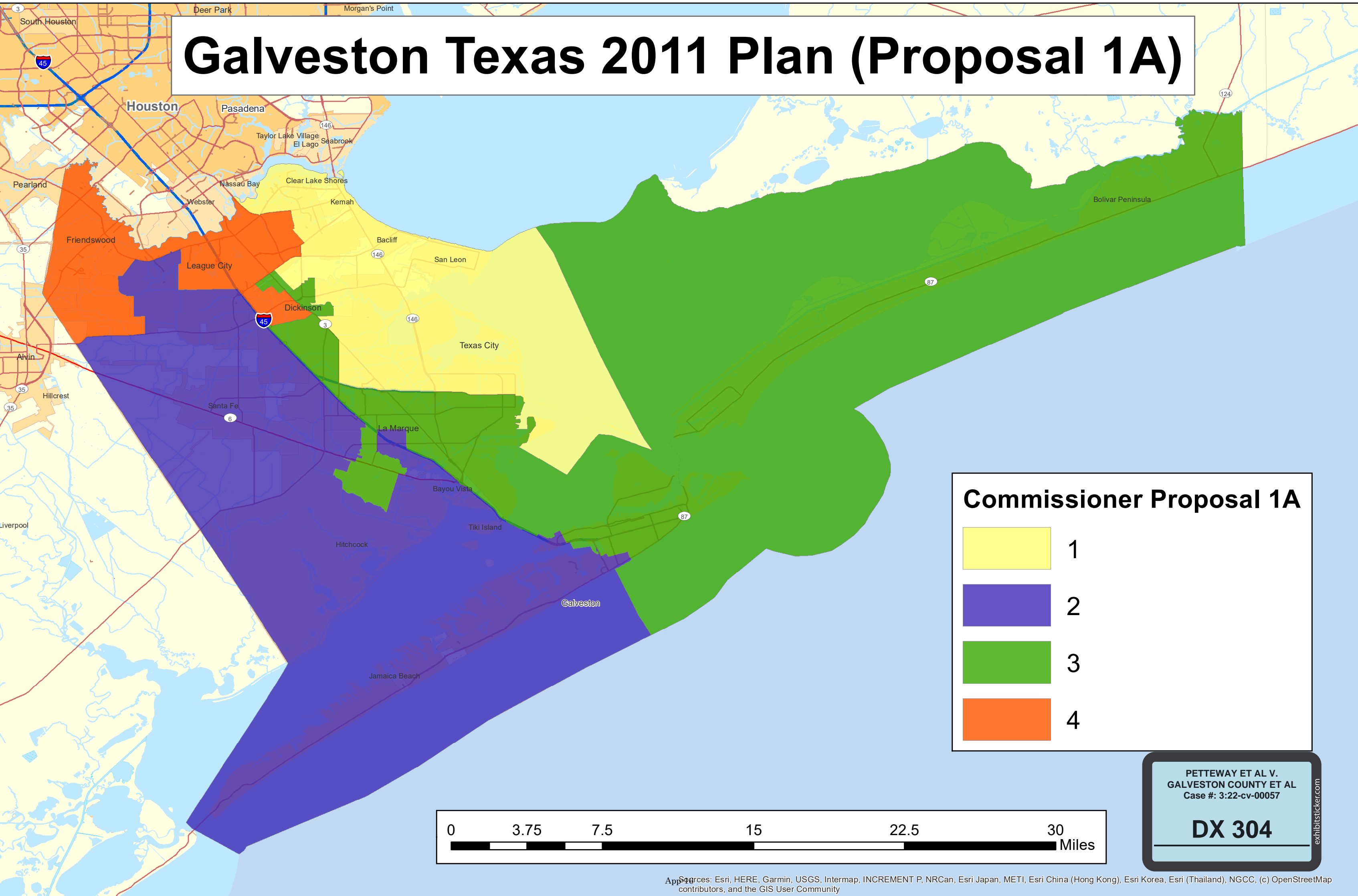
36) Sharon Lewis: Examples for students. This is a teaching moment

37) Anne Willis: 60yr resident Bolivar. Support MAP 2
Better serves w/ MAP 2





38)

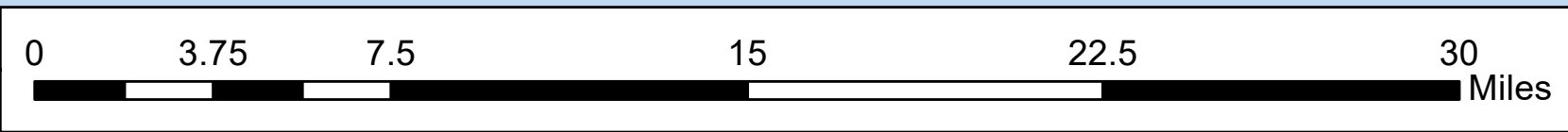
APPENDIX 3

Galveston Texas 2011 Plan (Proposal 1A)



Commissioner Proposal 1A

	1
	2
	3
	4



PETTEWAY ET AL V.
GALVESTON COUNTY ET AL
Case #: 3:22-cv-00057

DX 304

exhibitsticker.com

App Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

APPENDIX 4



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D C 20530

MAR 05 2012

James E Trainor III, Esq
Beirne, Maynard & Parsons
401 West 15th Street, Suite 845
Austin, Texas 78701

Dear Mr Trainor

This refers to the 2011 redistricting plan for the commissioners court, the reduction in the number of justices of the peace from nine to five and the number of constables from eight to five, and the 2011 redistricting plan for the justices of the peace/constable precincts for Galveston County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U S C 1973c We received your response to our December 19, 2011, request for additional information on January 4, 2012, additional information was received on February 6, 2012

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the county's previous submissions. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group *Georgia v United States*, 411 U S 526 (1973), *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965*, 28 C F R. 51.52(c) For the reasons discussed below, I cannot conclude that the county's burden under Section 5 has been sustained as to the submitted changes Therefore, on behalf of the Attorney General, I must object to the changes currently pending before the Department

According to the 2010 Census, Galveston County has a total population of 291,309 persons, of whom 40,332 (13.8%) are African American and 65,270 (22.4%) are Hispanic. Of the 217,142 persons who are of voting age, 28,716 (13.2%) are black persons and 42,649 (19.6%) are Hispanic The five-year American Community Survey (2006-2010) estimates that African Americans are 14.3 percent of the citizen voting age population and Hispanic persons comprise 14.8 percent The commissioners court is elected from four single-member districts with a county judge elected at large. 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.

We turn first to the commissioners court redistricting plan. With respect to the county's ability to demonstrate that the commissioners court plan was adopted without a prohibited purpose, the starting point of our analysis is the framework established in *Village of Arlington Heights v. Metropolitan Housing Development Corp*, 429 U S 252 (1977). There, the Court provided a non-exhaustive list of factors that bear on the determination of discriminatory purpose, including the impact of the action on minority groups; the historical background of the action, the sequence of events leading up to the action or decision; the legislative or administrative history regarding the action, departures from normal procedures, and evidence that the decision-maker ignored factors it has otherwise considered important or controlling in similar decisions. *Id.* at 266-68.

Based on our analysis of the evidence, we have concluded that the county has not met its burden of showing that the proposed plan was adopted with no discriminatory purpose. We start with the county's failure to adopt, as it had in previous redistricting cycles, a set of criteria by which the county would be guided in the redistricting process. The evidence establishes that this was a deliberate decision by the county to avoid being held to a procedural or substantive standard of conduct with regard to the manner in which it complied with the constitutional and statutory requirements of redistricting.

The evidence also indicates that the process may have been characterized by the deliberate exclusion from meaningful involvement in key deliberations of the only member of the commissioners court elected from a minority ability-to-elect precinct. For example, the county judge and several – but not all – of the commissioners had prior knowledge that a significant revision to the pending proposed map was made on August 29, 2011, and would be presented at the following day's meeting at which the final vote on the redistricting plans would be taken. This is particularly noteworthy because the commissioner for Precinct 3, one of two precincts affected by this particular revision, was one of the commissioners not informed about this significant change. Precinct 3 is the only precinct in the county in which minority voters have the ability to elect a candidate of choice, and is the only precinct currently represented by a minority commissioner.

Another factor that bears on a determination of discriminatory purpose is the impact of the decision on minority groups. In this regard, we note that during the current redistricting process, the county relocated the Bolivar Peninsula – a largely white area – from Precinct 1 into Precinct 3. This reduced the overall minority share of the electorate in Precinct 3 by reducing the African American population while increasing both the Hispanic and Anglo populations. In addition, we understand that the Bolivar Peninsula region was one of the areas in the county that was most severely damaged by Hurricane Ike in 2008, and lost several thousand homes. The county received a \$93 million grant in 2009 to provide housing repair and replacement options for those residents affected by the hurricane, and has announced its intention to spend most of the grant funds restoring the housing stock on Bolivar Peninsula. Because the peninsula's population has historically been overwhelmingly Anglo, and in light of the Census Bureau's

estimated occupancy rate for housing units in the Bolivar Census County Division of 2.2 persons per household, there is a factual basis to conclude that as the housing stock on the peninsula is replenished and the population increases, the result will be a significant increase in the Anglo population percentage. In the context of racially polarized elections in the county, this will lead to the concomitant loss of the ability of minority voters to elect a candidate of choice to office in Precinct 3. *Reno v. Bossier Parish School Board*, 528 U.S. 320, 340 (2000) (“Section 5 looks not only to the present effects of changes but to their future effects as well.”) (citing *City of Pleasant Grove v. United States*, 479 U.S. 462, 471 (1987)).

That this retrogression in minority voting strength in Precinct 3 is neither required nor inevitable heightens our concern that the county has not met its burden of showing that the change was not motivated by any discriminatory purpose. Both Precincts 1 and 3 were underpopulated, and it would have been far more logical to shift population from a precinct that was overpopulated than to move population between two precincts that were underpopulated. In that regard, benchmark Precinct 4 was overpopulated by 23.5 percent over the ideal, and its excess population could have been used to address underpopulation in the other precincts. Moreover, according to the information that the county supplied, its redistricting consultant made the change based on something he read in the newspaper about the public wanting Bolivar Peninsula and Galveston Island to be joined into a commissioner precinct; but a review of all the audio and video recordings of the public meetings shows that only one person made such a comment.

Based on these factors, we have concluded that the county has not met its burden of demonstrating that the proposed commissioners court redistricting plan was adopted with no discriminatory purpose. We note as well, however, that based on the facts as identified above, the county has also failed to carry its burden of showing that the proposed commissioners court plan does not have a retrogressive effect.

The voting change at issue must be measured against the benchmark practice to determine whether it would “lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.” *Beer v. United States*, 425 U.S. 130, 141 (1976). Our statistical analysis indicates that minority voters possess the ability to elect a candidate of choice in benchmark Precinct 3, and that ability has existed for at least the past decade.

As noted, the county’s decision to relocate the Bolivar Peninsula from Precinct 1 into Precinct 3 had the effect of reducing the African American share of the electorate in Precinct 3, while increasing both the Hispanic and Anglo populations. In specific terms, the county decreased the black voting age population percentage from 35.2 to 30.8 percent and increased the Hispanic voting age population 25.7 to 27.8 percent, resulting in an overall decrease of 2.3 percentage points in the precinct’s minority voting age population. There is sufficient credible evidence to prevent the county from establishing the absence of a retrogressive effect as to this change, especially in light of the anticipated and significant population return of Anglo residents to the Bolivar Peninsula, as discussed further above.

We turn next to the proposed reduction in the number of election precincts for the justice of the peace and constable, and the 2011 redistricting plan for the justices of the peace/constable precincts. 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.

In addition, we understand that the county's position is that the court's order in *Hoskins v. Hannah*, which required the county to maintain two minority ability to elect districts for the election of justices of the peace and constables, has expired. If it has, then it is significant that in the first redistricting following the expiration of that order, the county chose to reduce the number of minority ability to elect districts to one. A stated justification for the proposed consolidation was to save money, yet, according to the county judge's statements, the county conducted no analysis of the financial impact of this decision. The record also indicates that county residents expressed a concern during the redistricting process that the three precincts electing minority officials were consolidated and the precincts with white representatives were left alone. The record is devoid of any response by the county.

In sum, there is sufficient credible evidence that precludes the county from establishing, as it must under Section 5, that the reduction of the number of justice of the peace/constable districts as well as the redistricting plan to elect those officials will not have a retrogressive effect, and were not motivated by a discriminatory intent.

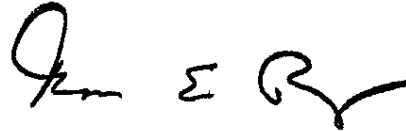
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *Georgia v. United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the county's 2011 redistricting plan for the commissioners court and the reduction in the number of justice of the peace and constable districts as well as the redistricting plan for those offices.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the

objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, the submitted changes continue to be legally unenforceable. *Clark v Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10. To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that Galveston County plans to take concerning this matter. If you have any questions, you should contact Robert S. Berman (202/514-8690), a deputy chief in the Voting Section.

Because the Section 5 status of the redistricting plan for the commissioners court is presently before the United States District Court for the District of Columbia in *Galveston County v. United States*, No. 11-cv-1837 (D.D.C.), we are providing the Court and counsel of record with a copy of this letter. Similarly, the status of both the commissioners court and the justice of the peace and constable plans under Section 5 is a relevant fact in *Petteway v Galveston County*, No. 3:11-cv-00511 (S.D. Tex.). Accordingly, we are also providing that Court and counsel of record with a copy of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', written in a cursive style.

Thomas E. Perez
Assistant Attorney General

APPENDIX 5

McCorkle, Perry C (CRT)

NO. 2012-1597

From: Joe Compian [joec@gulfcoastinterfaith.org]
Sent: Thursday, March 22, 2012 6:35 PM
To: Berkower, Risa (CRT); vot1973c (CRT); Bell-Platts, Meredith (CRT)
Cc: Guerrero (Cornyn)
Subject: RE: #2011-4317 Objection to Proposed Settlement with DOJ Litigation Section to Galveston County Commissioner's Court Map adopted on March 22, 2012
Attachments: 3.22.12 Final Objection to Galveston County Commissioners Court 2nd Map to DOJ.pdf; Galv Co Redist final11.29.11.pptx; galvnewsopinionGALCOREDISTRICT3.18.12.pdf

Dear Mr. Perez, Ms. Bell-Platts and Ms. Berkower:

We continue to earnestly objection to the proposed settlement map that was passed by Galveston County Commissioner's Court today by a vote of 3 - 2.

The Galveston County Collaborating Organizations are amazed that the United States Department of Justice under the administration of President Obama would permit a redistricting map that packs minorities into one precinct and absolutely does not recognize the growth of the Latino population in this County. Based upon the remarks of the Galveston County's attorney attributed to the Department of Justice lawyers that the DOJ only asked about African American percentages, our Latino congregations and organizations are beginning to believe that the DOJ places a greater value on the voting rights of African Americans. If this is true, we unanimously find this attitude by the DOJ repugnant.

We ask that you reject the map settlement offer of Galveston County. The Galveston County Collaborating Organizations have offered advice on how to amend lines to permit fairness and compliance with the Voting Rights Acts for ALL.

Respectfully,

Joe Compian
409 939 8017 (talk & text)
281 300 3235 (talk & text)

"Love the poor. Do you know the poor of your place, of your city? Find them. Maybe they are right in your own family?" - Mother Teresa



GALVESTON COUNTY
COALITION
FOR
JUSTICE



THE GALVESTON
NORTHSIDE
TASKFORCE



March 22, 2012

The Honorable Thomas E. Perez
Chief, Voting Section
Civil Rights Division
United States Department of Justice
Room 7254-NWB
1800 G Street, NW
Washington, DC 20006
VIA vot1973c@USDOJ.gov

Meredith Bell-Platts
Voting Section
Civil Rights Division
United States Department of Justice
VIA Meredith.Bell-Platts@usdoj.gov

Re: #2011-4317 Objection to Galveston County Commissioners Court Map adopted on
March 13, 2012

Dear Department of Justice,

The undersigned collaborating organizations from Galveston County, Texas present this objection to the Galveston County Commissioners Court map adopted on March 22, 2012. We believe the Department of Justice should not accept the March 22, 2012 map for any purpose. We anticipate more signatures will be forthcoming over the next few days.

Our Collaborating Organizations in Galveston participated in the redistricting process for the City of Galveston and the map we supported was eventually adopted by the Galveston City Council and approved by the Department of Justice. We have worked with members of the community, our respective organizations, and with each other in good faith to arrive at a fair compromise map for the Galveston County Commissioners Court that complies with the Voting Rights Act.

We believe any adopted final map must be fair for the community for years and many elections beyond the upcoming election.

Background

Under Section 5, the Attorney General was required to determine whether Galveston County has met its burden of showing that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group. *Georgia v. United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52(c). With respect to Galveston County's ability to demonstrate that the Commissioners Court map was adopted without a prohibited purpose, the starting point in the analysis is the framework established in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). The Court provided a non-exhaustive list of factors that could bear on finding a discriminatory purpose, including the impact of the action on minority groups; the historical background of the action; the sequence of events leading up to the decision or action; the legislative or administrative history regarding the action; departures from normal procedures; and evidence that the decision-maker ignored factors it has otherwise considered important or controlling in similar decisions. *Id.* At 266-68.

Prior to Galveston County's October 16th submission of its proposed map to DOJ public hearings had been held where a significant portion of the public expressed their concern about the fairness of the various maps and the process and raised other questions. During the process the lone minority commissioner on the Galveston County Court submitted a map for the Commissioners Court.¹ At the final hearing an alternate new map was suddenly submitted, discussed and adopted with a 3-2 vote along partisan political lines. The map was eventually presented to the Department of Justice and at the same time a law suit was filed by Galveston County in USDC in Washington DC. Since the late presentation of the map to the DOJ created time constraints and problems for potential candidates a group of elected Democratic public officials from Galveston County filed a lawsuit in USDC in Galveston, Texas. A hearing was held on November 21, 2011 and an order issued shortly thereafter. Some individual Galveston County residents intervened in the Galveston USDC case and additional hearings were scheduled to review possible interim maps. On November 22, 2011 we sent a letter to the Department of Justice objecting to Galveston County's proposed redistricting map that had been submitted on October 16, 2011. We submitted a supplemental objection with our proposed map on November 29th and provided Galveston County a copy. Another hearing for an interim map is scheduled for March 23, 2012.

The Attorney General was required to carefully consider the proposed October 16th map and supporting data and documentation as well as the supplemental information that

¹ It is probable the 2011 map submitted by Commissioner Holmes would have passed the scrutiny of the Department of Justice. That map, however, was rejected in a partisan 3-2 vote and now the parties are locked in an ever spiraling cycle of litigation and mounting legal expenses.

was requested to determine whether Galveston County failed to establish the absence of a discriminatory purpose. However, it has to be noted that, simply based on the data submitted, Galveston County failed to carry its burden of showing that its proposed map did not have a retrogressive effect on the ability of minority voters to elect, or impact the election of, their candidate of choice and therefore an objection was warranted by DOJ.

On March 5, 2012, the Department of Justice objected to the Commissioner Court map as well as the Justice of the Peace and Constable map.

On March 12, 2012 a supplemental objection to DOJ and a separate letter to the County Judge and Commissioners, each with our attached compromise map, was distributed before the scheduled March 13th hearing via County Attorney Harvey Baseman. On March 13, 2012 Galveston County held a public hearing in an attempt to adopt another map for submission to the Department of Justice. Questions concerning notice for the hearing and the legality of the process were raised by Commissioners Holmes and Doyle. After several hours a vote was taken that was boycotted by Holmes and Doyle. A 3-0 vote adopted the map and it was then immediately offered for public comment. Although the courtroom had been packed earlier in the day with about 90% African-American attendees, only about ten residents testified against the process that resulted in the approval of the map. There was no testimony against the newly approved March 13th map since copies of the map and supporting data was being passed out as the public hearing commenced and there was not time to read and consider, much less research, the merits of the map. <http://galvestondailynews.com/comments/299314>

After the March 13, 2012 hearing, an objection was filed by the undersigned organizations. The Department of Justice promptly directed inquiries to some of the undersigned organizations as well as to Galveston County officials. The Galveston County Daily News raised questions about the map submitted by Galveston County as well as the process that was followed in adopting the map. See Ex. 2 attached hereto. On or about March 19, 2012 a new map was posted at the Galveston County website and a public hearing was scheduled for 3:00 and 7:00 on March 22, 2012.

The newest March 22nd map includes minor cosmetic changes that do not hide that it is clearly fatally flawed and should be rejected by the Department of Justice.

Discussion

After the 2000 census Galveston County created a map that was submitted to the Department of Justice. It was approved for pre-clearance. The statistics simply and clearly show there was one over 50% Latino/African-American district.

Galveston County Map 2001 (population 250,158 with 63.1% Anglo) See Ex. 1, p3.
Anglo Latino African-American L/A-A Asian/other

#1	60.53	22.22	12.55	34.77	4.70
#2	72.45	16.97	7.33	24.30	3.25
#3	38.16	21.36	38.35	59.71	4.14
#4	80.12	11.60	3.67	15.27	4.56

Since 2000 Galveston County has had an increase in population. There has been a significant increase in the northern part of the county which has resulted in one precinct that clearly violated the “one man-one vote” constitutional principle established in *Baker v. Carr*. Further, Galveston County suffered through Hurricane Ike in 2008 which contributed to a population reduction in the southern part of Galveston County. Finally, the other significant change has been the increase of Latino residents throughout Galveston County. These changes have created additional challenges to drawing a map that would fairly represent the interests of Latinos and African-Americans in Galveston County and comply with the Voting Rights Act. In the decade between the 2000 and the 2010 Census, the county added more than 41,100 persons, of whom 20,300 (49%) were Latino, 14,800 (36%) were non-Hispanic White and the remainder 6,000 (15%) were African-Americans or other minorities. Despite the significant increases in minority population share in Galveston County, the 2011 Galveston County map still only managed to create one precinct where there is a majority minority, and the percentage minority in Precinct 1, the second most minority district, retrogressed from 40% minority in 2000 to 37% minority in the Galveston County map.

Galveston County Map 10/16/11 (population 291,309 with 59.27% Anglo) See Ex. 1, p.4.

	Anglo	Latino	African-American	L/A-A	Asian/other
#1	63.42	23.02	9.13	32.15	4.43
#2	70.21	17.62	7.41	25.03	4.76
#3	33.54	31.53	31.36	62.89	3.57
#4	70.74	17.17	5.35	22.52	6.74

The proposed 2011 Galveston County map clearly diminishes the voting strength of Latinos/African-Americans when compared to Galveston County’s map in 2001 and thus affects their ability to elect and influence the election of candidates of their choice. The map presented by the Collaborating Organizations almost achieves two majority minority precincts with more compact precinct lines. The map more fairly reflects the minority population of Galveston County and is in compliance with the Voting Rights Act.

Gulf Coast Interfaith Map 2011 (population 291,309 with 59.27% Anglo) See Ex. 1, p.5.

	Anglo	Latino	African-American	L/A-A	Asian/other
#1	50.43	31.44	13.90	45.34	4.22
#2	72.38	16.16	5.24	21.40	6.22

#3	37.48	28.21	31.05	59.26	3.26
#4	76.62	13.76	3.94	17.70	5.69

The new March 13th Galveston County map once again clearly diminishes the voting strength of Latinos/African-Americans when compared to Galveston County's map in 2001 and thus affects their ability to elect and influence the election of candidates of their choice. <http://galvestondailynews.com/photos/2012.March/GALCOredistrictDOJ.pdf>

Galveston County Map 3/13/12 (population 291,309 with 59.27% Anglo)

	Anglo	Latino/Asian/other	African-American
#1	80.26	13.12	6.62
#2	81.72	11.07	7.21
#3	45.82	18.10	36.08
#4	81.71	12.95	5.34

Despite the significant increases in minority population share in Galveston County, the March 13th Galveston County map still only manages, according to the supporting data from Galveston County, to create one precinct (Pct. 3) where there is a majority minority but retrogressed from 64% to 54% majority minority, and the percentage minority in Precinct 1, the second most minority district, retrogressed from 40% minority in 2000 to 19% minority in the Galveston County map.

The March 13th Galveston County map is more retrogressive than the rejected October 16th map and should, once again, be rejected by the Department of Justice for any purpose.

The new March 22nd Galveston County map once again clearly diminishes the voting strength of Latinos/African-Americans when compared to Galveston County's map in 2001 and thus affects their ability to elect and influence the election of candidates of their choice.

Galveston County Map 3/22/12 (population 291,309 with 59.27% Anglo)

	Anglo	Latino	African-American	L/A-A	Asian/other
#1	67.19	21.86	6.39	28.25	4.56
#2	69.80	18.69	6.97	25.66	4.54
#3	28.37	32.79	35.43	68.22	3.41
#4	71.33	16.44	5.32	21.76	6.91

Despite the significant increases in minority population share in Galveston County, the March 22nd Galveston County map still only manages, according to the supporting data from Galveston County, to create one precinct (Pct. 3) where there is a majority minority

that has been packed to increase from 64% minority to 72%, and the percentage minority in Precinct 1, the second most minority district, retrogressed from 40% minority in 2000 to 33% minority in the March 22nd Galveston County map.

The March 22nd Galveston County map packs minorities into Pct. 3, and is retrogressive for Pct.1. and therefore the March 22nd map should, once again, be rejected by the Department of Justice for any purpose.

Conclusion

Galveston County had the burden of demonstrating to the Department of Justice the proposed precinct changes in the map it submitted on October 16, 2011 were free of discriminatory purpose and retrogressive effect. Galveston County was notified on March 5th that it had failed. Galveston County then submitted a different map to the Department of Justice on March 13th to settle the ongoing litigation in the United States District Court in Washington D.C. on March 13th that prompted objections from many Galveston County organizations and questions from the Department of Justice. The March 13th map has now been substituted with the March 22nd map.

Under the 2001 map approved by the Department of Justice the Latino/African-American voters had the ability to elect a candidate of choice in one of four precincts. Ten years later, despite a significant increase of minorities, Galveston County submitted an October 16, 2011 map that, once again, created the ability for Latino/African-American voters to only elect or influence the election of a candidate of choice in one of four precincts. Further, the minority population percentage was decreased in the second most minority district. We believed the Galveston County 2011 map violated the Voting Rights Act and filed our objection.

Unfortunately, as discussed above, after the Department of Justice rejected the 2011 map on March 5th, an even more retrogressive map was adopted by Galveston County on March 13th to be replaced by another objectionable map on March 22nd.

We believe the compromise map of the undersigned collaborating organizations better reflects the minority population of Galveston County by creating two districts where Latino/African-Americans have more opportunity to elect or influence the election of their candidate of choice. The compromise map was sent to the Department of Justice on November 29, 2011 as an attachment to our objection and a copy provided to County

Attorney Harvey Baseman. It was once again provided to DOJ and Galveston County officials on March 12, 2012. The map was published in the Galveston County Daily News on March 18, 2012 and appears to have some public support. This compromise map has not been considered at a public hearing.

We welcome the opportunity to visit with the Department of Justice, members of the Commissioners Court individually, collectively, with or without a room full of lawyers, to discuss this compromise map. We would welcome a public discussion and hearing to see if a reasonable compromise map can be adopted by the Galveston County Commissioners Court or if Galveston County will choose to be compelled to operate under a court ordered map.

Respectfully submitted,

__(Signed by Consent)_____
David Miller
President, NAACP, Galveston Unit 6180
PO BOX 2023, Galveston TX 77553

__(Consent Pending)_____
Anna Olivares
President, Galveston LULAC Council #151
P.O. BOX 4433, Galveston TX 77553/3728 Avenue Q Galveston TX 77550

__(Signed by Consent)_____
Leon Phillips
President, Galveston County Coalition for Justice
600 59th Street, Galveston TX 77551

__(Consent Pending)_____
Cornelia Banks
Chair, North Side Task Force
Mt. Olive Baptist Church 3602 Sealy St #4, Galveston TX 77550

__(Signed by Consent)_____
Joe Compian
Leader, Gulf Coast Interfaith
1010 35th Street, Galveston TX 77550

__(Signed by Consent)_____
Stephen McIntyre

Leader, Gulf Coast Interfaith
1010 35th Street, Galveston TX 77550

_____(Signed by Consent)_____

Dotti Jones
President, Barbour's Chapel Community Development Corporation
7420 FM 1765, Texas City TX 77591

_____(Signed by Consent)_____

Dotti Jones
President, NAACP Mainland Branch Unit 6201 (LaMarque)
PO BOX 291, Texas City TX 77590

_____(Signed by Consent)_____

Maxine Jones
President, NAACP Mainland Branch Unit 6280 (Dickinson)
PO BOX 1878, Dickinson TX 7539

_____(Signed by Consent)_____

Carlos Garza
Legal Counsel, Texas City LULAC Council #255
1100 Rosenberg, Galveston TX 77550



OUR VIEW

A cleaner, simpler district map

If you want to see what's wrong with the county's plan for drawing new district lines for county commissioners, all you have to do is look at an alternate plan drawn by Gulf Coast Interfaith.

Interfaith is not a political organization.

People who volunteer with the organization usually do so for reasons of faith, rather than politics. There are Democrats and Republicans among the volunteers, but politics are generally checked at the door, as are denominational lines.

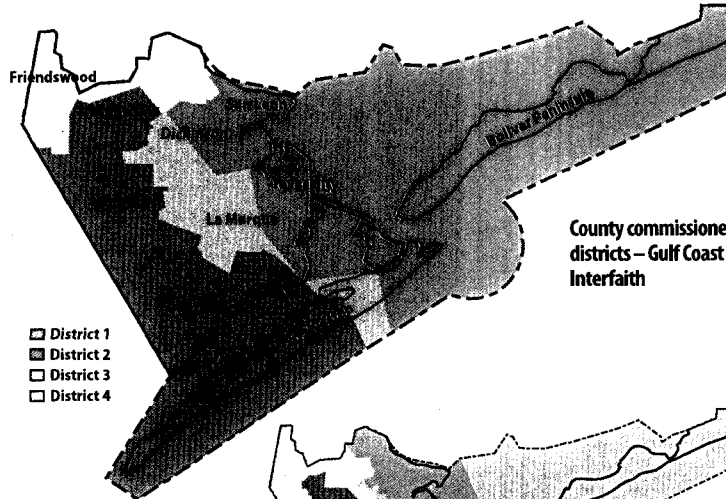
The map, similar to one proposed by County Commissioner Stephen Holmes, is different from the county's map, which was rejected by the U.S. Department of Justice, in one obvious way and one less obvious way.

Obviously, the lines are cleaner. The map prepared by the county's consultants looks like a classical gerrymander. Its district boundaries are convoluted. The map's critics, including the justice department's lawyers, might suspect that the lines were drawn for political gain, rather than to comply with the Voting Rights Act.

The folks at Gulf Coast Interfaith drew a much simpler map. Unlike the county's map, it tends to keep the smaller cities in one commissioner's precinct. Where it divides cities among county commissioner districts, it uses landmarks, such as railroads or highways. You don't need a global positioning system to tell which county commissioner's district you're in.

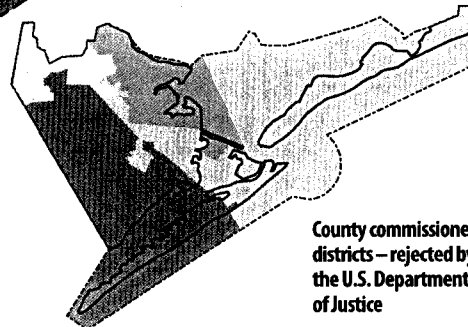
The less obvious thing about Interfaith's map? Unlike the county's map, it wouldn't be a challenge for the justice department.

The boundary lines of the districts of elected officials are redrawn after every census to reflect changes in population.

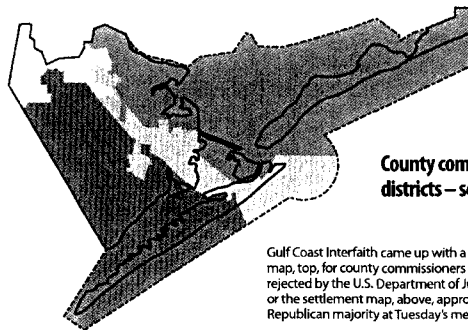


County commissioner districts – Gulf Coast Interfaith

- District 1
- District 2
- District 3
- District 4



County commissioner districts – rejected by the U.S. Department of Justice



County commissioner districts – settlement

In Galveston County, the trends are obvious: First, the growth was in the north county. Second, Galveston lost population.

Third, the county's overall population still grew, and the fastest growing segment was the Latino population.

If you draw a map that reflects those basic facts, you can do so simply. Interfaith proved that.

It drew District 3, now represented by Stephen Holmes, to remain a district that is made up mostly of minorities.

It drew District 1, now represented by Pat Doyle, to be a 50-50 precinct, a "minority impact" district in the lingo of the justice department.

Democrats, of course, would love to see that kind of map.

Another option, of course, is to ignore the growth in the minority population and draw a map that forces that growth into one district with just one vote on the commissioners court.

Republicans control the commissioners

court this time. Democrats controlled the commissioners court for decades past. Neither party has proved to be above politics each time districts are re-

drawn after each census. And so the county has a map that the justice department doesn't like.

There is a new map offered as an alternative, but even if accepted by

the justice department, the argument remains the same. If simple fairness is what you're after, you can draw a simple map.

— Heber Taylor

Gulf Coast Interfaith came up with a simpler district map, top, for county commissioners than the one rejected by the U.S. Department of Justice, middle, or the settlement map, above, approved by the Republican majority at Tuesday's meeting.

Galveston County redistricting effort no laughing matter

During the recent "State of the County & Cities" business luncheon hosted by the Texas City-La Marque Chamber of Commerce, La Marque Mayor Bobby Hocking joked with County Judge Mark Henry about how smoothly the city's redistricting effort went compared to the county's.

"Redistricting accomplished in one day and recently receiving pre-clearance from the U.S. Department of Justice," Hocking told the 300 or so gathered for the luncheon before turning to Henry at the head table and adding, "Sorry



Patrick Graham

Patrick Graham is president and publisher of the Daily News.

to bring that up, judge, but I had to get that in there."

It was a great line from Hocking delivered in a good-natured way. I laughed along with everyone else at the time, but unfortunately, what is going on right now with the county's redistricting isn't very funny.

At all.

The first proposed precinct map the county delivered to the U.S. Department of Justice was rejected mainly because the feds felt like it diluted minority voting by shifting the majority white Bolivar Peninsula out of District 1 and into majority minority District 3.

While I'm not sure I agree with that premise since it is impossible for the commissioners to really know how many people will eventually return to the peninsula, I agree even less with the way commissioners handled the task of the getting the Department

of Justice another map that would pass muster.

During a meeting last week, the Republican majority on the court (Henry, Ken Clark and Kevin O'Brien) went behind closed doors with the county's redistricting attorneys to hammer out a new map. The Democratic minority (Patrick Doyle and Stephen Holmes), which had pushed a failed vote during the meeting to have the redistricting discussions in open session, refused to take part in the closed-door meeting.

Good for the Democrats. I'm sure that line has my dad, William Graham, who used to be

chairman of the Republican Party in Madison County, Ala., for many years, rolling over in his grave right now.

Although it's possible the Republican majority did not violate the state's open meetings laws in this instance, in my opinion, it's never a good idea for elected officials to conduct the public's business behind closed doors.

There are exemptions that have been written into the law, and the discussion surrounding the new map might fall under one of them, but those exemptions were made more for the benefit of public officials, not the public.

Trust me.

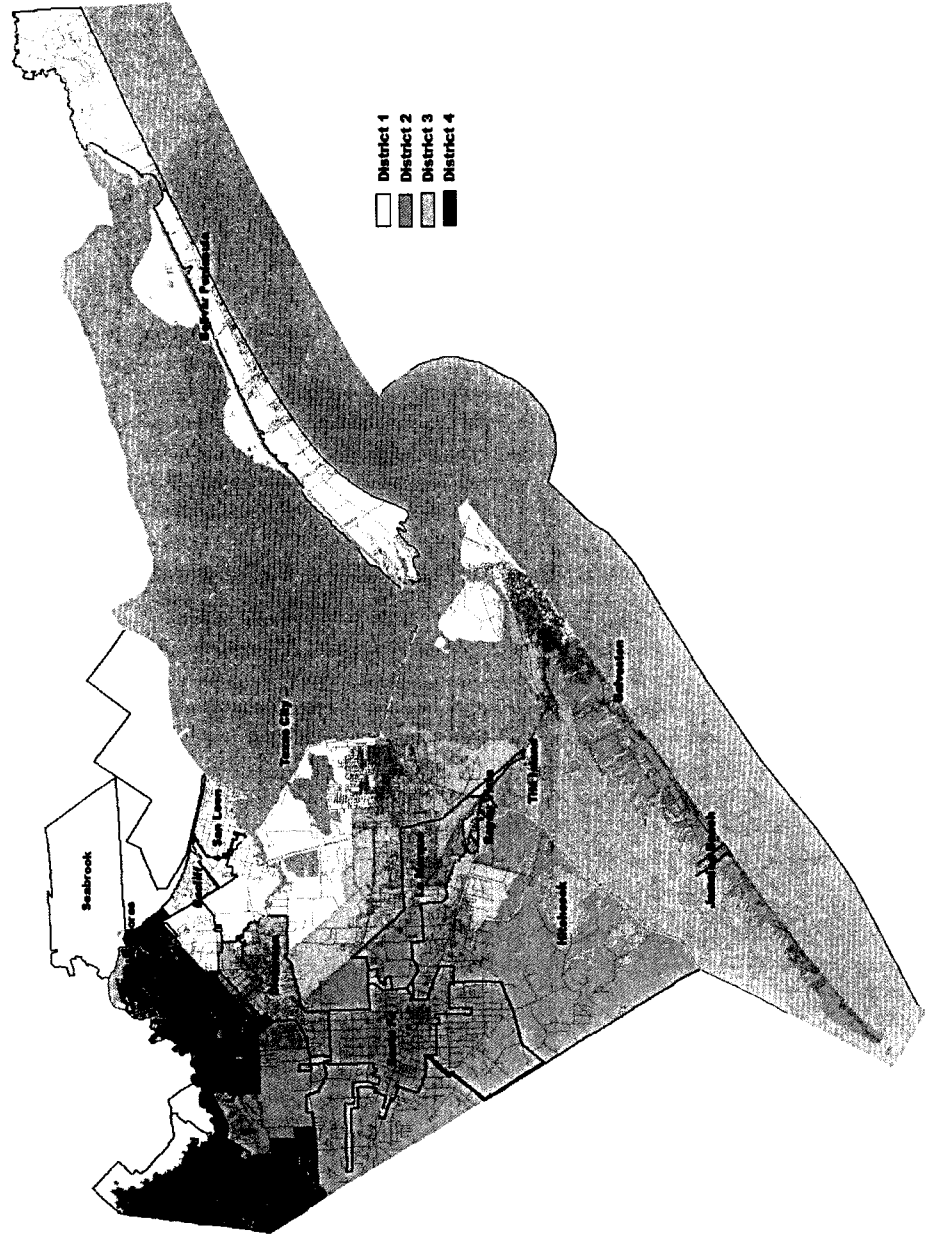
Another reason the Department of Justice didn't approve the first map was because the feds felt like the process to develop it lacked openness. Despite the fact the commission held a number of public hearings on redistricting, the Department of Justice didn't believe commissioners took the public's input into account when designing the original map.

Do you think the latest move by the majority of the commission helps address that concern by the Department of Justice? Nope. Not funny at all.

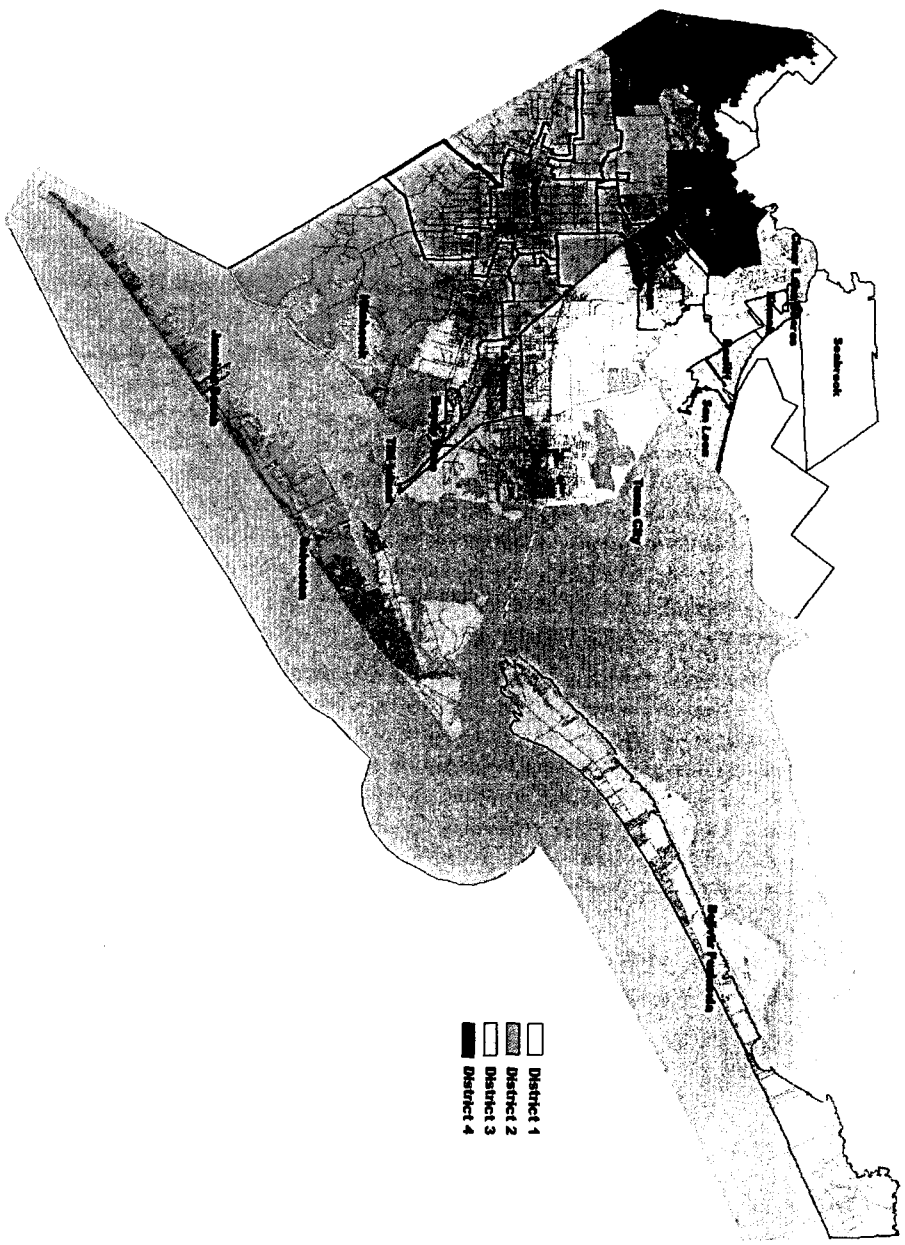
Galveston County Redistricting Possibilities

EXHIBIT 1

Galveston County Map 2001

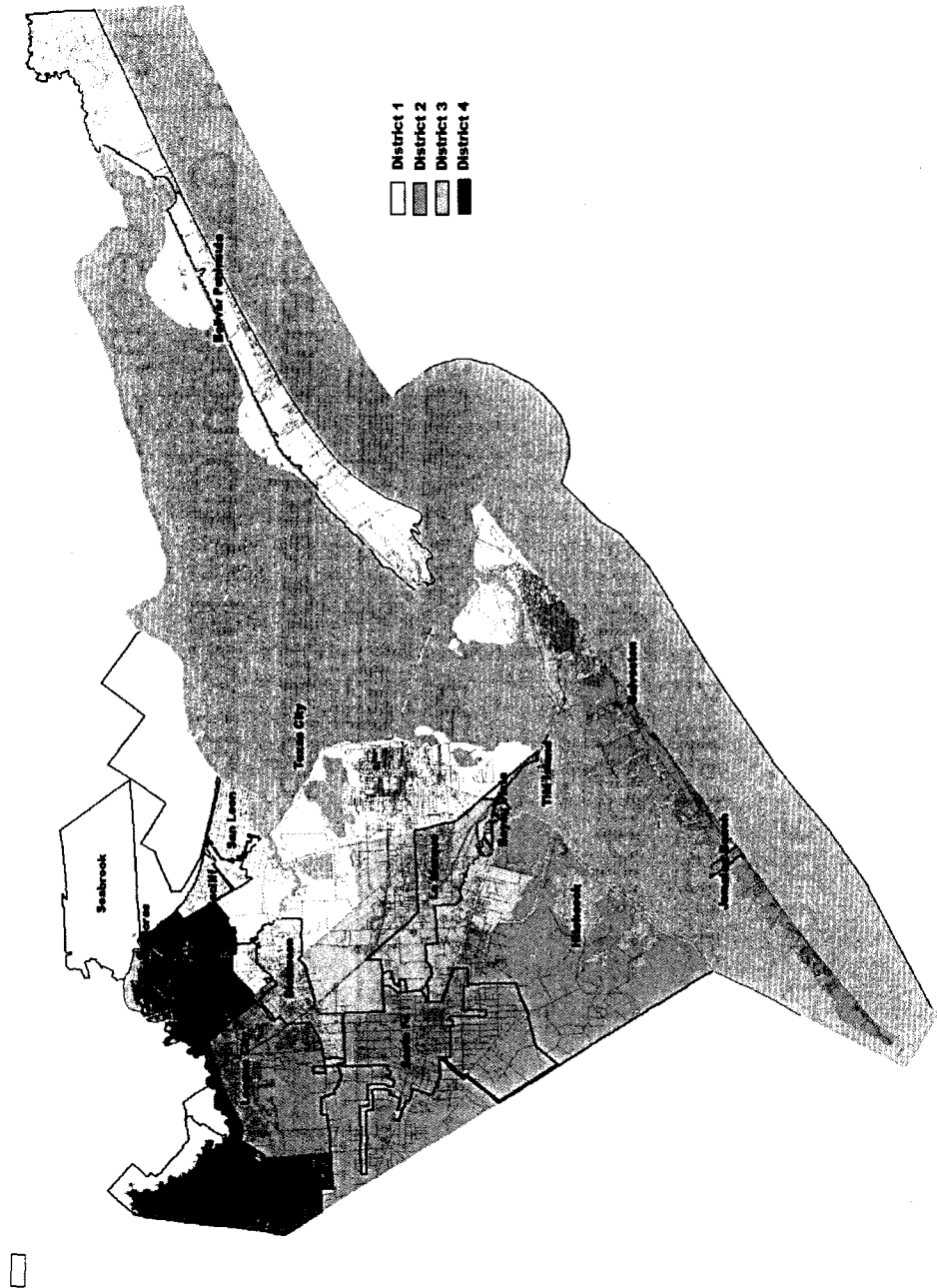


Galveston County Map 2011



- District 1
- District 2
- District 3
- District 4

Gulf Coast Interfaith Map 2011 "Clean Lines Plan"



Principles of “Clean Lines” Map

- Bacliff, Bolivar CDP, Friendswood, Jamaica Beach, La Marque, San Leon, Santa Fe, Tiki Island are not divided.
- Dickinson, Galveston City, Hitchcock, and Texas City are divided using identifiable boundaries to create minority-majority District 3 (63%/37%) and minority-impact District 1 (50%/50%), respecting principles of Voting Rights Act.
- League City divided using identifiable boundaries to respect incumbent residences in District 2 and 4.
- No Block-level tweaking for partisan or racial/ethnic impact.

Current Numbers 2010 Census

District 1	61,152	34,313	17,556	6,577	2,980
District 2	76,684	51,769	15,375	6,002	3,538
District 3	69,634	40,583	13,774	5,296	1,707
District 4	89,939	66,073	13,596	4,243	6,027
Total	291,309	172,697	60,299	22,018	14,158
District 1	100.00%	55.99%	28.10%	10.73%	4.70%
District 2	100.00%	67.51%	20.05%	7.83%	4.61%
District 3	100.00%	32.56%	20.51%	35.27%	2.65%
District 4	100.00%	73.46%	15.12%	4.72%	6.70%
Total	100.00%	59.27%	22.41%	13.47%	4.86%

County Plan Numbers*

District 2	72,956	51,224	12,852	5,407	3,473		
District 3	74,809	25,803	28,949	23,420	2,608		
District 4	71,860	50,835	12,341	3,845	4,839		
District 1	100.00%	70.21%	17.62%	9.13%	4.43%		
District 2	100.00%	70.21%	17.62%	7.41%	4.76%		
District 3	100.00%	70.21%	17.62%	5.35%	6.73%		
District 4	100.00%	70.74%	17.17%	5.35%	6.73%		

*Percentages supplied by county; population numbers calculated from percentages.

Conclusions

- County grew fast in north county.
- Two-thirds of county growth was minority population growth.
- Many south county cities increased their minority populations, lost Anglo population.
- By using District 1 to grow District 3, and League City to grow District 1, the County plan ignored the possibility of expanding Districts 1 and 3 to minority areas in south county, creating a retrogression in minority voting impact potential, despite minority population growth.

Gulf Coast Interfaith Plan

“Clean Lines” Numbers

District 1	73,605	37,120	25,100	10,210	3,115
District 2	75,123	54,374	12,140	3,935	4,674
District 3	70,787	39,374	20,271	2,841	2,341
District 4	70,824	54,262	9,747	2,787	4,028
Total	291,308	172,657	65,276	39,228	14,158
District 1	100.00%	50.43%	31.44%	13.98%	4.22%
District 2	100.00%	72.38%	16.16%	5.24%	6.22%
District 3	100.00%	37.48%	28.21%	31.05%	3.26%
District 4	100.00%	76.62%	13.76%	3.94%	5.69%

APPENDIX 6

From: Joe Compian [joec@gulfcoastinterfaith.org]
Sent: 3/23/2012 3:54:37 PM
To: vot1973c (CRT) [Shared.vot1973c@crt.usdoj.gov]; Bell-Platts, Meredith (CRT) [Meredith.Bell-Platts@crt.usdoj.gov]
CC: Guerrero (Cornyn) [Jay_Guerrero@cornyn.senate.gov]; info@maldef.org; info@LULAC.org
Subject: RE:2011-4317 Objection to Galveston County Proposed Settlement Map

Good Morning,

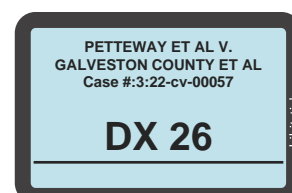
We continue to urge the Department of Justice to reject a settlement with Galveston County for their Commissioner's Court Redistricting plan.

It, quite simply, does not have community support. The plan undervalues Latinos. We find this position surprising by a Department of Justice under President Obama.

<http://galvestondailynews.com/story/301486>

Joe Compian
409 939 8017 (talk & text)
281 300 3235 (talk & text)

"Love the poor. Do you know the poor of your place, of your city? Find them. Maybe they are right in your own family?" - Mother Teresa



APPENDIX 7

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

TERRY PETTEWAY, THE HONRABLE
DERRICK ROSE, MICHAEL MONTEZ,
SONNY JAMES, and PENNY POPE,

Plaintiffs,

v.

GALVESTON COUNTY, TEXAS and
HONRABLE MARK HENRY, in his official
capacity as Galveston County Judge,

Defendants.

Case No. 3:22-cv-57

EXPERT REPORT OF DR. MARK OWENS

(amended from March 17, 2023)



March 31, 2023

PETTEWAY ET AL V.
GALVESTON COUNTY ET AL
Case #: 3:22-cv-00057

DX 290

exhibitster.com

I am a tenured associate professor of Political Science at The University of Texas at Tyler. In the seven years I have taught at UT Tyler, I have taught courses on Congress, voting behavior, state politics, and research methods at the undergraduate and graduate level. I have authored numerous journal articles on legislative politics and social behavior, which can be found in *American Political Research*, *Legislative Studies Quarterly*, *Social Sciences Quarterly*, and other academic journals. I also co-authored a recent book, *Battle for the Heart of Texas*, about the changing preferences of voters in Texas and the increasing civic engagement of Hispanic voters. A full list of my qualifications and publications are available in my CV as Exhibit A.

I have also provided expertise relevant to the 2021 redistricting cycle on three occasions. I used Maptitude GIS software to help a non-profit organization in the state of Oklahoma prepare districting plans of state and federal legislative offices for public submission. I submitted an analysis of whether racially polarized voting was occurring in *Black Voters Matter Capacity Building Institute, Inc., et al. v. Laurel Lee*, No. 2022 CA 066, before the Circuit Court of the Second Judicial District in Leon County, Florida last year. I also provided analyses about racially polarized voting in the case *Palmer et al. v. Hobbs*, No. C22-5035RSL, before the United States District Court Western District of Washington (2022). My compensation to prepare and write this report is \$350 per hour. My compensation is in no way dependent on the opinions offered in this report.

Summary

I have been asked by counsel for the Defendants to evaluate the Galveston County Commissioner's Court Precinct map with specific attention to the compactness of districts within the county. Since this is a county-level analysis, an intensely local analysis is required. The first step is to identify if residents of the county live in compact areas. I will see if individuals in those compact areas have similar characteristics (e.g., work status, age, geographic mobility, culture, income levels, education, and lifestyle). The analysis of compactness and characteristics of county residents is to evaluate if residents with shared interests and backgrounds live in a local geographic area. My conclusion is that the Hispanic population in particular is not geographically compact as the Hispanic population in Galveston is both far apart and disparate.

I begin by describing how the county has changed over the last decade. Galveston's population grew to 350,682 in the 2020 Census making the ideal number of persons in each Commissioners Court precinct is approximately 87,671 people. Galveston County's Hispanic total population from the Census is 88,636 (25%) and the ACS 2020 5-year estimate (2016-2020) of citizen voting age population is 45,962 (19%). Galveston County's Black population is 43,120 (12%) and Black citizen voting age population is 30,465 (13%).¹ Therefore, my analysis will focus on how closely the Hispanic and Black populations are concentrated within the county, as they are the predominant minority groups in the county and the subject of this Section 2 lawsuit. I will compare Hispanic residents across the county's geography to see if they are

¹ Throughout this report I refer to residents as Hispanic, instead of Latino, because the Census Bureau uses "Hispanic" I do the same here. The intent is to include persons of Latin American descent based on their identification as Hispanic in the Census and American Community Survey.

similar to each other despite living in different municipal areas. I will also see how concentrated Black communities are in the county.

Later in the report, I evaluate the numerous alternative plans submitted by the Plaintiffs to determine if those illustrative plans comply with traditional redistricting criteria or if they prioritize race over traditional redistricting criteria. I find that each illustrative alternative selectively ignores traditional redistricting practices in an effort to group Black and Hispanic residents into Precinct 3.

The illustrative alternatives split municipalities, islands, and other subdivisions violating traditional redistricting principles. Plaintiffs’ proposed alternatives surgically splice voting precincts on racial grounds, carving the Anglo portion and placing it in Commissioner Precincts 1, 2, or 4. The cuts fold a higher portion of the Black citizen voting age population (BCVAP) into Precinct 3.

Tables 1 and 2 clearly shows the degree this occurs in each plan. All plans, except one preserve the Benchmark Map’s inclusion of BCVAP in Precinct 3 that is three times larger than any other precinct. The illustrative alternatives also propose an opposite impact for the non-Hispanic white citizen voting age population (WCVAP) by creating a difference of at least 15% to 25% in the WCVAP between Precinct 3 and Precincts 1, 2, and 4. The distant pockets of HCVAP populations allow its share of a precinct population to be relatively stable in any plan. The Enacted Map is the only plan, which keeps the non-Hispanic white population from making up more than two-thirds of the CVAP in any two precincts.

Table 1: Comparison of Citizen Voting Age Population, by Precinct and Plan

	Benchmark HCVAP	Benchmark BCVAP	Benchmark WCVAP	Enacted HCVAP	Enacted BCVAP	Enacted WCVAP
Precinct 1	12125 (20.1%)	5093 (8.4%)	41079 (68.0%)	13274 (21.7%)	6403 (10.4%)	39296 (64.2%)
Precinct 2	11056 (16.6%)	5375 (8.1%)	47201 (70.8%)	13250 (20.5%)	9121 (14.1%)	40186 (62.2%)
Precinct 3	13311 (24.2%)	16904 (30.7%)	22833 (41.5%)	10436 (18.8%)	5032 (9.1%)	35881 (64.8%)
Precinct 4	9470 (16.6%)	3093 (5.4%)	40337 (70.5%)	9002 (15.5%)	9909 (17.0%)	36087 (62.1%)
Total	45962	30465	151450	45962	30465	151450
Not in P3 (Pct of Total)	32651 (71.0%)	13561 (44.5%)	128617 (84.9%)			

Table 2: Comparison of Citizen Voting Age Population, by Precinct and Illustrative Plan

	Cooper 1 HCVAP	Cooper 1 BCVAP	Cooper 1 WCVAP	Cooper 2 HCVAP	Cooper 2 BCVAP	Cooper 2 WCVAP	Cooper 3 HCVAP	Cooper 3 BCVAP	Cooper 3 WCVAP
Precinct 1	12848 (20.7%)	5103 (8.2%)	41979 (67.7%)	12542 (20.9%)	5154 (8.6%)	40429 (67.2%)	13882 (22.2%)	9075 (14.5%)	37490 (59.9%)
Precinct 2	9779 (15.9%)	4565 (7.4%)	44345 (72.2%)	10572 (16.5%)	4370 (6.8%)	46365 (72.2%)	8901 (14.6%)	2935 (4.8%)	45462 (74.5%)
Precinct 3	14591 (24.2%)	17717 (29.4%)	25700 (42.6%)	14848 (24.7%)	17590 (29.3%)	25553 (42.6%)	13663 (23.6%)	15309 (26.4%)	26684 (46.1%)
Precinct 4	8744 (15.7%)	3080 (5.5%)	39426 (70.9%)	8000 (14.6%)	3351 (6.1%)	39103 (71.2%)	9516 (16.4%)	3146 (5.4%)	41814 (72.4%)
Total	45962	30465	151450	45962	30465	151450	45962	30465	151450
Not in P3 (Pct of Total)	31371 (68.3%)	12748 (41.8%)	125750 (83.0%)	31114 (67.7%)	12875 (42.3%)	125897 (83.1%)	32299 (70.3%)	15156 (49.8%)	124766 (82.4%)

	Fairfax HCVAP	Fairfax BCVAP	Fairfax WCVAP	Rush 1 HCVAP	Rush 1 BCVAP	Rush 1 WCVAP	Rush 2 HCVAP	Rush 2 BCVAP	Rush 2 WCVAP	Rush 3 HCVAP	Rush 3 BCVAP	Rush 3 WCVAP
Precinct 1	12122 (20.1%)	5090 (8.4%)	41048 (68.0%)	11660 (18.8%)	5878 (9.9%)	42161 (67.9%)	11261 (18.9%)	4481 (7.5%)	41356 (69.4%)	11672 (19.4%)	4361 (7.2%)	41753 (69.3%)
Precinct 2	10183 (16.1%)	5073 (8.0%)	45186 (71.3%)	9876 (15.7%)	3927 (6.2%)	45740 (72.7%)	9707 (15.5%)	3843 (6.2%)	45565 (73.0%)	10050 (15.9%)	3817 (6.0%)	46008 (72.9%)
Precinct 3	14187 (24.3%)	17209 (29.5%)	24859 (42.6%)	15378 (25.6%)	16982 (28.2%)	25789 (47.6%)	16224 (25.3%)	18585 (29.0%)	27222 (42.5%)	15729 (25.2%)	18385 (29.5%)	26373 (42.3%)
Precinct 4	9470 (16.6%)	3093 (5.4%)	40337 (70.5%)	9048 (16.7%)	3678 (6.9%)	37760 (69.7%)	8770 (16.5%)	3556 (6.7%)	37307 (70.0%)	8511 (15.9%)	3902 (7.3%)	37316 (69.8%)
Total	45962	30465	151450	45962	30465	151450	45962	30465	151450	45962	30465	151450
Not in P3 (Pct of Total)	31775 (69%)	13256 (43.5%)	126591 (83.6%)	30584 (66.5%)	13483 (44.3%)	125,661 (83.0%)	29738 (64.7%)	11880 (39.0%)	124228 (82.0%)	30233 (65.8%)	12080 (39.7%)	125077 (82.6%)

My report shows compact precincts were enacted in 2021 for the Galveston Commissioner’s Court. Those compact precincts follow traditional redistricting criteria by joining communities that have common characteristics beyond race, which is discussed in more detail below. The current map removes the “hooks” and “claws” from the prior map’s Precinct 3 boundaries. The result is that fewer local communities are divided under the current map, and the precincts preserve existing political boundaries.

Collectively, these results show that Plaintiffs’ illustrative maps fail to meet the *Gingles* 1 criteria in three important ways. First, neither Black nor Latinos are sufficiently numerous in and of themselves to constitute the majority in a single member district. This is important because all of the Plaintiffs’ illustrative maps require the combination of Black and Hispanic voters to form a majority-minority district. Second, the pairing of Black and Hispanic voters together is inappropriate because Black and Hispanic voters in Galveston County are not geographically compact. Third, and finally, the illustrative plans violate traditional redistricting principles to push the number of Black and Hispanic CVAP above 50%+1 in each illustrative plan.

Galveston County’s Dynamic Growth

Between 2010 and 2020, Galveston County’s population grew by 59,373. The proportional increase of 20% of the county’s population was the largest since 1970.² The growth also continued changes in the county’s demography, shared below in Table 1. A look at the 2020 Census population count in each Commissioner Court Precinct shows that Galveston County’s growth since 2010 was not even across the county. Prior to the county’s 2021 redistricting process, both Precincts 2 and 4 were overpopulated and Precinct 3’s population growth lagged the county by almost 9%. To keep district populations within plus or minus 5% of an equal distribution of individuals among four commissioner precincts, Precinct 2 needed fewer people and Precinct 3 needed additional people.

Table 1: Change in Galveston County from 2000 to 2010 to 2020

	2000	2010	2020
Total Population	250,198	291,309	350,682
Ideal Precinct Population (4)	62,550	72,827	87,671
Hispanic Population	44,939 (18%)	65,270 (22%)	88,636 (25%)
NH Black Population	38,179 (15%)	39,229 (14%)	43,120 (12%)
NH White Population	157,851 (63%)	172,652 (59%)	191,358 (55%)

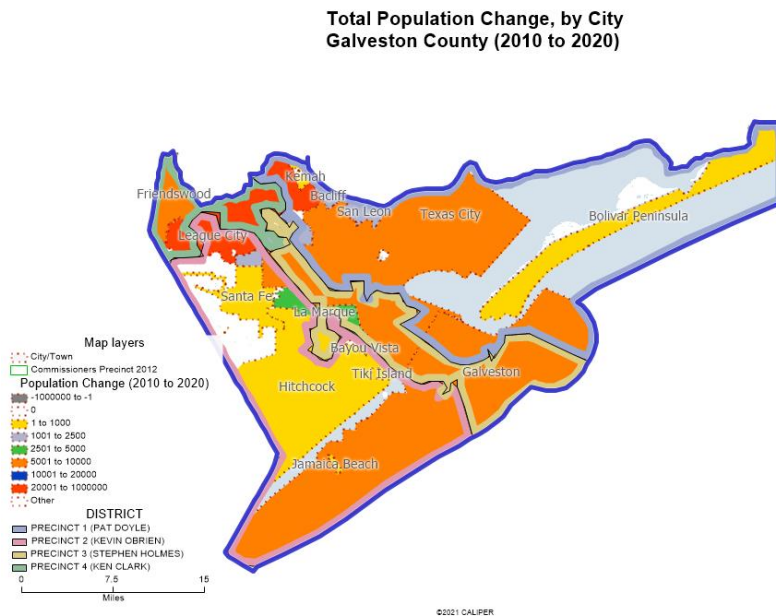
Figure 1, on the next page, illustrates that League City predominantly contributed to Galveston County’s growth with more than 30,802 new residents. This area is shaded in red to

² Texas Almanac. 2011. Population History of Counties from 1850–2010. Texas State Historical Association. <https://www.texasalmanac.com/drupal-backup/images/topics/ctypophistweb2010.pdf>

Also, Ferguson, John Wayne. 2021. “Galveston County population tops 350k, according to census.” *Galveston Daily News*, August 12, 2021. galvnews.com/news/article_15c68cc2-73f6-58b9-8162-07f7a74186e1.html

reflect that the population growth exceeded 20,000 individuals. Under the prior map, portions of League City were split between all four districts, but only one of League City’s voting districts was in Commissioner Court Precinct 3. Precinct 3 under the Benchmark Map was comprised of cities with lower population growths over the past decade like Dickinson (2,167 new residents) and La Marque (3,521 new residents).

Figure 1: Population Growth in Galveston County (2010 to 2020), by City with overlay of 2012 Commissioner’s Court Precinct Map



I. None of the Illustrative Maps Are Compact Under *Gingles I*

A. Determining Compactness

Comprehensive evaluations of compactness require multiple levels of analysis. Traditional redistricting principles encourage following political boundaries, major roadways, major waterways or other recognizable markers to align precincts in a North-South or East-West configuration. The first reason for compactness is to reflect communities of interest (e.g., income, education, cultural communities, population centers, etc.). Districts are determined to be reasonably configured and less burdensome administratively if districts minimize splits of municipalities and are more compact. Contiguous districts are not always uniform in size, so compactness can be measured with statistical scores that describe the shape of the polygon. The scores submitted by the Plaintiffs (Reock, Polsby-Popper, and Convex-Hull) are commonly used to measure compactness. While all scores have different assumptions about measurement, they serve the same purpose of comparing districts to one another and across a plan (here, Galveston County as a whole).

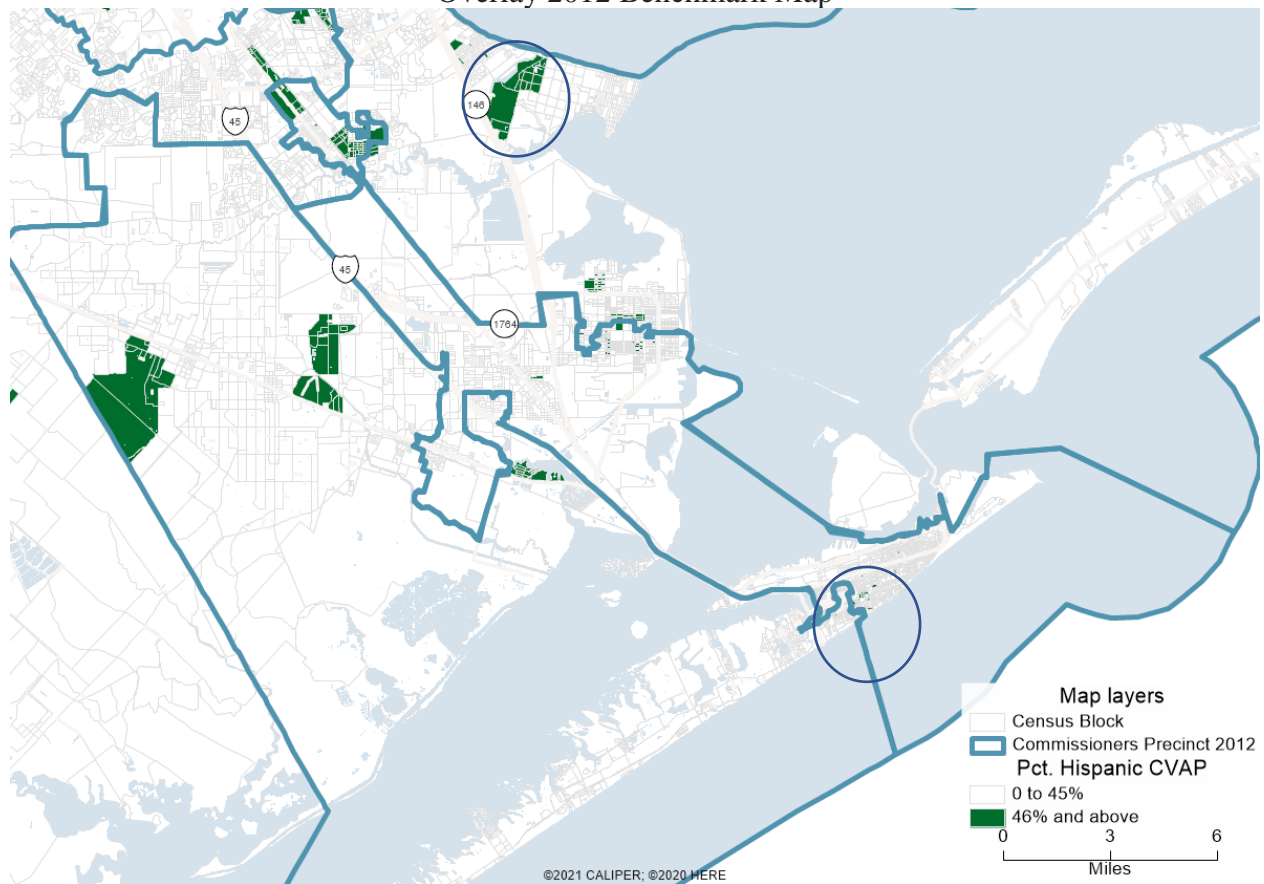
A *Gingles I* evaluation for the Galveston County Commissioner’s Court Precinct Map must answer a few direct questions. Does Galveston County’s Hispanic CVAP (19%) live in a

compact area? Does Galveston County’s Black CVAP live (13%) in a compact area? These questions lead to understanding the compactness of Galveston’s two largest minority communities. Compactness is not defined by the boundaries of the prior district, but where people live.

B. Galveston County’s Hispanic Citizen Voting Populations are geographically dispersed at the North and South ends of the County.

The Hispanic population in Galveston County is not compact. Population growth in the past decade shows that the Hispanic population is growing in different parts of the county. Figure 2 below shows the weight of the Hispanic population is largest and most concentrated in the northeast and southeast parts of the county. But the Benchmark Precinct 3 excluded swaths of Hispanic residents across the county and in voting districts adjacent to Precinct 3’s boundary and selectively chose some Hispanic residents at the top and bottom of that majority-minority precinct. Additionally, Figures 2 and 3 show that the concentration of Hispanic CVAP in Galveston County at the census block and voting tabulation district level look different. This is because the Hispanic CVAP population is concentrated within the smallest geographic units, but not adjacent to other communities.

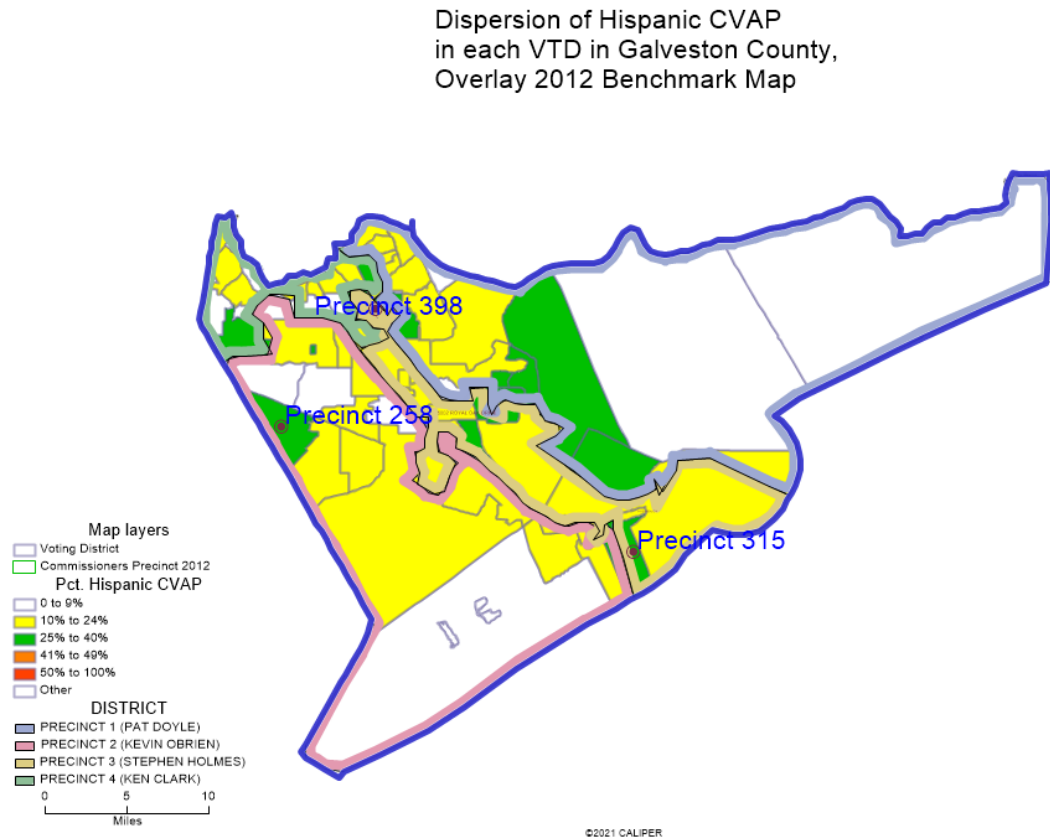
Figure 2: Dispersion of Hispanic Citizen Voting Age Population, by Census Block Overlay 2012 Benchmark Map



On Galveston Island there are 7,637 Hispanic residents who are voting age citizens. Those citizens live 18 miles away from the concentration of 305 Hispanic voting age citizens in the census blocks that are circled in Figure 2 to the north.

Figure 3 illustrates the range of Hispanic citizen voting age population's (HCVAP) concentration in the former voting districts (VTDs). In Texas, voting tabulation districts (VTD) are a collection of census blocks. Therefore, the VTD represents the political geography where residents live. If multiple census blocks are concentrated in a compact community, then the VTD will also show higher levels of concentration. At the VTD level there is, again, a pattern of a geographically dispersed Hispanic population in Galveston County. There are large concentrations of heavily Hispanic VTDs in the northwest corner of the county around Dickenson and League City and the southeast portion of the county near the Gulf Coast of Galveston City, a distance of 24.8 miles. The northern concentration includes a Hispanic CVAP of 980 citizens southern concentration a Hispanic CVAP of 1545 citizens. We see that Hispanic voters are not highly concentrated in the central portion of Galveston County, rather they are at the northern and southern ends of the county. These two clusters of Hispanic populations are not culturally similar, and should not be assumed to be so, as described in more detail below.

Figure 3: Share of Hispanic Voting Age Population in Voting Tabulation Districts



From top to bottom, the areas where we see clusters of the highest percent are in the north-central portion of the county. Voting districts 341 and 398 are adjacent and are the only

voting tabulation districts where more than 40% of the citizen voting age population is Hispanic (HCVAP). The HCVAP in Voting district 398 is 43% or 272 residents and it was assigned to Commissioner Precinct 3 in the 2012 Benchmark map. Old voting district 315, which is 22 miles apart from voting district 398, is the southernmost concentration of HCVAP. The 1,545 Hispanic citizens make up a 34% HCVAP. Voting district 315 was also in Commissioner Precinct 3 of the Benchmark map. Additionally, old voting district 315 is more than 26 miles away from old voting district 258, which is the western-most concentration of 1,383 Hispanic citizens of voting age, with a HCVAP of 35%. Old voting district 258 was assigned to Commissioner Precinct 2 and continues to be assigned to it in all of the plans that are reviewed in this case. The locations of these VTDs with very high concentrations of HCVAPs are not geographically compact.

C. In All Illustrative Plans, the current Precinct 3 Does Not Form A Community Of Interest of Hispanics

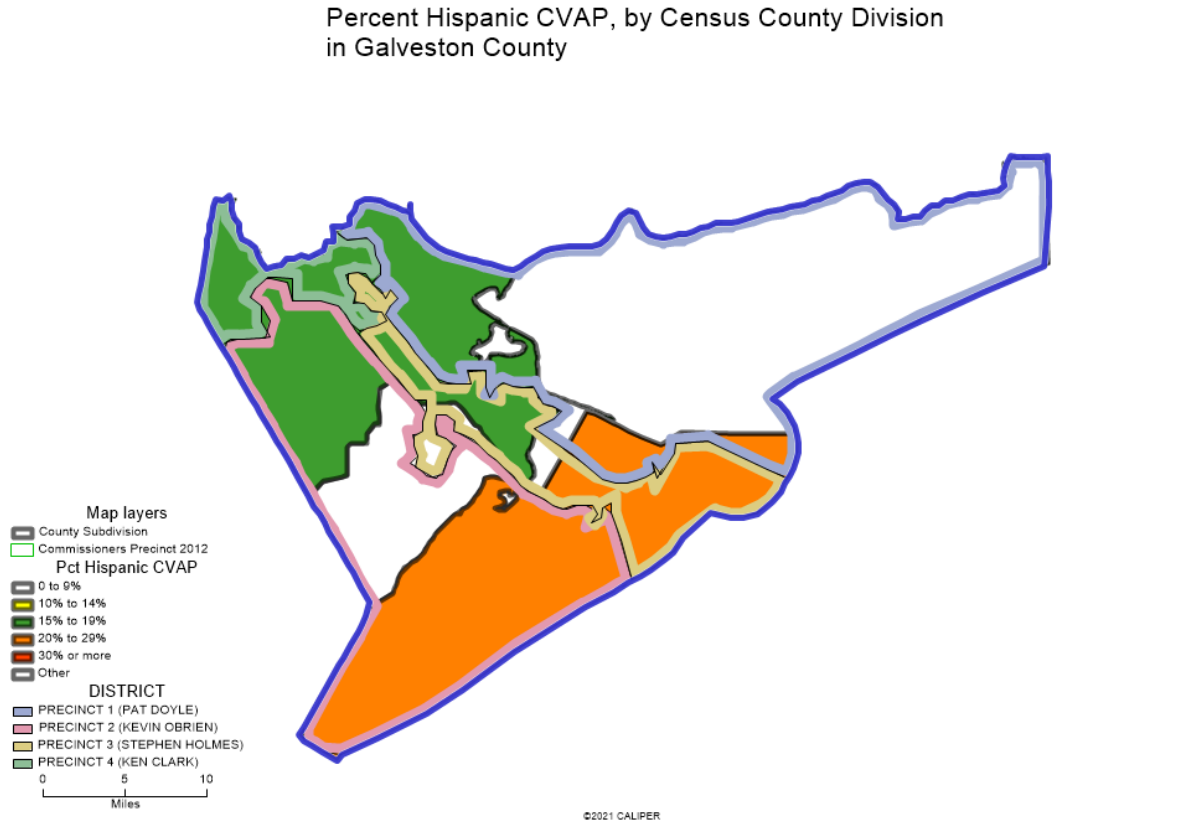
Galveston County's HCVAP is both distant and disparate. This indicates that a compact community of interest does not exist among the current Hispanic population in Galveston County. My analysis focuses on the citizen voting age population. These numbers reflect responses to the American Community Survey's robust set of questions in order to provide the most reliable estimate of subgroups at a local geographic level. The estimates of Galveston County's citizen voting age population by race and ethnicity also show that the Hispanic populations are disparate, and unable to be placed into one commissioner precinct that would form a majority Hispanic population. There is even less justification to join Hispanic and Black voters as a single community of interest even when they live in the same area, as described in more detail below.

Analyzing differences within populations and comparing them to neighbors shows how diverse and distinct a population is in a local area. I examine the diversity within the Hispanic population, with the 5-year estimates of the American Community Survey by the U.S. Census Bureau (2020), which provides insight into the different levels of education attainment, income, employment status, and other characteristics by age, gender, as well as race and ethnicity within these populations. The most granular level at which these data are available is the Census County Division (CCD). Using data tables from the Census, subpopulation counts can be determined within a more general spatial layer to maintain the anonymity of a respondent (<https://data.census.gov/>). In Galveston County, the four CCD's are Bolivar, Galveston, La Marque and Hitchcock, as well as Texas City and League City.³ In Maptitude for Redistricting,⁴ each CCD is identified as the "County Subdivision." Figure 4, on the next page, shows the percent of Hispanic CVAP in each CCD in Galveston County, these divisions are visible as grey lines and with the 2012 Benchmark Map overlaid.

³ Since the Bolivar Peninsula is geographically distinct, I direct my comparisons to the three divisions that are a part of the illustrative Precinct 3 proposals.

⁴ Maptitude for Redistricting is a GIS software designed specifically for the purpose of creating and analyzing redistricting plans. Similar to ArcGIS this is used by multiple states to create their redistricting plans, therefore I use it in my analysis to align my analysis with the processes used to create a district.

Figure 4: Hispanic Citizen Voting Age Population in Census County Divisions of Galveston County



A substantial difference between the Hispanic population across Galveston County is who in the population is employed full time. Hispanic men in the northern part of Galveston County are 12% more likely to have a full time job than Hispanics on Galveston Island. This exceeds the difference in the difference we see in the median age of Hispanic males between the regions of the county.

Table 4: Median Age and Population Working Full Time Among Hispanics, by County Area

	Category	Galveston	La Marque, Hitchcock	Texas City, League City
Median Age	Male	32	34	28
	Female	32	30	30
Pct. Working Full time	Male	47	62	59
	Female	35	35	32

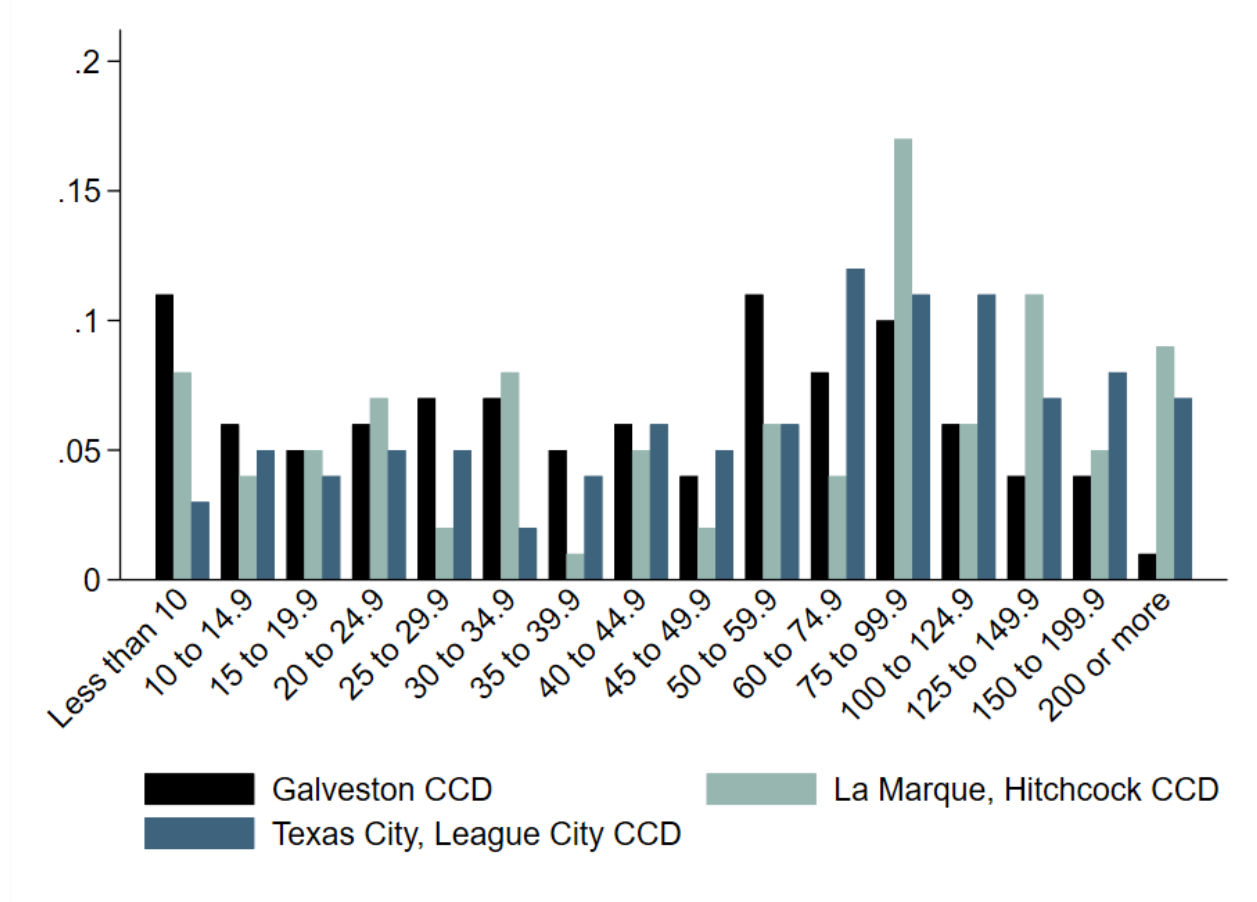
These details provide a more consistent context to understand population dynamics within the county than that depicted by Plaintiffs' expert William Cooper, in Figure 5 of his report (p. 16). The Plaintiffs' expert identified an economic community of interest that was conditioned on income and having a child in the household. His analysis omits that there is

substantial variation between the Hispanic population’s workforce status by gender and geography.

Figure 4 presents the ACS 5-year estimates for household income ranges in 16 categories. Each bar reflects the percent of the population that has an income within that category, in thousands of dollars. The category definitions are designed to create enough buckets to capture individual differences in incomes earned so that we can make reliable comparisons across the income distribution.

Across Galveston County there is a clear difference by geographic region in the income distribution of Hispanic residents. Hispanic residents in La Marque and Hitchcock make up the larger share of both lower incomes and high incomes. Hispanic household incomes in Texas City and League City are more evenly distributed and Hispanic households on Galveston Island are more often middle to lower income.

Figure 5: Hispanic Household Income in Past 12 months, by Population Group and Geography



Hispanics in the southern end of the county are different from Hispanics in the northern end. This is reflected in who is employed full-time and the distribution of household incomes in the community.

D. Galveston County’s Black Citizen Voting Populations are geographically dispersed at the North and South ends of the County.

Figure 6 shows population dispersion in Galveston county the same way that was just done for Hispanic CVAP. The Black citizen voting age population (BCVAP) in Galveston County is concentrated in the northern and southern portions of the county. The distance from the northern most concentration of BCVAP to the census blocks with high concentration of BCVAP on Galveston Island is 21 miles, point to point. From east to west it is 8 miles between the census blocks with the highest concentration of BCVAP in Texas City to those in Hitchcock.

Figure 6: Dispersion of Black Citizen Voting Age Population, by Census Block

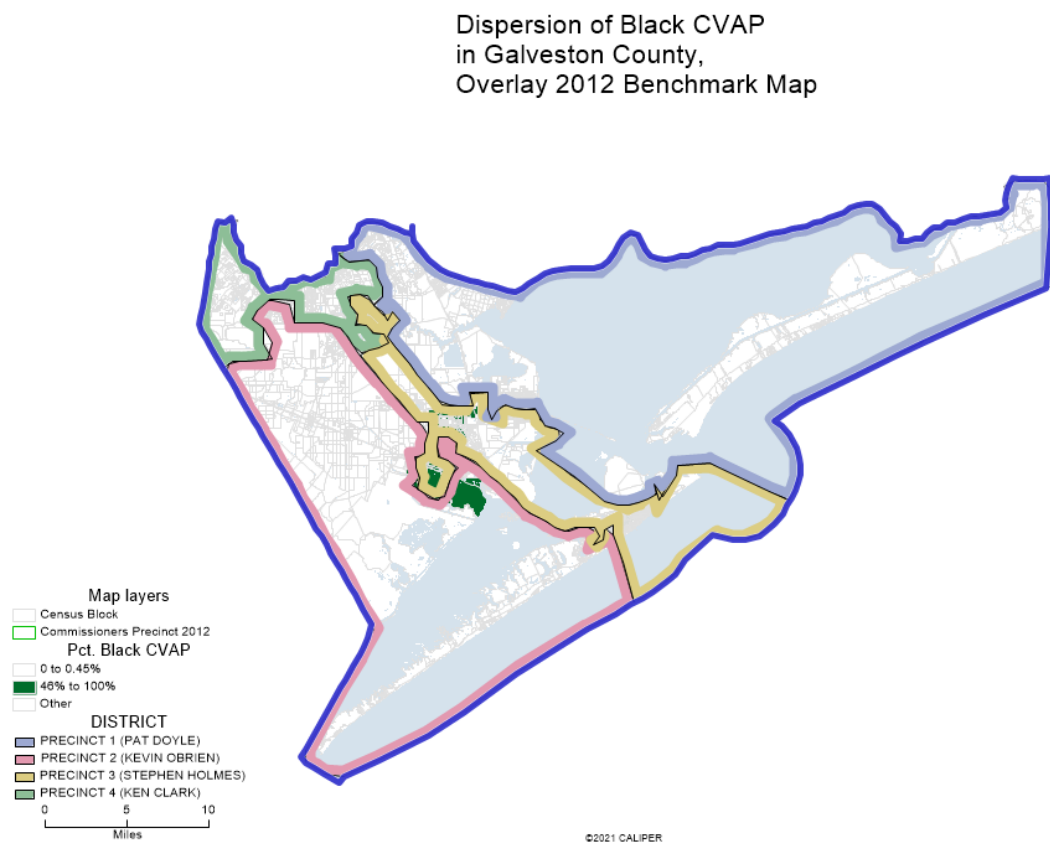
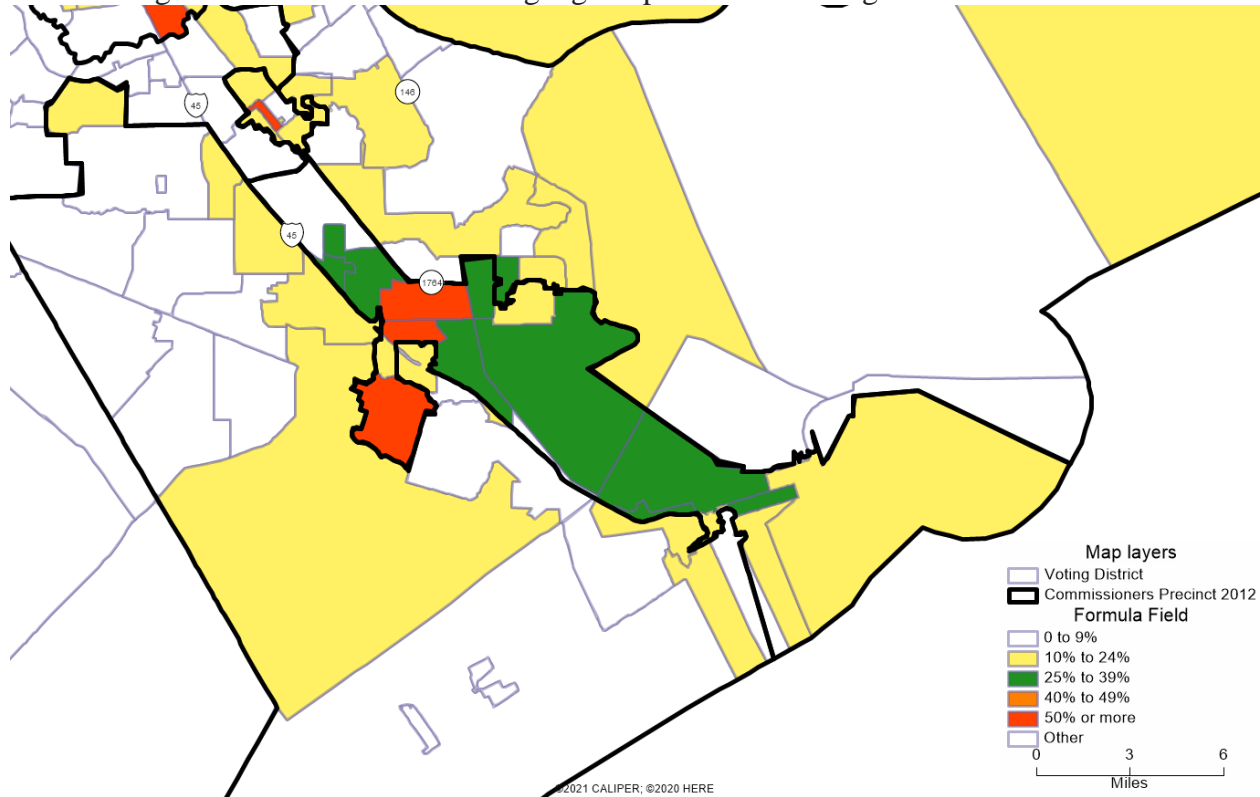


Figure 7 illustrates the Black CVAP in the voting tabulation districts (VTDs). Although the Black CVAP population appears concentrated in the center of the county, the population does not come close to having a substantial influence for a district of more than 85,000 residents. The Benchmark Precinct 3 combined a population of 14,159 Black citizens of voting age who reside in the green and red areas in the center and southern portion of the county with a small northern peninsula of 1,151 BCVAP residents in Dickinson (3.8% of the county’s BCVAP). The distance from the south of old voting district 336 to north of old voting district 340 is just under 10 miles to join these populations. One concern is that decisions to draw these communities into one Commissioner’s precinct does not consider other differences Black citizens have in these different cities and areas of the county.

Figure 7: Share of Black Voting Age Population in Voting Tabulation Districts



E. In All Illustrative Plans, the current Precinct 3 Does Not Form A Community Of Interest of Black CVAP

The distance between the geographic dispersion of BCVAPs indicates that a compact community of interest does not exist among the current Black population in Galveston County. The estimates of Galveston County’s citizen voting age population show that the Black populations are disparate, and unable to reliably be placed into one commissioner precinct that would form a majority community of interest. Clear differences emerge between geographic areas related to where people moved from to reside in Galveston County, employment, and income.

Among the Black residents who did move to a new area of county from elsewhere in Texas, Black residents were more likely to move to Texas City and League City than anywhere else. Hispanic residents, who previously lived in Texas, did not move to any part of Galveston County more often than any other. The movement of Black residents within the county is primarily moving to Galveston Island, whereas the movement of Black resident to the county from elsewhere in Texas heads towards Texas City and League City.

Table 6: Geographic Mobility Among Blacks, by Population

		Galveston	La Marque, Hitchcock	Texas City, League City
Geo. Mobility	Same House 1 year	76	83	81
	Moved within county	17	12	9
	Moved from elsewhere in Texas	5	4	8
	Moved from other state	1	1	1
	Moved from abroad	0	0	0

Another substantial difference between the Black populations in Galveston County is the median age of Black population. We see that the Texas City and League City communities are substantially younger than other areas of Galveston County to the south and west. The gap in the median age of each gender population in La Marque and Hitchcock varies the most, with Black women in La Marque and Hitchcock skewing 13 years older than Black women in Texas City and League City. Despite these age differences, the share of Black men and Black women in the workforce is the same in Galveston, La Marque, and Hitchcock.

Table 7: Median Age and Population Working Full Time Among Blacks, by County Area

	Category	Galveston	La Marque, Hitchcock	Texas City, League City
Median Age	Male	40	38	31
	Female	38	49	36
Pct. Working Full time	Male	28%	33%	48%
	Female	29	33	41

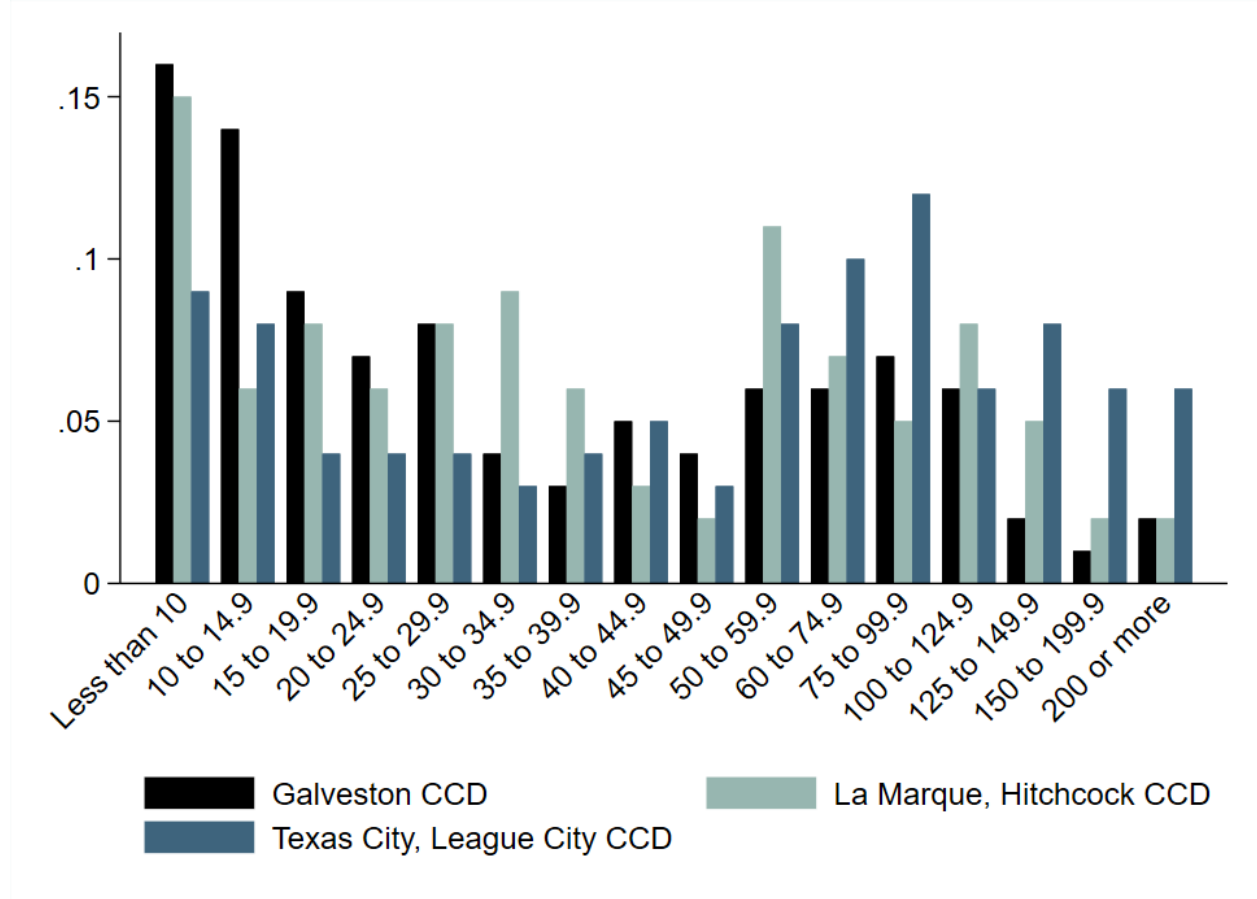
The rates of education offers another substantial difference. Black males have much higher levels of college degrees and collegiate attendance in La Marque, Hitchcock, Texas City, and League City than Black men on Galveston Island. The distribution of education attainment, race, and gender also shows the share of Black women with a college degree in Texas City and League City is substantially higher than the rest of the county. The range within the Black population is stark, as 14% more Black men and women in Texas City and League City have a college degree compared to Black men and women on Galveston Island. So, in addition to being younger, Black men and women also have higher education attainment in the areas closer to Houston.

Table 8: Education Attainment Among Blacks, by County Area

Education	Population	Galveston	La Marque, Hitchcock	Texas City, League City
Less than High school	Male	28%	12%	12%
High school	Male	33	31	24
Some college	Male	29	46	39
Bachelor's degree	Male	9	11	25
Less than High school	Female	12	12	9
High school	Female	33	18	31
Some college	Female	39	56	31
Bachelor's degree	Female	16	14	30

Finally, Figure 8 shows a clear difference by geographic region in the income distribution of Black residents. Black residents of Texas City and League City have higher household incomes than Black residents in La Marque, Hitchcock, and Galveston.

Figure 8: Black Household Income in Past 12 months, by Population Group and Geography



Education, income, and geographic mobility are ways that the Black population in Galveston County is disparate in addition to being geographically distant. The Black population in the southern end of the county is different from the northern end in a few disparate ways. This reduces the claim that this is one cohesive community of interest.

F. Illustrative Alternatives for Precinct 3 are Not Compact

In addition to considering the concentration of the Hispanic population included and those excluded from illustrative alternatives for Precinct 3, I present the set of compactness measures and deviation statistics for each plan. This includes the Benchmark prior Commissioners Precinct Map that was in place until 2021, the 2021 Enacted Map, and all Illustrative Maps from Plaintiffs’ experts. The scores all range from 0 to 1, where 1 reflects a more compact geographic shape. I also report the average score and the standard deviation for all four Commissioner Precincts in order to show how compact they are in comparison to others in the same plan. This is important because any extension of a voting district from a traditional polygon will affect the compactness of its adjacent district (losing area from its shape).

Table 9 presents the percent of the Precinct population that is above the ideal population of 87,671 residents. The redistricting process is centered on reducing the population deviation between of each precinct, which is how governments are able to reduce the ratio of representation to ensure the equal protection of all voters. The table below reports all the deviation statistics for each plan together. A point of caution, the Cooper Illustrative Map 2 as exhibits less population deviation than the Enacted Map but the way this occurs is problematic and a point I discuss later in the report.

Table 9: Population Deviation for Precinct Plans

Deviation	Precinct 1	Precinct 2	Precinct 3	Precinct 4	Avg.	Std. Dev.
Benchmark Map	-2.6%	9.0%	-8.8%	2.4%	5.7%	6.6%
Enacted Map	0.02	0.03	0.5	0.6	0.3	0.3
Fairfax Illus 1	-2.6	3.8	-3.6	2.4	3.1	3.1
Rush Map 1	1.1	-1.7	-0.8	1.35	1.2	0.3
Rush Map 2	-2.7	-1.7	5.7	1.4	2.9	1.7
Rush Map 3	-1.3	0.1	2.6	-1.4	3.2	3.6
Cooper Illus 1	-0.4	-0.7	1.0	0.2	0.3	0.6
Cooper Illus 2	0.0	-0.3	0.3	0.04	0.1	0.2
Cooper Illus 3	0.6	1.7	-0.5	-1.8	0.6	1.2

Three statistical scores, the Reock score, Polsby-Popper score, and the Convex-Hull score are used to compare the symmetry and consistency of all boundaries of the shape in a standardized way. In Tables 10, 11, and 12, I present the scores for all Precinct plans under consideration. The Enacted Map is more compact than each illustrative map. The Enacted map has an average score that is consistent with the other plans, but the standard deviation of the scores across all districts is the lowest. A close examination of the scores per precinct shows that the lowest compactness score in all illustrative maps is Precinct 3. The one Illustrative Map that offers one-tenth of a percent less population deviation than the 2021 Enacted Map (Cooper Map 2) has lower average compactness scores and higher standard deviations of compactness (Reock, Polsby-Popper).

Table 10: Reock scores for Precinct Plans

Reock score	Precinct 1	Precinct 2	Precinct 3	Precinct 4	Avg.	Std. Dev.
Benchmark Map	0.28	0.39	0.16	0.34	0.22	0.15
Enacted Map	0.30	0.24	0.23	0.29	0.27	0.04
Fairfax Illus 1	0.28	0.39	0.16	0.34	0.29	0.10
Rush Map 1	0.29	0.34	0.21	0.26	0.28	0.05
Rush Map 2	0.30	0.33	0.16	0.31	0.28	0.08
Rush Map 3	0.30	0.33	0.16	0.28	0.27	0.07
Cooper Illus 1	0.28	0.37	0.17	0.34	0.29	0.09
Cooper Illus 2	0.27	0.25	0.20	0.39	0.28	0.08
Cooper Illus 3	0.23	0.29	0.35	0.21	0.27	0.06

Table 11: Polsby-Popper scores for Precinct Plans

Polsby-Popper	Precinct 1	Precinct 2	Precinct 3	Precinct 4	Avg.	Std. Dev.
Benchmark Map	0.23	0.28	0.09	0.14	0.19	0.09
Enacted Map	0.28	0.21	0.12	0.22	0.21	0.07
Fairfax Illus 1	0.23	0.30	0.10	0.14	0.19	0.09
Rush Map 1	0.22	0.25	0.12	0.14	0.18	0.06
Rush Map 2	0.25	0.26	0.12	0.17	0.20	0.07
Rush Map 3	0.25	0.27	0.12	0.14	0.20	0.08
Cooper Illus 1	0.24	0.29	0.11	0.12	0.19	0.09
Cooper Illus 2	0.27	0.25	0.20	0.39	0.39	0.08
Cooper Illus 3	0.24	0.23	0.18	0.13	0.20	0.05

Table 12: Convex-Hull scores for Precinct Plans

Convex-Hull	Precinct 1	Precinct 2	Precinct 3	Precinct 4	Avg.	Std. Dev.
Benchmark Plan	0.69	0.71	0.48	0.15	0.51	0.26
Enacted Plan	0.76	0.71	0.47	0.67	0.65	0.13
Fairfax Illus 1	0.69	0.73	0.49	0.55	0.62	0.11
Rush Map 1	0.66	0.65	0.56	0.56	0.61	0.06
Rush Map 2	0.68	0.67	0.54	0.58	0.62	0.07
Rush Map 3	0.68	0.67	0.53	0.60	0.62	0.07
Cooper Illus 1	0.69	0.69	0.51	0.55	0.61	0.09
Cooper Illus 2	0.74	0.64	0.60	0.62	0.65	0.06
Cooper Illus 3	0.68	0.74	0.60	0.52	0.64	0.10

Another factor of compactness is the distance it takes to travel from one end of the precinct to another. Maptitude for Redistricting’s GIS software provides a Travel Contiguity Analysis tool to calculate the percentage of residents who drive in the district, the distance they travel by car, and the time they report to travel by car. The software tool generates a complete and accurate measure by computing a matrix of distances from all points along the boundary of a district. In another column, I also add to this analysis the miles from the northern most point to the southern most point of the Precinct Plan.

Table 13: Travel Contiguity Analysis of Precinct 3 in Illustrative Plans, Plus Length of Precinct 3

District Plan	Pct who drive	Max Drive Distance	Max Drive Time	Precinct 3’s Distance North to South
Fairfax	91.0%	31.82 miles	52.43 minutes	22 miles
Cooper 1	92.3	31.82 miles	52.15 minutes	22 miles
Cooper 2	91.7	29.01 miles	52.15 minutes	22 miles
Cooper 3	92.4	18.13 miles	34.45 minutes	14 miles
Rush 1	92.9	29.84 miles	52.15 minutes	21 miles
Rush 2	92.3	28.13 miles	52.15 minutes	22 miles
Rush 3	92.7	28.13 miles	52.15 minutes	21 miles

As shown above in Table 13, the illustrative maps for Precinct 3 are not compact. Moreover, there are substantial differences between the Hispanic and Black populations in the regions that are the focus of the Plaintiff’s complaint. The lack of geographic compactness and

the substantial differences between these populations discussed above shows they do not have sufficient shared interests to compel a majority-minority district composed of both Hispanics and African Americans.

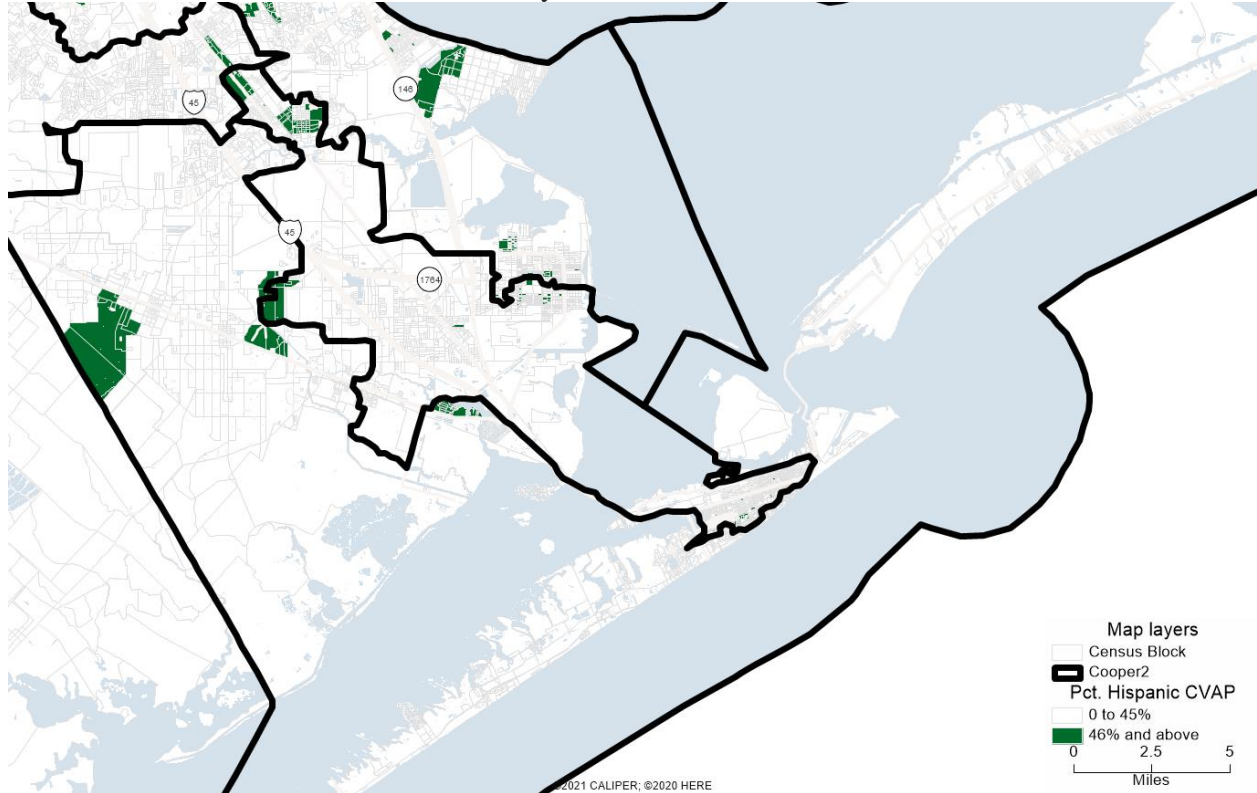
G. The Proposed Alternative Plans Prioritize The Racial Identity of Persons Above Traditional Redistricting Principles.

An analysis of the illustrative plans reveals that plaintiffs have prioritized race over traditional redistricting practices. Earlier in this report, I show that Hispanic voters are concentrated in different parts of Galveston County and are uniquely different from Black residents in the same places. I also show the consistent lack of compactness in the illustrative maps submitted by the Plaintiffs.

Six of the seven proposed plans divide Galveston Island into multiple precincts. Most of those plans divide the island into three precincts. Cooper's Illustrative Map 3 is the only one that does not. Any division of Galveston Island is unnecessary given that its population of 54,774 (including Pelican Island) is less than the ideal district population. Redistricting principles allow minimal population deviation so that geographically distant areas like islands are not cracked into multiple districts.

Another concerning pattern in the illustrative maps is that the non-compact illustrative maps reach out to grab Black voters and combine far-flung segments of the Hispanic population. Figure 4 offers a clear example of how Cooper's Illustrative Map 2 confirms that the Hispanic population is not compact.

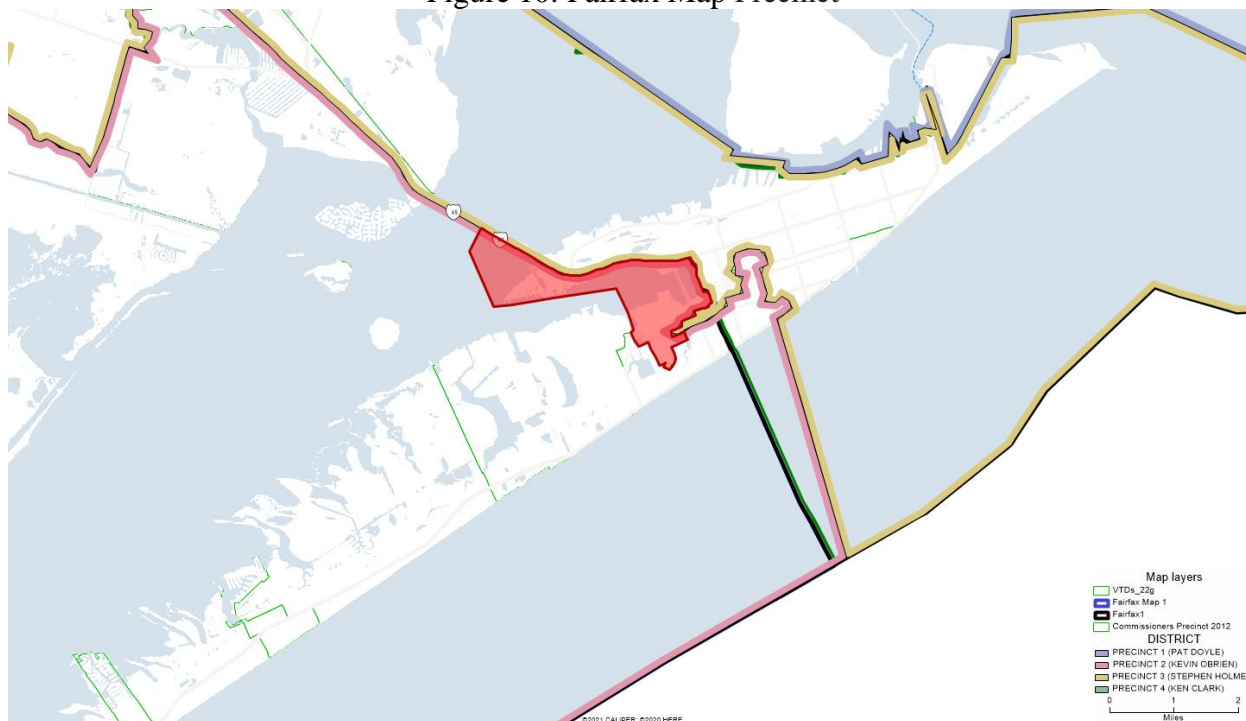
Figure 9: Precinct 3 Overlaid with Dispersion of Hispanic Citizen Voting Age Population, by Census Block



Building from this point, I will identify how each illustrative map violates traditional redistricting principles in an effort to maximize the racial composition of the district. I will begin with Anthony Fairfax’s illustrative map, then discuss Cooper’s three illustrative maps, and end with an evaluation of the maps from Tye Rush.

The Fairfax Illustrative Map attempts to recreate Precinct 3 by staying close to the previous boundary. Figure 10 shows one voting district was added. Fairfax added the area where the black line extends beyond the pink line. The voting district that was selected added 873 Hispanic citizen voting age residents (25%) and 302 Black citizens of voting age (9%). This selectively chose a diverse voting district to add, when other voting districts were also adjacent to Precinct 3 and could have improved the compactness of the Precinct.

Figure 10: Fairfax Map Precinct



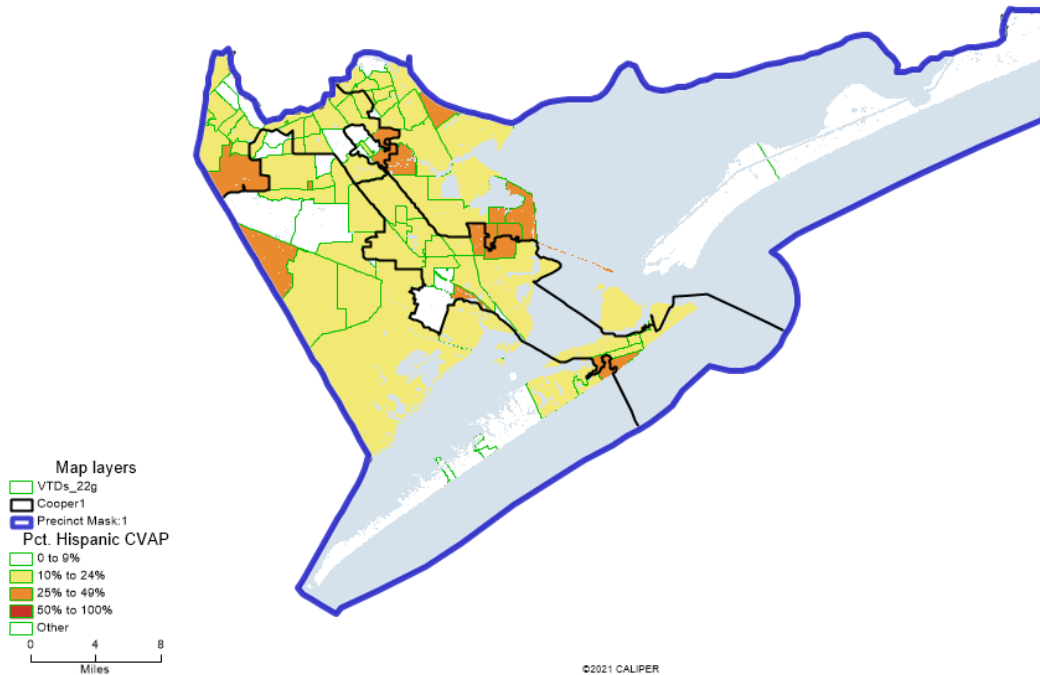
The process exhibits a selective choice under the guise of offering the least changes. Precinct 3, as proposed in Fairfax Map 1, continues to be underpopulated by 3.6%. This selection excludes the more populous voting district 223 (shaded above with a citizen voting age population of 4,045). Voting district 223 would have reduced the population deviation further and had a higher concentration of 870 Black voting age citizens (22%) than voting district 218. The remaining demographic composition of voting district 223 includes 777 Hispanic voting age citizens (19%) and 2263 non-Hispanic white voting age citizens (56). This opportunity to increase the Black and Hispanic populations in Precinct 3 would limit the ability for Precinct 2 to be contiguous on the island.

The process exhibits a selective choice under the guise of offering the least changes. Precinct 3, as proposed in Fairfax Map 1, continues to be underpopulated by 3.6%. This selection excludes the more populous voting district 223 (shaded above with a population of 6,093). voting district 223 would have reduced the population deviation further and had a higher concentration of BCVAP than voting district 218. The demographic composition of voting district 223 includes 19% HCVAP, 56% WCVAP, and 22% BCVAP, as compared to 27% HCVAP, 62% WCVAP, and 9% BCVAP. This opportunity to increase the Black and Hispanic populations in Precinct 3 would limit the ability for Precinct 2 to be contiguous on the island.

The first illustrative map proposed by William Cooper enlarges the geographic footprint of Precinct 3 in order to add population to the underpopulated Precinct. The district includes the northern part of the Precinct where concentrations of Hispanic voters are split into Precinct 1, 3, and 4. Precinct 3 grows west to add voting districts 219 and 232.

Figure 11: Cooper Map 1, Precinct 3

**Cooper Illustrative Map 1,
Dispersion of Hispanic CVAP by VTD**



While it would appear the illustrative plan now rounds out Precinct 3’s previous extended arm into Hitchcock, there are three substantial violations of traditional redistricting practices that lead to increasing the population of Black residents in Precinct 3.

1. The substantial changes to Precinct 3 does not limit the representation of Galveston Island to two voting districts, as the Plaintiff’s expert says. This illustrative map continues to exclude 713 voting age citizens in voting district 105.1 from Precinct 3 by assigning coastal area in Precinct 1. The voting district has a CVAP population includes 92 Hispanic citizens, 523 non-Hispanic white, and 33 non-Hispanic Black citizens (13% HCVAP, 73% WCVAP, and 5% BCVAP).
2. Adding more of La Marque and Hitchcock to Precinct 3 and give the visual appearance of compactness, relies on adding voting district 232 (population 2,205 CVAP). The newly added population in this area was 24% HCVAP, 55% WCVAP, and 17% BCVAP).
3. The added population needed to reduce population deviation came from adding Voting district 419. Voting district 219 is not adjacent to the area where most voting districts were added, but it has a citizen voting age population of 2,689 (24% HCVAP, 53% WCVAP, and 14% BCVAP). This ignored the concentrated Hispanic population across Highway 6 in voting district 225 that goes on the shoreline. Voting district 225 is adjacent to three of the newly added voting districts and has a similar population to the

areas it is adjacent to. The citizen population of voting district 225 is 3,606 (14% HCVAP, 81% white, 2% BVAP).

I addressed the second illustrative map submitted by William Cooper above, but want to identify additional selective choices that were made in Cooper Map 2. The cartographer's attention on this map is directed to the furthest northern and southern sections of Precinct 3. At the north, there are clear attempts increase the number of adjacent voting districts from one to two before the district moves up capture a set of voting districts that are clearly of interest to the Plaintiffs. In this case:

1. The map splits voting district 192 north and south. The split occurs south of voting district 391 and captures a little more than half of the voting district's population. This voting district that has a citizen voting age population of 32% HCVAP, 52% WCVAP, and 14% BCVAP is split so, Precinct 3's share of voting district 391 is 29% HCVAP, 34% WCVAP, and 14% BCVAP. The share of voting district 391 sent to Precinct 1 is 28% HCVAP, 49% WCVAP, and 15% BCVAP. Splitting this voting district did not add to the compactness of the district in a meaningful way, but it increased the share of Black CVAP.
2. Compactness was not likely the reason for voting district 192's split, since voting district 391 runs north of that area. The voting district that remained part of Precinct 3 in Cooper Map 2 has a HCVAP of 28%, WCVAP of 49%, and BCVAP of 16%. Voting district 391 was part of the Benchmark Commissioner Precinct Map and the split of voting district 392's only benefit was to add visual compactness to the hook that existed to include voting district 391 in the first place. The southern portion of voting district 392 was essential to maintaining the contiguity of voting district 391 without relying on the geographically small voting district 394.
3. Voting district 218 is also split along census block lines. In this case Precinct 3 comes within 0.2 miles of Seawall Blvd. The wide-open ocean and Precinct 3, which extends to north Galveston County, are separated are separated by a census block of 16 residents. Using this small intersection to connect a district that is just shy of 58 miles from the northeast corner to the southwest corner violates traditional expectations of compactness and clearly divides local communities from receiving the same representation.
4. Voting district 315 is adjacent to voting district 218 and has the same problem. In this case, Precinct 3 goes all the way east to Seawall Boulevard on three occasions (as seen in Figure 9). Within those jagged selections, 5 voting age citizens are split from Precinct 3 into Precinct 2 in order to be joined with Porretta Beach. Across from Stewart Beach Park, another 144 voting age citizens residents find they are part of Precinct 2 and not Precinct 3 because of their access to the water. The affected individuals are 7% HCVAP, 83% WCVAP, and 10% BCVAP. Precinct 2 is given beach access to continue as a contiguous precinct, which it barely achieves with a tiny strip of beach. The contiguity of Precinct 2 becomes dependent on the weather conditions and high tide.

Figure 12: Cooper Map 2, Precinct 3



The first departure from a traditional redistricting practice divided a voting district to assign census blocks with more Hispanic residents to Precinct 2. The communities that remained had a higher Black CVAP. The beach contiguity problem is also a sign of racial gerrymandering, since 218 individuals were selectively discarded from Precinct 3 even though the non-Hispanic Black population was consistent with the county’s population share. In each case the exclusion of certain populations allowed the district to extend to reach areas with larger non-Hispanic Black populations, like on Galveston Island. This allowed Precinct 3 to include the entire 314th voting district, which has a larger than average concentration of non-Hispanic Black residents at the far east end.

A third illustrative map from William Cooper acknowledges the county’s interest in reducing the political divisions on Galveston Island, acknowledges the unnecessary split of voting district 192, and ends the narrowest contiguity of Precinct 3 at Robinson’s Auto Repair in Dickinson. This narrow point of contiguity was part of the Benchmark district and allowed someone to be in one of three different Commissioner Precincts, depending on which side of the business you were on. Despite those changes, the illustrative plan continues to make selections that show the prioritization of race over redistricting principles.

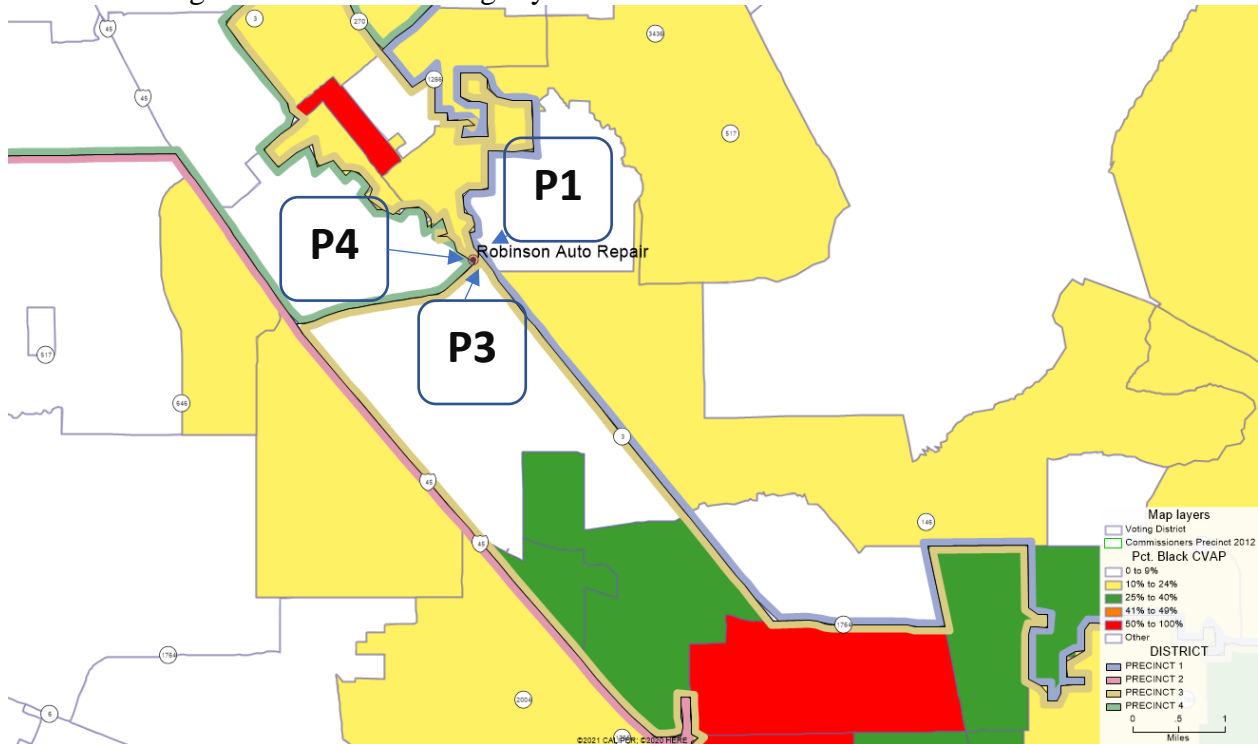
1. This map increases the share of Texas City that is in Precinct 3, by adding voting districts 142, 148, and 150. However, because voting district 150 goes up to the south shore of Moses Lake, Precinct 1 becomes contiguous only through the Moses Lake Floodgate on the north edge of Moses Lake. The extension of this hook around Texas City also uses a large area with zero population to connect the northern and southern sides of Precinct 1. This is another example of how adjustments to Precinct 3 reduce the compactness of adjacent districts. This version of Precinct 1 had the lowest compactness score of the three illustrative maps William Cooper submitted.
2. The district still maintains a division of the Hispanic population in the city of Dickinson in the northern section of the district and attempts to pair it with population in Hitchcock. The distance to achieve his combination is more than 13 miles. A district would be more

compact if the community of interest in Dickinson was joined with a community in League City, where the populations are more similar.

The first illustrative map prepared by Tye Rush is another example of prioritizing race in the selection of voting districts over traditional redistricting principles. The first illustration:

1. Separates Galveston Island into Precincts 1, 2, and 3. The plan deviates from the historical map, by assigning voting district 314 to Precinct 1 (now voting district 214). Doing this makes Precinct 3 on the island narrower than 1 mile east to west. The citizen voting age population of voting district 314 is 4621 (22% HCVAP, 42% WCVAP, and 35% BCVP).
2. More than 19 miles to the north, the map splits voting district 439 and 144 with voting district 341. This is the same narrow community that has been previously described as being 0.05 miles wide and the site of Robinson's Auto Repair. Precinct 3 is unable to pick up the concentration of 3,107 BCVP+HCVAP if it does not take this narrow pass over Dickinson Bayou. That is 9.6% of the BCVP+HCVAP used to create the illustrative versions of Precinct 3 that keep this intact.
 - a. The 341st voting district included is 47% HCVAP, 38% WCVAP, and 12% BCVP. The two adjacent voting districts have a BCVP of 6% (voting district 439) and 5% (voting district 144). The HCVAP of the same two districts is 16% (voting district 439) and 25%. (voting district 144). Voting district 341 was selected to be in Illustrative Precinct 3 at the exclusion of the two adjacent voting districts, because it had double the BCVP.

Figure 13: Narrow Contiguity of Precinct 3 - Where Three Districts Meet



3. Also, instead of expanding the northern section of Precinct 3 to be more compact, this map excludes voting district 399 from Precinct 3. The citizen voting age population

of this voting district is 456 (37% HCVAP, 17% non-Hispanic White, and 18% non-Hispanic Black). The estimated CVAP population is 456 (HCVAP is 38%, BCVAP is 18%, and WCVAP is 38%).

4. The adjacent voting district below has a population distribution of 48% Hispanic, 7% non-Hispanic white, and 41% non-Hispanic Black. This shows Rush Map 1 split a younger Hispanic community (HCVAP 37%) from its adjacent neighbor (HCVAP 42%), in order to prioritize maintain voting districts with higher BCVAP in the center of the county in Precinct 3.
5. Rush's first illustrative map has the same additions in Texas City to Precinct 3 that force Precinct 1 around Moses Lake and reduce the compactness of Precinct 1. Although, this configuration occurred with the Cooper maps, the addition of Pelican Island to Precinct 3 extends the distance Precinct 1 is only contiguous via Galveston Bay.

The second illustrative map by Tye Rush continues to prioritize the northwest by southeast version of Precinct 3. This version makes notable changes to the first Rush illustrative.

1. Galveston Island continues to be split into Precincts 1, 2, and 3. In this version voting district 314 (now 214) is returned back to Precinct 3.
2. The effort to add more of Texas City to Precinct 3 recedes in this version, as voting district 148 is split away from Texas City. This voting district was previously joined with Precinct 3 in Map 1, as well as maps by William Cooper's third illustrative map. The decision to assign voting district 148 to Precinct 1 moves a citizen voting age population in voting district 148 that is 27% HCVAP, 59% WCVAP, and 11% BCVAP. Rush Map 2 kept the adjacent voting district 150 (29% HCVAP, 60% WCVAP, and 10% BCVAP) and adjacent voting district 142 (29% HCVAP, 42% WCVAP, and 26% BCVAP). The action to add voting district 142 selectively chooses the voting district with the highest percentage of Black CVAP. The extension to include voting district 150 also, includes one of the Plaintiffs into the district. Those to steps are done at the exclusion of a voting district that has the largest HCVAP population.
3. Additionally, this map includes the greatest population deviation of 8.4% between the least populated and most populated Commissioner Precincts by packing more residents into Precinct 3 than any other illustrative map submitted by the Plaintiffs.

Rush's third illustrative map continues to follow a similar approach to the second map with three notable changes.

1. Illustrative Map 2 drops voting district 219 in Hitchcock from the unnecessarily overpopulated Precinct 3 in Map 2.
2. Illustrative Map 2 drops voting district 218 from the version just discussed from the unnecessarily overpopulated Precinct 3 in Map 2.
3. Precinct 218 is assigned to Precinct 2, which was done in other illustrative maps to drive the district as far south as possible.

Conclusion: Galveston County Lacks a Compact Community of Interest

My report has focused an intensely local analysis on Galveston County's residents to identify if the areas with concentrations of Hispanic residence are adjacent or disparate. In addition to finding that Galveston County's Hispanic residents are disparate, I also did not find patterns within subdivisions of the county where the Hispanic and Black populations are substantially similar to be considered a combined community of interest.

Galveston County's population growth has primarily been centered around its largest city League City. The county's fastest growing demographic group are Hispanics, but they are concentrated in cities across the county with unique individual characteristics in each geographic area. These two factors and the acceleration of the county's population growth have reshaped the county's political geography. It has changed so much, that the Benchmark Precinct 3 no longer represents a clear community of interest. A view of population distributions at the census blocks and voting districts show that illustrative maps that are set to prioritize representation of Black residents excludes adjacent Hispanic residents.

The illustrative versions of Precinct 3 that have been proposed constitute a collection of multiple racial gerrymanders that stretch definitions of compactness, population deviation, and how to maintain contiguity. Moreover, six of the seven districts perpetuate significant political divisions of Galveston Island. My report describes how on multiple occasions each map plan chose to include a voting district that had a higher concentration of Black citizens of voting age, even when adjacent voting districts with similar populations had higher concentrations of Hispanic voters could have been selected.

The illustrative maps are prime examples of how racial considerations are prioritized over traditional redistricting principles to achieve a majority-minority district built on an overgeneralized assumption of similarities between the Hispanic and Black communities. The distant Hispanic populations and their distinct cultural characteristics lead us to infer that minority status was the only characteristic that was considered when trying to join these populations. The long and distant Precinct 3 may appear as an opportunity to give representation to the central part of the county, but any analysis that breaks down the population statistics will identify the Benchmark and illustrative Precinct 3 boundaries joins two very different Hispanic populations that are at the north and south ends of the smaller Black population.

Mark Owens

Curriculum Vitae

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EDUCATION

University of Georgia - Ph.D. in Political Science	2014
University of Oxford - Visiting Doctoral Student in the Department of Politics	2013
Johns Hopkins University - M.A. in Government	2008
University of Florida - B.A. in Political Science, <i>magna cum laude</i>	2006

ACADEMIC POSITIONS

University of Texas at Tyler	
Associate Professor & Honors Faculty	2020 - present
Assistant Professor	2015 - 2020
Reinhardt University - Adjunct Professor of Public Administration	May 2014 & May 2017
Bates College - Visiting Assistant Professor	2014 - 2015

PROFESSIONAL EXPERIENCE

APSA Congressional Fellow, <i>Office of the President Pro Tempore</i> , United States Senate.	2015 - 2016
Legislative Assistant, two former U.S. Representatives. Washington, D.C.	2007 - 2009

BOOKS

Owens, Mark, Ken Wink, and Kenneth Bryant, Jr. 2022. *Battle for the Heart of Texas: Political Change in the Electorate*. Norman, OK: University of Oklahoma Press.

Bryant, Jr., Kenneth, Eric Lopez, and Mark Owens. 2020. *Game of Politics: Conflict, Power, & Representation*. Tyler, TX: The University of Texas at Tyler Press (Open Source Textbook).

ARTICLES

- 10 Howard, Nicholas O. and Mark Owens. 2022. "Organizing Staff in the U.S. Senate: The Priority of Individualism in Resource Allocation." *Congress & the Presidency* 49(1): 60-83.
- 9 Johnson, Renee M. Cassandra Crifasi, Erin M. Anderson Goodell, Arkadiusz Wiśniowski, Joseph W. Sakshaug, Johannes Thrul, and Mark Owens. 2021. "Differences in beliefs about COVID-19 by gun ownership: A cross-sectional survey of Texas adults." *BMJ Open* 11(11): 1-7.
- 8 Goldmann, Emily, Daniel Hagen, Estelle El Khoury, Mark Owens, Supriya Misra, and Johannes Thrul. 2021. "An examination of racial/ethnic differences in mental health during COVID-19 pandemic in the U.S. South." *Journal of Affective Disorders* 295(1): 471-478.

- 7 Owens, Mark. 2021. "Changes in Attitudes, Nothing Remains Quite the Same: Absentee Voting and Public Health." *Social Science Quarterly* 102(4): 1349-1360.
- 6 Johnson, Renee M. and Mark Owens 2020. "Emergency Response, Public Behavior, and the Effectiveness of Texas Counties in a Pandemic." *Journal of Political Institutions & Political Economy* 1(4): 615-630.
- 5 Howard, Nicholas O. and Mark Owens. 2020. "Circumventing Legislative Committees: Use of Rule XIV in the U.S. Senate." *Legislative Studies Quarterly* 45(3): 495-526.
- 4 Madonna, Anthony J., Michael Lynch, Mark Owens and Ryan Williamson. 2018. "The Vice President in the U.S. Senate: Examining the Consequences of Institutional Design." *Congress & The Presidency* 45(2): 145-165.
- 3 Owens, Mark. 2018. "Changing Senate Norms: Judicial Confirmations in a Nuclear Age." *PS: Political Science and Politics* 51(1): 119-123.
- 2 Carson, Jamie L., Anthony J. Madonna, and Mark Owens 2016. "Regulating the Floor: Tabling Motions in the U.S. Senate, 1865-1946." *American Politics Research* 44(1): 56-80.
- 1 Carson, Jamie L., Anthony J. Madonna, and Mark Owens 2013. "Partisan Efficiency in an Open-Rule Setting: The Amending Process in the U.S. Senate, 1865-1945." *Congress & The Presidency* 40(2): 105-128.

BOOK CHAPTERS

- 2 McWhorter, Rochell, Mark Owens, Jessie Rueter, Joanna Neel, and Gina Doepker. 2020. "Examining Adult Learning of 'Giving Back' Initiatives." In *Handbook of Research on Adult Learning in Higher Education*. Hershey, PA: IGI Publishers. With Rochell McWhorter, Jessie Rueter, Joanna Neel, and Gina Doepker.
 Reprinted in 2021 by Information Resources Management Association (Ed.), in *Research Anthology on Adult Education and the Development of Lifelong Learners* (pp. 1039-1066). IGI Global.
- 1 Carson, Jamie L. and Mark Owens. 2015. "Lawmaking." In Robert A. Scott and Stephen M. Kosslyn, eds. *Emerging Trends in the Social and Behavioral Sciences*. New York: Wiley.

BOOK REVIEWS

- Owens, Mark. 2023. "Johnson, Marc. Tuesday Night Massacre: Four Senate Elections and the Radicalization of the Republican Party." *Great Plains Research*. **Forthcoming**.
- Owens, Mark. 2021. "Lewallen, Johnathan. Committees and the Decline of Lawmaking in Congress." *Congress & the Presidency* 48(3): 404-406.

AWARDS

Burns "Bud" Roper Fellow. American Association of Public Opinion Researchers.	2021
Prestige Impact Award, Dean of the College of Arts & Sciences at UT Tyler.	2019
Outstanding Faculty Mentor Award, UT Tyler Office of the Provost.	2019
Teaching and Learning Award, UT Tyler Center for Excellence in Teaching and Learning.	2018

Community Engaged Learning Award, Harvard Center at Bates College.	2015
Outstanding Teaching Assistant Award, University of Georgia Provost.	2013
Charles S. Bullock, III Scholar, UGA School of Public and International Affairs.	2009

GRANT & CONTRACT SUPPORT

10. Texas Vaccine Hesitancy Survey, (Co-Investigator & PI for Subaward). 2022. PI's: Paul McGaha (UT Tyler HSC) & Paula Cuccaro (UT SPH-Houston) PI of \$1.3 million subaward: Mark Owens (UT Tyler). Scope of Survey: Statewide survey of hard to reach respondents (Apr. to Nov.). Funded by: Texas State Department of Health and Human Service.	\$2.6 million
9. El Paso County Social Survey, (Investigator). 2022. PI: Gregory Schober, UTEP Scope of Survey: Countywide survey, oversampling low-income households (May-July) Funded by: University of Texas at El Paso (UTEP).	\$46,200
8. Southern Cities Survey, (Co-PI). 2020. PI's: Emily Goldmann (NYU) & Mark Owens Scope of Survey: Sample of 5 major Southern Metropolitan areas in May. Funded by: UT Tyler & New York University School of Global Health.	\$12,000
7. Small Grant, Center for Effective Lawmaking (Co-PI). 2020. PI's: Mark Owens & Nicholas Howard (Auburn-Montgomery) Scope of Work: Content Analysis of all Senate committee reports, 1985-2020. Funded by: UVA & Vanderbilt.	\$2,300
6. Texas Mental Health Survey, (Co-PI). 2020 PI's: Renee Johnson (JHU) & Mark Owens Scope of Survey: Three wave statewide panel (April, May, & June) Funded by: UT Tyler & Johns Hopkins Bloomberg School of Public Health	\$45,000
5. East Texas Survey on Education & Property Tax Reform, (Co-PI). 2019 PI's: Kyle Gullings (UT Tyler) & Mark Owens Scope of Work: Regional sample to compare East Texas to DFW and Houston. Funded by: UT Tyler	\$10,000
4. Faculty Undergraduate Research Grant, (PI) Studying Vote Centers in Texas. 2018. Scope of Work: Mentor undergraduates to gather data and submit FOIA requests. Funded by: UT Tyler Office of Research and Scholarship.	\$3,000
3. Congressional Research Grant, (PI) Bicameralism's Effect on Appropriations. 2015. Scope of Work: Archival visits to Concord, Tempe, and Washington, D.C. Funded by: The Dirksen Congressional Center.	\$3,133
2. Faculty Development Grant, (PI) Majority Party Power in a Bicameral Congress. 2015. Scope of Work: Mentor undergraduate researchers to analyze archived documents. Funded by: Office of the Dean of Faculty at Bates College.	\$2,575
1. Richard Baker Award, (PI) Majority Party Power in a Bicameral Congress. 2011. Scope of Work: Archival visits to Austin, TX and Washington, D.C.. Funded by: Association of Centers for the Study of Congress.	\$1,000

COMMENTARY

Owens, Mark. "Why our poll got it wrong on Biden but right on so much more." *Dallas Morning News*. Sunday November 15, 2020. Page, 5P.

Howard, Nicholas O. and Mark Owens. "Are Amendment Strategies Learned Through Experience or Contingent on the Institution?" *LegBranch*. May 27, 2019.

Bryant, Jr. Kenneth, Ken Wink, and Mark Owens. "Conflicting Attitudes of Texans on Wall and Border Policies." *Austin American-Statesman*. March 11, 2019.

Owens, Mark. "Are Courtesy Meetings Nuked?" *LegBranch*. July 10, 2018.

Owens, Mark. "East Texans support Trump, but at lower levels than 2012." *Tribtalk: Texas Tribune*. November 8, 2016.

INVITED TALKS

League of Women Voters, Tyler/Smith County	"Policies in Texas's Legislative Session"	2023
Dallas Democratic Forum	"Battle for the Heart of Texas"	2022
Southern Methodist University, Tower Center	"Battle for the Heart of Texas"	2022
East Texas Heritage Museum Association	"Polls in Today's Elections"	2022
League of Women Voters, Houston	"Battle for the Heart of Texas"	2022
Texas A&M San Antonio	"Public Attitudes on Equity and Inclusivity"	2022
Delta Sigma Theta Sorority, Tyler Alumnae	"Social Action & Election Education"	2022
League of Women Voters, Tyler/Smith County	"Your options under TX's new Election Law"	2022
Texas Associated Press Managing Editors	"Texas Politics Panel"	2021
League of Women Voters, Oklahoma	"All about Redistricting."	2021
League of Women Voters, Tyler/Smith County	"Essential Conversation on Voting in Texas"	2021
League of Women Voters, Oklahoma	"Representation & Redistricting"	2021
Kilgore College	"Why We Poll Texans"	2020
Smith County Republican Women Club	"Understanding the 2020 Election Polls"	2020
League of Women Voters, Tyler/Smith County	"Processes of the Electoral College"	2020
Kilgore College	"What Primary Voters in Texas Care About"	2019
League of Women Voters, Tyler/Smith County	"Census & Redistricting Forum"	2019
Tyler Area Chamber of Commerce	"Public Input on Transportation"	2019
League of Women Voters, Tyler/Smith County	"Representation & Redistricting"	2018
Bates College, Martin Luther King, Jr Day	"Legacy of the Voting Rights Act of 1965"	2015
Rothemere American Institute, Oxford, UK	"Effect of Bicameralism on Policy"	2013

CONFERENCE PRESENTATIONS

Hofstra University Presidential Conference on Barack Obama's Presidency	2023
The Citadel Symposium on Southern Politics	2014 - 2022
Congress & History Conference	2012, 2016, 2018
Election Science, Reform, and Administration Conference	2020
American Association of Public Opinion Researchers Meeting	2020, 2021, 2023
American Political Science Association Meeting	2011 - 2016, 2020
Midwest Political Science Association Meeting	2011 - 2018, 2023
Southern Political Science Association Meeting	2011 - 2014, 2017 - 2023
Southwest Social Science Association Annual Meeting	2017, 2021

PROFESSIONAL SERVICE

Book Review Editor. <i>Public Opinion Quarterly</i> .	2023 - 2024
Co-Chair. Election Sciences Conference within a Conference at SPSA, San Antonio, TX.	2022
Speaker: AAPOR Send-a-Speaker Program.	2020 - 2021
Field of Study Advisory Committee. <i>Texas Higher Education Coordinating Board</i> .	2018 - 2021
Co-Editor. <i>PEP Report</i> for the APSA Presidency and Executive Politics Section.	2018 - 2019
Grant Reviewer. Hurricane Resilience Research Institute (HURRI), University of Houston.	2018
Grant Reviewer. Administration on Children, Youth, and Families, US Dept. of HHS.	2007

EXTERNAL SERVICE

Expert Witness for neither party, <i>Palmer et al. v. Hobbs</i> , racially polarized voting analysis.	2022
Expert Witness for Florida's Secretary of State, <i>BVM v. Lee</i> , racially polarized voting analysis.	2022
Map Consultant for People not Politicians OK, Independent U.S. House and state district plans.	2021

TEACHING EXPERIENCE

Graduate Course	Institution	Recent Evaluation	Years Taught
Scope & Methods	UT Tyler	4.6	2017 - 2022
Seminar on American Politics	UT Tyler	4.4	2015 - 2022
Budgeting & Public Finance	UT Tyler; Reinhardt	5	2014 - 2017
Program Evaluation	UT Tyler	4.7	2018
Advanced Quantitative Research	UT Tyler	3.8	2018
Undergraduate Course			
Campaigns & Elections	UT Tyler; Bates; UGA	4.6	2013 - 2022
Congress & Legislation	UT Tyler; UGA	4.3	2013 - 2021
Research Methods	UT Tyler	4.4	2016 - 2023
Southern Politics	UT Tyler	4.6	2018 - 2023
U.S. Presidency	UT Tyler; Bates	3.9	2014 - 2017
Intro. to Texas Government (Honors)	UT Tyler	4.1	2020 - 2023
Intro. to American Government	UT Tyler; Bates; UGA	3.8	2013 - 2019

CURRENT COMMUNITY INVOLVEMENT

<i>KVUT 99.7FM UT Tyler Radio</i> (NPR), Advisory Board Member. Secretary (2022-23)	2021 - 2023
<i>League of Women Voters - Tyler/Smith County, TX</i> , Nominating Committee. Chair of Nominating Committee (2021-22)	2020 - 2022

APPENDIX 8

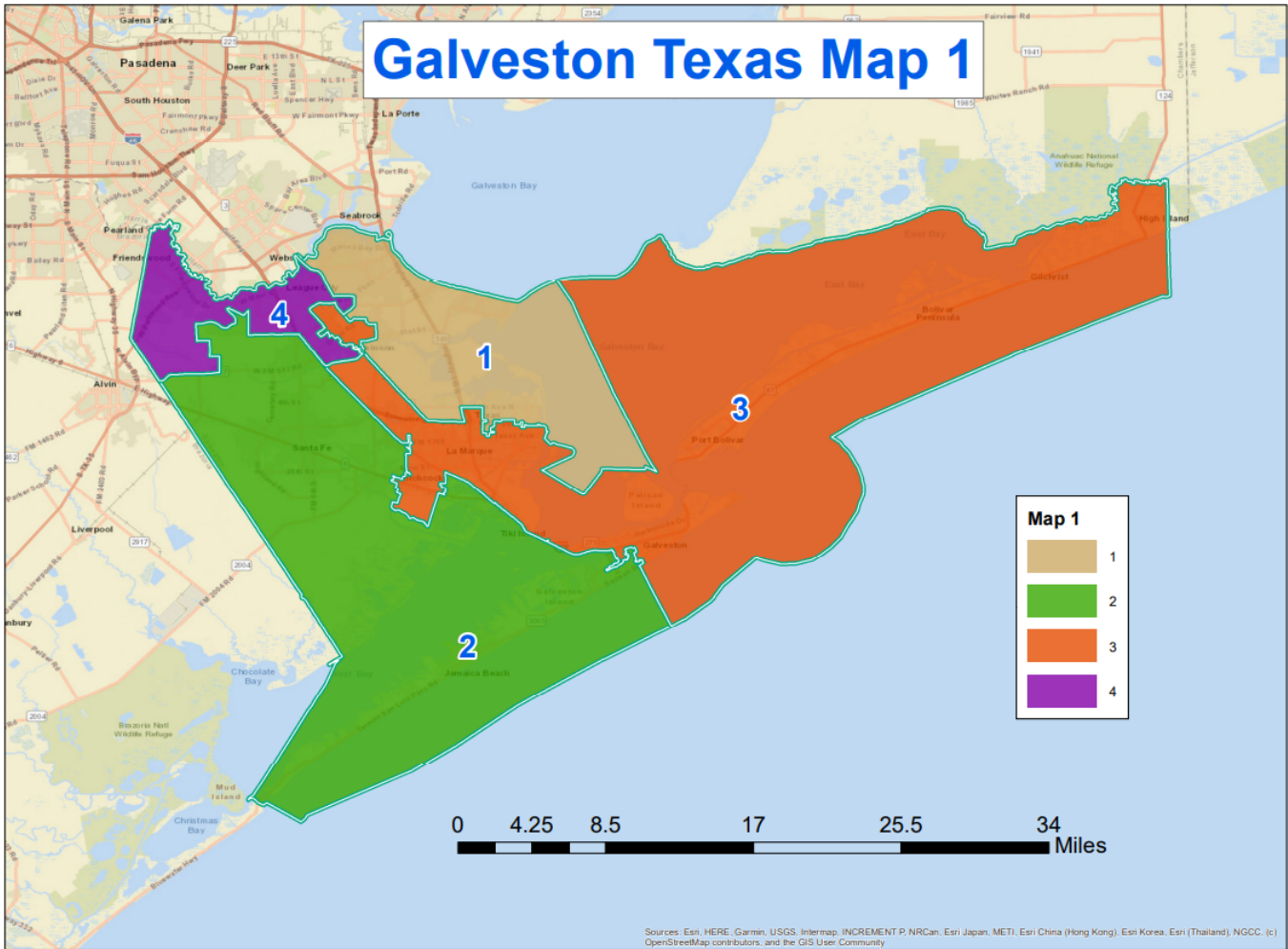
Redistricting

Galveston County Commissioners Proposed Precincts

The Galveston County Commissioners Court will be discussing and voting to redistrict county commissioner's precincts in the next few weeks. Below are the two proposed maps that will be considered. Public comment is now open for county residents via the form on this page.

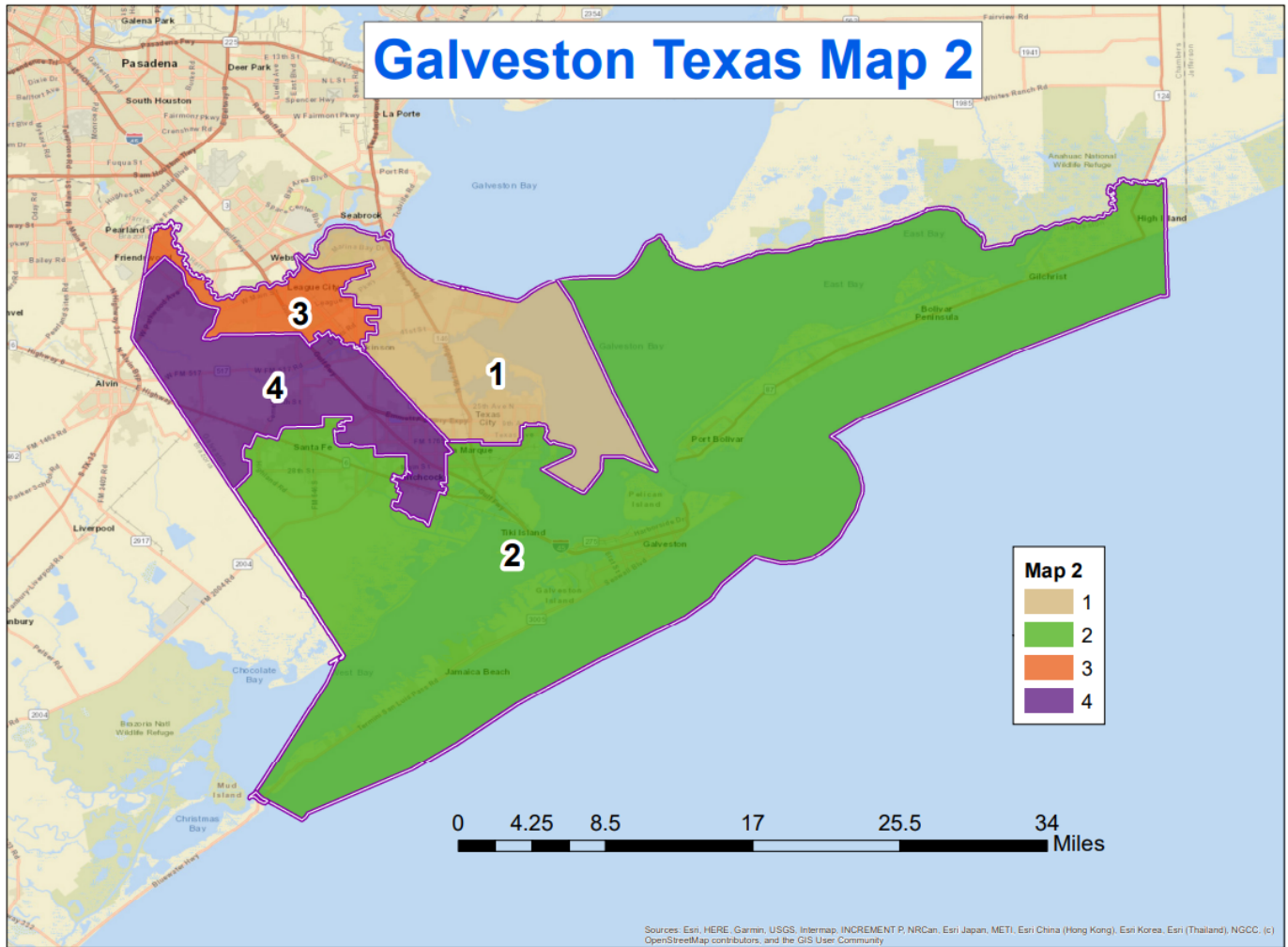
Interactive Redistricting Maps

You may click on the map to access an interactive version.



Proposed Redistricting Map 2

You may click on the map to access an interactive version.



Public Comment

Full Address

Street Number and Name

Unit Number

City

State/Province/Region

Postal/ZIP Code

Full Name

First Name

Last Name

Comment

500 Character limit

500 characters

To receive a copy of your submission, please fill out your email address below and submit.

Email Address

I'm not a robot

reCAPTCHA
[Privacy](#) - [Terms](#)

[Review](#)

[Submit](#)

APPENDIX 9

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HONORABLE TERRY § 3:22-CV-00057
PETTEWAY, ET AL §
§
V. § 9:09 A.M. TO 2:27 P.M.
§
GALVESTON COUNTY, TEXAS, §
ET AL § AUGUST 7, 2023

BENCH TRIAL
BEFORE THE HONORABLE JEFFREY V. BROWN
Day 1 of 10 Days

APPEARANCES:

FOR THE PETTEWAY PLAINTIFFS:

Mr. Mark P. Gaber
Campaign Legal Center
1101 14th Street NW
Suite 400
Washington, DC 20005
(202) 736-2200
and
Mr. Neil G. Baron
Law Office of Neil G. Baron
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League City, Texas 77573
(281) 534-2748
and
Mr. Chad W. Dunn
Brazil & Dunn
1900 Pearl Street
Austin, Texas 78705
(512) 717-9822
and
Ms. Valencia Richardson
Campaign Legal Center
1101 14th Street NW
Suite 400
Washington, DC 20002
(318) 573-8984

1 Q. Did you learn any of the demographics about Map 1?

2 A. Not really. Like I said, the only thing I know was
3 about 30 percent.

02:08:13

4 Q. Do you have any understanding as to whether or not
5 Map 1, if adopted, would elect Commissioner Holmes?

6 A. Not if they broke up Precinct 3, it couldn't.

7 Q. You don't think Map 1 here in Precinct 3 would elect
8 Commissioner Holmes?

02:08:39

9 A. Like I said, I can't see which precincts are in
10 Precinct 3.

11 Q. All right.

12 A. Because that way you will know who is voting for who.
13 Just having just a map like this without the breakdown, I
14 can't see the numbers unless somebody printed the numbers
15 out, and then that's their numbers. I'm just taking their
16 word for it.

02:08:53

17 Q. All right. And I want to make really clear. Did at
18 any --

19 A. Okay.

02:09:03

20 Q. -- time Commissioner Holmes or anybody else ever tell
21 you that he could get elected from Map 1?

22 A. No. No one ever told me that.

23 Q. Would you have expected Commissioner Holmes to have
24 told you that if it were true?

02:09:19

25 A. If it were true, but I can't say that because I don't

1 know that, because, like I said, if you do the breakdown
2 and show me the precincts, the voting precincts, then I
3 could determine who is in those precincts.

02:09:40 4 MR. NIXON: Can you pull up Defendants' Exhibit
5 Number 144, please.

6 BY MR. NIXON:

7 Q. All right. This is an e-mail from Mr. Dunn, the
8 Lawyer Dunn, to Commissioner Holmes.

02:10:08 9 MR. NIXON: And if you scroll down a little bit.
10 Keep scrolling. Right. Down one more. Go back one page,
11 please. Blow up this paragraph right here, Galveston
12 County Map 1.

13 BY MR. NIXON:

02:10:35 14 Q. I'm going to represent to you -- this is already in
15 evidence, but Lawyer Chad Dunn on November 6th, 2021, six
16 days before the vote, informed Mr. Holmes, at Mr. Holmes'
17 request, and told him, "County proposed Map 1 makes only
18 minor changes in the benchmark map. The core
19 neighborhoods within each precinct are maintained. The
02:11:10 20 population deviation in the majority-minority Precinct 3
21 is resolved by adding heavily Republican Bolivar Peninsula
22 to the west, which produces the Black CVAP in Precinct 3
23 to 32 percent, and the Black" -- or the B plus H, which
24 means Black plus Hispanic -- "CVAP to 55 percent.

02:11:36 25 However, the district appears to continue to perform for

1 Black and other minority voters."

2 Did you know that?

3 **A.** No. You are telling me that.

4 **Q.** Commissioner Holmes knew that on November 6th. Did he
02:11:50 5 tell you?

6 **A.** Personally, no.

7 **Q.** Did he tell anybody to support Map 1, to your
8 knowledge? Did you hear that?

9 **A.** No. I can't say that because I can't speak for

02:12:02 10 everyone else, but I can only speak for myself. And this
11 is the first I am hearing this.

12 **Q.** Commissioner Holmes at that meeting had every right to
13 speak. He is a commissioner. Did he say this to the
14 crowd?

02:12:19 15 **A.** I didn't hear it.

16 **Q.** Did he tell or ask any other commissioner to vote for
17 Map 1?

18 **A.** I didn't hear it.

19 **Q.** We have a recording. That's not on it. I didn't hear
02:12:30 20 it either.

21 When Commissioner Holmes spoke, what did he tell you
22 to do?

23 **A.** When he spoke at the meeting in November?

24 **Q.** Yes, ma'am.

02:12:47 25 **A.** He said that they were basically taking the

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HONORABLE TERRY § 3:22-CV-00057
PETTEWAY, ET AL §
§
V. § 9:04 A.M. TO 5:34 P.M.
§
GALVESTON COUNTY, TEXAS, §
ET AL § AUGUST 8, 2023

BENCH TRIAL
BEFORE THE HONORABLE JEFFREY V. BROWN
Day 2 of 10 Days

APPEARANCES:

FOR THE PETTEWAY PLAINTIFFS:

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Law Office of Neil G. Baron
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(512) 717-9822
and
Ms. Valencia Richardson
Campaign Legal Center
1101 14th Street NW
Suite 400
Washington, DC 20002
(318) 573-8984

1 Q. So the first time you saw the map was after the vote
2 for the map, when the maps appeared in a newspaper?

3 A. No. The first time was November 10th. That's the
4 date that's on the -- do you want to see it? That's the
5 date that's on the paper.

10:02:19

6 Q. Okay.

7 A. And I think that was before -- that was, like, two
8 days before the vote.

9 Q. Did you call Commissioner Holmes at that time and ask
10 him to -- offered your help in any way --

10:02:29

11 A. I did.

12 Q. Okay. What did he say?

13 A. He said, "Thank you. I really appreciate it."

14 Q. Did he tell you that he wanted to get Map 1 passed?

10:02:41

15 A. No. He was busy. And that's about all we talked
16 about.

17 Q. He didn't tell you that Map 1 would have re-elected
18 him?

19 A. No. We didn't talk about the maps. I just offered my
20 support, and he thanked me. And he needed to go, and I
21 needed to get back to work.

10:02:53

22 Q. Okay. Good.

23 At some point as JP, Bolivar Peninsula was in your JP
24 district?

10:03:09

25 A. Yes.

1 and I will pop my head in at some of those, yes.

2 **Q.** Do you know whether or not Hispanic voters in
3 Galveston County vote Republican more often than Black
4 voters in Galveston County?

05:27:58 5 **A.** I can't answer that because I really don't know.

6 **Q.** You are also aware that there are many different
7 cultures within the broader term "Hispanic," right?

8 **A.** You bet.

9 **Q.** And there are many different cultures within the
05:28:10 10 broader term "Hispanic" in Galveston County?

11 **A.** Yes.

12 **Q.** The statue in front of 722 Moody, the Confederate
13 statue, you recall that debate, correct?

14 **A.** Yes.

05:28:31 15 **Q.** You recall that it was not taken down, correct?

16 **A.** I don't think it was.

17 **Q.** Okay. Did you ever see the statue up-close?

18 **A.** Not really.

19 **Q.** Okay. There was a plaque on it. Do you remember ever
05:28:46 20 seeing a plaque on that statue?

21 **A.** I didn't see it up-close. So, no.

22 **Q.** Okay. So you are not aware whether or not that plaque
23 was taken down?

24 **A.** No.

05:29:00 25 **Q.** Okay. During that November 12th meeting, did

1 Commissioner Holmes ever advocate for the approval of
2 Map 1?

3 **A.** I don't remember him advocating for that map, no.

05:29:21

4 **Q.** Okay. He never said that he could still get elected
5 under Map 1, so, guys, let's do Map 1? Nothing like that?
6 He left that information out?

7 **A.** He didn't say anything like that at that meeting, no.

8 **Q.** Okay. I think this might be the last question.
9 Famous last words.

05:29:49

10 But you said that the assistant who was at the meeting
11 who was handing out agendas, she only had, like, 25 of
12 them?

13 **A.** Maybe. I didn't count them, but there were few.

05:30:01

14 **Q.** You don't know whether or not she went back, printed
15 some more out, handed them out in the hallway? You just
16 don't know?

17 **A.** I don't know. She didn't come back where I was
18 passing anything out.

05:30:10

19 **Q.** You don't know why Commissioner Holmes was sitting at
20 the table?

21 **A.** I guess he just chose to sit down.

22 **Q.** I mean, you remember at the meeting he said, "They
23 didn't make me sit down here," right?

24 **A.** I'm sorry?

05:30:18

25 **Q.** Do you remember when he said that at the meeting,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HONORABLE TERRY § 3:22-CV-00057
PETTEWAY, ET AL §
§
V. § 9:01 A.M. TO 6:17 P.M.
§
GALVESTON COUNTY, TEXAS, §
ET AL § AUGUST 15, 2023

BENCH TRIAL
BEFORE THE HONORABLE JEFFREY V. BROWN
Day 7 of 10 Days

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1 Q. I asked if -- we're just talking about Map 1. Did you
2 tell any of your constituents that Map 1 would elect a
3 candidate of their choice?

12:51:29

4 A. That's not what Map 1 says. That's not what he says.
5 It says it appears. It does not say it does. It says
6 "appears." It doesn't say it does.

7 Q. Listen, I don't have -- I don't have a problem with
8 that position. I understand that.

12:51:50

9 Did you tell anybody that Map 1 appears to be able to
10 elect a candidate of their choice?

11 A. No.

12 Q. Okay. Thank you, sir.

13 MR. NIXON: Let's put up DX-120, please.

14 BY MR. NIXON:

12:52:19

15 Q. Okay. This is an e-mail from Roxy Hall to several
16 people, including you. Do you see that?

17 A. I am actually looking for my name.

18 Q. It's in the "to"?

19 A. In the "to"?

12:52:52

20 Q. To. And then it's got -- yeah. There you go. There
21 you go. Do you see it? It's highlighted?

22 A. Yeah. Okay. Yeah. Yes.

23 Q. Okay. It talks about you speaking at a redistricting
24 event in Galveston County, it looks like, on November 3rd
25 or 4th.

12:53:12

Laura Wells, RPR, RMR, CRR, RDR

1 in attendance spoke against both Map 1 and Map 2 --

2 **A.** Yes.

3 **Q.** -- do you recall that?

4 **A.** Yes.

03:37:38

5 **Q.** Would you say that's -- most of the comments were
6 that, right?

7 **A.** I don't recall the breakout now. There were many
8 people that said we should just start all over again.

03:37:52

9 **Q.** Really, there was no advocacy for either one of the
10 maps for most of the speakers. Would you agree with that?

11 **A.** That, I don't recall. I would have to go back and
12 watch the video again.

03:38:03

13 **Q.** Prior to attending -- going -- attending the meeting,
14 did you have an opportunity to review the comments that
15 y'all had collected?

16 **A.** Yes.

17 **Q.** And what did you glean from those?

18 **A.** I read it into the record at the end of the meeting.
19 As I recall, it was 2:1, favoring Map 2 over Map 1.

03:38:15

20 **Q.** Okay. And Map 2 -- or Map 2 was the coastal precinct
21 map?

22 **A.** Correct.

23 **Q.** And Map 1 was the minimum change?

24 **A.** Right.

03:38:26

25 **Q.** Now, do you recall at the end of the meeting

1 had been the opposite, if it had been 2:1 for Map 1 over
2 Map 2, that would have been very hard to move along.

03:42:53

3 **Q.** Okay. And what about the discussion that was actually
4 ongoing during the meeting? Do you think that could have
5 changed your mind?

6 **A.** Sure. I mean, I wanted to hear a reason and argument
7 as to why Map 1 would be a better map. That's what I
8 wanted to hear from folks.

03:43:08

9 **Q.** Well, did you ever -- I mean, you thought about
10 whether -- if Commissioner Holmes had asked you to
11 consider Map 1, would you have?

12 **A.** If Commissioner Holmes had asked me to consider Map 1?
13 I would have a hard time telling him no. He has never
14 asked me for a thing in 12 years.

03:43:30

15 **Q.** But did he ask?

16 **A.** He did not ask.

17 **Q.** Did y'all get the maps submitted to the State of Texas
18 timely?

19 **A.** We did.

03:43:56

20 **Q.** At the time that you voted for Map 2, was it your
21 intention to discriminate against either Commissioner
22 Holmes or the public in any way?

23 **A.** No.

03:44:33

24 **Q.** Up until the voting and after, had you given much
25 consideration to the racial breakdown within any of the

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HONORABLE TERRY § 3:22-CV-00057
PETTEWAY, ET AL §
§
V. § 8:33 A.M. TO 5:24 P.M.
§
GALVESTON COUNTY, TEXAS, §
ET AL § AUGUST 16, 2023

BENCH TRIAL
BEFORE THE HONORABLE JEFFREY V. BROWN
Day 8 of 10 Days

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1 say we hit the date exactly, but it would have been close.

2 **Q.** Okay. And to your recollection, what was the result
3 of the preclearance letters sent to the Department of
4 Justice?

08:38:49

5 **A.** Well, the first preclearance letter, prior to the date
6 of having to file an answer on the DCDC case, the
7 Department of Justice filed an objection to preclearance
8 on the Galveston County Commission plan.

08:39:13

9 **Q.** Okay. And do you recall the -- that being around
10 March of 2012?

11 **A.** That would probably be about right.

12 **Q.** All right. And then what happened next?

13 **A.** Well, at that time, we began to negotiate with DOJ to
14 see what could be done in order to obtain a preclearance.

08:39:34

15 **Q.** Okay. And did the Department of Justice come down to
16 Galveston to work on those details?

17 **A.** They did. As a matter of fact, we conducted the
18 negotiations in a room in the county courthouse that was
19 just over the lobby. I remember it because it had this
20 big window right out there, and I was staring at the DOJ
21 people on the other side of the table, straight out that
22 window.

08:39:49

23 **Q.** And so were y'all able to resolve the matter with the
24 Department of Justice?

08:40:04

25 **A.** We were.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HONORABLE TERRY § 3:22-CV-00057
PETTEWAY, ET AL §
§
V. § 8:31 A.M. TO 5:54 P.M.
§
GALVESTON COUNTY, TEXAS, §
ET AL § AUGUST 17, 2023

BENCH TRIAL
BEFORE THE HONORABLE JEFFREY V. BROWN
Day 9 of 10 Days

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Laura Wells, RPR, RMR, CRR, RDR

1 know that he doesn't that can comment on it.

2 **Q.** At what point in time did you start to think about one
3 map more than the other?

10:31:52

4 **A.** When the idea started going around about a coastal
5 precinct, me being a coastal guy, I kind of liked that
6 idea of a coastal precinct because the issues are pretty
7 similar for Bolivar Peninsula, the unincorporated area, to
8 Galveston Island.

10:32:08

9 **Q.** At any point before the meeting on November 12th, are
10 you aware of Commissioner Holmes ever advocating for the
11 adoption of Map 1?

12 **A.** No.

13 **Q.** To your knowledge, was Commissioner Holmes excluded
14 from the redistricting process?

10:32:22

15 **A.** No.

16 **Q.** Were you having communications with other
17 commissioners behind the scenes and leaving him out?

18 **A.** No.

19 **Q.** Are you aware of that happening?

10:32:30

20 **A.** No.

21 **Q.** Do you know how big Bolivar's -- Bolivar Peninsula's
22 voting population is?

23 **A.** I'm not sure.

24 **Q.** In comparison with the rest of your precinct, is it
25 big? Little? Medium?

10:32:44

1 **A.** Still do.

2 **Q.** And, ultimately, you did vote to adopt Map 2, right?

3 **A.** Yes.

4 **Q.** At what point did you make up your mind that Map 2 was
5 the better map for you?

04:56:05

6 **A.** Well, when Stephen Holmes offered no solutions or
7 modifications, I thought that the coastal district was a
8 great idea, especially since it was 20 miles of that had
9 been my baby.

04:56:30

10 **Q.** And were there any other reasons for voting for Map 2?

11 **A.** I mean, no. Just that's it.

12 **Q.** We have already discussed that up until the time that
13 the motion had been made and seconded, did Commissioner
14 Holmes ever ask you to support Map 1?

04:56:55

15 **A.** No. He did not.

16 **Q.** Did he ever discuss with you that it might elect him
17 and keep his Precinct 3 as much intact as possible really?
18 Did you ever have that discussion?

19 **A.** Well, I mean, I believe we had that --

04:57:15

20 **Q.** Did Commissioner Holmes ever have that discussion with
21 you?

22 **A.** No.

23 **Q.** Never shared any other maps with you?

24 **A.** Never.

04:57:25

25 **Q.** Have you had a chance to think about what might have

Galveston County, Texas

COMMISSIONERS COURT SPECIAL SESSION

November 12, 2021

Available at:

<https://livestream.com/accounts/21068106/events/6315620/videos/227296657>

AUDIO TRANSCRIPTION

LENGTH OF AUDIO FILE: 1:36:31

MAGNA LEGAL SERVICES

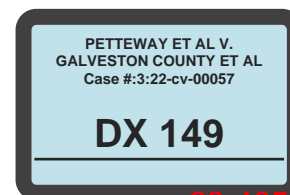
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Reported by: Marissa Mignano

Job Number: 876364



23-40582.21043

1 Proceedings

2 Commissioner Apffel for his support of
3 Bolivar Peninsula of the last few years.
4 We may be small, but, you know, we're
5 getting big enough that we do have a lot
6 of problems. Thank y'all very much.

7 COUNTY JUDGE HENRY: Okay. That's
8 all we have for --

9 UNKNOWN SPEAKER: Did you sign up
10 as well?

11 Okay. That's all we have for
12 public comment.

13 COUNTY JUDGE HENRY: Before we get
14 to the next part, I would like to let
15 everyone know we did online questions
16 and people responded. 430 440 total
17 responses as of about 12:30 this
18 afternoon. These are open to reporters,
19 open records request, of course. If you
20 want to call, just make sure that, you
21 know, this is as of 12:30, if any had
22 come in since then I wouldn't know about
23 them.

24 Of the 440 that came in, 168 did
25 not discuss a particular map, they just

1 Proceedings
2 called me names, mostly. Of the people
3 who did choose a map preference, Map 1
4 was -- received 64 responses. Map 2
5 received 208 responses. So of those
6 responding to a particular map, 76.4,
7 Map 2. 23.5, Map 1.

8 With that, I'm going to make the
9 motion to approve Map 2.

10 COMMISSIONER APFFEL: I second the
11 motion.

12 COUNTY JUDGE HENRY: I have a
13 second.

14 There's discussion.

15 Commissioner Holmes, I believe you
16 have something to --

17 COMMISSIONER HOLMES: Yeah, I have
18 some discussion, Judge, if I may.

19 First of all, let me say -- first
20 of all, thank you, everybody for coming.
21 I didn't personally call anybody or ask
22 anybody to come down here, but certainly
23 for your comments -- I'm certainly
24 overwhelmed at the number of people that
25 showed up and support I certainly

APPENDIX 10

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

DICKINSON BAY AREA BRANCH	§	
NAACP, et al.,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. 3:22-cv-117- JVB
	§	
GALVESTON COUNTY, TEXAS, et al.,	§	
	§	
<i>Defendants.</i>	§	

TERRY PETTEWAY, et al.,	§	
	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. 3:22-cv-57-JVB
	§	[Lead Consolidated Case]
	§	
GALVESTON COUNTY, TEXAS, et al.	§	
	§	
<i>Defendants.</i>	§	

UNITED STATES OF AMERICA,	§	
	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. 3:22-cv-93-JVB
	§	
	§	
GALVESTON COUNTY, TEXAS, et al.	§	
	§	
<i>Defendants.</i>	§	

EXPERT DECLARATION AND REPORT OF WILLIAM S. COOPER

JANUARY 13, 2023



Figure 2: Galveston County – 2000-2020 Voting Age Population & Estimated Citizen Voting Age Population by Race and Ethnicity⁸

	2000 VAP	2000 VAP Percent	2010 VAP	2010 VAP Percent	2020 VAP	2020 VAP Percent	2006-2010 CVAP Percent	2016-2020 CVAP Percent
Total 18+	183,289	100.00%	217,142	100.00%	267,382	100.00%	100.00%	100.00%
NH White 18+	121,028	66.03%	136,259	62.75%	155,020	57.98%	67.40%	63.29%
Total Minority 18+	62,261	33.97%	80,883	37.25%	112,362	42.02%	32.60%	36.71%
Latino 18+	29,292	15.98%	42,649	19.64%	60,159	22.50%	14.84%	19.20%
NH Black 18+	26,549	14.48%	28,423	13.09%	32,289	12.08%	14.31%	12.75%
NH Black + Latino 18+	55,841	30.46%	71,072	32.73%	88,582	33.13%	29.15%	31.95%
NH DOJ Black 18+	26,655	14.54%	28,716	13.22%	33,341	12.47%	14.62%	12.83%
NH AP Black 18+					33,972	12.71%		
NH DOJ Black 18+Latino 18+	55,947	30.52%	71,365	32.86%	93,500	34.97%	29.46%	32.03%
NH AP Black 18+ Latino 18+					94,131	35.21%		

32. According to estimates from the 5-Year 2016-2020 ACS (rightmost column of Figure 2), of the countywide CVAP, African Americans account for 12.83% (NH DOJ BCVAP), Latinos 19.20%, and NH Whites 63.29%. The combined Black/Latino CVAP is 32.03%.

33. The Black/Latino CVAP percentage in Galveston County is poised to go up this decade. According to the 2016-2020 Special Tabulation, Black citizens of *all* ages represent 13.67% (NH DOJ Black) of all citizens and Latino citizens of *all* ages represent 22.21% of all citizens. The combined Black/Latino citizen population is 35.88% of all citizens, over 2 percentage points more than the CVAP. This suggests that there will be an increase in the percentage of Black/Latino CVAP as younger individuals in these groups reach the age of 18.

34. An ongoing uptick in minority CVAP is already reflected in the 1-Year 2021 ACS, which estimates that the countywide Latino CVAP stands at 21% and the NH White CVAP has

⁸ Sources: PL94-171 Redistricting File (Census 2020) and 2016-2020 ACS Special Tabulation.

APPENDIX 11

No. 23-40582

**United States Court of Appeals
for the Fifth Circuit**

Honorable Terry Petteway; Honorable Derrick Rose; Honorable Penny Pope,
Plaintiffs-Appellees

v.

Galveston County, Texas; Mark Henry, *in His Official Capacity as Galveston County Judge*; Dwight D. Sullivan, *in his official capacity as Galveston County Clerk*
Defendants-Appellants

United States of America,

Plaintiff-Appellee

v.

Galveston County, Texas; Galveston County Commissioners Court; Mark Henry, *in his official capacity as Galveston County Judge*
Defendants-Appellants

Dickinson Bay Area Branch NAACP; Galveston Branch NAACP; Mainland Branch NAACP; Galveston LULAC Council 151; Edna Courville; Joe A. Compian; Leon Phillips,

Plaintiffs-Appellees

v.

Galveston County, Texas; Mark Henry, *in his official capacity as Galveston County Judge*; Dwight D. Sullivan, *in his official capacity as Galveston County Clerk*,
Defendants-Appellants

On appeal from the United States District Court
for the Southern District of Texas
USDC Nos. 3:22-CV-00057, 3:22-CV-00093, 3:22-CV-00117

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of 5th CIR Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument is set for November 7, 2023 at 9:00 a.m. *Petteway* Appellees intend to participate at oral argument.

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STATEMENT OF ISSUES

1. Whether the district court was correct to follow binding *en banc* Circuit precedent authorizing coalition claims under Section 2 of the Voting Rights Act.
2. Whether the district court did not clearly err in concluding that the first *Gingles* precondition was satisfied because the evidence showed that Black and Latino voters were sufficiently numerous and geographically compact to comprise the majority of eligible voters in a reasonably configured alternative precinct.
3. Whether the district court’s decision to afford less weight to primary elections than to general elections in assessing the second *Gingles* precondition—which all parties’ experts agreed it should—was not clearly erroneous and whether the district court’s factual findings that race explained voting patterns in Galveston County were not clearly erroneous.
4. Whether the district court correctly concluded that Section 2 is not unconstitutional because the County contends it lacks “temporal limits.”

INTRODUCTION

Judge Jeffrey Vincent Brown presided over a two-week trial and, in a carefully reasoned 157-page opinion, observed that

[t]his is not a typical redistricting case. What happened here was stark and jarring. The commissioners court transformed Precinct 3 from the precinct with the highest percentage of Black and Latino residents to that with the lowest percentage. The circumstances and effect of the enacted plan were mean-spirited and egregious given that there was absolutely no reason to make major changes to Precinct 3. Looking at the totality of the circumstances, it was a clear violation of §2 of the Voting Rights Act. And it must be overturned.

ROA.16029 (internal quotation marks and citation omitted). Later, the Court observed that it was “stunning how completely the county extinguished the Black and Latino communities’ voice on its commissioners court during 2021’s redistricting.” ROA.16028.

Although the district court’s Section 2 ruling rendered it unnecessary for it to formally decide Plaintiffs’ intentional discrimination claim, the court’s lengthy factual findings under the *Arlington Heights* intentional discrimination framework illustrate in detail why the district court found the circumstances of this case “[a]typical,” “stark,” “jarring,” “mean-spirited,” “egregious,” and “stunning.”

The County challenges none of these factual findings. Nor could it. Instead, it has presented an “emergency” appeal and sought a stay of the district court’s injunction because it disagrees with *en banc* precedent that has been the settled, binding law of this Circuit for over three decades. The County announced in its brief

that it intends to devote its oral argument time to this issue—despite this Circuit’s rule of orderliness that forecloses the relief the County seeks.

The County’s claim of irreparable harm in its stay motion is deeply ironic. The district court’s injunction permits the County to use its *own* map—Map 1—as the remedy in this case. The County’s entire theory of the case at trial was that it was *Commissioner Holmes’s* fault that Map 1 was not adopted because a majority of the commissioners would have apparently approved it if only Commissioner Holmes had sufficiently lobbied them. *See, e.g.*, ROA.16149-16150, 18317, 18579-18580, 18581, 18597, 18681, 18950-18951, 19578. The County cannot claim harm from a map that it drew, says is lawful, and contends would have become law if only the sole Black commissioner had lobbied his white colleagues more fervently not to enact a discriminatory map.

The district court’s decision should be expeditiously affirmed and the County’s stay motion denied. A case involving a “jarring,” “mean-spirited,” and “egregious” “extinguish[ment]” of minority voting rights is a particularly poor vehicle for the County’s campaign to upend three decades of settled precedent.

STATEMENT OF THE CASE

I. Factual Background

Between 2010 and 2020, Galveston County’s total population increased by more than 20 percent, with the Black total population increasing from 39,229 to

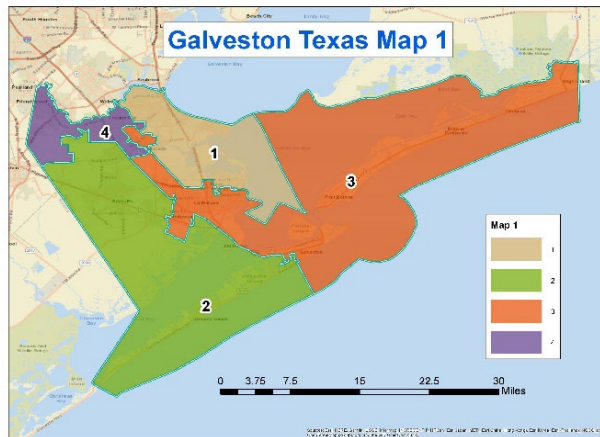
43,120 and the Latino total population increasing from 65,270 to 88,636. ROA.8168. As a result of substantial growth in the County’s minority population, the white share of the County’s total population fell from 59.3 percent in 2010 to 54.6 percent in 2020. ROA.8167. According to the 2020 Census, Galveston County now has a total population of 350,682—54.6 percent white, 25.3 percent Latino, and 13.3 percent Black, with the combined Black and Latino population representing approximately 38.6 percent of the countywide population. ROA.8167. In addition to a shift in demographics, the 2020 Census revealed population imbalances among the Galveston County Commissioners Court precincts. ROA.8168.

Commissioner Precinct 3, which historically covered portions of Dickinson, La Marque, Texas City, and the city of Galveston, existed as the only majority-minority Commissioners Court precinct in Galveston County for thirty years—from 1991 to 2021. ROA.15911 (citing ROA.35188, 35252-35253). As the district court recognized, “[t]he historic core of Precinct 3 was the product of advocacy by Black and Latino activists to create a majority-minority precinct in which they could elect a candidate of choice in the 1991 redistricting cycle,” and “[o]ver time, Precinct 3 became an important political homebase for Black and Latino residents.” ROA.15911 (citing ROA.35251-35256); *see also* ROA.15950. While Black and Latino voters’ candidate of choice “was always a lonely voice on the court,” the very presence of that commissioner ““meant that ‘minority voices [were] heard in a

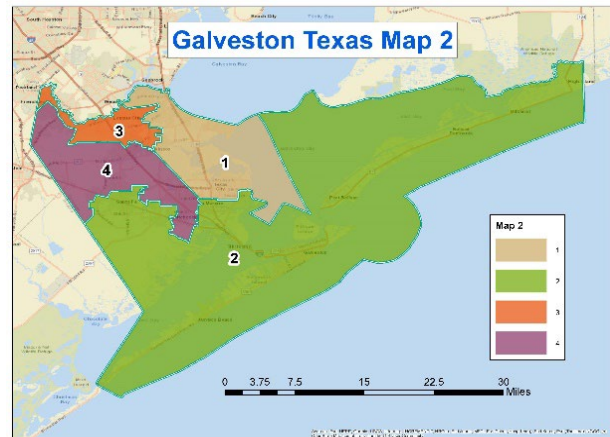
meaningful way.” ROA.16028 (quoting *Johnson v. Waller Cnty.*, 593 F. Supp. 3d 540, 608 (S.D. Tex. 2022)). By 2020, the citizen voting age population (“CVAP”) of Precinct 3 in the Benchmark Plan—the plan used for Commissioners Court elections from 2012 to 2021—was 58.31 percent Black and Latino. ROA.15911 (citing ROA.35193).

During the 2021 redistricting process, the Commissioners Court proposed two redistricting maps to the public on October 29, 2021. ROA.15960. The first proposal, Map 1, largely maintained the same lines as the Benchmark Plan, but added the Bolivar Peninsular to Commissioner Precinct 3. Under this proposal—which Defendants’ legal consultant, Dale Oldham, testified was legally defensible and had been drawn without consideration of race—Precinct 3 would have retained its status as a majority-minority precinct, and Black and Latino voters would have constituted over 55 percent of the precinct’s CVAP. ROA.15912. At trial, the County contended

the Commissioners Court would have adopted Map 1 had Commissioner Holmes advocated more aggressively for it. *See, e.g.*, ROA.16149-16150.



Proposed Map 1



Proposed Map 2 (Enacted Plan)

The second proposal, Map 2 (“Enacted Plan”), which was ultimately adopted, dismantled Precinct 3 and fragmented Galveston County’s minority population evenly among all four precincts. *See, e.g.*, ROA.16028 (explaining that the Enacted Plan “summarily carved up and wiped off the map” historic Precinct 3). As the district court explained, “after the 2021 redistricting, Precinct 3 now includes the lowest Black and Latino CVAP proportion of any precinct—about 28%—and the Black and Latino population is evenly distributed throughout the remaining precincts—with each one containing a range of 32% to 35% Black and Latino CVAP.” ROA.15938 (citation omitted). The Enacted Plan thus ensured that “minority voters have been subsumed in majority-Anglo precincts in a county with legally significant racially polarized voting,” such that “Black and Latino voters, as

a coalition of like-minded citizens with shared concerns [are] . . . ‘shut out of the process altogether.’” ROA.15887, 16028 (citation omitted).

The Enacted Plan enables the County’s white majority to vote together to block the growing minority community from electing its preferred candidates. In most recent general elections, “over 85% of Anglos across Galveston County voted for candidates running against the minority-preferred candidates” and “[s]imilarly high levels of bloc voting are present at the individual-precinct level in the enacted commissioners precincts.” ROA.15933. Under the Enacted Plan, Anglo bloc voting will defeat the candidate of choice of Black and Latino voters “in every election in every commissioners precinct.” ROA.15932.

Black and Latino voters in Galveston County likewise demonstrate a high level of political cohesion, based on a long history of shared political and social interests. *See, e.g.*, ROA.16016 (concluding that “there are distinctive minority interests that tie the two communities together”). Indeed, undisputed evidence from Plaintiffs’ experts shows that, on average, 85 percent of Black and Latino voters have voted for the same candidate countywide and within the illustrative Precinct 3 plans offered by Plaintiffs, and most Black and Latino voters have separately voted for the same candidate in almost all general elections. ROA.15925. Further, both Plaintiffs’ and the County’s experts agreed that Black and Latino voters support the same candidate in primary contests. *See* ROA.15929 (noting that even primary elections

“show a steady presence of inter-group cohesion between Black and Latino voters,” with Black and Latino voters voting cohesively in nine out of ten primary elections studied, and “[b]etween Drs. Oskooii and Alford, the analyzed results show that Blacks and Latinos usually support the same top-choice candidate in primary contests.”). Accordingly, as the district court recognized, there is a direct relationship “between a precinct’s demographic composition and a specific candidate’s likelihood of success in any given election”: “[a]s the minority percentage moves up or down, the performance of minority-preferred candidates moves in direct proportion.” ROA.15933.

Galveston County’s Enacted Plan thus impedes minority voters’ effective participation and representation in the political process. Indeed, from Galveston County’s founding in 1838, it took 133 years before a Latino candidate—the only Latino ever to serve—was elected to the Commissioners Court, and it took 150 years before a Black candidate won a seat. ROA.16028. As the district court recognized, the dearth of minority representation on the Commissioners Court is connected to Galveston County’s long history of racial discrimination, which extends to voting and redistricting in particular, and persists today in the form of: contemporary barriers to voting that weigh more heavily on Black and Latino voters; a continued lack of electoral success for minority candidates; unresponsiveness by Galveston County officials to the needs of the minority community; racial appeals in recent

local political campaigns; and enduring discrimination and racial disparities in areas including education, income, employment, housing, and public health. *See* ROA.15940-15947, 15982-16000, 16023-16026. Lasting negative effects of these conditions, in turn, have contributed to the minority community’s disproportionately low voter turnout rates. ROA.15984.

Galveston County’s 2021 redistricting process itself exemplified a lack of transparency and public input and included substantial procedural and substantive departures from past redistricting cycles. For example, in past redistricting cycles, the Commissioners Court held several hearings at various locations around the county to solicit public input on map proposals, including seven public hearings during the 2011 redistricting cycle. ROA.15970. In 2021, in contrast, the only opportunities for public input were an online public comment portal¹ and one public meeting on November 12, 2021—held at the League City Annex, a small and inaccessible facility located twenty-seven miles from the city of Galveston (the county seat and where the Commissioners Court holds its regular meetings), and just one day before the deadline to submit enacted plans to the Texas Secretary of State. ROA.15971-15974. Thirty-five of the thirty-six members of the public who spoke

¹ County Judge Mark Henry admitted that he reviewed fewer than a dozen of the 446 public comments that were submitted. ROA.15974. Instead, he relied on a breakdown of those comments provided by his staff, which the district court found disregarded “public commentary expressing concern over the discriminatory impact of redistricting on Galveston County’s minority community.” ROA. 15974.

at the November 12 meeting opposed Map 2, and the remaining comments “noted the inconvenience of the meeting and the lack of public transparency in the process.” ROA.15975-15976. Only Commissioner Holmes, the sole minority member of the Commissioners Court, attempted to respond to the audience’s concerns. ROA.15976. As the district court recognized, the other three members of the Commissioners Court present nevertheless adopted the Enacted Plan without addressing any public comments received at the meeting or publicly debating either of the proposed redistricting plans. ROA.15976. Other procedural departures during the 2021 redistricting process that the district court identified include the County’s: (1) failure to adopt a redistricting timeline; (2) failure to adopt any publicly available redistricting criteria to guide the process; (3) lack of transparency in engaging redistricting counsel; (4) lack of public notice; (5) conduct surrounding the November 12 special meeting; (6) disregard for minority input; and (7) exclusion of the sole minority commissioner, Commissioner Holmes, from the redistricting process. ROA.15963; *see generally* ROA.15950-15982.

In addition to the discriminatory circumstances and effect of the Enacted Plan, *see* ROA.16029, the district court, following the framework of the *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), made several factual findings suggesting it was indeed the intent of the

Defendants to dilute the votes of the County’s Black and Latino voters, although the district court found it unnecessary to ultimately decide the issue. ROA.15940.

For example, the County had received six objection letters from the Attorney General since 1976. The County most recently received an objection letter in 2012 from the U.S. Attorney General that noted several procedural deficiencies in the 2011 redistricting process that raised concerns of intentional discrimination, including the failure to adopt redistricting criteria and the deliberate exclusion of Commissioner Holmes. ROA.15963-15964. As the district court recognized, “[t]he 2012 objection letter put Judge Henry on notice of procedural defects that could raise concerns about the exclusion of minority stakeholders and lack of transparency”— lapses the court found to have occurred once again in 2021 and which “could be viewed as evidence of intentional discrimination.” ROA.15964; *see also* ROA.15965, 15976-15977.

In addition to the deficiencies mimicking those outlined in the 2012 objection letter, the district court found several other deficiencies in the County’s 2021 redistricting process. For example, even with delays in the release of census data caused by the COVID-19 pandemic, the County moved unusually slowly in their map drawing process. The County waited until October 14 to contact a demographer, ROA.15952, 15954-15955, even though a map feasibly could have been drawn

immediately following the release of 2020 Census data in August 2021.² ROA.15968. Similarly, there is no evidence of the County publicly announcing the drawing of draft maps, aside from a post on Judge Henry’s Facebook page and a repost by Commissioner Giusti. ROA.15960-15961. The limited information the County released omitted any quantitative data about the population and demographic makeup of the proposed districts. ROA.15967.

The map-drawing process itself also proved suspect. Shortly after engaging Dale Oldham as the County’s legal consultant, Judge Henry and the county’s general counsel, Paul Ready, contacted Oldham to ask whether the county “had to draw a majority[-]minority district.” ROA.28546. Subsequently, Mr. Oldham—who was the “lead person” responsible for providing instructions about configuring the County’s proposed redistricting plans and told the County’s demographer exactly “where to place the lines,” ROA.15955-15956—provided a chart to Mr. Ready, “to distribute to the commissioners,” reflecting each precinct’s racial demographic changes from 2010 to 2020, ROA.15952. Mr. Oldham himself reviewed this racial data, as well as racial-shading maps of Galveston County after the 2020 Census was released, “to identify where Black populations were concentrated.” ROA.15953. The district court found that Mr. Oldham’s understanding was “generally consistent with

² As a result of this delay, demographer Thomas Bryan was forced to draw maps for the County on a flight back from vacation and forgo his usual practice of visiting and researching the jurisdiction prior to drawing a map. ROA.15969.

Judge Henry and Commissioners Apffel and Giusti’s understanding that Galveston County’s Black and Latino population was centered around Precinct 3, which had consistently elected Commissioner Holmes.” ROA.15952 (citing, *e.g.*, ROA.18350-18352, 18999-19000, 19221)). Nevertheless, Judge Henry told Mr. Oldham directly that he wanted “the configuration that ultimately became Map 2,” ROA.15954, a configuration that entirely dismantled Precinct 3. Mr. Oldham likewise testified that Map 2 was “the visualization of the instructions’ Judge Henry had provided.” ROA.15956 (citation omitted).

The district court found that all three of the commissioners who approved the Enacted Plan understood, before voting, that the Enacted Plan would have a racially discriminatory impact on Galveston’s Black and Latino residents, fracturing the core of historic Precinct 3 across all four districts such that minority voters could no longer elect their candidate of choice. ROA.15939.

Ultimately, none of the County’s litigation counsel’s purported justifications explained the configuration of the Enacted Plan. *See* ROA.15977-15982. Based on Mr. Oldham’s and the commissioners’ denial of a partisan motivation, the district court found that partisanship did not explain the configuration of the map. ROA.15955. Similarly, the goal of creating a coastal precinct was not one that was backed by public support nor initially raised with the demographer, Thomas Bryan. ROA.15956, 16026. Even when drawing a map with a coastal precinct, Bryan was

given virtually no discretion. ROA.15956 (highlighting that Oldham provided “very specific instructions about how he wanted Map 2 to look”). Indeed, the district court found the creation of a coastal precinct did not actually require the dismantling of the majority-minority precinct nor did it explain the adoption of the Enacted Plan. ROA.15957.

II. Procedural Background

In August 2023, the district court held a 10-day bench trial where it heard live testimony from several lay and expert witnesses. *See* ROA.15890-15892. On October 13, 2023, the court issued a 157-page order finding “defendants’ actions to be fundamentally inconsistent with § 2 of the Voting Rights Act.” ROA.15886. As the district court explained, “[t]his is not a typical redistricting case. What happened here was stark and jarring. The Commissioners Court transformed Precinct 3 from the precinct with the highest percentage of Black and Latino residents to that with the lowest percentage. The circumstances and effect of the enacted plan were ‘mean-spirited’ and ‘egregious’ given that ‘there was absolutely no reason to make major changes to Precinct 3.’” ROA.16029 (citations omitted). Accordingly, the court concluded that the Enacted Plan was a “clear violation” of Section 2 and “must be overturned.” ROA.16029. The district court also concluded—despite finding a number of facts that would support a finding of intentional discrimination, *see, e.g.*, ROA.15964-15967 (noting the procedural irregularities in the redistricting process,

including the lack of a redistricting timeline, lack of redistricting criteria, lack of transparency in engaging redistricting counsel, and lack of public involvement)—that it “need not determine the outcome of the intentional-discrimination or racial-gerrymandering claims,” because the relief Plaintiffs sought for those claims is not broader than that to which they are entitled under Section 2. ROA.16032-16033.

The district court found that Plaintiffs established the three *Gingles* preconditions for Section 2 liability. Plaintiffs satisfied the first *Gingles* precondition by submitting over a dozen illustrative maps showing that Galveston County’s minority community is “sufficiently large and geographically compact to constitute a majority in a single commissioners precinct that is both reasonably configured and comports with traditional redistricting principles.” ROA.15922; *see also generally* ROA.15914-15922, 16007-16013.³ Indeed, as the court recognized, “defendants do not dispute that Galveston County’s Black and Latino communities, when considered as a coalition, are sufficiently large to satisfy the first *Gingles* precondition.” ROA.16007. The district court also recognized that, while Plaintiffs “do not need to consider specific communities of interest when drawing illustrative

³ The district court found “widespread shortcomings” in Defendants’ *Gingles* I expert, Dr. Owens, and thus assigned “little to no weight” to his opinions on traditional redistricting principles, the geographic dispersion of minority populations, and the first *Gingles* precondition. ROA.15902. Even still, Dr. Owens generally agreed that Plaintiffs’ illustrative plans were “about as reasonably compact as the enacted plan” and did not dispute that Plaintiffs’ experts used non-racial traditional redistricting criteria. ROA.15919.

maps,” their illustrative plans “sufficiently preserve communities of interest—namely the Black and Latino communities in benchmark Precinct 3.” ROA.16009 at 129 (citation omitted); ROA.15919.

Plaintiffs also established the second and third *Gingles* preconditions because “Black and Latino voters in Galveston County are cohesive in that a large majority of these voters have consistently favored the same candidates across a series of elections,” and “voting in Galveston County is racially polarized such that Anglo voters usually vote as a bloc to defeat the candidate of choice of Black and Latino voters.” ROA.15923, 15934; *see also generally* ROA.16014-16020. The district court credited Plaintiffs’ experts’ analyses and testimony showing that Black and Latino voters vote cohesively, as the undisputed results of their analyses show that “on average, over 85% of Black and Latino voters have voted for the same candidate countywide” and “Latinos and Blacks have separately voted for the same candidate in almost all general elections.” ROA.15925. All the experts—including Defendants’ expert, Dr. Alford—“agreed that general elections are more probative than primary elections in this case” to determine cohesion between Black and Latino voters, for a variety of reasons. ROA.15928. Even recognizing their lower probative value, the district court found that the analyses of Plaintiffs’ expert Dr. Oskooii and Defendants’ expert Dr. Alford nevertheless “show that Blacks and Latinos usually support the same top-choice candidate in primary contests,” with Black and Latino

voters voting cohesively in nine out of ten primary elections Dr. Oskooii studied. ROA.15929.

Likewise, even Defendants' expert Dr. Alford testified that it would be hard to find "a more classic pattern of what polarization looks like in an election" than what exists in Galveston County. ROA.15927 (quoting ROA.19311-19312). Accordingly, the district court found that "[a]ll experts agree that Anglo bloc voting usually defeats the Black and Latino candidate of choice in Galveston County elections in every precinct analyzed in the enacted plan." ROA.15934; *see also generally* ROA.16017-16020. The district court also recognized that, "[t]o the extent that partisanship explains the voting patterns in the county, it still does not change the fact that the data unerringly points to racially polarized voting." ROA.15934; *see also generally* ROA.15935-15938. Indeed, the levels of cohesion between Black and Latino voters versus white voters, and the racial composition of Galveston County's political parties, confirm that the County's electorate is racially polarized. ROA.15936-15937, 16018-16019.

The district court further concluded that the totality of circumstances supported Section 2 liability. ROA.16020-16029. In particular, the court evaluated the factors that guide the totality analysis, enumerated in *Thornburg v. Gingles*, 478 U.S. 30, 36-38, and concluded that "most of the Senate factors support § 2 liability." ROA.16022-16027.

SUMMARY OF ARGUMENT

The district court’s decision should be affirmed. It follows decades of settled precedent and correctly enjoins a redistricting map that arose from a “jarring,” “egregious,” and “mean-spirited” process.

First, the County’s plea that this Court overturn binding *en banc* precedent is a nonstarter. A panel of this Court cannot do that. Moreover, the settled precedent is correct—the plain text of Section 2 protects a class of voters who share a common characteristic—experiencing a minimized opportunity to participate in the electoral process on account of their race. A jurisdiction’s voting maps violate Section 2 when they result in an unequal opportunity to participate in the electoral process for minority voters—whatever their skin color. That shared discriminatory experience—and not the color of one’s skin—defines the class that Section 2’s plain text protects. Every circuit but one has so concluded.

Second, the County offers no basis to disturb the district court’s factual finding that the first *Gingles* precondition is satisfied. On appeal, the County mimics the positions advanced by their expert—that the minority population in Galveston County is too dispersed or lacks shared interests. But the district court correctly gave this testimony little to no weight—a determination the County does not challenge on appeal. Its effort to repackage its failed expert testimony into appellate arguments likewise fails.

Third, the district court did not err—much less clearly so—by affording primary elections less weight than general elections in its *Gingles 2* analysis nor in rejecting the County’s contention that partisanship, not race, explains the racially polarized voting in the county. The County’s own expert agreed with the district court’s weighing of primary elections, and the County has not shown clear error in the district court’s findings with respect to the racial basis for polarized voting.

Fourth, the County’s contention that Section 2 is unconstitutional for lack a “temporal limit” is foreclosed by Supreme Court precedent and is nonsensical. The statute itself limits liability to jurisdictions *currently* experiencing the effects of discrimination. Like this one. Congress does not offend the Constitution by designing a statute that remedies *present day* discriminatory effects.

STANDARD OF REVIEW

This Court reviews the district court’s legal conclusions *de novo* and its factual findings for clear error. *Harding v. Cnty. of Dallas, Tex.*, 948 F.3d 302, 306-07 (5th Cir. 2020). Under the clear error standard, “‘If the district court's findings are plausible in light of the record viewed in its entirety, we must accept them, even though we might have weighed the evidence differently if we had been sitting as a trier of fact.’” *Veasey v. Abbott*, 830 F.3d 216, 229 (5th Cir. 2016) (citing *Price v. Austin Indep. Sch. Dist.*, 945 F.2d 1307, 1312 (5th Cir. 1991)).

ARGUMENT

I. Binding Circuit precedent forecloses Appellants’ challenge to Section 2 coalition claims.

A coalition of two or more politically cohesive minority groups may seek relief under Section 2. Applying Section 2 to protect minority coalitions is “necessary and appropriate to ensure full protection of the Fourteenth and Fifteenth Amendments rights,” because voting discrimination is just as problematic when it prejudices one minority group as when it harms several. *See Bush v. Vera*, 517 U.S. 952, 992 (1996) (O’Connor, J., concurring). This Court’s binding precedent, as well as persuasive authority in the Supreme Court and other circuits, confirm that Section 2 permits minority coalition claims. Section 2’s plain text and legislative history confirm as much.

A. This Court and the vast majority of other courts have held that Section 2 protects coalition districts.

Under this Court’s rule of orderliness, one panel may not overturn another panel’s decision—let alone a prior *en banc* decision—“absent an intervening change in the law, such as by a statutory amendment, or the Supreme Court, or our *en banc* court.” *Martinelli v. Hearst Newspapers, L.L.C.*, 65 F.4th 231, 234 (5th Cir. 2023) (citation and internal quotation marks omitted); *see also, e.g., United States v. Avants*, 367 F.3d 433, 441 (5th Cir. 2004) (“Of course, we must follow precedent established by an earlier panel, not to mention a decision by our *en banc* court.”)

(citation omitted); *Terrell v. Household Goods Carriers' Bureau*, 494 F.2d 16, 21 n.9 (5th Cir. 1974) (a panel “could hardly decide that the en banc decision was subject to later revision”). No intervening change in law exists here; accordingly, this panel is bound to follow existing Circuit precedent, which recognizes that Section 2 permits coalition claims. See *LULAC v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (en banc) (“*Clements*”); *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989); *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989) (per curiam); *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988); *LULAC, Council No. 4386 v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1500-02 (5th Cir. 1987) (“*LULAC I*”).⁴ This alone should end the matter.

This Court has made clear that “[t]here is nothing in the law that prevents the plaintiffs from identifying the protected aggrieved minority to include both Blacks and Hispanics.” *Campos*, 840 F.2d at 1244. Indeed, “Congress itself recognized ‘that voting discrimination against citizens of language minorities is pervasive and national in scope,’ and similar discrimination against Blacks is well documented.” *Id.* (citation omitted). Consequently, if together, Black and Latino voters “are of such numbers residing geographically so as to constitute a majority in a single member

⁴ Although the *en banc* court vacated the *LULAC I* panel decision on other grounds, see 829 F.2d 546 (5th Cir. 1987) (en banc), the Fifth Circuit subsequently reinforced the panel’s ruling and adopted its reasoning to allow coalition claims, see, e.g., *Brewer*, 876 F.2d at 453; *Campos*, 840 F.2d at 1244.

district, they cross the *Gingles* threshold as potentially disadvantaged voters.” *Id.* Plaintiffs need only prove—as has occurred here—that “the minorities so identified actually vote together and are impeded in their ability to elect their own candidates by all of the circumstances, including especially the bloc voting of a white majority that usually defeats the candidate of the minority.” *Id.*; *see also id.* at 1244-45 (recognizing that the most persuasive evidence of inter-minority political cohesion for Section 2 purposes is to be found in voting patterns).

Consistent with this Court’s precedent, the vast majority of courts to consider the issue have held that Section 2 prohibits vote dilution against minorities, whether alone or in combination. While the Supreme Court has not expressly resolved the issue, it has assumed that Section 2 allows coalition claims. *Grove v. Emison*, 507 U.S. 25, 41 (1993); *White v. Regester*, 412 U.S. 755, 767 (1973); *see also Bartlett v. Strickland*, 556 U.S. 1, 13-14 (2009) (plurality op.) (declining to address whether minority coalition claims are cognizable); *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994) (explaining in the context of § 2 that “there are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups”). In *Houston Lawyers’ Association v. Attorney General of Texas*, for example, the Court entertained a Section 2 challenge pursued by “a statewide organization composed of both Mexican-American and African-American residents.” 501 U.S. 419, 421 (1991). Similarly, in *Wright v. Rockefeller*, the Court

accepted that a coalition of Black and Puerto Rican voters brought a constitutional vote dilution challenge but rejected the merits. *See* 376 U.S. 52, 54 (1964). The Supreme Court also recognizes coalition claims in the vote denial context. Indeed, just two years ago, the Court evaluated a coalition of Black, Hispanic, and Native American voters' Section 2 vote denial claims. *See Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2322 (2021). Courts in the First, Second, Ninth, and Eleventh Circuits agree even more clearly with this Court in recognizing that Section 2 protects minority voter coalitions.⁵

Nevertheless, the County urges this Court to depart from its own precedent and from the majority rule, and instead follow a single outlier, the Sixth Circuit. *See Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996) (en banc). But the *Nixon* majority misinterpreted Section 2's text to reach its conclusion foreclosing coalition claims, detaching the word "class" from its context to mean a single racial group. *Id.* at 1386-87. This is contrary to the plain text, as discussed *infra* at Part I.B The Sixth Circuit's decision also depends on questionable "policy concerns," suggesting that even if

⁵ *See, e.g., Huot v. City of Lowell*, 280 F. Supp. 3d 228, 235-36 (D. Mass. 2017) (applying *Latino Political Action Comm., Inc. v. City of Boston*, 784 F.2d 409 (1st Cir. 1986)); *NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 379-80 (S.D.N.Y. 2020) (applying *Bridgeport Coal'n for Fair Representation v. City of Bridgeport*, 26 F.3d 271 (2d Cir. 1994)); *aff'd sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021); *Badillo v. City of Stockton, Cal.*, 956 F.2d 884 (9th Cir. 1992) (holding that factual record did not demonstrate the coalition's cohesion); *Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990) (same).

there is proven discrimination against minority groups, “there is no basis for presuming such a finding regarding a group consisting of a mixture of both minorities.” *Id.* at 1391. But as the *Nixon* dissent emphasized, the more problematic “policy concern” is that rejecting coalition claims “requires the adoption of some sort of racial purity test” that is inconsistent with Section 2’s goal to eliminate racial divisions in voting. *Id.* at 1401 (Keith, J., dissenting) (reasoning that if courts “are to make these [racial] distinctions, where will they end? Must a community that would be considered racially both Black and Hispanic be segregated from other Blacks who are not Hispanic?”). *Nixon* is thus a significant outlier based on dubious textual and policy interpretations.

In claiming a broader circuit split, the County also points, Br. at 31, to *Hall v. Virginia*, 385 F.3d 421 (4th Cir. 2004) and *Frank v. Forest County*, 336 F.3d 570 (7th Cir. 2003) as holding that the VRA does not protect minority coalitions, or at least indicating “strong concerns” with coalition claims. But both cases are inapposite. *Hall* does not proscribe coalition claims as the County contends, because it concerned only an alleged crossover district including “black and white voters,” not a minority coalition district. 385 F.3d at 430. Far from limiting Section 2 minority coalitions, the *Hall* court “noted that “[t]here are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups” and seek to enforce their rights. *Id.* at 431 n.13 (quoting *Georgia v. Ashcroft*, 539

U.S. 461, 483 (2003)). The court’s nuanced discussion of coalitions simply concluded that Section 2 does not “create an *entitlement* for minorities to form an alliance with [white crossover] voters in a district who do not share the same statutory disability as the protected class.” *Id.* (emphasis added). But the inverse of this observation is that Section 2 *does* recognize a claim when minority voters *can prove* they “form an alliance with other voters” who *do* “share the same statutory disability” of discriminatory vote dilution. *See id.* *Hall* reinforces that a coalition must be composed of cohesive, statutorily protected minority groups; it “does not stand for the proposition that minority groups cannot be combined.” *See NAACP, Spring Valley Branch*, 462 F. Supp. 3d at 380 n.11.

Frank likewise did not proscribe minority coalitions. *See* 336 F.3d at 575-76. *Frank* turned solely on the lack of cohesion between Black and Native American voters, where evidence of their voting patterns was “limited to voting in Presidential elections—a far cry from voting in county board elections,” and where the “only thing” that Black residents of a Job Corp Center had in common with Native American voters in the proposed district “is that they are not Caucasian,” *id.* The plaintiffs even admitted that they had “no evidence that the Job Corps residents have any interests in county government that are in common with those of” Native American voters, *id.* at 576—a far cry from the voluminous record here of common

interests shared by Galveston County's Black and Latino residents, *see, e.g.*, ROA.15982-16000.

In sum, this Court and every other circuit to consider the issue, save one, have concluded that Section 2 protects coalition districts. This panel is bound by existing Fifth Circuit precedent to conclude the same. *See, e.g., Avants*, 367 F.3d at 441.

B. Section 2's plain text and legislative history, as well as the broader remedial purpose of the VRA, support coalition claims.

While the County largely eschews analysis of Section 2's text in favor of reliance on legislative history, *see* Br. at 24-28, Section 2's plain language authorizes coalition districts. Its legislative history and the VRA's broad remedial purpose confirm as much.

Section 2, like other civil rights statutes, is "written in starkly broad terms," *see Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731, 1753 (2020), and should be interpreted in "the broadest possible scope," *Chisom v. Roemer*, 501 U.S. 380, 403 (1991) (citation omitted). It empowers "any citizen" to challenge any "qualification or prerequisite to voting or standard, practice, or procedure" that discriminatorily "deni[es] or abridge[s]" the right to vote. 52 U.S.C. § 10301(a). Section 2's "broad language" does not limit its protections to a single minority group bringing claims *seriatim*; it instead reflects "Congress's presumed point to produce general coverage." *Bostock*, 140 S. Ct. at 1749 (internal quotation marks omitted). Accordingly, the absence of any express reference to coalition claims in the text of

Section 2 is not dispositive to interpretation of the provision. *See Bostock*, 140 S. Ct. at 1747 (“[T]here [is no] such thing as a ‘canon of donut holes,’ in which Congress’s failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception.”).

Section 2(a) of the VRA prohibits any voting standard or practice that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,” or language-minority status. 52 U.S.C. §§ 10301(a), 10303(f). Section 2(b) sets forth how a violation of Section 2(a) is established, and notes that it applies to “a class of citizens protected by subsection (a).” *Id.* § 10301(b). The “class of citizens” to which Section 2(b) refers is not a singular minority group, but rather those “protected by subsection (a)”—*i.e.*, “any citizen” subject to a denial or abridgment of voting rights “on account of race or color, or” language-minority status. *Id.* § 10301(a), (b). Nothing in the text of Section 2 requires every member of the “class of citizens” to share the same race, as opposed to the same experience of being politically excluded “on account of race,” whatever their race is. *Id.* Section 2 protects all minority voters and reading it to protect only one at a time defeats its broad textual mandate.

The County’s sole engagement with Section 2’s text is a brief, strained statutory interpretation of “class” in subsection (b) to mean only a single harmed minority group. Br. at 34. But this reading improperly plucks “class” from its

statutory context. *See Yates v. United States*, 574 U.S. 528, 537 (2015) (the “meaning of a word cannot be determined in isolation”) (citation omitted). “Class” instead means “[a] *group of people* . . . that have common characteristics or attributes,” Black’s Law Dictionary (11th ed. 2019) (emphasis added), and refers to the plural of “citizens” listed as protected groups in subsection (a): racial, ethnic, *and* language-minority citizens. Accordingly, “class of citizens” means the class members must merely share the common characteristic of being a Section 2 protected racial, ethnic, or language minority voter experiencing vote dilution. Reading “class of citizens” to include a combination of protected minority citizens accords with both the last antecedent grammatical rule, *see Barnhart v. Thomas*, 540 U.S. 20, 26 (2003), and the singular-plural canon of statutory interpretation, *see, e.g., F.D.I.C. v. RBS Sec. Inc.*, 798 F.3d 244, 258 (5th Cir. 2015) (applying 1 U.S.C. § 1).

Even if it were ambiguous whether Section 2’s text protects minority coalitions, its legislative history and the broad remedial purpose of the VRA both support recognizing such claims. Courts may “consult[] the understandings of the law’s drafters as some (not always conclusive) evidence,” *Bostock*, 140 S. Ct. at 1750, and the Supreme Court often relies on Section 2’s legislative history, *see, e.g., Brnovich*, 141 S. Ct. at 2332-33; *Gingles*, 478 U.S. at 43 & n.7.

The 1975 amendment to Section 2—which the County ignores entirely—added language-minority protections because Congress sought to address “pattern[s]

of racial discrimination that ha[ve] stunted . . . black *and* brown communities.” S. Rep. No. 94-295, at 30 (1975) (citation omitted; emphasis added); *see also generally id.* at 22-31. Congress knew that Texas, for example, had a substantial minority population “comprised primarily of Mexican Americans and [B]lacks” and “has a long history of discriminating against members of *both* minority groups.” *Id.* at 25 (emphasis added).⁶ Congress thus sought to protect together all “racial or ethnic groups that had experienced appreciable prior discrimination in voting,” noting that Latinos “suffered from many of the same barriers to political participation confronting [B]lacks,” including ““invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others””—like that present here. *Salas v. Sw. Tex. Junior Coll. Dist.*, 964 F.2d 1542, 1549 & n.19 (5th Cir. 1992) (quoting S. Rep. No. 94-295, at 30). Indeed, the Senate stressed that “racial discrimination against language minority citizens seems to follow density of minority population” overall, citing examples of jurisdictions and electoral systems that have “den[ied] Mexican Americans *and* [B]lack voters in Texas political access.” S. Rep. No. 94-295, at 27-28.

Importantly, in its discussion of the history of discrimination and the need for expanded Section 2 protection, the Senate was aware of “at least one case in which

⁶ The 1975 House Report included identical language regarding patterns of discrimination, including in Texas, against both racial and ethnic minorities. *See* H.R. Rep. No. 94-196, at 17, 25, 30 (1975).

African-Americans and Hispanics brought a joint claim” under the VRA. *Nixon*, 76 F.3d at 1395 (Keith, J., dissenting) (citing *Wright*, 376 U.S. 52). The Senate also repeatedly referenced another case—*Graves v. Barnes*, affirmed by *White v. Regester*—in which several voting rights claims involving Black and Latino voters were consolidated in one action with their rights evaluated collectively. See S. Rep. No. 94-295, at 27 (“In January, 1972, a three-judge Federal court ruled that the use of multi-member districts for the election of state legislators in Bexar and Dallas counties, Texas, unconstitutionally diluted and otherwise cancelled the voting strength of Mexican Americans *and* [B]lacks in those counties.”) (emphasis added); see also *id.* at 30. “If Congress was thus aware that more than one minority group could be considered to constitute one plaintiff class in determining the availability of Voting Rights Act protection, certainly the absence of an explicit prohibition of minority coalition claims compels a construction of Section 2 which allows them.” *Nixon*, 76 F.3d at 1395 (Keith, J., dissenting).

When Congress amended Section 2 in 1982 it was no less aware of coalition claims. In its Report on the 1982 amendments, the Senate Judiciary Committee twice referenced *Wright*—involving a coalition of Black and Hispanic voters, just as here. S. Rep. No. 97-417, at 19 n.60, 132 (1982) (citing *Wright*, 376 U.S. at 52-54). The Senate likewise again repeatedly cited to *Graves* as affirmed by *White*, describing *White* as “the leading pre-*Bolden* vote dilution case” and among “the leading cases

involving multi-member districts.” *Id.* at 2, 22.⁷ The Senate made clear its understanding that, in that case, multimember districts “operated to dilute the voting strength of racial *and* ethnic minorities.” *Id.* at 21 (quoting *White*, 412 U.S. at 767) (emphasis added); *see also id.* at 130 (noting that the Supreme Court relied upon evidence that included “a long history of official discrimination against *minorities*”) (emphasis added).

Beyond citation to cases involving coalition claims, the 1982 Senate Report spoke repeatedly of the need to protect racial and ethnic minorities together, explaining that “the amendments would make racial and ethnic groups the basic unit of protection.” *Id.* at 94; *see also, e.g., id.* at 122 (local electoral arrangements are expected to conform with guidelines “established to maximize the political strength of racial *and* ethnic minorities”) (emphasis added).⁸ For example, in recounting an

⁷ The House Report on the 1982 amendments likewise cited to *White*. H.R. Rep. No. 97-227, at 20 (1981).

⁸ The Senate Report also includes dozens of references to minorities plural, without differentiating each time between protections for racial and ethnic minority groups. *See, e.g., S. Rep. 97-417*, at 27 (plaintiffs must prove either intent or that the challenged system “results in *minorities* being denied equal access to the political process”) (emphasis added); *id.* at 16 (the “crucial question” for judicial inquiry is “whether *minorities* have equal access to the electoral process”) (emphasis added).

The House Report likewise repeatedly discusses minorities plural, without distinguishing between different racial and ethnic groups. *See, e.g., H. Rep. No. 97-227*, at 3 (“The Voting Rights Act of 1965 was primarily designed to provide swift, administrative relief where . . . racial discrimination continued to plague the electoral process, thereby denying *minorities* the right to exercise effectively their franchise.”), 7 (describing “progress in increasing registration and voting rates for

illustrative list of municipalities “in jeopardy of court-ordered change under the new results test,” the Senate spoke of the overall minority population in each, without differentiating among Black, Latino, or other groups—including in jurisdictions like New York City, where its 40 percent minority population necessarily encompassed multiple minority groups. *See id.* at 154-57. The Senate thus reinforced that minority groups, together, must have “a fair chance to participate” and “equal access to the process of electing their representatives.” *Id.* at 36. Just as in 1975, if Congress meant to exclude coalitions, “Congress would have made it explicit in the statute, or at least some of the Members would have identified or mentioned it at some point in the unusually extensive legislative history of the 1982 amendment.” *Chisom*, 501 U.S. at 396 (holding that the absence of exclusion of judicial elections from Section 2’s statutory text meant they were within Section 2’s ambit).

The County nevertheless insists, Br. at 26-27, that Congress in 1982 “nowhere references the concept of a multiracial . . . fusion claim,” but rather only ever cites to “a single minority, as opposed to in plural terms.” But this ignores entirely: the myriad references to protections for minorities plural; the discussion of racial and ethnic groups together as “the basic unit” (singular) of protection; the repeated cites “minorities” and “improvements in the election of minority elected officials,” citing registration and election rates for both Blacks and Latinos); *see also id.* at 28, 34-35 (noting the “overwhelming evidence of a continuing pattern and practice of voting discrimination against racial *and* language minorities” and that the VRA sought to extend protections “to all minorities”) (emphasis added).

to cases upholding challenges by coalitions of minority voters; and the discussion of the combined total minority populations of jurisdictions “in jeopardy of court-ordered change.” It is thus clear that Congress, in both 1975 and 1982, was aware of and approved of coalition claims in its extension of protections for minority voters.

Moreover, while the County urges that “[p]ermitting different racial minority groups to ban together” would “vastly overstep[] the VRA’s intended purpose,” Br. at 26, this is not true. Recognizing coalition claims is wholly consistent with the VRA’s broad remedial purpose, of “rid[ding] the country of racial discrimination in voting.” *Chisom*, 501 U.S. at 403 (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966); *see also id.* (“The VRA should be interpreted in a manner that provides the broadest possible scope in combating racial discrimination.”) (cleaned up)).

To paraphrase the recent Supreme Court, “Congress is undoubtedly aware [that the Supreme Court and nearly every circuit entertains coalition claims]. It can change that if it likes. But until and unless it does, statutory stare decisis counsels our staying the course.” *Allen v. Milligan*, 599 U.S. 1, 31 (2023) (citing *Kimble v. Marvel Entm’t, LLC*, 576 U. S. 446, 456 (2015)).

Section 2’s text and legislative history confirm that Congress contemplated statutory protection for minority coalitions, which advance the broad remedial purpose of the VRA.

C. Recent Supreme Court cases do not indicate that coalition claims are improper.

As explained *supra* and as the County acknowledges, Br. at 28, 34, the Supreme Court has explicitly reserved judgment on the legality of coalition claims. And none of the Court’s recent precedent indicates that such claims are improper.

The County, points for support to *Bartlett v. Strickland*, 556 U.S. 1 (2009), Br. at 34-37, but such reliance is misplaced. First, the Court in *Bartlett* explicitly did not address coalition districts, *see* 556 U.S. at 13-14 (plurality op.), and its reasoning does not apply to minority coalitions. The *Bartlett* plurality was concerned only that factually distinct *crossover* claims by minority *and white voters* would pose a “serious tension” with Section 2’s racially polarized voting precondition. *Id.* at 15-16. That tension is not present for coalition claims, which require proof that a cohesive minority coalition is stifled by oppositional white-bloc voting. Whereas crossover voting by its nature represents a division within the majority bloc, *see id.* at 16, coalition claims do not. Coalition claims thus do not involve any “serious tension” with the third *Gingles* prong and, consequently, are distinct from the purely “political coalitions” that crossover claims necessarily entail. *Id.* at 15.⁹

Second, coalitions of minority groups go beyond merely “political alliances” because coalition claims depend on all minority claimants necessarily proving that

⁹ The County’s reliance on *Hall* is misplaced for the same reason. *See Hall*, 385 F.3d at 430.

they suffer from discrimination because of their minority status. Vindication of the rights of minority coalitions thus addresses discriminatory treatment not based on political alliance but rather on being historically disadvantaged on account of race—the underlying motivation for passage of Section 2. *See id.* at 10. Indeed, contrary to the County’s assertion, Br. at 26, that recognizing coalition claims “contradicts the [VRA]’s intent to eliminate racially discriminatory structures,” coalition claims actually *reduce* racial distinctions. Allowing coalitions to sue advances Section 2’s goal to address the lasting effects of discrimination without “produc[ing] boundaries [that] amplify[] divisions between” voting groups. *See Cooper v. Harris*, 137 S. Ct. 1455, 1469 (2017). Having an arbitrary limitation requiring minority groups to sue separately would discount that varying minority groups—as here—may face the same impediment to vote for their preferred candidates as a result of their race.

The *Bartlett* Court was also concerned with abandoning the majority requirement of *Gingles* prong one, which it thought would leave jurisdictions uncertain of when Section 2 obligations might arise. 556 U.S. at 17 (plurality op.). But no such administrability issue exists here; Plaintiffs do not advocate jettisoning the majority-minority requirement. Accordingly, while the County contends, Br. at 36, that coalitions are unworkable because they could involve “any combination or

number of minority voter groups,” addition is not too steep an administrative hurdle.¹⁰

Finally, the County insists, Br. at 36, 39, that coalition claims, like crossover voting, invite speculation and force courts to make decisions based on political judgments. But this is not so. A court assessing a coalition claim need not try to predict political variables of any sort. Instead, a court—as the district court did here—must only ask whether a jurisdiction has an aggregated minority population that makes up over 50 percent of the voting population, whether that minority group votes cohesively together, and if minority voters have regularly been defeated in electing candidates of their choice due to high levels of majority bloc voting. This is a simple and straightforward analysis, regardless of the County’s insistence otherwise.

D. Coalition claims do not sanction proportional representation.

The County finally contends, Br. at 23-34, 37-38, that allowing coalition claims amounts to impermissible proportional representation of minority voters. But the Supreme Court foreclosed that argument this year. In *Milligan*, the Supreme

¹⁰ The County contends, Br. at 40, that an “objective, numerical test” that asks whether minorities make up more than 50 percent of the voting-age population in the relevant geographic area would be “much less fraught.” It fails to acknowledge however that this is already the test; coalition claims require only basic arithmetic by courts, to assess whether cohesive groups of minority voters make up a majority in a given district.

Court rejected Alabama’s argument that Section 2 “inevitably demands racial proportionality in districting,” reasoning that “the *Gingles* framework itself imposes meaningful constraints on proportionality.” 599 U.S. at 26. This was so, the Court explained, because the first *Gingles* precondition includes limitations—such as requiring reasonably compact districts and respect for traditional districting principles—that prevent the types of districts that seek proportional representation. *Id.* at 28. The County does not explain how coalition claims are any different. The same *Gingles* 1 constraints with respect to compactness and traditional districting principles apply to coalition claims, and here the district court correctly found as a matter of fact that Plaintiffs satisfied those requirements. *See infra* Part II.

Here, the combined Black and Latino population of Galveston County is 38.6 percent. Prior to the Enacted Plan’s adoption, the Black and Latino community was able to elect their candidate of choice to 25 percent of the precincts—less than their proportional share. The County sought to make that number 0 percent of the precincts, and the district court’s injunction returns it to 25 percent. Anglo residents, who are 54.6 percent of the population, will be able to elect their candidates of choice in 75 percent of the precincts as a result of the district court’s injunction. This is hardly a recipe for proportional representation for Galveston’s minority voters.

II. The district court did not clearly err in finding *Gingles* 1 satisfied.

The district court did not clearly err in finding *Gingles* 1 satisfied. There is no genuine dispute that Galveston County’s Black and Latino community is sufficiently large and geographically compact as to constitute a majority in a Commissioners Court precinct, and the district court did not clearly err by so finding. The County is correct, Br. at 16, that “neither compactness nor traditional redistricting principles can be assumed based on race alone,” which is why neither Plaintiffs nor the district court made those assumptions. Rather, Plaintiffs presented numerous illustrative maps which the district court found to be “but a few examples of a multitude of potential districts that are reasonably configured and that contain a majority Black and Latino population by CVAP.” ROA.16008-16009. In so finding, the district court considered the illustrative maps themselves as well as the credible testimony and analyses presented by Plaintiffs’ three experts regarding each plan’s compliance with traditional redistricting criteria. ROA.15914-15920, 16010-16013. Moreover, the Commissioners Court itself proposed a plan, Map 1, containing a majority Black and Latino CVAP district which the commissioners’ legal consultant for redistricting testified was legally defensible and had been drawn without any regard to race, and which the district court found to be “reasonably compact.” ROA.15912-15913 (citing ROA.18613-18614).

The County contends, Br. at 41-42, that *Gingles* 1 cannot be met because while Black voters are concentrated in the central portion of the County in benchmark Precinct 3, Latino voters are “evenly disbursed throughout the County.” Although the County obviously wishes Section 2 did not protect coalitions of minority voters, this Court has held that it does. The relevant inquiry is thus whether—in proposed *Gingles* 1 demonstrative alternative precincts—there is a geographically compact minority population that constituted a majority of eligible voters. The district court correctly found that there was—based on a multitude of such demonstrative maps, including one drawn by the County *itself*. The County’s argument goes awry because it shifts the focus from the compactness of the combined minority population within the proposed demonstrative precinct to the distribution of Latino voters in the remainder of the precincts countywide.

Neither the distribution of the minority population in Galveston County nor the characteristics of that population prevent Plaintiffs from meeting the compactness requirement of the first *Gingles* precondition. In *LULAC v. Perry*, the Supreme Court held that one of six Latino opportunity districts, which contained “a 300-mile gap between the Latino communities . . . and a similarly large gap between the needs and interests of the two groups,” was not “reasonably compact.” 548 U.S. 399, 430, 432, 434 (2006). The district court cited to this precedent, noting the Supreme Court’s “critical caveat” that ““it is the enormous geographical distance

separating the [two] communities, coupled with the disparate needs and interests of these populations—not either factor alone—that renders [the district] noncompact for § 2 purposes.” ROA.16010 (quoting 548 U.S. at 435). The district court found that, in this case, “[t]he Black and Latino areas joined in the plaintiffs’ illustrative maps are marked by neither ‘enormous geographical distance’ nor ‘disparate needs and interests.’ [] To the contrary, there is substantial quantitative evidence, supported by lay-witness testimony, that the needs and interests of communities included in the plaintiffs’ illustrative plans are similar.” ROA.16009-16010 (internal citation omitted).¹¹

In any event, the County’s reliance on *Perry* is misplaced because in that case the two geographically distant Latino populations were necessary in order for the district to be majority minority. 548 U.S. at 424. Here, the County objects, Br. at 43, primarily to the inclusion of League City in Plaintiffs’ illustrative plans, contending that Black and Latino voters have different socioeconomic statuses. But the various illustrative Precinct 3 configurations proffered by Plaintiffs contain few League City residents and their inclusion is not necessary to satisfy the *Gingles* 1 majority-minority requirement. *See* ROA.17112, 35576-35623. Moreover, the district court

¹¹ In light of this finding, it is no surprise that even the Enacted Plan contains two precincts—Precincts 1 and 4—that combine portions of Texas City and League City, two of the municipalities which the County now puzzlingly claims share no commonalities such that their grouping necessarily offends traditional redistricting principles. ROA.24459.

specifically concluded that the County’s *Gingles* 1 expert, Dr. Mark Owens, who proffered the same opinions that the County now asserts as its arguments on appeal, had such “widespread shortcomings” in his testimony and analysis that it assigned “little to no weight to [his] opinions on traditional redistricting principles, the geographic dispersion of minority populations, and the first *Gingles* precondition.” ROA.15902. The County does not appeal that determination, but its identical arguments on appeal suffer from the same shortcomings.

III. The district court did not clearly err in finding *Gingles* 2 and 3 satisfied.

A. The district court did not clearly err in its assessment of primary elections in its *Gingles* 2 analysis.

The district court did not clearly err in its assessment of primary elections in its *Gingles* 2 cohesion analysis. The district court found, based upon the agreement among the County’s and Plaintiffs’ experts, that general elections were more probative of voting patterns in Galveston County than primary elections. ROA.15928, 16015-16016. Indeed, Dr. Alford—the County’s expert—testified that general elections provide the “clearest picture” of voting patterns and that general election results should be afforded greater weight. ROA.19440-19442 (Dr. Alford testifying that if evidence from “the primary . . . contradicted what we found in the general . . . in my view, it would be the general [that] is more important”). Accordingly, the district court afforded general elections greater weight and primary elections lesser weight. The County’s brief skips past this point entirely. But the

district court could not have erred—much less clearly so—by assigning probative weight to the various elections consistent with the unanimous expert testimony. In any event, the district court *did* consider primary elections, and while the court assigned them less weight, it concluded that they too support a finding of cohesive voting.

Based upon an intensely local appraisal of conditions, the district court determined that primary elections were not as probative as general elections. ROA.15928, 15930. In Galveston County in particular, primary elections provide limited information. Galveston County Commissioners Court elections are usually uncontested. ROA.15928, 16904.¹² Moreover, all racial groups rarely participate in such elections, with Black and Latino voters participating in exceptionally low levels. ROA.15928, 16904, 17340-17341; *see also generally* ROA.34913-34942, 35459-35483. Significantly, the County's appellate position regarding primary elections was disclaimed several times by its own expert. *See, e.g.*, ROA.19440, 19441-19442, 19443.

¹² According to election records before the Court, Precinct 3 had no contested primary elections over the last decade. *See* ROA.35465-35466. On the Democratic side where an overwhelming majority of Galveston Black and Latino voters vote, there has not been a single competitive primary election for any County Commissioners' Court Precinct or County Judge from 2012 to 2022. ROA.35465-35466.

Despite the limited value of primary elections, the district court credited Plaintiffs' expert Dr. Oskooii's analysis of recent primary elections, concluding that it illustrated cohesion between Black and Latino voters in Galveston County in nine out of those ten elections. The County relegates this to a footnote, Br. at 50 n.16, and dismisses the district court's factual findings because the candidates supported by Black and Latino voters were also supported by white primary voters. But on cross examination, the County's expert, Dr. Alford, testified that the behavior of the small number of white Democratic primary voters is irrelevant to the question of *Gingles* 2 cohesion between Black and Latino voters. ROA.19421-19422, 15929-30. White voter behavior is relevant at *Gingles* 3, and in this case in the general election, a conclusion that flows directly from *Gingles* itself. The district court did not clearly err adhering to Supreme Court precedent and the County's own expert's position.¹³

The County next highlights various results of Dr. Trounstine's, Br. at 48, but omits that the County itself—through the report and testimony of Dr. Alford—established that Dr. Trounstine had run an outdated statistical code in producing her results. ROA.19327, 19394, 19412, 23999. Dr. Alford agreed with Plaintiffs' experts Dr. Barreto and Dr. Oskooii that a more modern approach should now be used, and he re-ran the primary elections examined by Dr. Trounstine using that method.

¹³ Likewise, the County's fleeting reference to a 75 percent threshold for cohesion, Br. at 48, omits that Dr. Alford testified on cross examination that utilizing a threshold is methodologically unsound. ROA.19394-19397, 19456-19457.

ROA.19320-19322. As the district court correctly found, Dr. Alford’s analysis shows cohesion between Black and Latino voters in those primary elections. Under his replications, five out of eight exogenous primary elections, ROA.19323-19324, and four out of six¹⁴ endogenous primary elections show Latino and Black cohesion in voting for the same candidates, ROA.19434-19435.

Further, as the district court concluded, several of the endogenous primary elections examined by Dr. Trounstine, some from as far back as 2002, are too far removed temporally to be probative. *See* ROA.19433. The most recent, and thus most probative endogenous primary election—the 2012 primary for Precinct 3—shows overwhelming cohesion between Black and Latino Voters in Galveston County. *See* ROA.19434, 24002.

The County’s concerns about broad confidence intervals for estimating Hispanic voter patterns are similarly undermined by the testimony of their own expert. Dr. Alford testified that these intervals did not affect the ultimate conclusions he drew—the “same overall conclusion from the general elections that all of the experts have testified here draw.” ROA.19358-19359. Further, the County’s claim that Plaintiffs’ expert Dr. Barreto “agreed his analysis did not show Hispanic voter

¹⁴ Dr. Alford’s testimony that only one out of eight exogenous primary elections and zero out of the six endogenous primaries analyzed exhibited racial polarization was again based upon his own admittedly irrelevant inclusion of the White voting patterns in his primary analysis. *See* ROA.19431-19432, 19434-19435.

cohesion levels ‘consistently above 75%,’” is similarly false. Br. at 49.¹⁵ Rather, Dr. Barreto testified that his Bayesian Improved Surname Geocoding (“BISG”)¹⁶ analysis showed Hispanic cohesion levels in the 80 percent range. ROA.16901-16902.

The County correctly asserts that the significance of primary elections is a question for the district court’s factual determination. Here, the district court, based upon testimony and significant agreement between the parties’ experts, determined that primary elections provided limited probative value. Nonetheless, even if primary elections needed to be considered, the district court fulfilled this obligation reviewing the results of primary analysis by all experts that demonstrated significant cohesion between Black and Latino voters in Galveston County.

B. The district court did not clearly err in rejecting the County’s partisanship arguments.

The district court did not clearly err in rejecting the County’s partisanship arguments. Plaintiffs alleging Section 2 vote dilution claims have no affirmative duty, in the first instance, to “attempt to eliminate, as a causative factor, the impact

¹⁵ The County’s citation points to Dr. Barreto describing the BISG process.

¹⁶ In a thorough analysis the district court concluded that “BISG is particularly useful for narrowing in on the vote choices of Latino voters,” ROA.15924, and concluded that “the court finds that BISG is a reliable methodology for assessing racially polarized voting patterns,” ROA.15925. The County does not challenge that finding on appeal.

of politics on voting patterns.” Br. at 53. Rather, Plaintiffs are first only required to prove racial bias through satisfying the *Gingles* preconditions. *Teague v. Attala Cnty., Miss.* 92 F.3d 283, 290 (5th Cir. 1996). If Plaintiffs satisfy the *Gingles* preconditions, the burden shifts to Defendants to “rebut the plaintiffs’ evidence by showing that no such bias exists in the relevant voting community.” *Id.* Here, the County misunderstands¹⁷ the burden shifting required in showing that white bloc voting is driven by racial, not political motives. *Id.* Plaintiffs satisfied their burden in presenting sufficient evidence of racial bias in voting patterns of Galveston County by proving the three *Gingles* preconditions with expert and lay witness testimony. *See generally* ROA.16004-16020. The burden thus shifted to the County to show some evidence that partisanship, not racial bias caused the voting patterns. *Teague*, 92 F.3d at 290. The County failed to do so.

The record is devoid of evidence from the County showing that partisanship, not racial bias, is the cause of Galveston County’s divergent voting patterns. Instead, the County propounded “general statements that race played no role at the polls.” *Id.* at 291. For example, the County cites the fact that during the pendency of this litigation, a Black man was appointed to the Commissioners Court as evidence that

¹⁷ The County seems to deliberately misread *Teague*, which expressly explains the burden shifting does not require Plaintiffs to face the “insurmountable burden of coming forward with evidence disproving all nonracial reasons that can explain election results in spite of the fact that the defendant itself produced no real evidence that factors other than race were at work.” 92 F.3d at 291.

race and partisanship are not “inextricably intertwined.” Br. at 52. The County similarly attempts to support its position by noting that Dwight Sullivan, a Hispanic Republican, was successfully elected to County Clerk of Galveston County for several terms. Br. at 53. However, Sullivan was unopposed in almost all of his elections, ROA.19555-19556, and the County presented no evidence of Sullivan, whose first and last names present as Anglo, running openly as a Hispanic candidate or being the minority candidate of choice,¹⁸ *see* ROA.17859. Rather than “scuttle over” the reality of minority elected officials in Galveston County, the district court thoroughly considered the very limited number of minority officials and the exceptional circumstances surrounding their election, finding this minimal evidence unpersuasive. ROA.15988-15989.

Similarly, Dr. Alford failed to show that “race played no role at the polls.” Dr. Alford simply made broad statements that partisanship explains Galveston County voting patterns without conducting any reliable analysis to support this claim. *See* ROA.19401-19402 (denying doing any analysis to determine whether the candidates’ positions on issues had racial components that led to the voting patterns, and denying conducting any sort of survey to determine if election results were related to race.); *see also* ROA.19405-19406. Similarly broad and unsupported

¹⁸ The same is true for Judge Patricia Grady, a Hispanic Republican judge in Galveston County whom the County also cite in their brief. *See* ROA.17860.

statements by Dr. Alford have been rejected by several courts as “speculative and unreliable.” *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 587 F. Supp. 3d 1222, 1305-07 (N.D. Ga. 2022) (listing seven other courts discounting Dr. Alford’s testimony regarding the cause of voter behavior). Indeed, Dr. Alford himself agreed with these criticisms by prior courts. ROA. 19381-19382. These speculative and unreliable statements by Dr. Alford are insufficient to meet the County’s burden. *See Teague*, 92 F.3d at 291.

Even if Plaintiffs did have the burden of proving that race, not partisanship, motivated voting patterns in Galveston County, the district court found a series of facts establishing that race explained the divergent voting patterns. ROA.15936-15937. In *Clements*, 999 F.2d 831, the court considered the following evidence for determining whether partisan politics predominated racial concerns for polarized voting: the racial composition of membership of the political parties in the jurisdiction at issue and the extent to which a political party recruits minority persons as candidates or nominees. *Id.* at 861. Here, the district court found that the racial composition of political parties was starkly along racial lines. Indeed, “all experts agree that relatively few Anglo voters in Galveston County participate in Democratic Party primaries” ROA.15936-15937 (citing ROA.35461-35462); *see also* ROA.17341, 19402-19403. Similarly, “relatively few Black and Latino voters in Galveston County participate in the county’s Republican primaries.” ROA.15936;

see also ROA.17341, 19404. Further, it is clear that the political party that Anglo voters associate with in Galveston, specifically the Republican party, has not recruited nor nominated minority persons as their candidates or nominees for county elected positions. Tellingly, “[n]o Black or Latino *Republican* has ever won a primary election to be the Republican Party’s nominee for county judge or a county commissioner.” ROA. 15936. The County cannot and did not dispute this evidence nor adduce any contrary evidence.

Additionally, the *Clements* court viewed factors such as history of lack of access to the political process and whether there is a lack of responsiveness by elected and public officials to be probative in assessing whether polarized voting was on account of race. *Clements*, 999 F.2d. at 853, 857-58. In Galveston County, there is a lengthy history of lack of access to the political process for both Black and Latino voters. *See, e.g.*, ROA.15941; *see also* ROA.33885. Based on a thorough appraisal of the County, the district court found that “the history of discrimination resulting in ongoing socio-economic disparities and barriers to voting along racial lines also contributes to a finding that race, not partisanship alone drives the voting patterns seen in Galveston County.” ROA.15937.

The district court also found, based on testimony from the County Judge and Commissioners themselves, that there was a lack of responsiveness by elected and public officials. ROA.15990 (“Anglo commissioners are evidently not actively

engaged in specific outreach to Galveston County’s minority residents . . . Commissioner Apffel could not identify any wants, needs, or desires that African American and Latino constituents have.”); *see generally* ROA.15990-15992. These findings were also informed by the testimony of three of Plaintiffs’ expert witnesses, Drs. Burch, Rocha and Krochmal, *see, e.g.*, ROA.16427-16432, and the lay testimony of several Galveston County residents detailing the discrimination they face and the failure of the local government to address the needs of their community, *see, e.g.*, ROA.16362-16364 (detailing the failure of Galveston to rebuild public housing following Hurricane Ike.)

The County identifies no clear error in the district court’s conclusion that race explains the polarized voting patterns in Galveston County.

IV. Section 2 does not have an unconstitutional temporal scope.

Faced with sound factual findings and legal conclusions, the County attempts to fall back on a new defense, raised only after trial, that Section 2 is unconstitutional on its face for lack of temporal limits. This novel theory defies precedent and ignores Section 2’s self-limiting terms and operation.

No court has conditioned Section 2’s validity on its eventual termination. Rather, the Supreme Court has long upheld and recently reaffirmed Section 2’s nationwide ban on discriminatory results as an appropriate means of enforcing the Fifteenth Amendment. *See City of Rome v. United States*, 446 U.S. 156, 173 (1980)

“We hold that . . . the prior decisions of this Court foreclose any argument that Congress may not, pursuant to § 2 [of the Fifteenth Amendment], outlaw voting practices that are discriminatory in effect.”); *Milligan*, 599 U.S. at 41 (reaffirming the same). In *City of Rome*, the Court “ma[de] clear” that Congress could “prohibit state action that . . . perpetuates the effects of past discrimination.” 446 U.S. at 176.¹⁹ This Circuit has likewise held that Section 2, in its current form, is an appropriate “prophylactic measure[]” to ensure compliance with the Fourteenth and Fifteenth Amendments. *Jones v. City of Lubbock*, 727 F.2d 364, 375, 373-74 (5th Cir. 1984).

The County’s cases lend no support for imposing a time limit on Section 2. *Shelby County v. Holder* expressly disclaimed any effect on Section 2, holding that the VRA’s preclearance coverage formula no longer matched current conditions and could not be justified under a principle of “equal [state] sovereignty” that is irrelevant to Section 2, which applies nationwide. 570 U.S. 529, 550-51, 557 (2013).

¹⁹ The Court has since held up the VRA as an exemplar of congruent and proportional enforcement of the Fifteenth and Fourteenth Amendments. *See, e.g., City of Boerne v. Flores*, 521 U.S. 507, 518 (1997) (“[M]easures protecting voting rights are within Congress’ power to enforce the Fourteenth and Fifteenth Amendments, despite the burdens those measures place [] on the States.”); *Bd. of Trs. v. Garrett*, 531 U.S. 356, 373 (2001) (“[T]he [VRA is] a detailed but limited remedial scheme designed to guarantee meaningful enforcement of the Fifteenth Amendment in those areas of the Nation where abundant evidence of States’ systematic denial of those rights was identified.”); *Nev. Dep’t of Hum. Res. v. Hibbs*, 538 U.S. 721, 738 (2003) (likening Family and Medical Leave Act to VRA as a “valid exercise[] of Congress’ § 5 power” under the Fourteenth Amendment).

The Supreme Court’s latest affirmative action decision in *Students for Fair Admissions, Inc. v. Pre. & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) (“*Students*”), is also inapplicable. There, applying strict scrutiny and a 25-year durational limit already imposed in *Grutter v. Bollinger*, 539 U.S. 306 (2003), the Court struck down university affirmative action programs that allocate admission preferences based on race and lack an endpoint beyond achievement of some measure of racial proportionality. *Students*, 600 U.S. at 218-20. Section 2, by contrast, is not an affirmative action program: it neither confers benefits or burdens based on race nor seeks any measure of racial proportionality. It is, rather, an antidiscrimination statute, a purely defensive or prophylactic measure that *prohibits* voting discrimination based on race. *See* 52 U.S.C. § 10301. Like other federal antidiscrimination statutes, Section 2 permits only those remedies that are tailored to eliminate the offending practice. *See Veasey*, 830 F.3d at 253.

As such, Section 2 does not “demand exception to equal protection” and is not subject to strict scrutiny in its application to redistricting. Br. at 54. Indeed, Section 2 was enacted *pursuant* to the Fourteenth and Fifteenth Amendments to *enforce* those amendments. “[T]he mere fact that race [is] given some consideration in the districting process, and even the fact that minority-majority districts were intentionally created, does not alone suffice in all circumstances to trigger strict scrutiny.” *Chen v. City of Houston*, 206 F.3d 502, 506 (5th Cir. 2000) (citing *Shaw v.*

Hunt, 517 U.S. 899 (1996) (“*Shaw I*”). Strict scrutiny applies only when it is shown that race was the *predominant* factor in drawing district lines, subordinating race-neutral criteria. *See id.*; *Milligan*, 599 U.S. at 33 (“The line we have long drawn is between consciousness and predominance.”). While Section 2 compliance may require race consciousness in certain places under limited circumstances to avoid discriminatory results, it does not demand that race predominate in redistricting. Indeed, in cases where it is proven that race predominated in a given redistricting, compliance with Section 2 is a compelling justification *only* if the government had a strong basis in evidence for concluding that the three *Gingles* preconditions exist. *See Clark v. Calhoun Cnty., Miss.*, 88 F.3d 1393, 1405-06 (5th Cir. 1996); *Cooper v. Harris*, 583 U.S. 285, 301 (2017); *Shaw II*, 517 U.S. at 915 (assuming compliance with Section 2 is a compelling interest distinct from a “generalized” interest in remedying past discrimination without any “identified discrimination”).

Thus, Section 2 would be appropriately tailored without any temporal limitation because its application is “confine[d] . . . to *actual* racial discrimination.” S. Rep. 97-417, at 43 (emphasis added). Far from requiring an end to Section 2, the Supreme Court has only confirmed its enduring necessity, noting recently that the law “provides vital protection against discriminatory voting rules, and *no one suggests that discrimination in voting has been extirpated or that the threat has been eliminated.*” *Brnovich*, 141 S. Ct. at 2343 (emphasis added).

In any event, the County’s misguided search for a sunset provision overlooks the obvious fact that Section 2 already has temporal limitations embedded in its text and operation. On its face, Section 2 requires courts to consider “the totality of the circumstances” in determining whether election districts interact with social and historical conditions to deny minority voters equal opportunity to elect candidates of choice. 52 U.S.C. § 10301(b); *see Brnovich*, 594 U.S. at 2341 (preventing Section 2 from becoming a “freewheeling disparate-impact regime”). This inquiry demands “an intensely local appraisal of the electoral mechanism at issue, as well as a ‘searching practical evaluation of the past *and present* reality.’” *Milligan*, 599 U.S. at 19 (emphasis added). For example, courts must consider not only historical voting-related discrimination in the jurisdiction but also the extent to which the minority groups *presently* bear the effects of past discrimination in areas that hinder their ability to participate effectively in the political process. This test necessarily incorporates temporal limitations. If the intensely local appraisal reveals that past discrimination no longer causes discriminatory effects in the present, the claim fails. *See, e.g., Meza v. Galvin*, 322 F. Supp. 2d 52, 74 (D. Mass. 2004).

Finally, the County has also “failed to shoulder [its] heavy burden to demonstrate that the Act is ‘facially’ unconstitutional.” *United States v. Salerno*, 481 U.S. 739, 745 (1987). A facial challenge is “the most difficult . . . to mount successfully” because the County must show that “no set of circumstances exists

under which [Section 2] would be valid.” *Id.* The County does not and cannot argue that the passage of time has rendered Section 2 invalid in *all* its applications. The “stark and jarring” incident of discrimination found here in Galveston County is a case in point. ROA.16029.

CONCLUSION

For the foregoing reasons, the district court’s judgment should be affirmed and the County’s motion for a stay pending appeal denied.

November 2, 2024

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I hereby certify that on November 2, 2024, this document was electronically served on all counsel of record via the Court's CM/ECF system.

/s/ Chad W. Dunn

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APPENDIX 12

(ORDER LIST: 601 U.S.)

FRIDAY, DECEMBER 1, 2023

ORDER IN PENDING CASE

23A449 PETTEWAY, TERRY, ET AL. V. GALVESTON COUNTY, TX, ET AL.

The application to vacate stay presented to Justice Alito
and by him referred to the Court is dismissed as moot.

APPENDIX 13

No. 23-40582

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Galveston County, Texas, the Galveston County Commissioners
Court, Galveston County Judge Mark Henry, and Galveston County
Clerk Dwight Sullivan,
Appellants

v.

Terry Petteway, Constable Derrick Rose, the Hon. Penny Pope,
Mainland Branch NAACP, Dickinson Bay Area Branch NAACP,
Galveston Branch NAACP, and Galveston LULAC Council 151, and
the United States of America,
Appellees

On appeal from the United States District Court
for the Southern District of Texas, Galveston Division
No. 3:22-CV-00057 (consolidated with Nos. 3:22-CV-00093 and 3:22-CV-00117)

**APPELLANTS' REPLY IN SUPPORT OF THEIR RENEWED
EMERGENCY MOTION TO STAY PENDING APPEAL**

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**APPELLANTS’ REPLY IN SUPPORT OF THEIR RENEWED
EMERGENCY MOTION TO STAY PENDING APPEAL**

Appellants Galveston County, Texas, the Galveston County Commissioners Court, Galveston County Judge Mark Henry, and Galveston County Clerk Dwight Sullivan (collectively, the County or Appellants) file this brief reply in support of their renewed emergency request to stay the district court’s final judgment pending the outcome of this appeal, to address the following points.

No motion for stay was delayed. Petteway Appellees argue the County “failed to move for a stay on November 10.” Dkt. 162 at 1.¹ This recitation is misleading.

On November 10th at 9:56 a.m. CST, the panel issued its opinion affirming the district court’s judgment. Dkt. 118. At 1:06 p.m. CST, counsel for the County emailed Appellees to request their positions on, inter alia, an emergency motion to stay. Dkt. 153 at 3.² At 1:38 p.m. CST, the panel extended the administrative stay “pending en banc poll.” Dkt. 122. The en banc poll concluded and the panel opinion was vacated on November 28, 2023. Dkt. 137. During this time, counsel for

¹ The County moved for a stay pending appeal on October 17, 2023. Dkt. 13 at 20-21 (asking to stay the trial court “from altering the Commissioners Court boundaries during the pendency of this appeal” and in the alternative for an “administrative stay” pending consideration of the motion). The Court granted a temporary administrative stay on October 18th and deferred the opposed motion for stay pending appeal to the oral argument panel. Dkt. 28. The case was expedited, set for argument on November 7th, and the temporary stay was extended through November 10th. Dkt. 40.

² The email attached to the Petteway Appellees’ letter to the Court was printed by Mark Gaber, who is in Washington, D.C., one hour ahead. Dkt. 153 at 3.

Petteway Appellees applied to Justice Alito to vacate the stay, and oddly renewed that argument before the U.S. Supreme Court on November 28th, after this Court vacated the panel opinion and granted en banc review.

On November 30th, after Appellees' filings about the clarity of whether a stay was in place, the Court entered an order stating that the temporary administrative stay expired on November 28th. Dkt. 145. That evening, the district court entered an order implementing a different districting map. Dkt. 152. On December 1st, the County (1) confirmed with the Clerk's Office that the original motion to stay was still pending before the Court, and (2) renewed that motion on an emergency basis. Dkt. 152. Appellees cite no case law that a motion to stay was required on November 10th after the Court extended its temporary administrative stay. *See* Dkts. 162 at 1, 163 at 23.

There are no unresolved, "alternative" claims. Appellees continue to argue intentional conduct (*see* Dkt. 161 at 15-16), when the district court clearly stated that it "declin[ed] to reach" any such finding (ROA.16034 ¶ 430), none of the Appellees appealed that decision, and all of the Appellees prayed only for affirmance on appeal. Under these circumstances, there are no unresolved or alternative claims pending. *See Amazing Spaces, Inc. v. Metro Mini Storage*, 608 F.3d 225, 250 (5th Cir. 2010) ("this circuit follows the general rule that, in the absence of a cross-appeal, an appellate court has no jurisdiction to modify a judgment so as to enlarge the rights

of the appellee or diminish the rights of the appellant”).³ Nor must Appellants contest intent findings *when none exist*, and which Appellees have not appealed; Appellants appealed from the final judgment, which did not include a finding of intent. *See* Dkt. 162 at 2.

***Purcell* favors Appellants, not Appellees.**

Purcell supports a stay, despite Appellants’ arguments to the contrary. *See* Dkt. 162 at 6-7. Map 2, the 2021 enacted Plan, has been in place for two years—including for seventeen days of the 30-day candidate filing period. If *Purcell* instructs courts to refrain from acting too close to an election, then it supports keeping in place the districting plan that has been in effect for the past two years. Appellees are wrong when they say the County’s counsel confirmed that Map 1 is being implemented pursuant to the district court’s order *without any issues*; the conversation with the district court was whether additional orders were needed from it to implement Map 1 (of course, subject to this Court’s ruling on Appellants’ motion for stay). Specific issues about implementing a map switch more than mid-way through the candidate filing period were not reviewed. It would cause confusion to change the enacted Plan now, and *Purcell* supports a stay.

³ Petteway Appellants describe the “contemporary political environment in Galveston County” as including “a local political figure referring to a Black Republican as a ‘typical nig.’” Dkt. 162 at 2-3. They omit that the text had nothing to do with any election or local politics (the text chain discussed personal loans), that it was made by Republican Yolanda Waters (who is Black and Latina), and that Waters defended herself against claims of racism in the text message when the text message was made public.

CONCLUSION AND PRAYER

Appellants ask that the Court enter an order staying the district court's final judgment, its November 30, 2023 Order, and any further action that would alter the Galveston County Commissioners Court boundaries during the pendency of this appeal. In the alternative, Appellants ask that the Court enter an administrative stay until it can consider this filing.

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

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/s/ Angela Olalde
Counsel for Appellants

Dated: December 5, 2023

CERTIFICATE OF SERVICE

I certify that, on December 5, 2023, this document and its attachments were electronically served on all counsel of record in this case in accordance with the Federal Rules of Appellate Procedure.

/s/ Angela Olalde
Counsel for Appellants

APPENDIX 14

No. 23-40582

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Galveston County, Texas, the Galveston County Commissioners
Court, Galveston County Judge Mark Henry, and Galveston County
Clerk Dwight Sullivan,
Appellants

v.

Terry Petteway, Constable Derrick Rose, the Hon. Penny Pope,
Mainland Branch NAACP, Dickinson Bay Area Branch NAACP,
Galveston Branch NAACP, and Galveston LULAC Council 151, and
the United States of America,
Appellees

On appeal from the United States District Court
for the Southern District of Texas, Galveston Division
No. 3:22-CV-00057 (consolidated with Nos. 3:22-CV-00093 and 3:22-CV-00117)

**APPELLANTS' RENEWED EMERGENCY
MOTION TO STAY PENDING APPEAL**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Appellants

- a. Galveston County, Texas,
- b. the Galveston County Commissioners Court
- c. Galveston County Judge Mark Henry
- d. Galveston County Clerk Dwight Sullivan

2. Trial and Appellate Counsel for Appellants

- a. Joseph Russo, Jr.
- b. Andrew Mytelka
- c. Angela Olalde
- d. Jordan Raschke Elton
- e. Greer, Herz & Adams, L.L.P.
- f. Joseph M. Nixon
- g. J. Christian Adams
- h. Maureen Riordan
- i. Public Interest Legal Foundation

3. Trial Counsel for Appellants

- a. Holtzman Vogel Baran Torchinsky & Josefiak PLLC
- b. Dallin B. Holt
- c. Jason B. Torchisky

- d. Shawn T. Sheehy
4. “Petteway” Appellees
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 - b. Derrick Rose
 - c. Penny Pope
5. Counsel for “Petteway” Appellees
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 - b. Valencia Richardson
 - c. Simone Leeper
 - d. Alexandra Copper
 - e. Campaign Legal Center
 - f. Bernadette Samson Reyes
 - g. Sonni Watnin
 - h. UCLA Voting Rights Project
 - i. Chad W. Dunn
 - j. Brazil & Dunn
 - k. Neil G. Baron
 - l. Law Office of Neil G. Barron
6. “NAACP” Plaintiffs
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 - b. Mainland Branch NAACP
 - c. LULAC Counsel 151
 - d. Edna Courville

- e. Joe A. Compian
 - f. Leon Phillips
7. Counsel for NAACP Plaintiffs
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 - b. Hilary Harris Klein
 - c. Southern Coalition for Social Justice
 - d. Andrew Silberstein
 - e. Diana C. Vall-Llobera
 - f. JoAnna Suriani
 - g. Michelle Anne Polizzano
 - h. Molly Linda Zhu
 - i. Richard Mancino
 - j. Willkie Farr & Gallagher
 - k. Hani Mirza
 - l. Joaquin Gonzalez
 - m. Sarah Xiyi Chen
 - n. Christina Beeler
 - o. Texas Civil Rights Project
 - p. Kathryn Carr Garrett
 - q. Nickolas Anthony Spencer
 - r. Spencer & Associates PLLC
8. United States of America
9. Counsel for United States of America

- a. U.S. Department of Justice
- b. Robert S. Berman
- c. Catherine Meza
- d. Bruce I. Gear
- e. K'Shaani Smith
- f. Michael E. Stewart
- g. T. Christian Herren, Jr.
- h. Tharuni A. Jayaraman
- i. Zachary Newkirk
- j. Daniel David Hu

Appellants certify that, to the best of their knowledge, no publicly traded company or corporation has an interest in the outcome of this case or appeal.

By: /s/ Joseph Russo, Jr.
Counsel for Appellants

**APPELLANTS' RENEWED
EMERGENCY MOTION TO STAY PENDING APPEAL**

Pursuant to Federal Rule of Appellate Procedure 8, Appellants Galveston County, Texas, the Galveston County Commissioners Court, Galveston County Judge Mark Henry, and Galveston County Clerk Dwight Sullivan (collectively, the “County” or “Appellants”) file this renewed emergency request to stay the district court’s final judgment pending the outcome of this appeal, which is set for en banc review.

Yesterday evening (November 30, 2023), the district court entered the attached order implementing Map 1 and setting a status conference for Monday, December 4, 2023 at 1:00 p.m. “to discuss how the matter will proceed to ensure that the 2024 election will be conducted using Map 1.” Exhibit 1.

<p>Due to this latest development, Appellants ask that an <u>emergency stay issue today, December 1, 2023.</u></p>

The candidate filing period has been open since November 11, 2023 under the 2021 Galveston County Commissioners’ Court districting plan (“2021 Plan”). Under the district court’s latest order, candidates who have filed and qualified will no longer be able to run for County Commissioner.

Appellants believe action is needed today, December 1, 2023.

Appellees have reiterated their opposition to a stay, as recently as this morning, in response to Appellants’ letter filed in this Court yesterday.

INTRODUCTION AND NATURE OF THE EMERGENCY

This is an appeal of a Voting Rights Act (“VRA”) case brought by a minority coalition of Black and Latino voters challenging the 2021 Plan.

On November 30, 2023, the district court entered an order implementing Map 1, a map that was not adopted by the Galveston County Commissioners Court. The district court stated it was “no longer practicable” to allow the Commissioners Court any opportunity to consider or adopt an alternate map (Exhibit 1 at 2) and, without awaiting a response from Appellants, and following the misstatement from Petteway Appellees that there was no stay request pending before this Court, entered its order at 6:30 p.m., only 3.5 hours after the Petteway Appellees’ request was filed.

It is not disputed that the federal district court’s imposition of Map 1 will favor a Democratic candidate for County Commissioner Precinct 3 over a Republican, or that it greatly alters the boundaries of the 2021 Plan—**which has been in place for over two years now.**

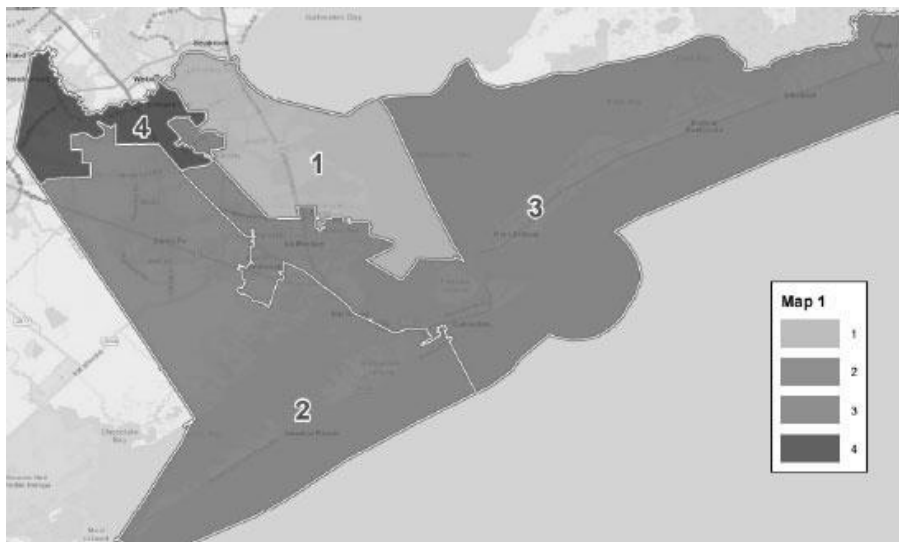
Considering the Court’s grant of en banc review, and the original panel’s strong denouncement of prior case law allowing minority coalition claims to proceed under the VRA, Appellants ask that the Court enter an order staying enforcement of the district court’s final judgment and any further order from the district court (including its November 30, 2023 Order) that prevents the use of the 2021 Plan for the 2024 election. As Appellants argued in response to the Petteway Appellees’

motion to vacate this Court’s temporary administrative stay, submitted to Justice Alito, the VRA is too important to be misused for political gain—which is precisely what a coalition claim does by joining plaintiffs under a political ideology, not by racial ties. And as *Allen v. Milligan* has recently instructed, reapportionment “is primarily the duty and responsibility of the State[s],” not the federal courts. *Allen v. Milligan*, 599 U.S. 1, 29 (2023). Section 2 limits judicial action to “instances of intensive racial politics where the excessive role of race in the electoral process denies minority voters equal opportunity to participate.” *Id.* (cleaned up). Appellants therefore renew their request for a stay pending appeal, and present this renewed request as an emergency to this Court.

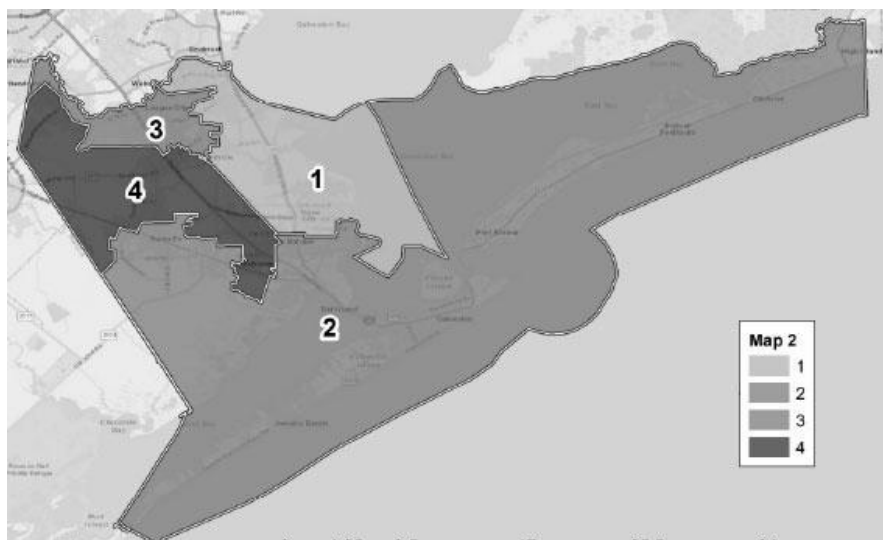
BRIEF FACTUAL BACKGROUND

The Court is likely familiar with the facts of this case, due to the parties’ numerous filings thus far. Briefly, the Galveston County Commissioners Court considered two map proposals following the 2020 Census (Map 1 and Map 2), and adopted the “Map 2” proposal (2021 Plan):

The “Map 1” Proposal



The “Map 2” Proposal (2021 Plan)



ROA.24458-24459.

Both proposed plans kept all Commissioners within their precinct boundaries as required by the Texas Constitution (art. 16 §14) and equalized County population among the precincts. Under the 2021 Plan, the incumbent Democrat for Precinct 3 is less likely to be reelected, considering the political makeup of the County and of the new Precinct 3. *See* ROA.15935, 15937, 16008-16009 ¶¶144, 149, 370. But Map 1 favors a Democratic candidate over a Republican.

ARGUMENT

I. Standard of Review and Applicable Law

A stay is an extraordinary remedy founded in equity and committed to the Court's discretion. *Nken v. Holder*, 556 U.S. 418, 437 (2009). In deciding whether a stay should be granted during an appeal, courts consider the following factors:

1. whether there is a strong showing the appellants are likely to succeed on the merits;
2. whether appellants will be irreparably injured absent a stay;
3. whether a stay will substantially injure the other parties interested in the proceeding; and
4. where the public interest lies.

Id. at 426. These factors cannot be applied rigidly or mechanically. *Campaign for S. Equal. v. Bryant*, 773 F.3d 55, 57 (5th Cir. 2014). And “[t]he first two factors are usually the most important.” *Thomas v. Bryant*, 919 F.3d 298, 303 (5th Cir. 2019) (citing *Nken*, 556 U.S. at 434).

II. The Court’s recent grant of en banc review acknowledges that serious questions of law are presented in this appeal, for which Appellants believe they present a substantial case on the merits.

The Fifth Circuit has held that a request for stay need only be supported by “a **substantial** case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.” *U.S. v. Baylor Univ. Med. Cntr.*, 711 F.2d 38, 39 (5th Cir. 1983) (emphasis added, citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)). This case presents a serious legal question, “both to the litigants involved and the public at large.” *See Campaign for S. Equal.*, 773 F.3d at 57 (granting stay where substantial question was presented to Court for resolution on appeal involving same-sex marriage bans). That question is whether a minority coalition can raise a VRA challenge. As discussed below in the irreparable harm section, the balance of equities weighs heavily in favor of granting a stay.

Appellants can also make a strong showing they are likely to succeed on the merits, as discussed in more detail below. With an election “many months away,” such likelihood “may counsel in favor of a stay.” *Robinson v. Ardoin*, 37 F.4th 208, 228-29 (5th Cir. 2022). Additionally, while the district court criticized the procedure surrounding the adoption of the 2021 Plan, including the lack of a formally adopted timeline, redistricting criteria, competitive procurement for redistricting vendors, and inadequate public notice and comment (*see* ROA.15963-15977 ¶¶232-78), it at

the same time now orders the County to implement Map 1. This fails to account for the fact that Map 1 was drawn and considered under the same procedure the district court criticized with the 2021 Plan.

A. The VRA does not protect minority coalitions.

This case presents a question of national importance: whether a coalition of Black and Hispanic voters may bring a VRA claim together, when it is undisputed that neither Black nor Hispanic voters could, on their own, form a majority-minority precinct.¹

This Court has allowed minority coalition claims under the VRA.² But since that time, other circuit courts and the United States Supreme Court have held the VRA does not protect sub-majority claims under the VRA. *See Bartlett v. Strickland*, 556 U.S. 1, 14 (2009) (rejecting sub-majority VRA claim for crossover district); *Hall v. Virginia*, 385 F.3d 421, 431-32 (4th Cir. 2004) (same, also using language referencing coalition claims); *Nixon v. Kent County*, 76 F.3d 1381, 1392-93 (6th Cir. 1996) (specifically rejecting coalition claims under the VRA); *Frank v. Forest*

¹ In many voting rights cases, the division in question is a “district.” Texas counties are divided into “precincts.”

² *See League of Un. Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (en banc) (“*Clements*”); *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989); *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989); *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988); *LULAC Council No. 4386 v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1499 (5th Cir. 1987).

County, 336 F.3d 570, 575-76 (7th Cir. 2003) (acknowledging circuit split and observing the “problematic character” of coalition claims).

As the Fourth Circuit explained in *Hall*, permitting multiracial coalitions to bring VRA claims would transform the statute from a source of minority protection to an advantage for *political* coalitions, and a redistricting plan that prevents political coalitions among racial or ethnic groups “does not result in vote dilution ‘on account of race’ in violation of Section 2.” *Hall*, 385 F.3d at 431.

Though the United States Supreme Court has not yet ruled directly on this issue,³ it has indicated that sub-majority claims are not actionable under the VRA, and it has cited *Hall* favorably. In *Bartlett v. Strickland*, the Court held that crossover districts (where minority voters make up less than a majority but are aided by majority voters who cross over to vote for the minority group’s preferred candidate—arguably an “effective minority district[]”—contradict the VRA’s mandate. *See Bartlett*, 556 U.S. at 14 (discussing crossover district where “minority voters might be able to persuade some members of the majority to cross over and join with them”). That is because the VRA requires proof that minorities “have less opportunity than other members of the electorate to . . . elect representatives of their

³ *See, e.g., Grove v. Emison*, 507 U.S. 25, 41 (1993) (declining to rule on the validity of coalition claims writ large); *Bartlett*, 556 U.S. at 13-14 (declining to address “coalition-district claims in which two minority groups form a coalition to elect the candidate of the coalition’s choice”); *Perry v. Perez*, 565 U.S. 388, 398-99 (2012) (creating a coalition district is likely not necessary to comply with VRA Section 5).

choice.” *Id.* (quotation omitted). Where a minority group forms less than a majority, it “standing alone ha[s] no better or worse opportunity to elect a candidate than does any other group of voters with the same relative voting strength.” *Id.* The Court explained that a minority group could “join other voters—including other racial minorities, or whites, or both—to reach a majority and elect their preferred candidate.” *Id.* Where one minority group cannot elect a candidate on its own “without assistance from others,” the Court quoted *Hall* favorably, stating that such a “VRA claim would give minority voters ‘a right to preserve their strength for the purposes of forging an advantageous political alliance.’” *Id.* at 14-15 (quoting *Hall*, 385 F.3d at 431 and *Voinovich*, 507 U.S. at 154 (minorities in crossover districts “could not dictate electoral outcomes independently”).

Clearly, *Bartlett* rejects the argument that sub-majority groups have special protection under the VRA to form *political* coalitions. *Id.* at 15 (“[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground”) (quotation omitted). Therefore, even though a VRA analysis should not be mechanically applied, it “does not impose on those who draw election districts a duty to give minority voters the most potential, or the best potential, to elect a candidate by attracting crossover voters.” *Id.*

That is, the VRA cannot “place courts in the untenable position of predicting many political variables and tying them to race-based assumptions.” *Id.* at 17 (stating

courts “would be directed to make predictions or adopt premises that even experienced polling analysts and political experts could not assess with certainty, particularly over the long term”). That is precisely what Appellees asked of the district court in this case:

- How have Hispanic Galveston County voters turned out to support the same candidate as Black Galveston County voters in the past?
- How reliable a prediction could be determined for future elections?
- What candidates have Black and Latino voters supported together, and will those trends continue?
- Were past voting trends based on incumbency, and did that depend on race?
- What are the turnout rates among white and minority voters, and will that continue into the future?

See id. at 17-18. These questions invite speculation, and impermissibly force courts, ill equipped, into the decision making based on political judgments. *Id.* (cautioning that courts “must be most cautious before” requiring “courts to make inquiries based on racial classifications and race-based predictions”). To permit the type of crossover district urged in *Bartlett* “raise[d] serious constitutional questions.” *Id.*

The same problems with a crossover district are present with a coalition minority district, and more. There is no line as to how many minority groups could join to form a VRA claim—beyond a Black and Hispanic coalition, plaintiffs could raise any combination or number of minority voter groups. Such claims would almost certainly constitute *political*, rather than minority, coalitions.

Additionally, and importantly given the ramifications present, Congress made no reference to minority coalitions in the text of the VRA. As Judge Higginbotham stated in his dissent from the denial of rehearing in *Campos*, the question to be answered is whether “Congress intended to *protect* [] coalitions” rather than whether the VRA prohibits them. *Campos v. City of Baytown, Tex.*, 849 F.2d 943, 945 (5th Cir. 1988) (per curiam) (Higginbotham, J. dissenting on denial of rehearing, joined by five other circuit judges). No such Congressional intent can be deduced. *Id.* Furthermore, the notion “that a group composed of [different minorities] is itself a protected minority” “stretch[es] the concept of cohesiveness” beyond its natural bounds to include political alliances, undermining Section 2’s effectiveness. *See id.*

Had Congress intended to extend protection to coalition groups, it would have invoked protected “classes of citizens” instead of a (singular) protected “class of citizens” identified under the VRA. *Nixon*, 76 F.3d at 1386-87. Because Section 2 “reveals no word or phrase which reasonably supports combining separately protected minorities,” the Sixth Circuit concluded that coalition claims are not cognizable. *Id.* at 1387. It expressly disagreed with *Campos* as an “incomplete [and] incorrect analysis.” *Id.* at 1388, 1390-92 (noting the difficulties of drawing district lines for minority coalitions, and that permitting coalition claims would effectively eliminate the first *Gingles* precondition).

The question is ripe for Supreme Court review. Under the rationale in *Bartlett* and in other circuit court opinions, the VRA does not protect minority coalitions.

III. Defendants will be irreparably injured absent a stay.

Irreparable harm is established upon showing “the inability to enforce [] duly enacted plans.” *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018) (explaining, in the context of interlocutory jurisdiction, that where state was barred from conducting elections under an enacted statute, unless the statute is unconstitutional, such an order “would seriously and irreparably harm” the state). As in *Thomas v. Bryant*, another VRA case, irreparable harm exists where state government officials face a trial court order “preventing enforcement of a state law, including the drawing of legislative lines, and where there was a “meaningful possibility (but not certainty) that a full appeal cannot be decided in time to provide Defendants relief before” the election at issue. *Id.* (citing *Abbott*, 138 S.Ct. at 2324 n.17). This voting rights case, as discussed above, presents serious questions about a County’s ability to enforce its duly enacted plan. As Justice Kavanaugh stated in his concurring opinion in *Merrill*, **“[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.”** *See e.g., Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J. concurring) (emphasis added).

That harm alone is sufficient to show irreparable injury absent a stay, though as discussed herein, additional serious harm may occur if no stay is ordered, including the possibility of the County having no qualified (or eligible) Republican candidates for two of its Commissioners Court seats.

As discussed above, Article 16, Section 14 of the Texas Constitution requires candidates for the Commissioners Court to live in the precinct which he or she will represent. To allowing adequate time for ballot programming and logistics before the March 2024 primary (early voting for which begins on February 20, 2024), the primary candidate filing window closes on December 11, 2023.⁴ *See* Tex. Elections Code § 172.023(a). If the County's chosen 2021 Plan is overwritten by district court order to favor a Democrat, there will be no reversing course for the 2024 election to avoid this political result, triggering serious Constitutional implications.

For example, If the district court's injunction remains in place and the 2021 Plan is replaced with Map 1 during that candidate filing window, Republican primary candidates for Precinct 3 under the 2021 Plan would be irreversibly prevented from participating in the 2024 election, even if the 2021 Plan is ultimately vindicated on appeal, because the Republican areas of Precinct 3 in the 2021 Plan are excluded under Map 1's Precinct 3. The inverse is not true. Appellees and the

⁴ Texas Secretary of State, Important Election Dates 2024, available at <https://www.sos.state.tx.us/elections/voter/important-election-dates.shtml> (last visited October 17, 2023).

district court have concluded that Democrat Commissioner Stephen Holmes, the incumbent in Precinct 3, is the candidate of choice of coalition voters. *See* ROA.15953 ¶ 198 (stating Commissioner Holmes was consistently elected in Precinct 3). Holmes resides in both versions of Precinct 3 under the 2021 Plan and Map 1. Holmes will be eligible to run for re-election in Precinct 3 whether or not the injunction stands and no matter what the result is of this appeal. The same is not true for potential Republican primary candidates for both Map 1 and the 2021 Plan.

IV. The remaining elements of substantial injury and public interest both support a stay of the Order pending appeal.

In considering harm to other parties, the “maintenance of the status quo is important.” *Louisiana by & through Landry v. Biden*, No. 22-30087, 2022 WL 866282, at *3 (5th Cir. Mar. 16, 2022). A stay would preserve that status quo to permit this Court to address the difficult legal questions discussed herein, among others (such as whether temporal limits on Section 2 are appropriate, and the appropriate weight courts should give to primary elections, especially in a coalition claim). In these circumstances, the alleged harm of an election under the existing plan should not outweigh the numerous harms of an injunction.

Additionally, where there is a likelihood of success on the merits, the risk of injury to Appellees is diminished—because there are serious challenges to whether a VRA violation occurred. The public interest similarly supports the enforcement of properly enacted laws—including redistricting plans adopted by governmental

bodies within the State of Texas.

V. In the alternative, Appellants ask the Court to issue a temporary administrative stay while it considers this motion.

Appellants ask that the Court issue a stay pending appeal. In the alternative, Appellants ask that the Court enter a temporary administrative stay pending its review of this motion. *See In re Abbott*, 800 F. App'x 293, 296 (5th Cir. 2020) (per curiam) (granting temporary administrative stay until further order of the Fifth Circuit “to allow sufficient time to consider” pending emergency motion for stay and mandamus petition).

CONCLUSION AND PRAYER

This appeal presents a serious question of law for this Court’s consideration, of national importance. Appellants make a strong showing they are likely to succeed on the merits, and case law recognizes the irreparable harm that would flow to the County in this redistricting challenge. Should the district court be permitted to significantly alter Commissioners Court boundaries while this appeal is pending, candidates may qualify for an office they ultimately cannot hold, and candidates who *could* hold such office would be prohibited from timely qualifying for, or running for, that office. These harms cannot be avoided without a stay.

Appellants therefore ask the Court to enter an order—staying the district court’s final judgment and its November 30, 2023 Order, and from any further action altering the Galveston County Commissioners Court boundaries during the

pendency of this appeal. In the alternative, Appellants ask that the Court enter an administrative stay until it can consider this filing.

Appellants believe action is needed today, December 1, 2023 due to the district court's order yesterday evening that requires Map 1 govern the Commissioners Court election.

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
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/s/ Angela Olalde
Counsel for Appellants

Dated: December 1, 2023

CERTIFICATE OF SERVICE

I certify that, on December 1, 2023, this document and its attachments were electronically served on all counsel of record in this case in accordance with the Federal Rules of Appellate Procedure.

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/s/ Joseph Russo, Jr.

Counsel for Appellants

ENTERED

November 30, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

TERRY PETTEWAY, *et al.*,

Plaintiffs,

VS.

GALVESTON COUNTY, TEXAS,
et al.,

Defendants.

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3:22-CV-57

ORDER

On October 13, 2023, this court held that the 2021 commissioners-court precinct map the Galveston County Commissioners Court adopted on November 12, 2021—“the enacted plan”—violated § 2 of the Voting Rights Act. Dkt. 250. The court permanently enjoined the defendants from administering, enforcing, preparing for, or in any way permitting the nomination or election of county commissioners from the commissioners-court precinct map as portrayed in the enacted plan. Dkt. 251 at 1. That same day, it announced a remedial-proceedings schedule that allowed the defendants an opportunity to submit an alternative redistricting plan that complies with § 2 of the Voting Rights Act so that this court could order the adoption of a new redistricting plan before November 11, 2023—the statutory opening date for candidate filing. *Id.* at 2.

Soon after, the defendants appealed and moved this court to stay its injunction pending appeal. Dkts. 253, 254. After the court denied their motion, they moved the United States Court of Appeals for the Fifth Circuit for the same relief. *Petteway v. Galveston County*, No. 23-40582, ECF No. 13. The Fifth Circuit expedited the appeal and entered a temporary administrative stay until November 10. *Id.*, ECF Nos. 28-2 at 2; 40-1 at 2. On November 10, the Fifth Circuit affirmed the district court’s judgment, *Petteway v. Galveston County*, 86 F.4th 214 (5th Cir. 2023), but extended the administrative stay pending an en banc poll, *Petteway*, No. 23-40582, ECF No. 122-2. Following the Fifth Circuit en banc poll, the administrative stay terminated. *Id.*, ECF No. 145-2 at 2.

Given that the candidate-filing period for the 2024 election has already begun and that the defendants’ electoral map is enjoined, it is no longer practicable to permit the commissioners court the opportunity to cure its enjoined map’s infirmities. *See Veasey v. Abbott*, 830 F.3d 216, 240 (5th Cir. 2016). The court will proceed accordingly to carry out its “unwelcome obligation” to devise and impose a remedy for the 2024 election. *See id.* (quoting *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978)).

The Petteway and NAACP plaintiffs previously asked the court to implement “Map 1,” the alternative map that the commissioners court

considered on November 12, 2021, and that is pictured in this order's appendix. Dkts. 241 ¶ 8; 242 ¶ 8; *see also* Dkt. 258-9 at 27. And in their emergency motion for a remedial order, the plaintiffs again ask the court to enter an order that requires Map 1 to be the remedial plan. Dkt. 266 at 2. In its order on the initial motion to stay, the court agreed to implement Map 1 if the defendants failed to, or elected not to, submit a revised plan. Dkt. 255 at 3. Map 1 remedies the vote dilution present in the enacted plan, satisfies all constitutional and statutory requirements, and preserves with "least change" the boundaries of the electoral map adopted in 2011. Accordingly, the court grants the plaintiffs' emergency motion and adopts Map 1 as the remedial plan. Dkt. 266.

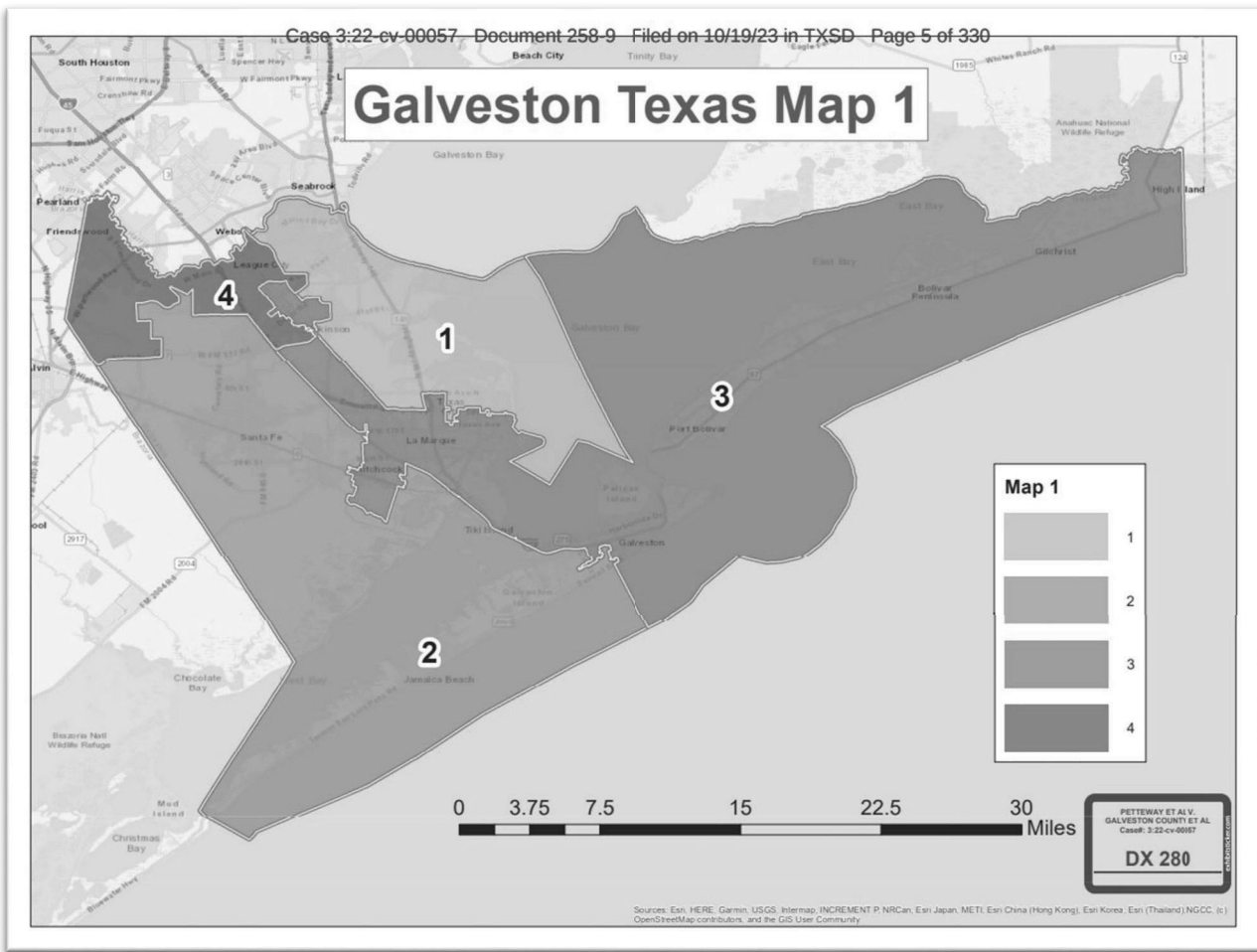
The court will hold a telephonic status conference for this case on **Monday, December 4, 2023, at 1 p.m.** to discuss how this matter will proceed to ensure that the 2024 election will be conducted using Map 1. Counsel for each party are ordered to participate in the conference.

Signed on Galveston Island this 30th day of November, 2023.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE

Appendix



APPENDIX 15

No. 23-40582

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Galveston County, Texas, the Galveston County Commissioners
Court, Galveston County Judge Mark Henry, and Galveston County
Clerk Dwight Sullivan,
Appellants

v.

Terry Petteway, Constable Derrick Rose, the Hon. Penny Pope,
Mainland Branch NAACP, Dickinson Bay Area Branch NAACP,
Galveston Branch NAACP, and Galveston LULAC Council 151, and
the United States of America,
Appellees

On appeal from the United States District Court
for the Southern District of Texas, Galveston Division
No. 3:22-CV-00057 (consolidated with Nos. 3:22-CV-00093 and 3:22-CV-00117)

**APPELLANTS' EMERGENCY MOTION FOR STAY PENDING
APPEAL AND FOR TEMPORARY ADMINISTRATIVE STAY**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Appellants

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- b. the Galveston County Commissioners Court
- c. Galveston County Judge Mark Henry
- d. Galveston County Clerk Dwight Sullivan

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- c. Angela Olalde
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- f. Joseph M. Nixon
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 - f. JoAnna Suriani
 - g. Michelle Anne Polizzano
 - h. Molly Linda Zhu
 - i. Richard Mancino
 - j. Willkie Farr & Gallagher
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 - l. Joaquin Gonzalez
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9. Counsel for United States of America

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- h. Tharuni A. Jayaraman
- i. Zachary Newkirk
- j. Daniel David Hu

Appellants certify that, to the best of their knowledge, no publicly traded company or corporation has an interest in the outcome of this case or appeal.

By: /s/ Joseph Russo, Jr.
Counsel for Appellants

**APPELLANTS' EMERGENCY MOTION FOR STAY PENDING APPEAL
AND FOR TEMPORARY ADMINISTRATIVE STAY**

Pursuant to Federal Rule of Appellate Procedure 8, Appellants Galveston County, Texas, the Galveston County Commissioners Court, Galveston County Judge Mark Henry, and Galveston County Clerk Dwight Sullivan (collectively, the “County” or “Appellants”) file this request, and ask the Court to stay the District Court from requiring the adoption of a revised districting until this appeal is concluded and, if necessary to allow the Court time to consider this request, to enter a temporary administrative stay until the Court has ruled on this Motion.

The County has complied with Rule 8: it has asked the District Court to stay its order (Fed. R. App. P. 8(a)(1)), the District Court denied that request, and the County has provided notice of this request to counsel for Appellees (Fed. R. App. P. 8(a)(2)(C)). **Appellants believe action is needed by October 24, 2023.**

Appellants have conferred with counsel for Appellees, and have been advised by all Appellees’ counsel that they oppose this motion and intend to file a response.

INTRODUCTION AND NATURE OF THE EMERGENCY

This is an appeal of a Voting Rights Act (“VRA”) case brought by a minority coalition of Black and Latino voters challenging the 2021 Galveston County Commissioners’ Court districting plan (“2021 Plan”).

On Friday, October 13, 2023, after a bench trial, the District Court issued Findings of Fact and Conclusions of Law (Appdx. A) and entered a mandatory injunction against the County (Appdx. B). On October 15, 2023, the Court modified the deadlines in that order. Appdx. C (Dkt. 255). The District Court is now requiring the County **to file (and therefore adopt) a new districting plan by October 27, 2023, along with supporting expert analysis**, or face the imposition of a map of the District Court’s choosing—one which will favor a Democratic candidate for County Commissioner Precinct 3 over a Republican, and which will greatly alter the boundaries of the 2021 Plan, which has been in place for two years.

The County requested a stay of the District Court’s order on October 14, 2023 arguing that, inter alia, insufficient time was provided to comply and the illustrative plan referenced by the trial court excluded one of the Commissioner’s homes from his precinct. Appdx. D (Dkt. 254). The trial court denied the request for stay on October 15, 2023, added seven days to its deadlines, and stated that, if Appellants “fail or prefer not to submit a revised plan, they are ordered to implement the Fairfax illustrative plan or Map 1 . . . by November 8, 2023.” Appdx. C at 3.

Appellants could adopt a plan referred to as “Map 1” to avoid a court order implementing a plan. Appdx. C (Dkt. 255). A hearing is set for November 8, 2023. *Id.*

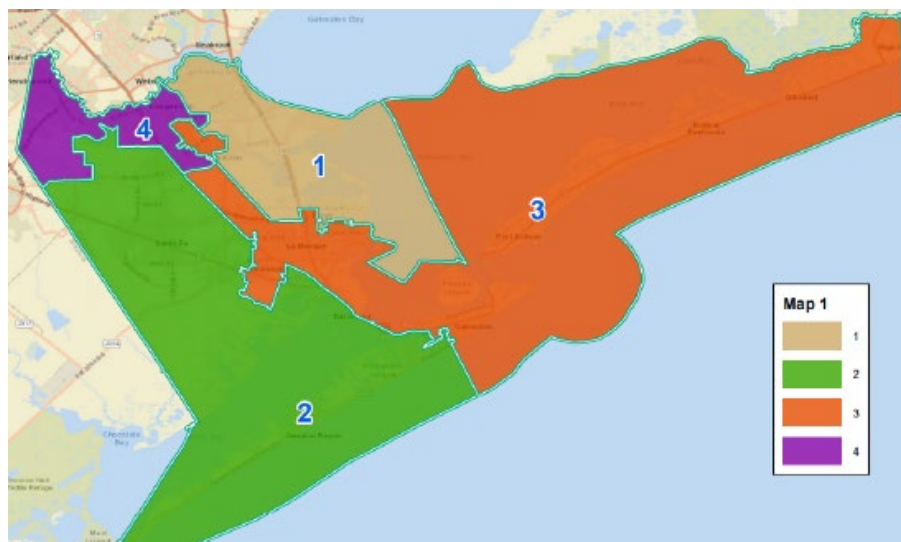
The Commissioner Court elections will occur in November 2024. Appdx. H. The District Court explained the urgency of its order, stating it wants a new plan adopted **“in time for the 2024 election, which means before November 11, 2023—the statutory opening date for candidate filing.”** Appdx. B (Dkt. 251 at 2); *see* Tex. Elections Code § 172.023(a). On October 15, 2023, the District Court also stated that it “maintains the position” that the County “must adopt a new plan before the 2024 election” (Appdx. C at 2), though the District Court maintained deadlines and a hearing date that would put a new districting plan in place by November 11, 2023. Appdx. C at 2-3. On October 16, 2023, Appellants provided notice to all parties of their intent to seek a stay in this Court. Appdx. E.

Considering the October 27, 2023 deadline for Appellants to hold a public hearing, consider the adoption of a revised districting plan, and submit such filing to the District Court with supporting expert analysis, **Appellants believe action is needed by October 24, 2023.**

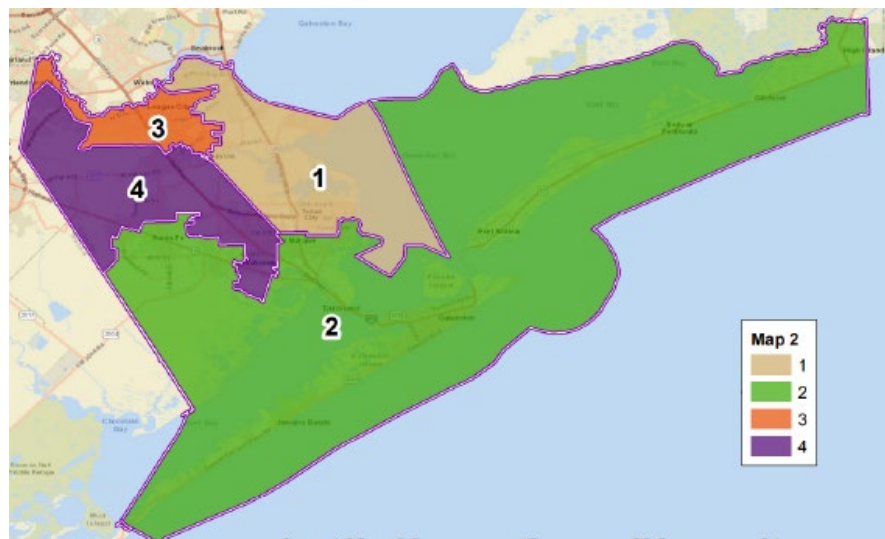
BRIEF FACTUAL BACKGROUND

The 2020 Census data revealed population deviations among Galveston County’s four commissioner precincts. The Commissioners Court considered two map proposals (Map 1 and Map 2) before it adopted the “Map 2” proposal (“2021 Plan”):

The “Map 1” Proposal



The “Map 2” Proposal (2021 Plan)

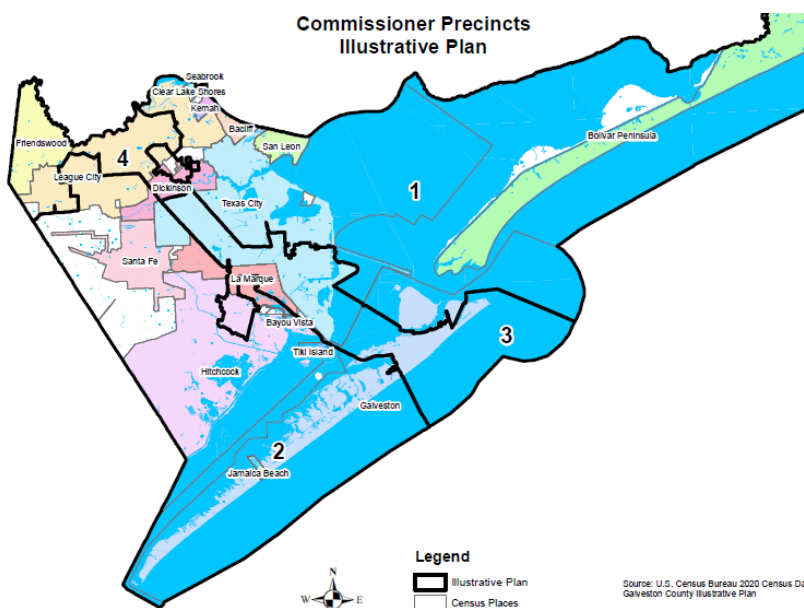


Appdx. F (Joint Trial Exhibit 29).

The 2021 Plan created a single coastal precinct. Both proposed plans kept all Commissioners within their precinct boundaries as required by the Texas Constitution (art. 16 §14), and equalized County population among the precincts. Under the 2021 Plan, the incumbent Democrat for Precinct 3 is less likely to be reelected, considering the political makeup of the County and of the new Precinct 3. See Appdx. A ¶¶ 144, 149, 370.

The District Court’s order mandates the adoption of a new plan with “supporting expert analysis.” Appdx. C at 2. If that does not occur, or if the District Court rejects such a plan, the District Court will require the County to implement either Map 1 or an illustrative map from one of the Appellees’ experts:

Plaintiffs’ Exhibit 339 – the Fairfax Plan



Plaintiff’s Exhibit 339 (Appendix G) (“Fairfax Plan”).

ARGUMENT

I. Standard of Review and Applicable Law

A stay is an extraordinary remedy founded in equity and committed to the Court’s discretion. *Nken v. Holder*, 556 U.S. 418, 437 (2009). In deciding whether a stay should be granted during an appeal, courts consider the following factors:

1. whether there is a strong showing the appellants are likely to succeed on the merits;
2. whether appellants will be irreparably injured absent a stay;
3. whether a stay will substantially injure the other parties interested in the proceeding; and
4. where the public interest lies.

Id. at 426. These factors cannot be applied rigidly or mechanically. *Campaign for S. Equal. v. Bryant*, 773 F.3d 55, 57 (5th Cir. 2014). And “[t]he first two factors are usually the most important.” *Thomas v. Bryant*, 919 F.3d 298, 303 (5th Cir. 2019) (citing *Nken*, 556 U.S. at 434).

II. Serious questions are presented in this appeal, and Appellants make a strong showing they are likely to succeed on the merits of those questions—even though they need only show a substantial case on the merits to obtain a stay here.

The Fifth Circuit has held that a request for stay need only be supported by “a **substantial** case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.” *U.S. v. Baylor Univ. Med. Cntr.*, 711 F.2d 38, 39 (5th Cir. 1983) (emphasis added, citing

Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir. 1981)). This case presents serious legal questions, “both to the litigants involved and the public at large.” *See Campaign for S. Equal.*, 773 F.3d at 57 (granting stay where substantial question was presented to Court for resolution on appeal involving same-sex marriage bans). Those questions include whether a minority coalition can raise a VRA challenge, whether a *Gingles* I analysis must consider whether an illustrative plan actually captures a community of interest, and whether VRA claims are temporally limited. As discussed below in the irreparable harm section, the balance of equities weighs heavily in favor of granting a stay.

Appellants can also make a strong showing they are likely to succeed on the merits, as discussed in more detail below. With an election “many months away,” such likelihood “may counsel in favor of a stay.” *Robinson v. Ardoin*, 37 F.4th 208, 228-29 (5th Cir. 2022). Additionally, while the District Court criticized the procedure surrounding the adoption of the 2021 Plan, including the lack of a formally adopted timeline, redistricting criteria, competitive procurement for redistricting vendors, and inadequate public notice and comment (*see* Appendix A at ¶¶232-78), the District Court at the same time stated it will order the County to implement Map 1 or the Fairfax plan if the County does not submit a revised plan by October 27, 2023. Appendix C at 3. These statements fail to account for the fact that Map 1 would have suffered from the same procedural deficiencies the District

Court criticized with the 2021 Plan, because Map 1 was a product of the same process which produced the 2021 Plan. It also fails to consider the short, 14-day timeline in which it has ordered the County to adopt and file a revised plan with supporting expert analysis, during which time it would not be possible to resolve *any* of the District Court’s procedural criticisms.

A. The VRA does not protect minority coalitions.

This case presents a question of national importance: whether a coalition of Black and Hispanic voters may bring a VRA claim together, when it is undisputed that neither Black nor Hispanic voters could, on their own, form a majority-minority precinct.¹

This Court has allowed minority coalition claims under the VRA.² But since that time, other circuit courts have held the VRA does not protect minority coalitions. *See Hall v. Virginia*, 385 F.3d 421, 431-32 (4th Cir. 2004); *Nixon v. Kent County*, 76 F.3d 1381, 1392-93 (6th Cir. 1996); *Frank v. Forest County*, 336 F.3d 570, 575-76 (7th Cir. 2003). As the Fourth Circuit explained in *Hall*, permitting multiracial coalitions to bring VRA claims would transform the statute from a source

¹ In many voting rights cases, the division in question is a “district.” Texas counties are divided into “precincts.”

² *See League of Un. Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (en banc) (“*Clements*”); *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989); *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989); *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988); *LULAC Council No. 4386 v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1499 (5th Cir. 1987).

of minority protection to an advantage for *political* coalitions, and a redistricting plan that prevents political coalitions among racial or ethnic groups “does not result in vote dilution ‘on account of race’ in violation of Section 2.” *Hall*, 385 F.3d at 431; *see also Frank*, 336 F.3d at 575 (acknowledging the circuit split, and observing the “problematic character” of coalition claims).

Though the United States Supreme Court has not yet ruled on this issue, it has cited *Hall* favorably. In *Bartlett v. Strickland*, the Court held that crossover districts (where minority voters make up less than a majority but are aided by majority voters who cross over to vote for the minority group’s preferred candidate—arguably an “effective minority district[]”—contradict the VRA’s mandate. *See Bartlett v. Strickland*, 556 U.S. 1, 14 (2009) (discussing crossover district where “minority voters might be able to persuade some members of the majority to cross over and join with them”). That is because the VRA requires proof that minorities “have less opportunity than other members of the electorate to . . . elect representatives of their choice.” *Id.* (quotation omitted). Where a minority group forms less than a majority, it “standing alone ha[s] no better or worse opportunity to elect a candidate than does any other group of voters with the same relative voting strength.” *Id.* The Court explained that a minority group could “join other voters—including other racial minorities, or whites, or both—to reach a majority and elect their preferred candidate.” *Id.* Where one minority group cannot elect a candidate on its own

“without assistance from others,” the Court quoted *Hall* favorably, stating that such a “VRA claim would give minority voters ‘a right to preserve their strength for the purposes of forging an advantageous political alliance.’” *Id.* at 14-15 (quoting *Hall*, 385 F.3d at 431 and *Voinovich*, 507 U.S. at 154 (minorities in crossover districts “could not dictate electoral outcomes independently”).

Clearly, *Bartlett* rejects the argument that minority groups have special protection under the VRA to form *political* coalitions. *Id.* at 15 (“[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground”) (quoting *De Grandy*, 512 U.S. at 1020). Therefore, even though a VRA analysis should not be mechanically applied, it “does not impose on those who draw election districts a duty to give minority voters the most potential, or the best potential, to elect a candidate by attracting crossover voters.” *Id.*

That is, the VRA cannot “place courts in the untenable position of predicting many political variables and tying them to race-based assumptions.” *Id.* at 17 (stating courts “would be directed to make predictions or adopt premises that even experienced polling analysts and political experts could not assess with certainty, particularly over the long term”). That is precisely what Appellees asked of the District Court in this case:

- How have Hispanic Galveston County voters turned out to support the same candidate as Black Galveston County voters in the past?
- How reliable a prediction could be determined for future elections?

- What candidates have Black and Latino voters supported together, and will those trends continue?
- Were past voting trends based on incumbency, and did that depend on race?
- What are the turnout rates among white and minority voters, and will that continue into the future?

See id. at 17-18. These questions invite speculation, and impermissibly force courts, ill equipped, into the decisionmaking based on political judgments. *Id.* (cautioning that courts “must be most cautious before” requiring “courts to make inquiries based on racial classifications and race-based predictions”). To permit the type of crossover district urged in *Bartlett* “raise[d] serious constitutional questions.” *Id.*

The same problems with a crossover district are present with a coalition minority district, and more. There is no line as to how many minority groups could join to form a VRA claim—beyond a Black and Hispanic coalition, plaintiffs could raise any combination or number of minority voter groups. Such claims would almost certainly constitute *political*, rather than minority, coalitions.

Additionally, and importantly given the ramifications present, Congress made no reference to minority coalitions in the text of the VRA. As Judge Higginbotham stated in his dissent from the denial of rehearing in *Campos*, the question to be answered is whether “Congress intended to *protect* [] coalitions” rather than whether the VRA prohibits them. *Campos v. City of Baytown, Tex.*, 849 F.2d 943, 945 (5th Cir. 1988) (per curiam) (Higginbotham, J. dissenting on denial of rehearing, joined

by five other circuit judges). No such Congressional intent can be deduced. *Id.* Furthermore, the notion “that a group composed of [different minorities] is itself a protected minority” “stretch[es] the concept of cohesiveness” beyond its natural bounds to include political alliances, undermining Section 2’s effectiveness. *See id.*

Had Congress intended to extend protection to coalition groups, it would have invoked protected “classes of citizens” instead of a (singular) protected “class of citizens” identified under the VRA. *Nixon*, 76 F.3d at 1386-87. Because Section 2 “reveals no word or phrase which reasonably supports combining separately protected minorities,” the Sixth Circuit concluded that coalition claims are not cognizable. *Id.* at 1387. It expressly disagreed with *Campos* as an “incomplete [and] incorrect analysis.” *Id.* at 1388, 1390-92 (noting the difficulties of drawing district lines for minority coalitions, and that permitting coalition claims would effectively eliminate the first *Gingles* precondition).

The Supreme Court has not ruled on this question. *See, e.g., Growe v. Emison*, 507 U.S. 25, 41 (1993) (declining to rule on the validity of coalition claims writ large); *Bartlett*, 556 U.S. at 13-14 (declining to address “coalition-district claims in which two minority groups form a coalition to elect the candidate of the coalition’s choice”); *Perry v. Perez*, 565 U.S. 388, 398-99 (2012) (creating a coalition district is likely not necessary to comply with VRA Section 5). The question is ripe for

Supreme Court review. Under the rationale in *Bartlett* and in other circuit court opinions, the VRA does not protect minority coalitions.

B. *Gingles I*³ compactness cannot exist if illustrative plans do not create districts around a community of interest.

As the County argued before the District Court, the Supreme Court’s recent opinion in *Allen v. Milligan* reinforces the rule that the VRA is not a tool to force proportional representation—because, “as residential segregation decreases—as it has “sharply” done since the 1970s—satisfying traditional districting criteria such as the compactness requirement “becomes more difficult.” *Allen v. Milligan*, 599 U.S. 1, 28-29 (2023). It is undisputed that the areas of the County in which Black and Hispanic populations live are scattered around the County, from the mainland to the Seawall on Galveston Island. Appellees failed in at least two fundamental respects when attempting to meet the *Gingles I* factor: their experts did not analyze data on the precinct level, and they failed to consider the traditional redistricting criterion of whether their illustrative districts were drawn around a community of interest.

³ VRA claims require proof of three threshold, “*Gingles*,” conditions: (1) a sufficiently large and geographically compact majority-minority district (2) that is politically cohesive, and that (3) Anglo residents vote as a bloc to usually defeat that majority-minority’s preferred candidate. *Harding v. Cty. of Dall.*, 948 F.3d 302, 308 (5th Cir. 2020) (citing *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986)).

Appellees did not meet their *Gingles* I compactness burden because their illustrative plans joined disparate Black and Hispanic populations from the northern to southernmost parts of the County, and Appellees never proved that these populations share sufficient interests to form a single community of interest, using evidence on a local level. Instead, their experts largely address a nationwide discussion of race and voting, rather than circumstances in Galveston County.

C. *Gingles* II cohesion was not met—and primary elections were erroneously discounted in a coalition case.

The District Court improperly discounted the relevance of primary elections to determining whether a coalition of minority groups votes cohesively. Whether primary elections are relevant in a cohesion analysis is a question for the Court, not witnesses. *LULAC v. Abbott*, 601 F. Supp. 3d 147, 165 (W.D. Tex. May 4, 2023) (“*Abbott* I”). What primary election results show on their face, particularly in a coalition case, is critical and clear: whether different minority groups select the same candidates. *See id.* at 169 n.10 (“shared voting preferences at the primary level would be powerful evidence of a working coalition” but is not needed to prove cohesion for a single minority group). In fact, in *Abbott* I, the court agreed with Dr. Alford’s view that primary elections “are relevant to analyzing divisions within political coalitions and that partisan affiliation is the main driver of voter behavior in general

elections.” *Id.* at 166.⁴ But the District Court discounted the importance of primary data in this case, and erred in holding that *Gingles* II cohesion was met.

D. When partisanship drives voting behavior in Galveston County, racially polarized voting under *Gingles* is not met.

As the District Court noted in its Findings, “partisanship undoubtedly motivates voting behaviors in Galveston County” Appdx. A ¶ 147. The District Court placed the burden on the County to prove that politics, rather than race, accounted for racially polarized voting. While the voting evidence, including primary election evidence considered inconsequential by the lower court, unmistakably shows partisanship explains voting results, this Court has not held this is a defense burden in a VRA case. Rather, a VRA *plaintiff* must establish all three *Gingles* preconditions, including racially polarized (not politically polarized) voting.

E. The district court erred in holding that the lack of a temporal limitation in Section 2 of the VRA is constitutional

The Supreme Court has, in recent years, steadily applied a requirement for temporal limits where the government treats people differently on the basis of race, as would be required to draw a Commissioners precinct primarily on the basis of voters’ races. *See Shelby County v. Holder*, 570 U.S. 529, 553 (2013); *Students for*

⁴ Here, Dr. Alford analyzed 24 primary elections and found in only 2 did Black and Latino voters support the same candidate with 75% or more of their vote. DX 305 at 14-19; Dkt. 245 ¶¶432, 436-439. Even using Dr. Trounstine’s lower standard of cohesion, Latino and Black voters support each other’s candidates in only 8 out of 24 primaries. *Id.* But a one-third cohesion rate is no cohesion at all. *Abbott I*, 601 F. Supp. 3d at 166.

Fair Admissions, Inc. v. President and Fellows of Harvard College, 143 S.Ct. 2141, 2172-74 (2023). Section 2 contains no termination date, mechanism, or spatial or temporal limit and the constitutionality of the law is not settled into the future. *See Allen*, 599 U.S. at 45 (Kavanaugh, J., concurring) (noting four-justice dissent’s concern that the “authority to conduct race-based redistricting cannot extend indefinitely into the future . . .” but that issue was not preserved). The absence of a temporal limit makes Section 2’s application unconstitutional here, where the District Court’s examples of discrimination draw from the “Antebellum era” while conceding that it is “easier to vote now than it has ever been in Galveston County.” Appdx. A at ¶¶160-164 (noting in paragraph 164 that “several witnesses acknowledged that it is easier to vote now than it has ever been in Galveston County”).

III. Defendants will be irreparably injured absent a stay.

Irreparable harm is established upon showing “the inability to enforce [] duly enacted plans.” *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018) (explaining, in the context of interlocutory jurisdiction, that where state was barred from conducting elections under an enacted statute, unless the statute is unconstitutional, such an order “would seriously and irreparably harm” the state). As in *Thomas*, another VRA case, irreparable harm exists where state government officials face a trial court order “preventing enforcement of a state law, including the drawing of legislative lines,

and where there was a “meaningful possibility (but not certainty) that a full appeal cannot be decided in time to provide Defendants relief before” the election at issue. *Id.* (citing *Abbott*, 138 S.Ct. at 2324 n.17). This voting rights case, as discussed above, presents serious questions about a County’s ability to enforce its duly enacted plan. As Justice Kavanaugh stated in his concurring opinion in *Merrill*, “[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *See e.g., Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J. concurring).

That harm alone is sufficient to show irreparable injury absent a stay, though as discussed herein, additional serious harm may occur if no stay is ordered, including the possibility of the County having no qualified (or qualifiable) candidates for two of its Commissioners Court seats.

As discussed above, Article 16, Section 14 of the Texas Constitution requires candidates for the Commissioners Court to live in the precinct which he or she will represent. Allowing time for ballot programming and logistics before the March 2024 primary (early voting for which begins on February 20, 2024), the primary candidate filing window opens November 11, 2023 and closes December 11, 2023.⁵ *See* Tex. Elections Code § 172.023(a). If the County’s chosen 2021 Plan is

⁵ Texas Secretary of State, Important Election Dates 2024, available at <https://www.sos.state.tx.us/elections/voter/important-election-dates.shtml> (last visited October 17, 2023).

overwritten by District Court order to favor a Democrat, there will be no reversing course for the 2024 election to avoid this political result, triggering serious Constitutional implications.

For example, If the District Court's injunction remains in place and the 2021 Plan is replaced with Map 1 during that candidate filing window, likely Republican primary candidates for Precinct 3 under the 2021 Plan would be irreversibly prevented from participating in the 2024 election, even if the 2021 Plan is ultimately vindicated on appeal, because the Republican areas of Precinct 3 in the 2021 Plan are excluded under Map 1's Precinct 3. The inverse is not true. Appellees and the District Court have concluded that Democrat Commissioner Stephen Holmes, the incumbent in Precinct 3, is the candidate of choice of coalition voters. *See* Appdx. A ¶ 198 (stating Commissioner Holmes was consistently elected in Precinct 3). Holmes resides in both versions of Precinct 3 under the 2021 Plan and Map 1. Holmes will be eligible to run for re-election in Precinct 3 whether or not the injunction stands and no matter what the result is of this appeal. The same is not true for potential Republican primary candidates for both Map 1 and the 2021 Plan.

Moreover, as discussed above, the District Court's injunction also threatens to order the adoption of Plaintiff's Exhibit 339, the Fairfax Plan (Appdx. G), which physically removes Precinct 1 Commissioner Apffel from the precinct he currently represents. Appdx. H (Declaration of Darrell Apffel); *see also* Appdx. C at 3 (Order

stating the District Court “did not intend to choose a map that draws incumbents out of their precincts”). The Precinct 1 Commissioner’s seat is up for election in the 2024 cycle. Appdx. H. This would render incumbent Commissioner Apffel ineligible to seek reelection. And the same uncertainties that may prevent candidates from running in Precinct 3 cast serious doubts that any eligible candidates would file for Precinct 1 and remain eligible if the 2021 Plan is vindicated on appeal between the filing window next month and the 2024 election.

IV. The remaining elements of substantial injury and public interest both support a stay of the Order pending appeal.

In considering harm to other parties, the “maintenance of the status quo is important.” *Louisiana by & through Landry v. Biden*, No. 22-30087, 2022 WL 866282, at *3 (5th Cir. Mar. 16, 2022). A stay would preserve that status quo to permit this Court to address the difficult legal questions discussed herein, among others (such as whether temporal limits on Section 2 are appropriate, and the appropriate weight courts should give to primary elections, especially in a coalition claim). In these circumstances, the alleged harm of an election under the existing plan should not outweigh the numerous harms of an injunction.

Additionally, where there is a likelihood of success on the merits, the risk of injury to Appellees is diminished—because there are serious challenges to whether a VRA violation occurred. The public interest similarly supports the enforcement of properly enacted laws—including redistricting plans adopted by governmental

bodies within the State of Texas.

V. In the alternative, Appellants ask the Court to issue a temporary administrative stay while it considers this motion.

Appellants ask that the Court issue a stay pending appeal. In the alternative, Appellants ask that the Court administratively stay the trial court’s October 15, 2023 order while it considers this request. *See In re Abbott*, 800 F. App’x 293, 296 (5th Cir. 2020) (per curiam) (granting temporary administrative stay until further order of the Fifth Circuit “to allow sufficient time to consider” pending emergency motion for stay and mandamus petition).

CONCLUSION AND PRAYER

This appeal presents serious questions of law for this Court’s consideration, that are of national importance. Appellants make a strong showing they are likely to succeed on the merits, and case law recognizes the irreparable harm that would flow to the County in this redistricting challenge. Should the District Court be permitted to significantly alter Commissioners Court boundaries while this appeal is pending, candidates may qualify for an office they ultimately cannot hold, an candidates who *could* hold such office would be prohibited from timely qualifying for, or running for, that office—potentially leaving two seats on the Commissioners Court half of the County’s governing body), vacant. These harms cannot be avoided without a stay.

Appellants therefore ask the Court to enter an order prohibiting the District

Court from altering the Commissioners Court boundaries during the pendency of this appeal. In the alternative, Appellants ask that the Court enter an administrative stay until it can consider this filing.

Appellants believe action is needed by October 24, 2023 due to the County's October 27, 2023 deadline to adopt a map and file it with supporting expert analysis before the District Court.

Respectfully Submitted,

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Dated: October 17 , 2023

CERTIFICATE OF SERVICE

I certify that, on October 17, 2023, this document and its attachments were electronically served on all counsel of record in this case in accordance with the Federal Rules of Appellate Procedure.

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Galveston County, Texas, the Galveston County Commissioners
Court, Galveston County Judge Mark Henry, and Galveston County
Clerk Dwight Sullivan,
Appellants

v.

Terry Petteway, Constable Derrick Rose, the Hon. Penny Pope,
Mainland Branch NAACP, Dickinson Bay Area Branch NAACP,
Galveston Branch NAACP, and Galveston LULAC Council 151, and
the United States of America,
Appellees

On appeal from the United States District Court
for the Southern District of Texas, Galveston Division
No. 3:22-CV-00057 (consolidated with Nos. 3:22-CV-00093 and 3:22-CV-00117)

**APPENDIX TO APPELLANTS'
EMERGENCY MOTION FOR STAY PENDING APPEAL AND
FOR TEMPORARY ADMINISTRATIVE STAY**

- A. The District Court's Findings of Fact and Conclusions of Law (Dkt. 250), dated October 13, 2023
- B. The District Court's Order and mandatory injunction (Dkt. 251), dated October 13, 2023
- C. The District Court's denial of the County's motion for stay and modification of prior order (Dkt. 255), dated October 15, 2023
- D. The County's emergency motion to stay filed in the District Court (Dkt. 254), dated October 14, 2023

- E. The County's letter to Appellees' counsel advising of the intent to file a motion for stay before the United States Court of Appeal for the Fifth Circuit, dated October 16, 2023
- F. The parties' Joint Trial Exhibit 29
- G. Plaintiffs' Trial Exhibit 339 (Fairfax Plan)
- H. Declaration of Darrell Apffel

APPENDIX A

ENTERED

October 13, 2023

Nathan Ochsner, Clerk

**In the United States District Court
for the Southern District of Texas**

GALVESTON DIVISION

No. 3:22-cv-57

TERRY PETTEWAY, *ET AL.*, *PLAINTIFFS*,

v.

GALVESTON COUNTY, *ET AL.*, *DEFENDANTS*.

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

JEFFREY VINCENT BROWN

UNITED STATES DISTRICT JUDGE

United States Courthouse

601 Rosenberg Avenue

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I. Introduction

This is a redistricting case brought under the Voting Rights Act and the Fourteenth and Fifteenth Amendments. It was tried to the bench from August 7–18.

On the third day of trial, William S. Cooper¹—one of the experts for the NAACP plaintiffs²—perfectly described the heart of this case, which challenges the commissioners-precinct plan that the Galveston County Commissioners Court adopted in November 2021 (“the enacted plan”) that dismantled Precinct 3—the only Black-and-Latino-dominant³ precinct in the county:

Q. What, if anything, do you observe about the differences between [the] benchmark and now the new 2021 enacted [plan]?

A. Well, if you look at the underlying census data, Precinct 3 went from being a Black plus Latino majority precinct to being a precinct with the lowest percentage of Blacks and Latinos in the

¹ As noted *infra*, Cooper has nearly four decades of experience drawing voting plans for about 750 United States jurisdictions. Dkt. 223 at 9–10. He has testified as an expert on redistricting and demographic analysis in federal court fifty-five times. *Id.* at 10; *see also* PX-341.

² The NAACP plaintiffs include Dickinson Bay Area Branch NAACP, Galveston Branch NAACP, Mainland Branch NAACP, Galveston LULAC Council 151, Edna Courville, Joe A. Compian, and Leon Phillips. *United States v. Galveston County*, No. 3:22-cv-97, ECF No. 38 (May 31, 2022).

³ Unless otherwise specified, the court uses the term “Black” to refer to individuals who identify as Black or African American. It also uses “Latino” to refer to individuals who identify as Latino or Hispanic and “Anglo” for those who identify as White/Caucasian.

county. . . . It's just a textbook example of a racial gerrymander.⁴ It's —it's egregious. I have never seen anything this bad. Because normally if a minority-majority district is in place, then you are not going to see a locality attempt to eliminate it unless [it] had no choice due to demographic changes.

Here there was absolutely no reason to make major changes to Precinct 3. It was just — it was mean-spirited. I've never — I mean, I'm just blown away by this. It's not fair, and . . . I am at a loss for words.

Dkt. 223 at 42–43.⁵ The court finds the defendants' actions to be fundamentally inconsistent with § 2 of the Voting Rights Act. Although Galveston County is no longer subject to preclearance, it still must comply with the edicts of § 2. They have not done so here. After careful review, the court has come to a grave and difficult conclusion: it must enjoin the defendants from using the enacted map in future elections.

* * *

On June 1, 2022, the court consolidated Civil Action Nos. 3:22-cv-93 and 3:22-cv-117 with Civil Action No. 3:22-cv-57, resulting in one action under Civil Action No. 3:22-cv-57. Dkt. 45. All three sets of plaintiffs—the

⁴ Although the Petteway plaintiffs challenged the enacted plan under the Constitution as a racial gerrymander, the court decided this matter under the Voting Rights Act. Accordingly, it does not reach the racial-gerrymandering claim.

⁵ Page citations refer to the PDF page number, not the document's internal pagination.

Petteway plaintiffs,⁶ NAACP plaintiffs, and the United States—challenge the enacted plan as violating § 2 of the Voting Rights Act. The Petteway and NAACP plaintiffs also challenge the enacted plan as (1) intentionally discriminatory against Galveston County’s Black and Latino voters in violation of the Fourteenth and Fifteenth Amendments and (2) racially gerrymandered in violation of the Fourteenth Amendment.

The court convened a bench trial on August 7, 2023, which lasted until August 18. After thoroughly reviewing the entire record, the court finds that the enacted plan illegally dilutes the voting power of Galveston County’s Black and Latino voters by dismantling Precinct 3, the county’s historic and sole majority-minority commissioners precinct. The enacted plan distributes the county’s Black and Latino voters, who comprise 38% of the county’s eligible voter population, among all four newly drawn commissioners precincts. As a result, those minority voters have been subsumed in majority-Anglo precincts in a county with legally significant racially polarized voting. Under the enacted plan, Anglo voters will likely continue to vote as a bloc to usually elect candidates who are not the Black and Latino voters’ candidates

⁶ The Petteway plaintiffs include the Honorable Terry Petteway, Constable Derrick Rose, and the Honorable Penny Pope. Dkt. 42. Michael Montez and Sonny James were previously a part of this group, but Sonny James voluntarily dismissed his claims, Dkt. 100, and the court dismissed Michael Montez’s claims after granting the defendants’ motion to dismiss, Dkt. 142.

of choice, preventing Black and Latino voters from participating equally in county government.

The court finds in favor of the plaintiffs and enjoins the use of the enacted plan.

II. Findings of Fact

1. Findings of fact and conclusions of law are required in all actions “tried on the facts without a jury.” Fed. R. Civ. P. 52(a)(1). A district court must “find the facts specially and state its conclusions of law separately.” *Id.* “Rule 52(a) does not require that the district court set out findings on all factual questions that arise in a case.” *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1054 (5th Cir. 1997); *see also Century Marine Inc. v. United States*, 153 F.3d 225, 231 (5th Cir. 1998) (quoting *Burma Navigation Corp. v. Reliant Seahorse M/V*, 99 F.3d 652, 656 (5th Cir. 1996)) (noting that Rule 52(a) “exacts neither punctilious detail nor slavish tracing of the claims issue by issue and witness by witness”). Instead, a court satisfies Rule 52 if it “afford[s] the reviewing court a clear understanding of the factual basis for [its] decision.” *Holman v. Life Ins. Co. of N. Am.*, 533 F. Supp. 3d 502, 506 (S.D. Tex. 2021) (quoting *Interfirst Bank of Abilene, N.A. v. Lull Mfg.*, 778 F.2d 228, 234 (5th Cir. 1985)). And if the court fails to make a specific finding on a particular issue, the reviewing court “may assume that the court

impliedly made a finding consistent with its general holding so long as the implied finding is supported by the evidence.” *Century Marine Inc.*, 153 F.3d at 231.

2. To the extent that any factual finding reflects or is better understood as a legal conclusion, it is also deemed a conclusion of law. Likewise, to the extent that any legal conclusion reflects or is better understood as a factual finding, it is also deemed a factual finding.

A. Procedural History

3. In February 2022, the Petteway plaintiffs challenged the enacted plan as discriminatory and in violation of § 2 of the Voting Rights Act, the Fourteenth Amendment, and the Fifteenth Amendment. Dkt. 1.

4. About one month later, the United States filed suit, alleging that the enacted plan violates § 2 of the Voting Rights Act. *See United States v. Galveston County*, No. 3:22-cv-93 (S.D. Tex. Mar. 24, 2022), Dkt. 1.

5. Three weeks later, the NAACP plaintiffs also filed suit challenging the enacted plan under the Fourteenth and Fifteenth Amendments and § 2 of the Voting Rights Act. *Dickinson Bay Area Branch NAACP v. Galveston County*, No. 3:22-cv-117 (S.D. Tex. Apr. 14, 2022), Dkt. 1.

6. In May 2022, the NAACP plaintiffs moved to consolidate these three cases. Dkt. 37. The court granted the motion and ordered the cases consolidated in June 2022. Dkt. 45.

7. Also in June 2022, the defendants filed separate motions to dismiss the three consolidated complaints, arguing that the court lacked jurisdiction and the plaintiffs had failed to state a claim for relief. Dkts. 46, 47, 48. The court partially granted the defendants' motion related to the Petteway plaintiffs' complaint, dismissing Michael Montez based on lack of standing. Dkt. 125 at 12–13. The court otherwise denied the motions. *Id.*; Dkts. 123, 124.

8. In May 2023, the defendants moved for summary judgment on two grounds: (1) the three preconditions required to establish the § 2 claims under *Thornburg v. Gingles*, 478 U.S. 30 (1986); and (2) the racial predomination in map-drawing needed for the Petteway and NAACP plaintiffs' racial-gerrymandering claims. Dkt. 176. The court denied the motion two months later. Dkt. 200.

9. The court held a ten-day bench trial beginning on August 7, 2023. It heard live testimony from several of the individual plaintiffs—Constable Derrick Rose, the Honorable Penny Pope, Edna Courville, Joe A. Compian (in his individual capacity and on behalf of LULAC Council 151), and Lucretia

Henderson-Lofton (on behalf of Dickinson Bay Area NAACP). Dkts. 221 at 55–104; 222 at 8–61, 211–79; 226 at 62–111, 188–215. The plaintiffs also presented live testimony from other county residents who are current and former elected officials: Lucille McGaskey, Robert Quintero, Sharon Lewis, Joe Jaworski, Pastor William Randall, Patrick Doyle, and Commissioner Stephen Holmes. Dkts. 221 at 105–79; 226 at 8–61, 112–87, 216–30; 228 at 11–64.

10. The court also heard expert testimony offered by the plaintiffs. William S. Cooper, Dr. Tye Rush, and Anthony E. Fairfax testified on the first *Gingles* precondition, illustrative map configurations, and redistricting principles. Dkts. 223 at 9–193; 224 at 9–162. Drs. Matthew A. Barreto, Jessica Trounstine, and Kassra A.R. Oskooii (“the quantitative experts”) testified on the second and third *Gingles* preconditions. Dkts. 223 at 194–329; 224 at 163–349. Finally, Drs. Traci Burch, Rene R. Rocha, and Max Krochmal testified on the totality of the circumstances and indicia of discriminatory intent. Dkts. 222 at 62–210; 225 at 10–283.

11. By agreement, the parties presented live testimony from Judge Mark Henry, Commissioner Joe Giusti, Commissioner Darrell Apffel, redistricting consultant Dale Oldham, and mapping consultant Thomas

Bryan. Dkts. 228 at 166–356; 231 at 8–308; 232 at 8–163, 289–379. After this testimony, the plaintiffs closed their case in chief.

12. The defendants presented live testimony from Commissioner Robin Armstrong and County Clerk Dwight Sullivan. Dkt. 230 at 191–219, 231–68. The court also heard expert testimony from Dr. Mark Owens, who addressed the first *Gingles* precondition, and Dr. John Alford, who addressed racially polarized voting. *Id.* at 10–190; Dkt. 232 at 164–288. Following this testimony, the defendants rested.

13. After resting, the defendants moved for judgment on partial findings under Fed. R. Civ. P. 52(c) on all claims, which the court denied. Dkt. 230 at 272–85.

14. About three weeks after trial, the parties filed post-trial closing-argument briefing, Dkts. 240, 241, 242, 244, along with proposed findings of fact and conclusions of law, Dkts. 239, 245. They then filed response briefing one week after that. Dkts. 246, 247, 248, 249. The court reviewed these materials when preparing these findings and conclusions.

B. Parties

1. Plaintiffs

15. The Honorable Terry Petteway is a Black resident of the city of Galveston. PX-607 ¶¶ 2–3. Under the election plan adopted as part of the 2011 redistricting cycle (“the benchmark plan”), Petteway’s home sat in

Precinct 3, and Commissioner Holmes represented him. *Id.* ¶ 6. But under the enacted plan, Petteway now resides in commissioners Precinct 2, which Commissioner Giusti represents. *Id.* ¶ 7. Petteway is a registered voter who has voted in commissioners-court elections and intends to vote in these elections in the future. *Id.* ¶¶ 4–5.

16. The Honorable Penny Pope is a Black resident of the city of Galveston. Dkt. 222 at 8–9. She is a former justice of the peace who represented Justice of the Peace/Constable (“JP/constable”) Precinct 3 for twenty-six years. *Id.* at 9, 12. Under the benchmark plan, Judge Pope’s home sat in commissioners Precinct 3. *Id.* at 21. But under the enacted plan, she now resides in Precinct 2. *Id.* She is a registered voter who regularly votes in Galveston County elections. *Id.* at 10.

17. Constable Derrick Rose is a Black resident of Texas City. Dkt. 221 at 55. Since 2005, he has served as the elected constable for JP/constable Precinct 3. *Id.* at 57–59. Under the benchmark plan, Constable Rose’s home sat in Precinct 3. *Id.* at 56, 60. But under the enacted plan, he now resides in commissioners Precinct 1, which Commissioner Apffel represents. *Id.* at 60. Constable Rose is a registered voter who regularly votes in Galveston County elections. *Id.* at 55–56.

18. Joe Compian is a Latino resident of La Marque. Dkt. 226 at 62. Under the benchmark plan, Compian's home sat in Precinct 3. *Id.* But under the enacted plan, he now resides in Precinct 4 and is represented by Dr. Armstrong. *Id.* Compian is a member of LULAC Council 151 and is a registered voter who votes religiously. *Id.* at 63–66. He intends to vote in the future. *Id.* at 63–64.

19. Edna Courville is a Black resident of Texas City. Dkt. 222 at 211. She used to reside in Precinct 3 under the benchmark plan but now lives in Precinct 4 under the enacted plan. *Id.* at 218. Courville is registered to vote, votes regularly, and intends to vote in the future. *Id.* at 219. She is a member of the Mainland Branch of the NAACP. *Id.* at 215–16.

20. Leon Phillips is a Black resident of the city of Galveston. DX-310 at 7. He is a member of the Galveston Branch of the NAACP. *Id.* at 21. Under the benchmark plan, he lived in Precinct 3. *Id.* at 32. But under the enacted plan, he now resides in Precinct 2. DX-34 at Row 31383. He is a registered voter and intends to vote in future elections.

21. The Dickinson Bay Area Branch of the NAACP is a nonprofit, nonpartisan membership organization and is an affiliate branch of the Texas State Conference of the NAACP. Dkt. 204-6 ¶ 27. The Dickinson Branch serves Dickinson and League City and has at least fifty members, including

members who lived in benchmark Precinct 3. Dkt. 226 at 200–01. One such member includes Lucille McGaskey, who now lives in Precinct 4. Dkt. 221 at 106, 123; DX-34 at Row 95740; DX-115 at Row 133363. The Dickinson Branch’s mission, consistent with the national NAACP and all other local NAACP units, includes educating people on discrimination and voting and helping people register to vote. Dkt. 226 at 199–200.

22. The Galveston Branch of the NAACP is a nonprofit, nonpartisan membership organization and is an affiliate branch of the Texas State Conference of the NAACP. Dkt. 204-6 ¶ 27. The Galveston Branch has about sixty members, all living or working in Galveston County. PX-605 ¶¶ 4–5. After the 2021 redistricting cycle, at least one Galveston Branch member who was a resident of benchmark Precinct 3 has been redistricted into a different commissioners precinct. *Id.* ¶ 6. As a unit of the national NAACP, the Galveston Branch’s mission includes educating people on discrimination and voting, as well as helping people register to vote. *See* Dkt. 226 at 199–200.

23. The Galveston LULAC Council 151 is a civic organization in Galveston County and an independent unit of the League of United Latin American Citizens. Dkts. 204-6 ¶ 28; 226 at 65–66. LULAC’s goals include supporting and advocating for civil rights and improving Latinos’ participation in the political system. Dkt. 226 at 66. After the 2021

redistricting cycle, at least one LULAC member who was a resident of benchmark Precinct 3 has been redistricted into a different commissioners precinct.

24. The Mainland Branch of the NAACP is a nonprofit, nonpartisan membership organization and is an affiliate branch of the Texas State Conference of the NAACP. Dkt. 204-6 ¶ 27. The Mainland Branch has over fifty members who live or work in Texas City, La Marque, and Hitchcock. PX-606 ¶¶ 7–8. As a unit of the national NAACP, the Mainland Branch’s mission includes educating people on discrimination and voting, as well as helping people register to vote. *See* Dkt. 226 at 199–200; *see also* Dkt. 222 at 216. At least one Mainland Branch member in Galveston County was a resident of the benchmark Precinct 3 and has been redistricted into a different commissioners precinct. PX-606 ¶ 9.

25. The United States is represented by the Department of Justice. Congress has vested the Attorney General with the authority to enforce § 2 of the Voting Rights Act on the United States’ behalf. *See* 52 U.S.C. § 10308(d).

2. Defendants

26. Galveston County is a political and geographical subdivision in southeast Texas on the Gulf of Mexico. Dkt. 204-6 ¶ 1.

27. Galveston County Commissioners Court is the county's governing body. Tex. Const. art. V, §§ 15, 16, 18(a)–(b). The commissioners court consists of a county judge elected at-large as the presiding officer and four county commissioners elected from single-member precincts, all serving four-year, staggered terms. Dkt. 204-6 ¶ 2. The commissioners court that adopted the enacted plan consisted of Judge Henry, Commissioner Apffel (Precinct 1), Commissioner Giusti (Precinct 2), Commissioner Holmes (Precinct 3), and Commissioner Ken Clark (Precinct 4). *Id.* ¶ 25.

28. Judge Mark Henry has been the county judge since 2010. *Id.* ¶ 4. The plaintiffs sued Judge Henry in his official capacity as Galveston County's chief officer. *See, e.g.*, Dkt. 42 ¶ 33.

29. Defendant Dwight D. Sullivan is the incumbent county clerk for Galveston County. Dkt. 230 at 233. Sullivan's office oversees all county elections, which involves supervising poll workers, polling sites, ballot creation, and ballot tabulation. *Id.* at 233–34.

C. Expert Witnesses' Credibility⁷

1. *Gingles* Precondition One

30. The plaintiffs' experts William Cooper, Anthony Fairfax, and Dr. Tye Rush testified about the first *Gingles* precondition for § 2 vote-dilution claims—whether Black and Latino residents in Galveston County are sufficiently large and geographically compact to constitute a majority in a single-member district. Dkts. 223 at 9–190; 224 at 9–162.

31. Each expert testified to forming their opinions by using publicly available data from the Census Bureau and applying standard and reliable redistricting methods in conducting their analyses and forming their opinions. Dkts. 223 at 15–17, 17; 224 at 22–26, 85–86, 92–93, 97; PXs-337 at 10–13; 342.

32. Cooper has nearly four decades of experience drawing voting plans for about 750 United States jurisdictions. Dkt. 223 at 9–10. He has testified on redistricting and demographic analysis in federal court fifty-five times. *Id.* at 10; *see also* PX-341. Cooper submitted, and the court received

⁷ The court's findings on the expert witnesses' qualifications, reliability, and credibility are limited to this case. They are not informed in any way by any testimony that may have been presented to the court in other cases and do not apply to future matters before this court.

into evidence, principal and rebuttal reports addressing the first *Gingles* precondition. PXs-386, 438.

33. The court recognized Cooper as an expert on redistricting, demographic analysis, and the first *Gingles* precondition. Dkt. 223 at 11–12. After receiving Cooper’s testimony and reviewing his reports, the court finds his analyses, opinions, and testimony credible.

34. Fairfax has over thirty years of map-drawing, demography, and redistricting experience. Dkt. 224 at 74–75. He testified that he has developed or helped develop hundreds of redistricting plans. *Id.* at 75–77. Fairfax has testified as an expert in redistricting matters nine times. *Id.* at 80. He submitted, and the court admitted into evidence, both his initial and rebuttal reports addressing the first *Gingles* precondition. PXs-337, 454.

35. The court recognized Fairfax as an expert on map-drawing, demography, redistricting, and census data as it applies to the first *Gingles* precondition. Dkt. 224 at 81. After receiving Fairfax’s testimony and reviewing his reports, the court finds his analyses, opinions, and testimony credible.

36. Dr. Rush is the president’s postdoctoral fellow at the University of California, San Diego, and has expertise in mapping and political geography. *Id.* at 12–14; PX-486. He holds a Bachelor of Arts in political

science from the University of California, Riverside, and a Master of Arts and Ph.D. in political science from the University of California, Los Angeles. Dkt. 224 at 11–12. Dr. Rush previously was a senior policy fellow at the UCLA Voting Rights Project, where he led research projects, conducted mapping analyses, and taught mapping. *Id.* at 13. He also was a redistricting and voting fellow at Common Cause, where he taught mapping to lawyers and assisted with census research. *Id.* Dr. Rush has also taught mapping and political geography at the university level, and clients have hired him to perform political mapping. *Id.* at 13–14. He submitted, and the court admitted into evidence, both an initial and a rebuttal report as well as a supplemental declaration addressing the first *Gingles* precondition. PXs-485–487.

37. The court recognized Dr. Rush as an expert on political geography, mapping, and electoral behavior. Dkt. 224 at 14–15. After receiving Dr. Rush’s testimony and reviewing his reports, the court finds his analyses, opinions, and testimony credible.

38. The defendants offered testimony from Dr. Mark Owens on the first *Gingles* precondition. Dkt. 232 at 164–288. Dr. Owens holds a Bachelor of Arts in political science from the University of Florida, a Master of Arts in government from Johns Hopkins University, and a Ph.D. in political science

from the University of Georgia. *Id.* at 165–66; DX-290 at 27. While working on his Ph.D. dissertation, he was also a visiting doctoral student at the University of Oxford. Dkt. 232 at 166.

39. After completing his Ph.D., Dr. Owens was a visiting assistant professor of American politics at Bates College. *Id.* at 168–69. After that, he joined the University of Texas at Tyler’s faculty, where he taught classes and conducted research on American political institutions and elections. *Id.* at 169. At UT-Tyler, he developed expertise and published works on Texas politics and elections. *Id.* at 173. He recently accepted a position as a professor of political science at the Citadel, where he will continue his teaching and research. *Id.* at 175.

40. At trial, the court allowed Dr. Owens to proffer expert opinions on the first *Gingles* precondition and the population dispersion of minority groups in Galveston County. *Id.* at 198. But the court does not find his testimony on these topics credible. He neither describes himself as an expert nor even claims to focus any of his work on either redistricting or the first *Gingles* precondition. *Id.* at 189–90. Instead, he concentrates his work on the federal legislative process. *Id.* at 190. None of Dr. Owens’s coursework included training on the technical aspects of drawing a voting plan, *id.* at 193, and he has not published any peer-reviewed work on any of the issues he

opined on in his report, *id.* at 193–94. Dr. Owens has never taught a course on the technical aspects of drawing a voting plan. *Id.* at 196. Other than part of a single class on southern politics, he does not teach any specialized courses to graduate students on the *Gingles* standard. *Id.* at 197.

41. Before forming his opinions, Dr. Owens had reviewed fewer than ten voting plans for compactness—and only two of those professionally. *Id.* at 195. His only redistricting experience involved assisting a nonprofit by drawing statewide maps in Oklahoma that were neither considered by any court of law nor used in any election. *Id.* at 195–96. And his report revealed a fundamental misunderstanding of traditional redistricting principles. *See, e.g.*, DX-290 at 16 (providing a table with an average population deviation instead of the maximum deviation); *id.* at 252–54.

42. Given the widespread shortcomings in Dr. Owens’s testimony in this case, the court assigns little to no weight to Dr. Owens’s opinions on traditional redistricting principles, the geographic dispersion of minority populations, and the first *Gingles* precondition.

2. *Gingles* Preconditions Two and Three

43. The plaintiffs’ experts Drs. Matthew Barreto, Jessica Trounstone, and Kassra Oskooii testified about the second and third *Gingles* preconditions—whether (1) Black and Latino residents are politically

cohesive and (2) Anglo voters sufficiently bloc vote to enable them to usually defeat their preferred candidate, respectively. *See generally* Dkts. 223 at 194–265; 224 at 163–349.

44. Drs. Barreto, Trounstine, and Oskooii base their opinions on quantitative analyses of demographic data and election results. PXs-356 ¶¶ 20–37; 384 ¶¶ 16–29; 476 ¶¶ 25–40; 501 ¶¶ 1–10.

45. Dr. Barreto is a political-science and Chicano-studies professor at the University of California, Los Angeles. Dkt. 223 at 196–97; PX-384 ¶ 2. He is a co-founder and faculty director of the Latino Policy and Politics Initiative at UCLA and the UCLA Voting Rights Project. Dkt. 223 at 196–197; PX-384 ¶ 2. Dr. Barreto has testified dozens of times in federal court on racially polarized voting, demographic change, map-making, and public polling. Dkt. 223 at 206–07; PX-384 ¶ 2. The court recognized Dr. Barreto as an expert in mapping, racially polarized voting, demographic change, racial and ethnic politics, and *Gingles* preconditions two and three. Dkt. 223 at 209.

46. After receiving Dr. Barreto’s testimony and reviewing his reports, the court finds his analyses, opinions, and testimony credible.

47. Dr. Trounstine is a political-science professor at Vanderbilt University. PX-604 at 1. Before Vanderbilt, she was the Foundation Board of

Trustees Presidential Chair of Political Science at the University of California, Merced. *Id.* She also served as an assistant professor of politics and public affairs at Princeton University. *Id.* Dr. Trounstine holds a Ph.D. and a Master of Arts in political science from the University of California, San Diego, and a Bachelor of Arts in political science from the University of California, Berkeley. *Id.*

48. Dr. Trounstine has published several peer-reviewed publications, *id.* at 1–3, including two award-winning books published by university presses. *Id.* at 1. One of those books, *Political Monopolies*, “is about how local political coalitions get built,” “how those coalitions end up electing officials to office,” “how those officials keep themselves in power for multiple decades,” and “the consequences those political monopolies . . . have for . . . representation.” Dkt. 224 at 167.

49. As part of her academic work, Dr. Trounstine has analyzed “the building of political coalitions,” “racial group representation,” and “the political voting patterns of various racial, ethnic, and class groups, as well as other groups along gender lines.” *Id.* at 168–69. As part of her academic work, Dr. Trounstine has also “looked at the various ways that coalitions are built over time.” *Id.*

50. Dr. Trounstine is currently an Andrew Carnegie Fellow. PX-604 at 3. She was awarded the fellowship to “write a book on local political polarization in the United States.” Dkt. 224 at 168.

51. The court recognized Dr. Trounstine as an expert in political science, particularly statistical analysis of group voting patterns and the ability of groups to elect their candidates of choice. *Id.* at 170–71. Having received Dr. Trounstine’s testimony and reviewed her reports and declaration, the court credits her analyses, opinions, and testimony and grants them substantial weight.

52. Dr. Oskooii is a tenured associate professor of political science at the University of Delaware and is a faculty member at the university’s Data Science Institute. *Id.* at 273–76. He has published peer-reviewed works on racially polarized voting analyses and served as an expert in Voting Rights Act cases nationwide. *Id.* The court recognized Dr. Oskooii as an expert on racially polarized voting analysis. *Id.* at 278.

53. The defendants’ expert on the second and third *Gingles* preconditions, Dr. John Alford, testified that he greatly respects Dr. Oskooii as a methodologist. Dkt. 230 at 151. Dr. Alford agreed with the numerical accuracy of Dr. Barreto’s and Dr. Oskooii’s ecological-inference results and adopted their results for his analysis. *Id.* at 99–100. Having received Dr.

Oskooii's testimony and reviewed his reports and declaration, the court credits his analyses, opinions, and testimony and grants them substantial weight.

54. Dr. Alford has been a professor in Rice University's political-science department for thirty-five years. *Id.* at 12. He teaches courses on elections and voting behavior, and has served as a testifying expert for about 30 years. *Id.* No court has ever declined to recognize him as an expert on the second and third *Gingles* preconditions. *Id.*

55. At trial, the parties stipulated to Dr. Alford's expertise on the second and third *Gingles* preconditions. *Id.* at 12–13. After receiving Dr. Alford's testimony and reviewing his reports, the court finds his analyses, opinions, and testimony credible.

3. Senate Factors and Arlington Heights Factors

56. Dr. Traci Burch is an associate professor of political science at Northwestern University and a research professor at the American Bar Foundation. Dkt. 222 at 64; PX-414 at 3, 52. She is an expert in political behavior, political participation, barriers to participating in politics, barriers to voting, race and ethnic politics, and criminal justice. Dkt. 222 at 64–65. She has been an expert in federal and state court on barriers to voting and

felony disenfranchisement, as well as both the Senate and *Arlington Heights* factors. *Id.* at 66–67.

57. Dr. Burch testified about the racially discriminatory intent of the 2021 redistricting plan. *Id.* at 72–110. Dr. Burch also testified on the Senate factors. *Id.*

58. Reflecting a reliable application of Senate Factors 5 through 9 to the facts of this case, Dr. Burch based her opinions on a review of sources and methods that are standard for political scientists and social scientists, including the relevant political-science literature. *Id.* at 68–69. Dr. Burch also collected relevant data and analyzed publicly available information from websites, meeting records, newspaper articles, census data, and surveys. *Id.* at 69.

59. Reflecting a reliable application of the *Arlington Heights* factors, Dr. Burch’s opinions are based on her analysis of relevant demographic data and county-specific primary sources, including statements by Judge Henry, the commissioners, and the public. *See generally* PX-414. She also bases her opinions on peer-reviewed political-science and sociological studies, which is standard practice for political scientists and social scientists. Dr. Burch “cast a fairly wide net,” surveying public records and statements made by decision-makers and Galveston County residents. Dkt. 222 at 69–71.

60. The court qualified Dr. Burch as an expert in this case. *Id.* at 67. After receiving Dr. Burch’s testimony and reviewing her reports, the court finds her analyses, opinions, and testimony credible.

61. The United States’ expert, Dr. Rene Rocha, testified about the Senate factors. Dkt. 225 at 192–279. Dr. Rocha is the Herman J. and Eileen S. Schmidt Chair and Professor of Political Science and Latino Studies at the University of Iowa. *Id.* at 193; PX-336 at 1. He conducts research and teaches courses about race and ethnic politics, immigration policy, and voting rights. Dkt. 225 at 193. He has previously served as an expert in a § 2 case in federal court. *Id.* at 196–98.

62. Dr. Rocha’s opinions are based on relevant demographic data, county-specific primary sources, and peer-reviewed political-science and sociological studies. His research included reviewing census and American Community Survey data, federal- and state-government documents, court decisions, peer-reviewed academic work, websites, and newspaper articles. He gathered evidence of incidents and events in Galveston County that fell within Senate Factors 1, 2, 3, 5, and 6. PX-335; *id.* at 192–283.

63. The court qualified Dr. Rocha as an expert in this case. Dkt. 225 at 199. After receiving Dr. Rocha’s testimony and reviewing his reports, the court finds his analyses, opinions, and testimony credible.

64. Finally, the United States' last expert—Dr. Max Krochmal—is a history professor and the Czech Republic Endowed Professor and Director of Justice Studies at the University of New Orleans. *Id.* at 11; PX-317. Dr. Krochmal researches and teaches courses on the history of the American South, African American history, Latino/Latina history, and multiracial coalitions, focusing on Texas history during the twentieth century. Dkt. 225 at 11.

65. Dr. Krochmal testified about the racially discriminatory intent of the 2021 redistricting plan. *Id.* at 36, 74–95. His testimony cataloged discriminatory events undertaken by local and state entities against Black and Latino residents in Galveston County that affected the right to vote. *Id.* at 52–67. Based on his research, Dr. Krochmal concluded that there was sufficient evidence to find a history of official, voting-related discrimination in Galveston County. *Id.* at 34–35.

66. Reflecting a reliable application of the *Arlington Heights* factors and the events leading up to the enacted plan, Dr. Krochmal bases his opinion on the historical method. *Id.* at 36–52; PX-412 at 8–9. To reach his conclusions here, Dr. Krochmal analyzed more than 300 newspaper articles, years of commissioners-court agendas and minutes, video streams, primary sources in archives, oral-history interviews, and multiple days of fieldwork.

Dkt. 225 at 36–52. Dr. Krochmal examined Galveston County’s past redistricting cycles, the specific sequence of events leading up to the 2021 redistricting plan, and the history of discrimination against the county’s Black and Latino population. *See generally* PX-412.

67. The court recognized Dr. Krochmal as an expert. Dkt. 225 at 32–33. The court also noted Dr. Krochmal’s advocacy within his community and how, at times, he provided legal and political opinions favorable to the plaintiffs. After hearing and observing Dr. Krochmal’s testimony, reviewing his report, and considering the defendants’ arguments and evidence proffered to show his bias, the court still finds his testimony credible—although less than that of Drs. Burch and Rocha.

D. Galveston County Demographics and Voting Patterns

68. According to the 2020 Census, Galveston County has a total population of 350,682—54.6% Anglo, 25.3% Latino, and 13.3% Black. Dkt. 204-6 ¶ 6. The combined Black and Latino population represents about 38.6% of the countywide population. PX-386 ¶ 26.⁸

⁸ Cooper explained there are several possible definitions of “Black”—such as non-Latino and any-part Black, non-Latino and DOJ Black, and single-race Black—in a demographic analysis. Dkt. 223 at 20–23. For Galveston County’s population, the differences are “fairly insignificant” for overall population, and “de minimis” for citizen-voting-age population (“CVAP”) calculations, and thus do not alter the court’s analysis. *Id.*

69. Commissioners Precinct 3, which historically covered portions of Dickinson, La Marque, Texas City, and the city of Galveston, was the only majority-minority precinct in Galveston County from 1991 to 2021. *Id.* ¶ 38; PX-412 at 33–34.

70. The historic core of Precinct 3 was the product of advocacy by Black and Latino activists to create a majority-minority precinct in which they could elect a candidate of choice in the 1991 redistricting cycle. PX-412 at 32–37. This advocacy occurred shortly after the 1988 election of the first Black member of the commissioners court, Wayne Johnson, in a close campaign marked by racially polarized voting. *Id.* at 23–25; Dkt. 225 at 62–65.

71. Over time, Precinct 3 became an important political homebase for Black and Latino residents. “It was responsive. It was reflective of their priorities. And people took great pride and ownership in it.” Dkt. 225 at 71; *see also* Dkts. 226 at 190–91; 228 at 46 (discussing how “different groups of people” take pride “not only in the precinct itself and the cohesiveness in the precinct itself but even the pride they have in their elected official as the county commissioner”).

72. By 2020, benchmark Precinct 3’s CVAP was 58.31% Black and Latino. PX-386 ¶ 46. On the other hand, the enacted plan has no

commissioners precinct with a Black and Latino CVAP larger than 35%. *Id.* ¶ 58. Ironically, Precinct 3 now has the smallest such population at 28%. *Id.*

1. Sufficiently Large and Geographically Compact

73. The Black community in Galveston County primarily resides in the center of the county—Texas City, La Marque, Dickinson, Hitchcock, and the city of Galveston. Meanwhile, the Latino community is evenly dispersed throughout the county.

74. Both parties agree that there is not a sufficiently large, compact, and separate Latino or Black population to constitute a majority-Latino or majority-Black precinct in Galveston County. They also agree, however, that when treated as a coalition, the Black and Latino populations are sufficiently large and compact to support a majority-minority commissioners precinct. The court finds both propositions to be true.

75. During the 2021 redistricting process, the commissioners court considered a proposed map—Map 1—that featured a reasonably compact commissioners precinct with a majority Black and Latino population by CVAP. That precinct—Precinct 3—was 30.86% Black and 24.28% Latino by CVAP. PX-487 ¶ 65.

76. The commissioners court’s legal consultant for the redistricting process, Dale Oldham, testified that Map 1 was legally defensible. Dkt. 231

at 122–23. The plaintiffs’ experts also testified that Map 1 met the first *Gingles* precondition. See Dkt. 224 at 73; cf. PX-386 ¶¶ 70–80; Dkt. 223 at 51–55.

77. The illustrative plans that the plaintiffs presented at trial demonstrate that Galveston County’s Black and Latino population is sufficiently large to constitute a majority by CVAP in a single commissioners precinct. Cooper drafted four illustrative plans that all include a majority Black and Latino commissioners precinct by CVAP. See generally PXs-386 ¶¶ 81–96; 439 at 2. Cooper Plans 1, 2, 3, and 3A each include an illustrative commissioners precinct with 57.65%, 57.72%, 55.27%, and 54.52% Black and Latino CVAP, respectively, as calculated using the 5-Year 2017-2021 ACS Special Tabulation. PX-439.

78. Fairfax’s illustrative plan likewise includes a majority Black and Latino commissioners precinct. According to the 2020 Census redistricting dataset and the 2016-2020 ACS 5-Year ACS Data, Fairfax’s illustrative plan includes a commissioners precinct with 55.15% Black and Latino CVAP. Dkt. 224 at 109–11; PXs-337 ¶ 47; 551.

79. For his initial report, Dr. Rush created three illustrative plans containing Precinct 3 configurations wherein the Black and Latino communities together formed a majority by CVAP. PX-487 ¶¶ 34–54. The

CVAP in Dr. Rush's plans was calculated using the 2020 Census redistricting dataset and the 2016–2020 5-year ACS Data. *Id.* The Precinct 3 configurations in his three initial plans exhibit a Black and Latino CVAP of 56.6%, 61.2%, and 57.5%, respectively. *Id.* Dr. Rush also presented a fourth plan with a Black and Latino CVAP of 57.92%. PX-486 at 19.

80. Dr. Rush subsequently created four additional plans containing coastal precincts, each unifying the county's entire county coastline into one commissioners precinct without fragmenting the mainland minority population. *Id.*; *see also* PXs-415–418. Texas Legislative Council-generated reports confirm that three of the coastal precinct plans contain a Precinct 3 in which the combined Black and Latino CVAP is over 50%. PX-485 ¶ 8.

a. Traditional Redistricting Criteria

81. All the plaintiffs' experts on the first *Gingles* precondition credibly testified to applying traditional redistricting criteria in developing their illustrative maps.

82. Dr. Owens's criticisms of the plaintiffs' illustrative plans do not overcome their experts' testimony, leaving intact the plaintiffs' argument that each plan comports with traditional redistricting criteria.

83. NAACP Plaintiffs' Illustrative Plans (Cooper). Cooper developed Cooper Map 1 by shifting just two voting precincts from the benchmark plan,

a “least-change” approach he deemed acceptable for Galveston County based on the characteristics of its population changes over the past decade. Dkt. 223 at 56–57; PX-386 ¶¶ 81–86. This least-change plan demonstrates the minimum number of changes necessary to eliminate malapportionment and brings the commissioners precincts within an “almost perfect deviation.” Dkt. 223 at 58; PX-386 ¶ 31.

84. In Cooper Map 1, all commissioners precincts are contiguous, and Precinct 3 is reasonably compact given the county’s complex geography. Dkt. 223 at 58. This plan keeps eleven municipalities whole and has fifteen populated municipal splits. PX-349 at 5–6. It respects municipal and political-subdivision boundaries better than the enacted plan, which keeps nine municipalities whole but has sixteen populated municipal splits as well as four populated voting-district splits. PX-346 at 5–6. Racial considerations did not predominate in drawing Cooper Map 1. Dkt. 223 at 58. Cooper Map 1 adheres to traditional redistricting principles and is reasonably configured. *Id.* at 62; PX-386 ¶ 86.

85. Cooper also developed Cooper Map 2 using a least-change strategy for equalizing populations while also including an entirely coastal Precinct 2. Dkt. 223 at 62–63; PX-386 ¶¶ 87–90. At 0.57%, the total population deviation is “even closer” to zero than that of the enacted plan.

Dkt. 223 at 64; PX-350 at 3. All commissioners precincts are contiguous, and Cooper Map 2 keeps ten municipalities whole with fifteen populated splits. Dkt. 223 at 66; PX-350 at 4–5. Cooper Map 2 has nine populated voting-district splits, which Cooper explained were split to prioritize creating a coastal commissioners precinct that would be contiguous by driving. Dkt. 223 at 66; PX-350 at 6. Cooper testified that Precinct 3 in Cooper Map 2 is reasonably compact. Dkt. 223 at 67. Racial considerations did not predominate in drawing Cooper Map 2. *Id.* at 63. Cooper Map 2 adheres to traditional redistricting principles and is reasonably configured.

86. Cooper developed Cooper Maps 3 and 3A by attempting to unify all offshore islands in a single precinct. Dkt. 223 at 68; PXs-386 ¶¶ 92–96; 438 ¶¶ 35–38. The population deviations for both plans are below 5%. PXs-351 at 3; 443 at 3. Cooper included Cooper Map 3A as a slightly modified version of Cooper Map 3 to allow Precinct 1 to be contiguous by driving without requiring entry across the Moses Lake Floodgate. Dkt. 223 at 70–72; PX-438 ¶ 35.

87. Cooper Map 3 keeps nine municipalities whole and includes sixteen populated splits, while Cooper Map 3A keeps nine municipalities whole and includes fifteen populated splits. PXs-351 at 5; 443 at 5. Cooper Maps 3 and 3A have three voting-district splits, one less than the enacted

plan. PXs-351 at 6; 443 at 6. Both are reasonably compact. Dkt. 223 at 68–69, 75. Race did not predominate in the development of either map. *Id.* at 70, 75–76. Cooper Maps 3 and 3A adhere to traditional redistricting principles and are reasonably configured.

88. In sum, all the Cooper illustrative plans adhere to traditional redistricting criteria without pairing any incumbents or predominating race. Cooper Maps 2, 3, and 3A prove that achieving these metrics and maintaining a majority-Black and Latino precinct is possible, even with a unified coastal precinct.

89. United States’ Illustrative Plan (Fairfax). Fairfax developed an illustrative plan using the least-change approach to equalize the population among the commissioners precincts. Using this approach, he shifted only one voting district from Precinct 2 to Precinct 3 to bring the precinct’s population deviations within the accepted guideline range of 5% and the total deviation under 10%. Dkt. 224 at 97–102; PX-337 ¶¶ 38–41. All commissioners precincts are contiguous. Dkt. 224 at 106–07; PX-340 at 9. Fairfax testified that his illustrative plan is reasonably compact and more compact than the benchmark plan. Dkt. 224 at 115–17. The illustrative plan is also similarly compact as compared to the enacted plan. PXs-454 ¶ 4; 557.

90. Fairfax testified that his illustrative plan adhered to traditional redistricting criteria, including equal population, contiguity, and compactness. Dkt. 224 at 104, 107. Fairfax's illustrative plan also maintained the same municipality and voting-district splits as the benchmark plan. Racial considerations did not predominate in drawing Fairfax's illustrative plan. *Id.* at 103. Therefore, Fairfax's illustrative plan adheres to traditional redistricting principles and is reasonably configured.

91. Petteway Plaintiffs' Illustrative Plans (Rush). Each precinct in Dr. Rush's eight illustrative plans is contiguous. PXs-415–418, 485, 486, 487.

92. Dr. Rush's illustrative plans have an overall plan deviation under 10%, and seven of his eight plans are within the 5% guideline.

93. Precinct 3 in Dr. Rush's illustrative plans is reasonably compact, as are the other three commissioners-court precincts in each of those plans. Dkt. 224 at 22–23; PXs-486, 487. Each precinct in Dr. Rush's illustrative plans is also comparatively compact when measured against the districts in the enacted and the benchmark plans. PXs-486, 487.

94. Dr. Rush's illustrative plans respect political and precinct boundaries. For example, Dr. Rush's Demonstrative Plans 1, 2, and 2b do not split any voting districts. PX-487 ¶¶ 38, 44. In addition to respecting political

boundaries, Dr. Rush’s illustrative plans keep together communities of interest. *See* Dkt. 224 at 21–22; PX-486 at 5–6.

95. Finally, racial considerations did not predominate in drawing Dr. Rush’s illustrative plans, as he did not consider race or ethnicity while creating his maps. Dkt. 224 at 22, 27. Given this evidence, Dr. Rush’s illustrative plans adhere to traditional redistricting principles and are reasonably configured.

96. Defendants’ Assessment of Plaintiffs’ Illustrative Plans (Owens). Although the court gives Dr. Owens’s testimony almost no weight, Dr. Owens generally agreed that the plaintiffs’ plans were “about as reasonably compact as the enacted plan.” Dkt. 232 at 229, 276. He also agreed that it is common to use a least-change approach when rebalancing populations following a census. *Id.* at 259–60. Dr. Owens charged that the plaintiffs’ illustrative plans used race as a predominating factor, but failed to explain what made him believe that, other than his work “comparing the outcomes” of the maps. *Id.* at 258. Nor did he dispute that the plaintiffs’ experts used non-racial traditional redistricting criteria. *Id.* at 256–58.

97. Dr. Owens’s opinions do not change the court’s findings that the plaintiffs’ illustrative plans exemplify several ways to draw a reasonably

compact commissioners precinct featuring a majority Black and Latino CVAP and comporting with traditional redistricting principles.

98. Conclusions Regarding Traditional Redistricting Principles.

Overall, Cooper, Fairfax, and Dr. Rush’s illustrative plans confirm that the combined Black and Latino population is sufficiently large and geographically compact. In their maps, Blacks and Latinos would constitute a majority by CVAP in a single commissioners precinct that is reasonably configured and adheres to traditional redistricting principles.

99. The illustrative plans would preserve Precinct 3 as a majority-minority precinct. Indeed, there are a “multitude of potential plans adhering to traditional redistricting principles that would result in maps that maintain a majority [Black and Latino] CVAP [c]ommissioners [p]recinct.” PX-386 ¶ 97; *see also* Dkts. 223 at 52; 224 at 117–18; PX-337 ¶ 63.

100. The plaintiffs’ illustrative plans further show that the commissioners court could retain a majority-minority precinct even if it prioritizes creating a unified coastal precinct.

b. Geographically Compact

101. Dr. Owens opined that Galveston County’s minority population is neither geographically nor culturally compact. The court assigns no weight to these opinions.

102. Dr. Owens did not cite any academic literature to support his analysis. Dkt. 232 at 232. Concerning the Latino population, Dr. Owens based his conclusion on the distances between discrete concentrations of Latino residents, ranging from 305 people to 7,637. *Id.* at 237–40. He provided no authority or reference for the significance of those distances or even a definition for what would be considered “distant and disparate” in Galveston County. *See id.* at 237–40; DX-290.

103. When testifying that Blacks and Latinos are not “culturally compact,” Dr. Owens had no basis for disputing that Black and Latino residents throughout Galveston County fare worse than their Anglo counterparts across most socio-economic measures. Dkt. 232 at 247–49. He analyzed only three of the twenty potential socio-economic factors available *Id.* at 245–46. When presented with factors that did not favor his opinion, he admitted to inconsistently choosing which factors to examine. *Id.* at 246. Additionally, he did not analyze how these groups compared to their Anglo counterparts. *Id.* at 247.

104. The court also does not credit the defendants’ assertions that Blacks and Latinos are not culturally similar because minority residents in League City have higher standards of living than those in the rest of the county. Although League City is more affluent than other parts of the county,

“disparities between Black and Latino residents as compared to their Anglo counterparts persist even in League City, which indicates that they share the common socio-economic challenges of Black and Latino residents in Galveston.” PX-438 at 5; *see also* Dkt. 223 at 184. Blacks and Latinos are more affluent in League City than in the rest of the county, but that does not disprove the overwhelming evidence that they share similar socio-economic struggles countywide and in Precinct 3.

105. Although not nearly as probative as the quantitative socio-economic data, lay-witness testimony adduced at trial supports this conclusion. For example, Lucretia Henderson-Lofton is a former president of the Dickinson Bay Area NAACP and a Black resident of League City. Dkt. 226 at 188, 198–99. Born on Galveston Island and raised in Texas City, Henderson-Lofton moved to League City in 2016. *Id.* at 189. She testified to the racial discrimination her family and others have experienced in League City and the significant contacts that she maintains in Texas City. *Id.* at 189–90, 193–98, 204–07.

106. Given this evidence, the court finds that Galveston County’s Black and Latino population is sufficiently large and geographically compact to constitute a majority in a single commissioners precinct that is both reasonably configured and comports with traditional redistricting principles.

2. Politically Cohesive

107. Using ecological-inference methods, the plaintiffs’ quantitative experts demonstrated that Black and Latino voters in Galveston County are cohesive in that a large majority of these voters have consistently favored the same candidates across a series of elections. PXs-356, 384, 476; Dkts. 223 at 226; 224 at 184, 188–89, 199, 279–82. These results were consistent across several data sources and in hundreds of statistical models. PXs-356, 384, 465, 476; Dkts. 223 at 221–32; 224 at 175.

108. Racially polarized voting “describes an electorate in which [Anglo] voters favor and vote for certain candidates . . . and minority voters vote for other candidates.” *Rodriguez v. Harris County*, 964 F. Supp. 2d 686, 756 (S.D. Tex. 2013) (quoting *LULAC, Council No. 4434 v. Clements*, 986 F.2d 728, 744 (5th Cir. 1993)). The existence of racially polarized voting does not necessarily mean that voters are racist or harbor racial animus. *See id.* at 757 (noting that the correct question is “not whether [Anglo] voters demonstrate an unbending or unalterable hostility to whoever may be the minority group’s representative of choice, but whether, as a practical matter, such bloc voting is legally significant”).

109. Ecological inference is a reliable and standard method of measuring racially polarized voting. PXs-384 ¶¶ 18–21; 476 ¶ 25; Dkt. 223 at

216–17, 219. Two forms of ecological inference, King’s Ecological Inference (“King’s EI”) and RxC EI, use aggregate data to identify voting patterns through statistical analysis of candidate choice and racial demographics within a precinct. PXs-384 ¶¶ 18–21; 476 ¶ 25; Dkt. 223 at 216–17, 219.

110. RxC EI is appropriate for analyzing elections with more than two candidates or more than two racial or ethnic groups. PXs-384 ¶ 18; 476 ¶ 25; Dkt. 224 at 188. The plaintiffs’ quantitative experts produced estimates using both King’s EI and RxC EI.

111. In addition to CVAP and Spanish Surname Turnout data used in King’s EI and RxC EI, Dr. Barreto and his co-author, Dr. Michael Rios, conducted a Bayesian Improved Surname Geocoding (“BISG”) analysis of Galveston County elections to more precisely assess voting patterns by race and ethnicity. PX-465.

112. BISG analysis creates a probability that a given voter who participated in an election is of a particular racial or ethnic group based on his or her surname and the racial composition of the census block. *Id.* ¶¶ 30–34. Because Latinos vote at lower rates than Anglo and Black voters, BISG is particularly useful for narrowing in on the vote choices of Latino voters who participate in elections. Dkt. 223 at 242–44. Studies have validated the reliability of using BISG for analyzing racially polarized voting. *Id.* at 236.

113. Dr. Oskooii replicated and reproduced Dr. Barreto's BISG results and achieved highly consistent results. PX-505. Dr. Oskooii testified that BISG is a reliable method and is widely employed across various industries and applications. Dkt. 224 at 305–06. Dr. Alford agreed that BISG is reliable for estimating Latino voting patterns in Texas. Dkt. 230 at 160. The court finds that BISG is a reliable methodology for assessing racially polarized voting patterns.

114. The experts agree that there is no universal way to determine cohesion. Instead, they determine cohesion by analyzing elections that show a particular pattern within the relevant jurisdiction. Dkts. 224 at 301; 230 at 100–01; PX-476 ¶¶ 27–28, 30; DX-305 at 2.

115. The undisputed RxC EI analyses from Drs. Oskooii and Barreto show that, on average, over 85% of Black and Latino voters have voted for the same candidate countywide and within the illustrative Precinct 3 plans contained in those reports. PXs-356 at 14, 23; 465 ¶ 36; *see also* Dkt. 224 at 184, 188–89, 199.

116. The undisputed RxC EI analyses from Drs. Barreto and Oskooii show most Latinos and Blacks have separately voted for the same candidate in almost all general elections. PXs-372 at 2, 4; 384 ¶ 46. Drs. Barreto and Rios's BISG-based analysis shows even stronger cohesion among Latino

voters, with over 75% favoring the same candidates in most of the twenty-nine elections they assessed. PX-465 ¶ 39. Dr. Oskooii's BISG analysis confirmed these results. PX-505 ¶¶ 1–8. These analyses show that Latino voters consistently supported the Black-preferred candidate and that Black voters consistently supported the Latino-preferred candidate. PX-465 ¶ 39. Dr. Alford did not dispute Drs. Barreto and Rios's BISG results. Dkt. 230 at 161.

117. Dr. Barreto agreed that the wider confidence interval for Latino voter cohesion stems from standard error. Dkt. 223 at 283. He observed that a lower standard error generates a tighter confidence interval, while a higher standard error generates a broader confidence interval for the exact point estimate. *Id.* at 288. Despite wider confidence intervals for Latino voters, Dr. Barreto had “equal faith” in the point estimates he reported in the BISG analysis. *Id.* at 289–92. Dr. Oskooii's estimates also had broad confidence intervals for Latino voters. Recognizing Dr. Alford's concerns about the reliability of the wide confidence intervals, the court still finds it to be probative evidence of Latino voter cohesion and attributable to the smaller sample sizes of Latino voters.

118. Dr. Alford considered the voting patterns of Anglos, Blacks, and Latinos separately, and testified that it would be hard to find “a more classic pattern of what polarization looks like in an election.” Dkt. 230 at 17–18.

119. Here, the most probative election results demonstrate cohesion between Black and Latino voters in Galveston County. All experts agreed that recent elections are more probative and can more reliably confirm cohesion and polarization than more distant elections. PX-356 ¶ 22; Dkts. 223 at 247–48; 224 at 139, 176. Due to the limited number of contested endogenous⁹ elections, it was necessary to analyze exogenous elections. PXs-384 at 17–40 (analyzing twenty-eight exogenous elections across five election cycles); 476 at 33; Dkt. 224 at 281.

120. Exogenous elections encompassing Galveston County, such as those for Attorney General and Governor, are more probative than elections covering only portions of the county, such as municipal elections. Dkts. 224 at 181–82, 280; 230 at 144–45. The exogenous elections that cover the entire county show consistently high levels of cohesion. PXs-384 at 17–40; 356 at 14; 476 at 46–47.

⁹ Endogenous elections are “contests within the jurisdiction and for the particular office that is at issue.” *Rodriguez*, 964 F. Supp. 2d at 759. Exogenous elections are “elections in a district for positions that are not exclusively representative of that district.” *Id.*

121. All experts agreed that general elections are more probative than primary elections in this case; this includes determining inter-group cohesion, *i.e.*, cohesion between Black and Latino voters in Galveston County. Dkt. 223 at 246–47; 224 at 181–87, 262–63; 230 at 145–46, 149; PXs-465 ¶ 27; 476 ¶ 34.

122. Primary elections have limited probative value in determining inter-group cohesion for several reasons. First, in the context of “racial[-] and ethnic[-]coalition building[,]... coalitions get built in the general election,” not the primary election. Dkt. 224 at 181–87. Second, because primary elections generally have low turnouts, the resulting estimates are less robust and do not present a good picture of most voters for any demographic group. *Id.* at 292–93; PX-356 ¶ 24. Third, candidate preferences are not as likely to be as strong for any candidate given that candidates’ ideological positions in the same party are likely closer than those in different parties in a general election. Dkt. 224 at 292–93; PX-356 ¶ 24.

123. Primary elections for the commissioners court are rarely contested, with lower levels of voter participation among all racial and ethnic groups—but especially Black and Latino voters. PXs-356 ¶ 24; 465 ¶ 27; Dkt. 224 at 292–93.

124. Considering their limited probative value, the primary elections that Dr. Oskooii analyzed show a steady presence of inter-group cohesion between Black and Latino voters. In nine out of the ten primary elections he studied, Black and Latino voters voted cohesively. PX-356 ¶¶ 64–65.

125. Between Drs. Oskooii and Alford, the analyzed results show that Blacks and Latinos usually support the same top-choice candidate in primary contests. *Id.* ¶ 64; DX-305 at 18–19; Dkt. 224 at 302–03.

126. The 2012 primary election for Precinct 3 provides very probative evidence because it is the most recent endogenous contest for Precinct 3. Dkt. 230 at 140–42. That election featured a highly cohesive Black and Latino electorate. *Id.* at 140.

127. Dr. Alford observed that several of the examined Democratic primary elections did not feature racially polarized voting because Anglo, Black, and Latino voters supported the same candidates. *Id.* at 30–31, 37–39, 47–48, 70. But on cross-examination, Dr. Alford admitted that this observation is irrelevant when determining racial cohesion between Black and Latino voters. *Id.* at 125–28, 130–31. And Dr. Alford acknowledged that when considering the third *Gingles* precondition, in general elections (in which voters can elect—rather than just nominate—a candidate of their choice), Anglo voting behavior is especially relevant. *Id.* at 131–32. The court

thus does not credit Dr. Alford's observation about Anglo voting behavior in Democratic primaries for purposes of the second or third *Gingles* preconditions.

128. Two data limitations restrict the probative value of the local nonpartisan elections analyzed in this case. First, the local nonpartisan elections cover smaller geographic areas than any individual county-commissioners precincts. Dkt. 224 at 182. They often encompass very few election precincts, *see, e.g.*, DX-287, thereby limiting the demographic information available to produce estimates, Dkts. 224 at 283–84; 230 at 67–68. Second, in many local nonpartisan elections there were multiple candidates and low voter turnout—two features that contribute to instability in ecological-inference estimates. Dkt. 224 at 294, 325–26. The local nonpartisan races also have less probative value than partisan general elections because commissioners-court races are partisan contests. PX-465 ¶ 25. The court therefore assigns little weight to the analyses of local nonpartisan elections.

129. Even so, local nonpartisan elections show cohesion between Black and Latino voters in Galveston County. PX-476 ¶ 56. Further, successful minority candidates in nonpartisan elections are primarily elected

from majority-minority districts, *see, e.g.*, Dkt. 230 at 265, which is consistent with racially polarized voting patterns, *id.* at 165.

130. Based on their analyses, the plaintiffs' quantitative experts concluded that Black and Latino voters in Galveston County are cohesive. PXs-356 ¶ 6; 384 ¶¶ 23–24; 476 ¶¶ 6, 34; Dkt. 224 at 184.

131. Although less probative than the quantitative evidence, lay testimony also shows political cohesion between Blacks and Latinos in Galveston County. Community leaders testified that Black and Latino voters in Galveston County vote cohesively. *See, e.g.*, Dkts. 221 at 133–34; 226 at 15, 130. Several witnesses testified that the Black and Latino communities in Galveston County share interests and policy preferences, including those addressing education, housing, healthcare, and employment. Dkts. 221 at 65, 109–10, 133–34; 222 at 32–36; 226 at 67–68, 128–30, 156–57, 197–98, 204, 207–08. Galveston County's local LULAC and NAACP branches often collaborate, sharing services and resources. Dkt. 226 at 86, 117, 120–21, 204. Several witnesses are members of both organizations. Dkts. 222 at 217; 226 at 14, 65, 201–02, 204.

132. Thus, the court finds that Blacks and Latinos vote cohesively in Galveston County.

3. Cannot Elect Candidate of Choice

133. The evidence adduced at trial shows that Anglo voters in Galveston County engage in bloc voting such that a large majority of the county's Anglo voters favor their own candidates in both countywide and precinct-only elections. The high level of Anglo bloc voting usually prevents Black and Latino voters in Galveston County from electing their candidates of choice.

134. An electoral-performance/reconstituted-election analysis is a technique used to examine how candidates would have fared under different maps or precinct boundaries. PXs-356 ¶ 68; 476 ¶¶ 38–40; *see also* PX-384 ¶ 46. The plaintiffs' quantitative experts used this method to analyze elections encompassing the entirety of Galveston County for the enacted plan and the plaintiffs' illustrative maps. PXs-356 ¶¶ 67–75; 384 ¶¶ 44–48; 476 ¶¶ 38–40, 58.

135. Under the enacted plan, Anglo bloc voting defeated the candidate of choice of Black and Latino voters in every election in every commissioners precinct. PXs-356 ¶¶ 71–72; 384 ¶¶ 44–46; 476 ¶ 58; Dkt. 224 at 205, 288–89.

136. All three electoral-performance/reconstituted-election analyses from Drs. Barreto and Rios, Dr. Oskooii, and Dr. Trounstine establish that

the candidate of choice of Black and Latino voters won in Precinct 3 in every election under the plaintiffs' illustrative maps. PXs-356 ¶¶ 72–75; 384 ¶¶ 44–46; 476 ¶ 58.

137. Dr. Alford also analyzed whether Anglo bloc voting is sufficient to defeat minority-preferred candidates in the enacted plan. Dkt. 230 at 123. He did not dispute the plaintiffs' quantitative experts' electoral-performance/reconstituted-election analyses. *Id.*; see generally DX-305.

138. A direct relationship exists between a precinct's demographic composition and a specific candidate's likelihood of success in any given election. As the minority percentage moves up or down, the performance of minority-preferred candidates moves in direct proportion. Dkt. 224 at 289–90. This relationship supports a finding of racially polarized voting and complements the ecological-inference estimates the quantitative experts performed in this case. *Id.*; PX-356 ¶¶ 74–75.

139. In most of the recent general elections, over 85% of Anglos across Galveston County voted for candidates running against the minority-preferred candidates. PXs-356 ¶ 40; 384 ¶¶ 22–24. Similarly high levels of bloc voting are present at the individual-precinct level in the enacted commissioners precincts. PX-356 at 19.

140. The plaintiffs' quantitative experts concluded that these patterns at the county level also exist at the commissioner-precinct level. Dr. Oskooii found that there is Anglo bloc voting in the enacted plan's precincts and that there is cohesive minority voting in Cooper's illustrative maps. *Id.* ¶¶ 56–62. Dr. Barreto found that Anglo and non-Anglo voters are sharply polarized in their voting patterns in each of the four enacted precincts. PX-465 ¶¶ 44–46. Similarly, Dr. Trounstine found the same polarized voting pattern in Precinct 3 in Fairfax's illustrative map. PX-501 ¶ 2; *see also* Dkt. 224 at 198–99. The court credits the quantitative experts and agrees with their conclusions.

141. All experts agree that Anglo bloc voting usually defeats the Black and Latino candidate of choice in Galveston County elections in every precinct analyzed in the enacted plan.

142. The court finds that voting in Galveston County is racially polarized such that Anglo voters usually vote as a bloc to defeat the candidate of choice of Black and Latino voters.

4. On Account of Race

143. The defendants contend that partisanship alone explains the racially divergent voting patterns in Galveston County. To the extent that partisanship explains the voting patterns in the county, it still does not change the fact that the data unerringly points to racially polarized voting.

144. The parties agree that Anglo bloc voting exists in Galveston County such that Blacks and Latinos could not elect candidates of their choice. They also agree that Anglos in Galveston County, who comprise a supermajority, are mostly Republican and that Blacks and Latinos are mostly Democrats. The plaintiffs argue that race and politics are “inextricably intertwined,” Dkt. 247 at 6 n.3, while the defendants and Dr. Alford contend that partisan affiliation is the “main driver of voter behavior,” Dkt. 244 at 54–58.

145. Dr. Alford did not analyze whether any factors other than race or party identification explain the divergent racial voting patterns in partisan elections in Galveston County. Dkt. 230 at 107–08. He admits that assessing “partisan polarization” in addition to racial polarization is not standard practice among redistricting experts. *Id.* at 88. Characterizing the typical redistricting expert as being, unlike himself, an “advocate[] for a particular position,” Dr. Alford defended his focus on the difference between racial and partisan polarization. *Id.* at 88–89.

146. Dr. Alford testified that political-issue attitudes are distinct from party identification and that party identification, unlike issue attitudes, is primarily the result of socialization. *Id.* at 77–79. Tellingly, he based his conclusions regarding the role of partisanship versus race primarily on one

election: the 2018 Senate race between Senator Ted Cruz and Beto O'Rourke. *Id.* at 53, 166.

147. Although partisanship undoubtedly motivates voting behaviors in Galveston County, the defendants failed to show that a race-neutral explanation explains the racially divergent voting patterns. Dr. Oskooii testified that Black and Latino voters were cohesive behind their preferred candidate in about 93% of racially contested elections, while Anglo voters were cohesive behind the Anglo-preferred candidate. Dkt. 224 at 298–300; PX-452 ¶ 7.

148. The racial composition of political parties in Galveston County, measured through participation in each party's primaries, further suggests that the county's electorate is racially polarized. All experts agree that relatively few Anglo voters in Galveston County participate in Democratic Party primaries. PX-465 ¶¶ 13–17; Dkt. 224 at 293; 300; *see also* PX-476 at A-12; Dkt. 230 at 109–10. Conversely, relatively few Black and Latino voters in Galveston County participate in the county's Republican primaries. PX-465 ¶¶ 17–19; Dkt. 224 at 183, 300; PX-476 ¶ 21. No Black or Latino Republican has ever won a primary election to be the Republican Party's nominee for county judge or a county commissioner. PX-465 ¶ 17. Commissioner Armstrong, who is Black, was appointed and did not

participate in a Republican primary election. Dkt. 230 at 197. He ran uncontested in the general election. Dkt. 224 at 298–99.

149. In general elections in Galveston County, Anglos overwhelmingly vote for Republican candidates. PX-452 ¶ 8. Meanwhile, Blacks overwhelmingly vote for Democrat candidates, and Latinos very often support the same candidates. *See* PX-476 at 33.

150. Although it is not very probative, national scholarship on political trends helps to further explain the link between race and partisanship in Galveston County. *See* PX-384 ¶¶ 30–43. “The fact that Black and Latino voters tend to support candidates from one party is a reflection of their cohesion, not an alternative explanation for it.” PX-476 ¶ 35. The history of discrimination resulting in ongoing socio-economic disparities and barriers to voting along racial lines also contributes to a finding that race, not partisanship alone, drives the voting patterns seen in Galveston County.

151. Moreover, Galveston County voters provided testimony of racially polarized voting based on their lengthy residences in the county, their elections to public office, or both. *See* Dkts. 221 at 128–29, 133–34; 222 at 17; 226 at 130. Although anecdotal and isolated, this evidence further supports that race provides a plausible explanation for voting patterns in Galveston County.

152. The court therefore finds that a partisan explanation for voting patterns in Galveston County does not overcome the weighty evidence of racially polarized voting on account of race.

E. Discriminatory Impact of the Enacted Plan

153. The enacted plan converted the benchmark Precinct 3 from the precinct with the highest percentage of Black and Latino residents to the one with the lowest. Dkt. 223 at 42–43. According to 2016–2020 ACS Special Tabulation data from the census, benchmark Precinct 3 is about 58% Black and Latino by CVAP. PX-386 ¶ 46. But after the 2021 redistricting, Precinct 3 now includes the lowest Black and Latino CVAP proportion of any precinct—about 28%—and the Black and Latino population is evenly distributed throughout the remaining precincts—with each one containing a range of 32% to 35% Black and Latino CVAP. *Id.* ¶ 58.

154. Accordingly, Black and Latino residents fail to comprise a majority in any new commissioners precinct—despite comprising about 38% of the overall population and 32% of the CVAP. *Id.* ¶ 31.

155. The plaintiffs’ quantitative experts established that Black and Latino voters will usually fail to elect a candidate of their choice in any commissioners precinct within the enacted plan. PXs-356 ¶¶ 70–74; 384 ¶¶ 44–46; Dkt. 224 at 288–89.

156. Anglo voters comprise 64.1% of the county’s voting age population but now control 100% of the electoral outcomes for Galveston County commissioners court. *See* PX-487 ¶ 14.

157. The county’s redistricting counsel, Oldham, likewise acknowledged that the benchmark plan included a performing precinct for minority voters while the enacted plan no longer does. Dkt. 231 at 178. The enacted plan creates an evident and foreseeable impact on racial minorities in Galveston County by eliminating the sole majority-minority precinct. *See* Dkt. 222 at 110.¹⁰

158. The court finds that the enacted plan disproportionately affects Galveston County’s minority voters by depriving them of the only commissioners precinct where minority voters could elect a candidate of their choice. Likewise, the court finds that the commissioners court was aware of that fact when it adopted the enacted plan.

F. Galveston County Voting and Redistricting

159. For § 2 vote-dilution claims, a plaintiff must show under the “totality of circumstances” that the “challenged political process is not ‘equally open’ to minority voters.” *Allen v. Milligan*, 599 U.S. 1, 18 (2023).

¹⁰ Several witnesses testified that it was obvious on the face of the map that the enacted plan would fracture minority communities. Dkts. 221 at 62–63; 222 at 248–49; 226 at 21–22, 69, 77.

District courts use the Senate Judiciary Committee’s Report accompanying the 1982 amendment to the Voting Rights Act to inform this determination, which provides several non-exhaustive factors to consider. S. Rep. No. 97-417, at 40 (1982) [hereinafter S. Rep.]. For intentional-discrimination claims, the Fifth Circuit follows the framework in *Village of Arlington Heights v. Metropolitan Housing Development Corp.* to determine whether a legislative body passed a redistricting plan with discriminatory purpose. 429 U.S. 252 (1977). The court will identify the factual findings that pertain to each framework as it presents those findings.

1. History of Discrimination in Voting Practices

160. The first Senate factor is the history of official voting-related discrimination in the political division. Similarly, the first *Arlington Heights* factor is the historical background of the decision.

161. Galveston County was a center for buying and selling enslaved Black people during the Antebellum era. Dkt. 225 at 52–53. After the Civil War, race relations in the county reflected those seen across much of the South, including segregation and Jim Crow laws. *Id.* 53–54; PX-412 at 13–14. At the same time, “state-supported practices and laws in a variety of different areas of life” came together to segregate Latinos in Galveston County, a system termed Juan Crow. Dkt. 225 at 57–58; PX-412 at 10–12.

162. The discrimination against Black and Latino residents in Galveston County extended to voting. Dkt. 225 at 58. For instance, the Texas legislature passed a poll tax in 1903, which required payment each January. PX-412 at 13; *id.* at 54–55. This affected many Black and Latino voters because many were agricultural laborers, and few had cash on hand in January due to the timing of the agricultural cycles. *See* Dkt. 225 at 54–55. During much of the twentieth century, the Texas Democratic Party allowed only Anglos to vote in its primary, preventing Black and Latino voters from participating in the “elections and caucuses that really mattered.” PX-412 at 13–15.

163. Restrictions on voting for minorities remained present in Texas even after the Voting Rights Act in 1965 and its 1975 extension. Before 2013, § 5 of the Voting Rights Act “required States to obtain federal permission before enacting any law related to voting.” *Shelby County v. Holder*, 570 U.S. 529, 534 (2013). Section 4(b) provided the coverage formula that defined the “covered jurisdiction” that must follow this preclearance process. *Id.* at 538–39. From 1975 to 2013, Galveston County was subject to § 5 preclearance. PX-412 at 15; Dkt. 225 at 58, 75. Preclearance subjected Galveston County to multiple objection letters from the Attorney General. PX-335 ¶¶ 19–23.

164. Nevertheless, several witnesses acknowledged that it is easier to vote now than it has ever been in Galveston County. Dkts. 221 at 157; 222 at 58; 230 at 245. The county adopted countywide voting centers, which allow voters to “vote anywhere on election day or early voting.” Dkt. 230 at 238. It is also relatively easy to register to vote in the county. *See, e.g.*, Dkts. 221 at 82; 222 at 258–59; 230 at 202, 245. Early voting lasts two weeks in Galveston County. Dkt. 221 at 155–57.

165. Sullivan testified that if a mail-in ballot required postage and the voter failed to affix it, the clerk’s office would pay for the postage because it “want[s] every vote to count.” Dkt. 230 at 245–46.

166. The county provides election materials in English and Spanish for all elections. Dkt. 226 at 82.

167. Judge Henry has not heard any complaint in the last ten years that the county prevented someone from being able to vote. Dkt. 228 at 248.

168. The county collaborates with LULAC and allows them to use county property for its Cinco de Mayo event. Dkt. 230 at 236. The event is a blend of a cultural festival and a get-out-the-vote effort. *Id.* at 235–36.

2. Attorney General's Objections

169. Since 1976, Galveston County and its political subdivisions have been the subject of six objection letters from the Attorney General. PX-335 ¶ 19.

170. In 1976, the Attorney General objected to Texas City's proposal to adopt a numbered-post system for city-council elections. PXs-1; 335 ¶ 20; Dkt. 225 at 202-03. After examining the history of governmental discrimination, racial-bloc voting, and the city's responsiveness to minority concerns, the Attorney General could not conclude that the city's proposal would not have a racially discriminatory effect. PX-1.

171. In 1992, the Attorney General objected to Galveston County's redistricting plans for JP/constable districts. PXs-2; 335 ¶ 26; Dkt. 225 at 203. The Attorney General's letter noted that Black and Latino residents were not a majority in any of the eight districts despite comprising 31.4% of the county's population. PX-2 at 1. County officials had "rebuffed" multiple requests from minorities to create a district where they would have an equal opportunity to elect candidates of their choice. *Id.* Ultimately, the county entered a consent decree concerning the 1992 JP/constable redistricting plan. PX-563.

172. Also in 1992, the Attorney General objected to the city of Galveston's proposal to modify how city-council members are elected—from six at-large districts to four single-member districts, with two members elected at large to numbered posts. PXs-3; 335 ¶ 21; Dkt. 225 at 203–04. After noting that several minority candidates unsuccessfully ran for city council because of racially polarized voting, the Attorney General did not preclear this change. PX-3. Ultimately, the city entered a consent decree to elect all city-council members from single-member districts. PX-335 ¶ 21.

173. In 1998, the city of Galveston again sought to change the method of electing its city council from six single-member districts to four single-member districts and two at-large posts—the same scheme to which the Attorney General filed an objection in 1992. PXs-4; 335 ¶ 22; Dkt. 225 at 204. Noting that two of the six single-member districts had elected minority officials, the Attorney General concluded that reverting to two at-large districts would retrogress minority voting strength. PX-4 at 2–3.

174. In 2001, the city of Galveston asked the Attorney General to reconsider the objection to four single-member and two at-large districts. But in 2002, he declined to withdraw the objection. PX-335 ¶ 22.

175. In 2011, the city of Galveston again sought to change the method of electing its city council from six single-member districts to four single-

member districts, with two members elected at large to numbered posts. PXs-47; 335 ¶ 23; Dkt. 225 at 205. The Attorney General objected to this change, noting that racial-bloc voting played a significant role in city elections and that minority candidates could elect candidates of choice from three of the six single-member districts. PXs-47 at 3–4; 335 ¶ 23.

176. In 2012, the Attorney General objected to Galveston County’s 2011 redistricting plans for the commissioners and JP/constable precincts. JX-6; PX-335 ¶ 26; Dkt. 225 at 205–06. The JP/constable-precinct plan proposed reducing the number of justices of the peace from nine to five and the number of constables from eight to five. JX-6 at 1–2. The Attorney General’s letter noted that minority voters could elect candidates of choice in Precincts 2, 3, and 5. *Id.* at 4. For Precincts 2 and 3, this ability resulted from a court order in *Hoskins v. Hannah*, No. G-92-12 (S.D. Tex. Aug. 19, 1992), that created these precincts. *Id.* Under the proposed plan, minority voters’ ability to elect a candidate of choice would be reduced to one precinct. *Id.*

177. In 2012, the Attorney General also concluded that the county had not met its burden of showing that the commissioners court did not adopt its proposed plan with a discriminatory purpose. JX-6. The Attorney General found that the county had failed to adopt, as it had in previous redistricting cycles, a set of criteria by which it would be guided in the redistricting

process. *Id.* at 2. The Attorney General’s letter noted that: (1) this procedural deviation was a deliberate decision by the county to avoid being held to a procedural or substantive standard of conduct; (2) the process may have been characterized by the deliberate exclusion from meaningful involvement of Commissioner Holmes; and (3) the proposed changes would reduce the overall minority electorate in Precinct 3 and lead to the loss of the ability of minority voters to elect a candidate of their choice. *Id.*

178. These efforts to reduce majority-minority districts are significant because research has shown that Blacks and Latinos are more likely to vote if they live in majority-minority districts. PX-335 ¶ 25. Former Justice of the Peace Penny Pope also observed that the results of the 2011, 2013, and 2021 redistricting processes created additional voting barriers for minority residents who felt less motivated to vote and participate politically. Dkt. 222 at 27–28.

179. On June 25, 2013, the Supreme Court held that § 4(b) of the Voting Rights Act is unconstitutional and that the coverage formula “can no longer be used as a basis for subjecting jurisdictions to preclearance.” *Shelby County*, 570 U.S. at 557. Yet the Court’s ruling “in no way affect[ed] the permanent, nationwide ban on racial discrimination in voting found in § 2.” *Id.*

180. Galveston County adopted an electoral map for JP/constable precincts two months later. *Petteway v. Galveston County*, No. 3:13-cv-308, at 1 (S.D. Tex. Aug. 31, 2022). Before the change, the county had eight precincts, two of which were majority-minority precincts. *Id.* After the 2013 plan, the county had four precincts, one of which was majority-minority. *Id.* Six plaintiffs sued the county, alleging § 2 vote dilution and intentional discrimination under the Fourteenth Amendment. *Id.* Following a three-day bench trial, the court concluded that the plaintiffs failed to show vote dilution, as the 2013 plan “increased the percentage of Galveston County residents living in a majority-minority district” and therefore did not diminish the voting power of minority voters. *Id.* The court also ruled in the defendants’ favor on the intentional-discrimination claim. *Id.* at 2–3.

3. Public Input and Transparency in Prior Redistricting

181. During the 1981 redistricting cycle, County Judge Ray Holbrook appointed a committee of about thirty citizens to make recommendations for redrawing the county’s voting precincts. PX-412 at 24–25. This recommendation would be a basis for “remapping” the commissioners-court precincts. *Id.* at 24. The commissioners court ratified the public committee’s work and adopted new commissioners-court precincts. *Id.* at 25. The 1981 commissioners precinct map reflected “minimal” change that only “[s]lightly

increas[ed] the combined voting strength of the county’s Black and Latin[o] residents,” “stopping short of creating a precinct [within] which the ‘total minority’ vote would constitute a majority.” *Id.* at 26; *see also* Dkt. 225 at 76. The Attorney General did not object to the county’s 1981 redistricting plan. Dkt. 225 at 76.

182. During the 1991 redistricting cycle, the commissioners court adopted a set of criteria and a timeline before it held three public hearings where numerous members of the public, including minorities, participated in the process. *Id.* at 76–77; PX-412 at 32–34, 37, 67. The redistricting plan reflected input from local NAACP and LULAC chapters and created a majority-Black-and-Latino Precinct 3. PX-412 at 34; Dkt. 225 at 78. The Attorney General did not file any objection to the county’s 1991 redistricting plan. Dkt. 225 at 187.

183. During the 2001 redistricting cycle, the commissioners court adopted redistricting criteria, created a schedule of public hearings, and held four public meetings across Galveston County. *Id.* at 78; PX-412 at 38–39, 67. Among the redistricting criteria the commissioners court adopted was that “[c]ommunities of interest should be maintained in a single district” and that the plan “should not fragment a geographically compact minority community or pack minority voters in the presence of polarized voting so as

to create liability under section 2 of the Voting Rights Act.” PX-539. The Attorney General did not file any objection to the county’s 2001 redistricting plan. Dkt. 204-6 ¶ 17.

184. During the 2011 redistricting cycle, after consideration of several proposals for redistricting counsel, the defendants hired James E. “Trey” Trainor, III, Dale Oldham, and Joe Nixon of the law firm Beirne, Maynard & Parsons, L.L.P., to serve as redistricting consultants. JX-45.

185. The commissioners court did not adopt redistricting criteria in the 2011 redistricting cycle. *See* PX-23. Judge Henry later became aware that the Attorney General had objected to the 2011 commissioners map in part because the commissioners court failed to adopt criteria. Dkt. 228 at 274.

186. During the 2011 redistricting cycle, the commissioners court adopted a redistricting timeline that accounted for the preclearance process and the candidate-filing period. PX-412 at 44. This timeline included (1) an initial hearing to present draft maps and explain the census results in Galveston County and (2) five public hearings on redistricting in the evenings throughout the county. *See* PXs-45 at 9; 531–535.

187. The commissioners court adopted a redistricting plan in 2011 and submitted it to the Attorney General on October 14, 2011. JX-45. The Attorney General filed an objection. JX-6. In his letter, the Attorney General

highlighted: (1) the county’s decision not to adopt a set of criteria “to avoid being held to a procedural or substantive standard of conduct”; (2) “the deliberate exclusion from meaningful involvement in key deliberations of the only member of the commissioners court elected from a minority ability-to-elect precinct”; and (3) the retrogressive impact that the relocation of the Bolivar Peninsula from Precinct 1 had on Precinct 3. *Id.*

188. The plan after the 2011 redistricting process contained a Precinct 3 in which Black and Latino residents constituted a majority of the CVAP. This Precinct 3 was a continuation of a district that the commissioners court created in the 1991 redistricting cycle that allowed Black and Latino voters to elect a candidate of choice and which was maintained in the 2001 redistricting cycle. Over its decades of existence, this Precinct 3 has become “a political home of historical significance” to Galveston County’s Black and Latino communities. PX-412 at 64.

G. The 2021 Redistricting Process

189. The second *Arlington Heights* factor is the specific sequence of events leading up to the challenged decision. Relatedly, the third and fourth *Arlington Heights* factors address procedural and substantive departures from the normal procedural sequence. This information also informs the court’s totality-of-circumstances analysis for § 2 claims.

1. Sequence of Events

a. April 2021—Engaging Redistricting Counsel

190. Judge Henry had the county’s general counsel contact Oldham in November 2020 to retain him as redistricting counsel. JX-11 at 2. Henry understood that the commissioners court would have to complete the process by sometime in November 2021 and specifically wanted Oldham because of his prior redistricting experience in the county. Dkt. 228 at 181, 280–81, 283–84. Now a solo practitioner, Oldham required a law firm to assist him in his work, and the commissioners court retained Holtzman Vogel Baran Torchinsky & Josefiak PLLC for that purpose in April 2021. Dkt. 231 at 28; PX-138.

191. The commissioners court voted 4-1, with only Commissioner Holmes voting against, to hire Oldham and Holtzman Vogel as redistricting counsel. *See generally* PXs-140; 585 at 8. The commissioners court did not publicly consider any other counsel. The commissioners court provided neither information on the April 2021 meeting agenda nor accompanying backup materials about whom the commissioners court was considering hiring. *See* Dkt. 228 at 288.

192. Shortly after engaging Oldham, Judge Henry and the county’s general counsel, Paul Ready, contacted Oldham to ask whether the county “had to draw a majority[-]minority district.” PX-144 at 1. Oldham responded

that it “may or may not need to draw a majority[-]minority district depending on census data.” *Id.*

b. August 2021—Census Data Released

193. The release of the 2020 Census data necessary for redistricting was delayed due to the COVID-19 pandemic. The Census Bureau ultimately released the data in the “legacy format” in August 2021 followed by a more user-friendly format the following month. Dkt. 231 at 36; DX-175.

194. In the spring or summer of 2021, Judge Henry became aware of the census data’s expected release date and of its actual release in August. Dkt. 228 at 290; *see also* PXs-568–569, 586.

195. At the time of the census data’s initial release, Oldham lacked the technical ability to parse through it, and the defendants had not yet hired a demographer for the project. So Oldham contacted Adam Kincaid of the National Republican Redistricting Trust to interpret the census data about Galveston County. Dkt. 231 at 36–37, 68; PX-173 at 1.

196. On September 14, Kincaid emailed Oldham a chart reflecting each commissioners precinct’s racial demographic changes from 2010 to 2020. PX-173 at 1, 3. Oldham then removed the logo of the National Republican Redistricting Trust from the document and sent it to Ready to distribute to the commissioners. Dkt. 231 at 51, 52.

197. Oldham reviewed the racial data Kincaid had sent and concluded that Galveston County’s Black population had remained concentrated in Precinct 3; the Latino population, on the other hand, had grown throughout the county. *Id.* at 131–34.

198. Oldham was “pretty familiar” with “the population and demographic location of that population in Galveston County.” *Id.* at 131. He knew that the Black population was centered in Precinct 3 in the 2011 plan. *Id.* at 133–34. Oldham reviewed racial-shading maps of Galveston County after the census-data release to identify where Black populations were concentrated. *Id.* at 134–36. Oldham’s understanding was generally consistent with Judge Henry and Commissioners Appfel and Giusti’s understanding that Galveston County’s Black and Latino population was centered around Precinct 3, which had consistently elected Commissioner Holmes. *See, e.g.*, Dkts. 228 at 271–73; 232 at 148–49, 370.

199. Oldham held a series of meetings in mid-September 2021 with the commissioners and Judge Henry to determine their priorities for redistricting. The first meeting on September 8 included both Judge Henry and Commissioner Appfel, followed by individual sessions with Commissioners Giusti and Clark, and ending with a meeting with Commissioner Holmes on September 20. Dkt. 231 at 38, 42–43, 45, 48.

200. In his meeting with Oldham and Commissioner Apffel, Judge Henry told Oldham that he wanted a map like the one he conceived in 2011—the configuration that ultimately became Map 2. *Id.* at 39–40, 150–52.

201. Commissioner Apffel requested that a specific area be brought into his precinct so that it included a new home he and his wife had bought. Dkt. 228 at 189.

202. Commissioner Giusti asked Oldham to “level out” the commissioners precincts in population, “clean up” the lines, and keep his parents’ home in his precinct. Giusti did not dispute Oldham’s recollection that Giusti additionally requested his precinct lines not change more than necessary. Dkt. 232 at 124–26.

203. When Oldham first met with Commissioner Holmes on September 20, he was frustrated that Commissioner Holmes could not list his mapping priorities. Dkt. 231 at 49–51, 53. In the follow-up call on September 23, Commissioner Holmes provided detailed instructions on which areas he wanted to add to Precinct 3 to resolve population imbalances and increase the district’s compactness. *See* Dkt. 228 at 68–72; JX-23 at 4.

c. October 14—Hiring a Demographer

204. Despite Oldham completing the meetings with the commissioners and Judge Henry by September 23, no one contacted a

demographer until October 14, when Holtzman Vogel asked Thomas Bryan to start drafting maps. Dkt. 231 at 225. Bryan owns Bryan GeoDemo, a company that provides redistricting map-drawing services. *Id.* at 216, 219–20.

205. On an October 15 call between Bryan and Phil Gordon of Holtzman Vogel, Gordon instructed Bryan to create two plans: (1) a least-change plan and (2) a plan that created four Republican precincts, later titled a “Four R plan.” *Id.* at 227–28, 233, 289–90; *see also* PX-188.

206. The purported motivation of Judge Henry—creating a “coastal precinct”—never arose during the hour-long phone call between Gordon and Bryan, and Bryan’s initial draft plans included no coastal precinct. Dkt. 231 at 290–91; PX-516.

207. After that initial call, Bryan immediately understood that Oldham, not Gordon, was the lead person from whom he should take instructions about configuring plans. Dkt. 231 at 290. Bryan and Oldham spoke by phone for the first time on October 17. *Id.* at 68–69; PX-196.

208. The Four R plan was not the foundation upon which Bryan built Map 2. Dkt. 231 at 291. Oldham never told Bryan that Judge Henry wanted to create four Republican precincts, and Oldham denied any such partisan objective. *Id.* at 153–54.

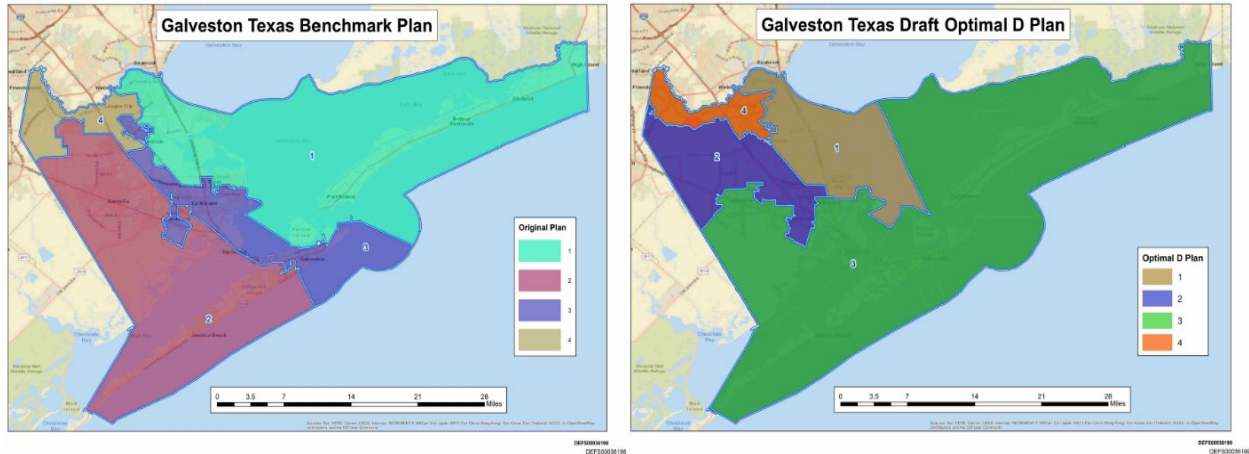
d. October 17—Bryan Creates Map 2

209. On October 17, Bryan drafted two map proposals that he shared via email with Oldham: (1) a “minimum change” plan that became Map 1, and (2) an “optimal” plan with an entirely coastal precinct and three mainland precincts—all of which fractured Precinct 3—that became Map 2. *See* PX-197; Dkt. 231 at 145–50. Map 2 was “the visualization of the instructions” Judge Henry had provided Oldham. Dkt. 231 at 181.

210. Bryan did not exercise discretion in drawing Maps 1 or 2; Oldham told him where to place the lines. *Id.* at 296. Oldham gave Bryan “very specific instructions about how he wanted Map 2 to look,” and Bryan did not know for what reason Oldham “was asking [him] to put [any] particular territory in each of the commissioner[s] precincts in Map 2.” *Id.* at 291–93. Bryan could not speak to what motivated the drawing of Map 2. Dkt. 232 at 29.

211. Bryan testified credibly that he did not display or consult racial data while working on the Galveston County maps. *Id.* at 33. But he also credibly testified that he was “given no instruction one way or the other on racial and ethnic information.” *Id.* at 19. The court credits Bryan—an eminently believable witness—and not Oldham in this regard.

212. The first draft of Map 2 represents a dramatic change in the commissioners-precinct lines, both on the coast and the mainland, in a way that distributes the population of benchmark Precinct 3 among all four new precincts and shifts Commissioner Holmes’s precinct north:



PX-197.

213. Oldham admitted that it was possible to retain a majority-minority precinct while also creating a coastal precinct without dismantling benchmark Precinct 3. Dkt. 231 at 164, 167–68, 171.

214. The court finds that a desire to create a coastal precinct cannot and does not explain or justify why Map 2, the “optimal” plan, was drawn the way it was—and especially does not explain its obliteration of benchmark Precinct 3.¹¹

¹¹ The plaintiffs’ experts presented at least five illustrative plans that included both a coastal precinct and a majority-minority Precinct 3. *See* PXs-386 ¶¶ 87–90; 415–418.

e. Late October—Finalizing and Announcing the Maps

215. After Bryan drew these maps, Oldham traveled to Galveston County to meet with Judge Henry and the commissioners. *Id.* at 79–80. Oldham met with Judge Henry on October 18, and Judge Henry told Oldham he preferred Map 2 because it was “essentially his criteria.” *Id.* at 82–84; PX-199.

216. Commissioners Appfel, Giusti, and Clark initially told Oldham that they preferred Map 1. Dkt. 231 at 190.

217. Oldham knew Commissioner Holmes would be dissatisfied with Map 2 because it dramatically reduced the minority population in Precinct 3, resulting in Precinct 3 having the lowest minority population percentage of all four precincts. *Id.* at 177–78. Commissioner Holmes opposed Map 2 and insisted that Oldham inform the commissioners court that § 2 of the Voting Rights Act required a majority-minority precinct. *Id.* at 101–02.

218. Bryan also produced a spreadsheet for Maps 1 and 2. *Id.* at 268–69. The spreadsheet included racial data about the plans. The first tab included CVAP and voting-age population data by racial group for each census block within Galveston County. PX-528. The second tab, titled “Pop Pivot,” provided the Black and Latino voting-age population percentages for each commissioners precinct in the benchmark plan, Map 1, and Map 2, as

well as the two categories combined to identify the total majority-minority percentage share for each precinct. *Id.*

219. The court finds that the commissioners never expressly considered this spreadsheet information.

220. After Oldham's initial meeting with Judge Henry, Oldham met with the commissioners. Dkt. 228 at 202–03. He first met with Henry and Commissioner Apffel to review the map proposals. *Id.* at 301; Dkt. 231 at 194. Later, Henry also contacted Commissioner Giusti to ensure he was comfortable with his new coastal precinct because it was a dramatic change from his current precinct. Dkt. 228 at 305–06. Henry chose not to call Holmes to do the same—to inquire whether he was comfortable with his new precinct. *Id.* at 306.

221. Ready set up a series of Zoom meetings between Oldham and Bryan on the one hand, and Commissioners Giusti, Clark, and Apffel on the other, to endeavor to accommodate the commissioners' wishes. Dkt. 231 at 191–92. Oldham met with Commissioners Giusti and Clark simultaneously to request and implement anything they wanted to see in Map 2. *Id.* at 191–92. Judge Henry also recalled meeting with Commissioner Apffel that same day. Dkt. 228 at 301; *see also id.* at 194–97.

222. Commissioner Holmes received a call from Constable Rose on October 21. Rose relayed a conversation he had with Commissioner Apffel, in which Apffel said, “There are a couple of maps floating out there, and it is not looking good for Holmes.” Dkt. 228 at 81.

223. On October 28, Judge Henry’s chief of staff, Tyler Drummond, emailed Oldham asking about the status of the “final maps” and stating the county “originally wanted to have a special meeting tomorrow to discuss and possibly adopt” them. JX-27 at 1. The commissioners court was “awaiting the final maps with split precincts so we can finalize everything and get a special meeting together for next week.” *Id.*

224. Bryan finalized the maps and provided them to the commissioners court on October 29. Dkt. 231 at 118. The county publicly posted the two proposals, Map 1 and Map 2, on the county’s website on October 29. *See* JX-29.

225. The web page provided an opportunity for public comment, but there were no instructions on when those comments had to be submitted for consideration. *Id.*; Dkt. 228 at 330.

226. The only evidence of the commissioners court announcing the creation of the redistricting web page or the release of proposed maps is a

post on Judge Henry's campaign Facebook page encouraging the public to support Map 2, PX-588, which Commissioner Giusti reposted. PX-247.

227. Based on Oldham's assessment, Judge Henry believed that Maps 1 and 2 were both legally compliant. Dkt. 228 at 332.

228. Commissioner Apffel testified that he never witnessed anyone instruct Oldham to use or consider racial data when designing potential maps. Dkt. 232 at 310. Apffel also did not recall seeing, reviewing, evaluating, or using racial demographics when considering maps. *Id.* at 311.

f. November 12—The Enacted Plan

229. On November 1, the Texas Secretary of State issued an election advisory confirming that the state's commissioners courts had to revise their commissioners precincts by November 13. JX-34 at 2. Judge Henry had mistakenly believed he had until December to complete the redistricting process. Dkt. 228 at 281, 283. He provided no credible explanation for this mistake.

230. Commissioner Apffel called Commissioner Holmes a few days before the November 12 special meeting. *Id.* at 86; JX-23 at 8. Apffel had known Holmes since 1989 and considered him a friend. Dkt. 232 at 318–19. Commissioner Holmes and Commissioner Apffel differ on their recollections of how this conversation proceeded. Dkts. 228 at 82–86; 232 at 326–32. The

court credits Commissioner Holmes’s recollection more than Commissioner Apffel’s and finds that Apffel informed Holmes that the commissioners court would be adopting Map 2. Holmes also told Apffel that Map 2 was discriminatory and ran afoul of § 2. Dkt. 228 at 82. Apffel explained that Oldham told him Map 2 was a “legal map” and that he had concerns about what Harris County was doing to the Republican members of its commissioners court through redistricting. *Id.* at 82–83. Holmes responded that “it was not about . . . Republican or Democrat but about the protections guaranteed to the minority groups in the Voting Rights Act.” *Id.* at 83. Apffel ultimately told Holmes that Judge Henry planned to make a motion to adopt Map 2, that he would second the motion, and that the commissioners court would vote for Map 2. *Id.* at 86.

231. The commissioners court held a special meeting on November 12 to consider and vote for a new commissioners-court map. PX-591. Thirty-six members of the public spoke at the meeting—a fraction of those who actually attended—criticizing the redistricting process and the two map proposals. JX-41 at 2–3. Commissioner Holmes then spoke, noting the procedural irregularities in the 2021 redistricting cycle and opposing both map proposals. He offered two alternative maps that preserved Precinct 3 as a majority-minority precinct. The other commissioners refused to consider or

vote on Commissioner Holmes's proposals. On a 3-1 vote,¹² with only Commissioner Holmes voting against, the commissioners court adopted Map 2, or the "enacted plan." *Id.* at 3.

2. Deviations from Prior Redistricting Cycles

232. Drs. Burch and Krochmal surveyed the 2021 redistricting process and found several procedural anomalies as compared to previous redistricting cycles. These procedural departures included the: (1) failure to adopt a timeline, (2) failure to adopt any publicly available redistricting criteria to guide the process, (3) lack of transparency in engaging redistricting counsel, (4) lack of public notice and availability for comment, (5) conduct surrounding the November 12 special meeting, (6) disregard for minority input, and (7) exclusion of Commissioner Holmes from the process. The court credits these findings as evidence of departures from the typical procedural sequence. The record evidence and lay testimony adduced at trial substantiate these procedural deviations.

233. The Attorney General's 2012 objection letter noted several procedural deficiencies in the 2011 redistricting process that raised concerns of intentional discrimination. JX-6 at 2. These deficiencies included the

¹² Commissioner Ken Clark did not attend the meeting due to health issues. He passed away in 2022 and was succeeded on the commissioners court by Commissioner Robin Armstrong.

failure to adopt redistricting criteria and the deliberate exclusion of Commissioner Holmes. *Id.* The 2012 objection letter put Judge Henry on notice of procedural defects that could raise concerns about the exclusion of minority stakeholders and lack of transparency—lapses that could be viewed as evidence of intentional discrimination.

234. During the 2021 redistricting process directed by Judge Henry, the county repeated these same procedural lapses. *See generally* Dkt. 222 at 122–24; PX-414 at 11, 18–19. The only alternative plan offered by Oldham during the 2021 redistricting cycle, Map 1, closely resembled the 2011 map, to which the Attorney General had objected. *Compare* JX-45 at 22, *with* JX-29. Oldham testified that the elimination of preclearance facilitated the dismantling of the majority-minority precinct. Dkt. 231 at 59–60.

a. No Redistricting Timeline

235. In contrast to past redistricting cycles, there is no evidence of any redistricting timeline established by the commissioners court in 2021.

236. The defendants have failed to provide any credible explanation for the lack of a redistricting timeline. Judge Henry, who was principally responsible for the redistricting process, testified that he was always aware Galveston County would need to redraw the commissioners precincts and that he was aware this would need to be completed by the candidate-filing

date. Dkt. 228 at 280–81. But Henry had no explanation for the commissioners court’s failure to set a timeline publicly, or even privately, for redistricting. *See id.* at 295–97.

b. No Redistricting Criteria

237. Unlike in prior years, the commissioners court failed to adopt any public redistricting criteria in 2021. Dr. Burch testified that the absence of public redistricting criteria is notable because “redistricting criteria tend to guide the process and give people a sense of what the priorities are, and the [c]ounty saw fit to adopt them in previous years.” Dkt. 222 at 192–93.

238. Judge Henry knew that the commissioners court’s failure to adopt criteria in 2011 provided a basis for the Attorney General’s objection to the 2011 map. Dkt. 228 at 274. He admitted that there was no way for anyone to know the commissioners court’s preferences and propose alternative maps that would meet them. *Id.* at 310–11. The defendants have failed to provide any explanation for deciding not to publicly adopt redistricting criteria in 2021.

239. Overall, the commissioners court’s failure to adopt redistricting criteria in 2021 is a deviation because the commissioners court had adopted criteria in prior years and other counties across the state have regularly adopted redistricting criteria. Dkt. 222 at 137–38.

c. Lack of Transparency in Engaging Counsel

240. The commissioners court deviated from past practice in engaging redistricting counsel. In prior cycles, the court publicly entertained bids from several prospective counsel. PXs-412 at 43; 414 at 17.

241. Judge Henry sought Oldham due to his “success” for the county the prior cycle. Dkt. 228 at 283–84. No other law firms besides Oldham’s personal choice, Holtzman Vogel, were publicly considered during the process. *Id.* at 286.

242. During the April 2021 commissioners court meeting in which they voted to hire Oldham and Holtzman Vogel, the commissioners court failed to provide any advance notice in the meeting agenda that they would be hiring counsel. PXs-570 at 239–41; 585 at 2. The defendants have not offered any explanation for this lack of transparency.

d. Lack of Public Notice and Comment

243. Failure to disclose the data underlying the commissioners court’s decision-making. At no point in the process did the commissioners court publicly disclose any quantitative data about the benchmark plan or proposed commissioners-court maps.

244. In 2011, before adopting a map, the commissioners court held public meetings after the census data came out. Dkt. 231 at 34–35; PX-414 at 17.

245. Judge Henry acknowledged that the commissioners court could have publicly announced the census results for Galveston County, Dkt. 228 at 291, as it had at a meeting in August 2011 in which “the [c]ounty’s redistricting consultants presented a preliminary demographic report showing the results of the 2010 Census as they related to the existing commissioner[s] precincts,” JX-45 at 9. Indeed, Judge Henry admitted to receiving a similar report from Oldham in September, including detailed information about why the commissioners-court lines needed to change. Dkt. 228 at 293–94.

246. When the commissioners court posted proposed Maps 1 and 2 on October 29, it provided no quantitative data by which the public could assess the maps. *See generally* JX-29.

247. The failure to make quantitative data available “speaks to the lack of transparency,” as “the public wasn’t able to see underlying population and demographic data to fully understand exactly how these maps were changing.” Dkt. 222 at 138.

248. Rushed redistricting process that prevented meaningful public comment. The commissioners court rushed the redistricting process in 2021 and failed to include any meaningful participation from the public and Commissioner Holmes. *Id.* at 126–27; PX-414 at 17–21; Dkt. 225 at 92–94.

249. The COVID-19 pandemic caused delays in the release of the data required to redistrict. Dkt. 222 at 127–28; PX-414 at 13–14; DX-175 at 2–3. Still, this delay does not account for the failure to include meaningful public participation or the rushed process.

250. Demographers for the parties agree that it was feasible to create timely redistricting plans despite the COVID-19 delay. Cooper testified that he had the 2020 Census data available “within a couple of days” of its release and thus had a “nationwide dataset breaking out the block-level census data for the whole country” around August 15. Dkt. 223 at 16. According to Cooper, this timing would be typical for anyone using standard demographic software such as Maptitude. *Id.* at 17. Fairfax likewise testified that “anybody with GIS skills” could access and use the 2020 Census data in the format provided by the Census Bureau on August 12. Dkt. 224 at 78–79. Fairfax also testified that the Census Bureau provided a database that could have been used to review the 2020 Census data released in August 2021. *Id.* at 79.

251. Bryan testified that he would have been able to download the Census Bureau’s redistricting data immediately once it was released. Dkt. 231 at 297–99. Had the defendants retained him earlier, he could have prepared draft maps by the end of August. *Id.* at 298–99. The defendants

offer no credible explanation for why the commissioners court did not begin drawing proposed maps until mid-October 2021.

252. Bryan testified to a rushed process in which he was made to draw maps on a flight back from a vacation in Hawaii and given only a few days to complete the project. *Id.* at 236, 298; Dkt. 232 at 36. It is Bryan’s practice to visit a jurisdiction and study it before drawing a map for it. Dkt. 232 at 35. Bryan testified that his inability to research or visit Galveston County and the tight timeline he was given was unusual for his work. *Id.* at 35–36.

253. The commissioners court was aware that redistricting likely needed to occur no later than November 2021 due to the timing of the candidate-filing period. Judge Henry testified that he fully expected the county to need to redraw commissioners precincts even before the redistricting data came out, and that this redistricting would have to be completed before the candidate-filing period opened. Dkt. 228 at 280–81.

254. Commissioner Giusti also testified that he “was pretty sure” the candidate-filing period would be from November to mid-December in 2021 because there “was a lot of resistance to [the state] moving the election dates.” Dkt. 232 at 106.

255. The commissioners court held several public meetings between retaining redistricting counsel and the November 12 special meeting

adopting the enacted map. PX-129. However, none discussed redistricting. *Id.*

256. Decision to Hold Special Meeting on November 12. In past redistricting cycles, the commissioners court held several hearings at various locations around the county to solicit public input on map proposals, including seven public hearings during the 2011 redistricting cycle. In 2021, Oldham advised the commissioners court to hold as many public meetings as possible and allow for supplementation of feedback after the meetings. Dkt. 231 at 201.

257. Judge Henry agreed the county had received initial map “proposals” by October 19 but did not want anything publicly disclosed until they were a “final product.” Dkt. 228 at 310.

258. Even factoring in the COVID-19 pandemic, Dr. Burch opined that the dearth of public meetings in 2021 was unusual. Dkt. 222 at 191, 196. In both 2011 and 2021, there were two weeks between when the commissioners court first disclosed its proposed maps and when it actually enacted a map. *Id.* at 191. In the two weeks before it adopted the benchmark plan in 2011, the commissioners court held five meetings across the county. *Id.* In the same amount of time in 2021, it only held one. *Id.*

259. The only opportunities for public input in 2021 were an online public comment portal and the November 12 special meeting. JX-42.

260. Commissioner Holmes testified that he expressed concerns to Drummond that the online comment portal was inadequate to provide residents the opportunity to be heard because of the number of residents who lacked access to either the internet or a computer. Dkt. 228 at 135; JX-23 at 5; *see also* Dkt. 222 at 194 (noting the racial disparities in internet access).

e. The November 12 Special Meeting

261. The November 12 special meeting was unusual not only for its singularity during the redistricting cycle but also for its lack of accessibility for many of Galveston County’s Black and Latino residents.

262. In past redistricting cycles, residents could choose among multiple meeting locations so that they could attend the most geographically accessible site. PX-412 at 60; Dkt. 225 at 75–82. Compounded with last-minute notice for the only meeting held about the maps, this factor “denied the public the opportunity to provide meaningful feedback on the maps.” PX-414 at 19; *see also* Dkt. 226 at 211–12.

263. The commissioners court held the November 12 special meeting at the League City Annex on Calder Road. PX-412 at 55–60. League City is

twenty-seven miles from the city of Galveston, the county seat and where the commissioners court holds its regular meetings.

264. The first meeting of the commissioners court at the League City Annex was in 2013. Dkt. 225 at 89–90. The custom of sometimes meeting away from the county courthouse, at locations termed “auxiliary courts,” was initially conceived to occur only “in the event the County of Galveston becomes precluded from conducting business or judicial functions within the county seat due to meteorological or catastrophic events.” PX-412 at 56. But meeting away from the county courthouse soon became more common. Even so, meetings at the League City Annex generally pertained to non-controversial routine business, such as payroll approvals. *Id.* at 56–57. Serious, non-run-of-the-mill county business continued to be conducted at the county courthouse in the county seat.

265. But in recent years, it became more common for topics involving race to be taken up at the League City Annex. Examples include: (1) an August 24, 2020 meeting on the removal of a Confederate statue; (2) a July 2, 2021 meeting when the commissioners court extended an immigration–related disaster declaration; and (3) the November 12 meeting on redistricting. *Id.* at 55–56.

266. The League City Annex is not spacious and will not accommodate as many people as the county courthouse. Lay testimony and video evidence of the November 12 special meeting indicate that by holding the meeting at the League City Annex, the commissioners court failed to provide the adequate space needed to accommodate the number of persons who sought to attend.

267. The small size of the League City Annex and the foreseeably large crowd caused congestion and overcrowding. Constable Rose testified that the League City Annex “was under construction The parking was terrible. It’s just not the place that you want to hold a meeting of that magnitude.” Dkt. 221 at 75. Additionally, Constable Rose observed that “people were standing all along the walls in the hallways You have got people [in] wheelchairs, walkers, everything there, and the accommodation was very poor.” *Id.*; see also Dkts. 221 at 134–41; 226 at 132–35, 226–27.

268. The defendants have not provided any credible explanation for their failure to hold the special meeting in a space that would accommodate the foreseeably sizable crowd. Judge Henry was responsible for scheduling the time and place of the November 12 meeting. Dkt. 228 at 257. Henry testified that after posting the draft maps on October 29, the commissioners court received “more comments . . . than [on] anything else we have ever

posted” and “received more comments and feedback than [on] any other thing we had done.” *Id.* at 213, 220–21. The commissioners court was well aware of how sensitive the issue was, and how interested the public was in how it would be dealt with.

f. Disregard for Public Input from Minority Residents

269. Conduct by Judge Henry and the county commissioners indicated a disregard for public input from the minority communities and those critical of the enacted plan’s discriminatory effect.

270. Judge Henry admitted that he reviewed fewer than a dozen of the public comments. Dkt. 228 at 221, 330. Instead, he had his staff provide a breakdown of comments, which he then announced during the November 12 special meeting before making the motion to adopt Map 2:

Of the 440 [comments] that came in, 168 did not discuss a particular map, they just called me names mostly. Of the people who did choose a map preference, Map 1 – received 64 responses. Map 2 received 208 responses. So of those responding to a particular map, 76.4[%], Map 2. 23.5[%], Map 1. With that, I’m going to make the motion to approve Map 2.

PX-591 at 62.

271. A detailed look at the public comments, JX-42, indicates that Henry’s summary during the November 12 meeting disregards public commentary expressing concern over the discriminatory impact of redistricting on Galveston County’s minority community. Dr. Burch analyzed

all 446 public comments that were submitted. Dkt. 222 at 145–46; PX-414 at 23. She found that Judge Henry “dismissed as devoid of meaningful content nearly every comment that did not support the maps and that expressed concerns about racial discrimination and minority[-]vote dilution.” PX-414 at 23.

272. The county residents who appeared at the meeting on November 12 were predominantly Black and Latino and included many older residents. PX-412 at 60; PX-129.

273. When attendees informed the commissioners court that they could not hear the proceedings, Judge Henry reacted by threatening to have constables remove attendees:

I’m going to speak at this tone. That’s all I can do. I’m not going to scream. I don’t have a microphone. . . . I will clear you out. If you make a noise, I will clear you out of here. I’ve got constables here.

PX-591 at 3.

274. Witnesses testified that Judge Henry was “real ugly about clearing the room.” Dkt. 221 at 77, 138–40. Commissioner Giusti believed his conduct was “aggressive.” Dkt. 232 at 150–51.

275. Thirty-five of the thirty-six members of the public who spoke at that meeting opposed Map 2. *See generally* PX-591 at 4–57. The remaining comments noted the inconvenience of the meeting and the lack of public

transparency in the process. *See id.* Commissioner Giusti acknowledged that only Commissioner Holmes attempted to respond to the audience's concerns. Dkt. 232 at 148–49.

276. The commissioners court adopted the enacted plan without addressing any public comments received at the meeting. They did not publicly debate the map proposals beyond Judge Henry's discussion of the online public commentary and Commissioner Holmes's remarks. PX-591 at 61–81.

g. Excluding Commissioner Holmes

277. The court finds that the 2021 redistricting process exhibited an exclusion of Commissioner Holmes. He was the only minority commissioner at the time. His district—Precinct 3—was dramatically reshaped under the enacted plan, and there was otherwise a lack of opportunity for minority voters to participate. Commissioner Holmes testified to this exclusion: he was not notified when the maps were finalized, was not told why additional public meetings were not held, and was never sent the data underlying the map proposals as he requested. Dkt. 228 at 103, 111–12.

278. Because of his experience in the 2011 redistricting cycle, Commissioner Holmes took contemporaneous notes of his conversations concerning the 2021 redistricting. *Id.* at 61–62; JX-23. Commissioner

Holmes requested specific changes to balance Precinct 3's population and to make the precinct lines more understandable to voters. *Id.* at 68–72; JX-23 at 3. Some of those changes were not reflected in any map proposal, including Map 1. *Compare* Dkt. 231 at 75–77 (Oldham testifying the “minimum change” map proposal was drafted to accommodate Commissioner Holmes but also to include predominantly Anglo Bolivar Peninsula in Precinct 3), *with* JX-23 at 3 (list of changes requested by Commissioner Holmes, including the addition of voting Precinct 142 to Precinct 3), *and* Dkt. 223 at 52–53 (confirming no portion of voting Precinct 142 was added to Precinct 3 in Map 1 even though it is roughly equal in population to the Bolivar Peninsula voting precincts that were added and would have been possible according to one-person, one-vote standards).

3. Purported and Actual Redistricting Criteria

279. One of the additional factors noted in the Senate Judiciary Report is whether the policy underlying the political subdivision's conduct was tenuous.

280. The defendants have disclaimed any consideration of race. They instead assert that they used seven factors in drafting and adopting the enacted plan, as described in their interrogatory responses:

- (1) compliance with federal law,
- (2) the creation of a coastal precinct,

- (3) geographic compactness,
- (4) minimizing voting precinct splits,
- (5) incumbency protection,
- (6) partisanship, and
- (7) “adopt[ing] a map that would be clear and easy to understand by the public.”

PX-593 at 6–8. The rationales stated by members of the commissioners court in public, in deposition testimony, and at trial are inconsistent with these purported criteria.

281. No witness testified at trial to applying the criteria described in the defendants’ interrogatory responses in either drawing or adopting the enacted plan. *See generally* Dkts. 228 at 312–25; 232 at 88 (Giusti testifying he considered the inclusion of his and his parents’ residence in his precinct, population equalization, and that lines were “drawn in a way the people understood” during the 2021 redistricting process), 304–05, 307–08 (Apffel testifying that he had no requests other than “equalized population” and keeping his new home in his precinct). Judge Henry admitted that he did not know of or apply the criteria the commissioners court claimed in its interrogatory responses to have used in the redistricting process. Dkt. 228 at 323–24.

282. Notably, unlike the criteria used in the 2001 redistricting cycle, the criteria the county revealed in its interrogatory responses do not include such objectives as maintaining communities of interest, preventing the unnecessary fragmentation of minority populations, or adhering to historic boundaries. *See* PX-539. From 1981 until 2021, the commissioners court had at least one precinct that performed to elect the candidate of choice for Black and Latino voters; the criteria the county purports to have used in 2021 would have done little to preserve that longstanding, and long-performing, majority-minority precinct.

283. The plaintiffs have provided several illustrative map configurations that perform as well or better than the enacted plan under the disclosed criteria.

284. Cooper reviewed the criteria provided by the defendants and evaluated whether the enacted plan adhered to them. In his opinion, it did not. PX-386 at 23–26. As to the first factor—compliance with the Constitution and the Voting Rights Act—Oldham disclaimed any requirement to draw a precinct that conformed with § 2 of the Voting Rights Act. Dkt. 231 at 61–62. Commissioner Apffel knew of Commissioner Holmes’s concerns about the potential Voting Rights Act violation. Dkt. 232 at 329–30.

285. Dr. Rush presented alternative maps that comply with federal law and maintain Precinct 3 as a majority-minority precinct. PX-487 at 9–17. Cooper explained that there “are many, many different ways to draw a majority Black plus Latino precinct. You can make [a] few changes. You can make lots of changes. It can look a lot of different ways.” Dkt. 223 at 47. Similarly, Fairfax testified that “there are possibilities of different configurations [of illustrative maps that] still continue to create a majority Black and Latino district that satisfied the first precondition of *Gingles* and followed traditional redistricting criteria.” Dkt. 224 at 117.

286. As to the second and third criteria—creating a coastal precinct and geographical compactness—the plaintiffs have provided multiple illustrative maps that would create a compact coastal precinct while maintaining a majority-minority Precinct 3. Creating a coastal precinct is not mutually exclusive with preserving Precinct 3 as a majority-minority district that allows Black and Latino voters to elect a candidate of choice. Dkt. 222 at 131.

287. Nor does the evidence support the need or any popular support for a single coastal precinct. Before the map’s passage, “there weren’t a bunch of people clamoring for a coastal precinct.” *Id.* at 105–06; Dkt. 225 at 85. The documents that Dr. Krochmal examined had just one mention in a news

article from the early 2010s. Dkt. 225 at 84–85. The commissioners did not engage the public on the need for a coastal precinct. *See, e.g.*, Dkts. 228 at 315, 317; 232 at 142–43. Some even advocated against a single-coastal precinct. Dkts. 228 at 315–17; 232 at 350–52.

288. As to the fourth and fifth criteria—to minimize the splitting of voting precincts before including incumbent residences—the defendants generally followed these criteria when drafting the enacted plan. But the alternative maps created by Dr. Rush protect the incumbency of the current commissioners while also preserving a majority-minority precinct. *See, e.g.*, Dkt. 232 at 157–58.

289. The sixth criterion—partisanship—did not require the enacted plan’s configuration, as all members of the commissioners court who voted for the enacted plan disclaimed partisanship as a predominating consideration. *See* Dkts. 228 at 197, 304; 232 at 98, 355–56. Consistent with this, Oldham testified that he never told Bryan that Judge Henry’s purpose for Map 2 was to create four Republican districts, and Oldham denied there was any such partisan motivation. Dkt. 231 at 153–54.

290. As for the final criterion, that the map be “clear and easy to understand by the public,” Cooper observed that the dramatic changes in the enacted plan do the opposite. “[B]ecause entire [voting] precincts are going

to be shifted around into different districts,” the likelihood of voter confusion—such as voters not knowing in which commissioner’s precinct they reside—is high. Dkt. 223 at 85–88.

291. Any contention that the defendants adopted the enacted plan to achieve near-equal population deviation is unsupported by the record. *See, e.g.*, PX-191. Indeed, there is no requirement to achieve a zero deviation for the commissioners-court map. Dkt. 223 at 186.

292. Judge Henry admitted he viewed benchmark Precinct 3 as a racial gerrymander and that any majority-minority Precinct 3 would have to look that way. Dkt. 228 at 319. Commissioner Apffel similarly testified that he believed and “ha[d] been told” that Precinct 3 had been “racially gerrymandered in favor of minorities.” Dkt. 232 at 356. Judge Henry further admitted he “would not have asked for” a coastal precinct map that kept the core of benchmark Precinct 3. Dkt. 228 at 305.

H. Ongoing Discrimination Touching on Participation in Voting

293. Three critical Senate factors in this case are: (1) the extent to which minority-group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; (2) the use of overt or subtle

racial appeals in political campaigns; and (3) the extent to which members of the minority group have been elected to public office in the jurisdiction.

294. The 2021 redistricting process for commissioners precincts occurred within a climate of ongoing discrimination affecting Black and Latino voting participation. This climate has led to limited Black and Latino electoral success in Galveston County. Notably, the limited success of Black and Latino candidates for office is largely attributable to majority-minority districts like the one dismantled by the enacted plan.

295. Dr. Burch's and Dr. Rocha's qualitative and quantitative analyses show that Black and Latino residents of Galveston County bear the effects of discrimination in income, poverty, education, and health, all of which combine to increase the costs of voting and decrease political participation. Pxs-335 ¶¶ 66–71; 414 at 23–32. The defendants did not call any fact witnesses to rebut these disparities between the minority and Anglo populations in Galveston County.

296. Historical disparities contribute to the contemporary inequalities that persist, not least because there are Galveston County voters alive today who lived through the Jim Crow era. Dkt. 222 at 74. For example, Pope testified to living through desegregation in education and public accommodations and the difficulties the county faced during that time. *Id.* at

28–31. Similarly, Reverend Randall described “racial fights” that occurred “in the junior high and high school [that] spilled over into the community” as he grew up during school desegregation. Dkt. 226 at 218.

297. Testimony from Black and Latino residents confirms that the county’s Black and Latino voters still suffer similarly from discrimination in income, poverty, education, and health as compared to Anglo residents. Dkts. 221 at 65, 133; 226 at 14.

298. Discrimination against minorities in Galveston County harms their ability to participate equally in the electoral process. PX-335 ¶¶ 9, 18, 27. Racial and ethnic disparities in education, income, housing, and public health are partly the result of past and present discrimination. Peer-reviewed academic research confirms that such disparities hinder Latinos and Blacks from participating in the political process. *Id.* ¶¶ 18, 27, 66–67.

299. Black and Latino voters, as measured by their consistently lower turnout rate than Anglo voters in Galveston County elections, have a depressed level of political participation. Dkt. 230 at 157.

1. Contemporary Voting Barriers

300. Residents testified how voter-identification requirements and voter-roll purging weigh more heavily on Black and Latino voters and

constitute barriers to voting. Dkts. 222 at 226–28; 226 at 18; *see also* PX-414 at 11 (describing Texas passing stricter voter ID laws after *Shelby County*).

301. Closure of polling places has also made it more difficult for the county’s Black and Latino residents to vote. The number of polling places in predominantly minority neighborhoods has decreased in recent decades. Dkt. 221 at 86–87.

302. The decline in polling places is partially attributable to the adoption of voting centers—locations where any voter can vote, regardless of the voter precinct in which he or she resides. But the convenience these centers provide is undercut by the fact that Galveston County has not established the mandatory minimum number of vote centers required under Texas law. Before the November 2022 general election, civil-rights organizations sent a letter to the Galveston County clerk and commissioners court informing them that the county had opened only twenty-eight voting centers, rather than the minimum required forty-one. PX-315. The letter described the disproportionate impact reduced polling places would have on minority residents with less access to transportation. *Id.* The county had also been warned in 2019 of this issue. *Id.*

303. Black and Latino residents have reported greater difficulty getting to polling places due to difficulties obtaining transportation.

Dkts. 226 at 58, 209; 228 at 43–44. Studies have shown that polling-place distance affects voter turnout, and those effects are related to transportation availability. PX-414 at 28.

304. The county has recently closed or attempted to close specific polling places in predominantly Black and Latino neighborhoods. The historic Carver Park polling place was considered by many to be the “hub” of the benchmark Precinct 3. Dkt. 221 at 61–62. It was closed in 2020, leaving some people unable to vote because of a lack of transportation. Dkt. 222 at 278. Similarly, another polling place closed during the 2020 election, the Dickinson Senior Center, which was also predominantly used by Black and Latino voters. Dkt. 228 at 44. The county also attempted to eliminate the Alamo Elementary polling location, which is located in a heavily Latino neighborhood. Dkt. 226 at 69.

305. Primary elections for commissioners court seats have a majority-vote requirement. Tex. Elec. Code § 172.003.

306. In recent years, candidates running for office in Galveston County have made implicit racial appeals in their campaigns. PX-335 ¶¶ 72–81; Dkt. 222 at 89. Racial appeals can “make racial attitudes and concerns more salient in the minds of voters, even without explicitly mentioning or

referring to a particular race or group.” PX-414 at 33; *see also* PX-335 ¶¶ 76–77; Dkt. 225 at 237–38.

307. For example, in the 2020 Republican primary for Galveston County tax assessor-collector, candidate Jackie Peden sent a mailer of a “Latino man covered in tattoos that indicates association with a violent gang (in this case, MS-13).” PXs-335 ¶ 78; 561; Dkts. 222 at 90–91; 225 at 240–41; Dkt. 226 at 17. Referring to her incumbent opponent, Peden’s mailer stated, “Texans can thank Cheryl Johnson for having illegal immigrants vote in this November’s Election!” PX-561. The mailer “use[d] text to associate her opposing candidate . . . with ‘illegal immigrants’ and appeals to race-based biases and fears regarding Latinos.” PX-335 ¶ 78. The image of the tattooed man featured is not a Galveston County resident but an El Salvadoran man whose image has been featured in other political campaigns. *Id.* ¶ 79; PX-562; Dkt. 225 at 241. Other candidates in Galveston County have used anti-immigrant imagery and “invasion” language as an anti-minority appeal. PX-414 at 34.

308. In 2022, Julie Pickren, a candidate for District 7 of the Texas State Board of Education, shared a video showing Black students at a local high school vandalizing the school cafeteria. PX-335 ¶ 80. The video was accompanied by text stating, “Discipline in schools must be restored.” *Id.* As

an implicit racial appeal, the video contains images of Black youth engaged in a stereotype-confirming behavior: violent destruction of property. *Id.*

309. Other racial incidents surrounding campaigns have occurred in recent years. In 2019, the chairwoman of the Galveston County Republican Party referred to a particular Black Republican as a “typical nig.” Dkt. 222 at 89–90; PX-414 at 34. Residents also heard racially derogatory language used toward Barack Obama during his presidential campaigns. Dkt. 226 at 17.

2. Lack of Electoral Success

310. Minorities have been underrepresented in electoral success relative to their share of Galveston County’s population. PX-414 at 34. Until the 1992 consent decree that increased minority representation in the JP/constable precincts, few minorities were elected to county office. Dkt. 222 at 15–16.

311. There have been three Black members of the commissioners court: Wayne Johnson, Stephen Holmes, and Robin Armstrong. Dkt. 204-6 ¶¶ 14–16. Wayne Johnson was the first Black member of the commissioners court and was elected in 1988. *Id.* ¶ 15. Stephen Holmes was appointed in 1999 after Wayne Johnson’s passing and has served continuously since then. *Id.* ¶ 16. Robin Armstrong was initially appointed in 2022 and ran unopposed in a majority-Anglo precinct in the November 2022 general

election. Dkt. 230 at 195, 198, 211. There has been just one Latino member of the commissioners court, Frank Carmona, who served from 1971 to 1990. PX-335 ¶ 7.

312. The court heard testimony that Commissioner Armstrong holds “several [political] views that are outside the mainstream of Black Americans.” PX-414 at 34–35. NAACP, LULAC, and other minority groups did not endorse him. *Id.* at 35. Commissioner Armstrong acknowledged he does not have a basis to believe he is a candidate of choice for Black or Latino voters. Dkt. 230 at 210.

313. Commissioners Giusti and Apffel could not identify any minority candidates who successfully ran in a countywide Republican primary. Dkts. 232 at 153, 367. Latino candidates with Spanish surnames have had minimal success in the county’s Republican primaries. Dkt. 226 at 15–17.

314. The limited number of successful Black and Latino elected officials within the county have tended to be members of city councils elected from majority-minority districts in cities with larger minority populations, such as Texas City and La Marque, or—in the case of the city of Galveston—elected from single-member districts created by court order to be majority-minority. *See, e.g.*, Dkts. 222 at 16; 230 at 255–56; 232 at 151.

3. Responsiveness

315. In § 2 vote-dilution claims, courts must consider “whether there is a significant lack of responsiveness by elected officials to the minority group members’ particularized needs.” *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 715–16 (S.D. Tex. 2017). Lack of responsiveness to public policies important to minorities serves to create and maintain racial disparities. PX-414 at 35.

316. Anglo commissioners are evidently not actively engaged in specific outreach to Galveston County’s minority residents. Dkt. 222 at 98–99; PX-414 at 35–36. Commissioner Apffel could not identify any wants, needs, or desires that African American and Latino constituents have. Dkt. 232 at 369. Judge Henry testified that he has never received an endorsement from leaders in the Black or Latino communities. Dkt. 228 at 254–55.

317. Minority residents have indicated that the commissioners court has become less responsive to the needs of minority constituents since the enacted plan went into effect. One resident testified that the lack of responsiveness makes minorities “not want to participate” in the political life of the county. Dkt. 222 at 28.

318. Recent votes by the commissioners court have been seen as unresponsive to the Black and Latino communities. Numerous witnesses cited the commissioners court's vote to allow \$1.8 million to help pay for a U.S.–Mexico border wall and to send constables to the border as racially discriminatory and diverting much-needed resources from local Black and Latino residents. *Id.* at 103; Dkt. 226 at 19–20. In addition, Anglo commissioners opposed removing the Confederate statue in front of the county courthouse. PX-412 at 50.

319. The commissioners court's handling of the November 12 special meeting also portrayed a lack of responsiveness. Witnesses who attended the special meeting were taken aback by some of Judge Henry's comments. Dkts. 221 at 77; 226 at 137. They testified that his disinterested demeanor to public comments also suggested a lack of responsiveness. Dkts. 222 at 246; 226 at 133–34. Galveston City Councilwoman Lewis described it as “almost like a back-in-the-'60s environment.” Dkt. 226 at 134.

320. Many residents reported that only Commissioner Holmes is responsive to Black and Latino residents' needs. *See, e.g.*, Dkts. 221 at 93; 222 at 26–27, 235–36; 226 at 73–74, 192, 221 (“I don't know any important event that Stephen wasn't there and giving us what we needed.”).

321. Commissioner Holmes was instrumental in reopening the Wayne Johnson Senior Center after Hurricane Ike. Dkt. 226 at 221 (“Even as far as Ike, Harvey, even Katrina. He led most of those efforts with housing and getting us back on our feet during tough times . . .”).

322. During the COVID-19 pandemic, Commissioner Holmes participated in weekly calls with the community. He “would get doctors, the health district, epidemiologists” and arrange testing opportunities. *Id.* at 221–22. He helped set up a phone line for people without internet access to sign up for COVID-19 vaccines. Dkt. 221 at 118–19.

323. Commissioner Holmes also helped arrange transportation for senior citizens and students around the county. Dkt. 222 at 237–38.

324. Residents of benchmark Precinct 3 who now live in Commissioner Armstrong’s precinct do not believe he would be responsive to his constituents from their neighborhoods due to his lack of involvement in minority community organizations and his absence from the Black and Latino community. *Id.* at 240–42; Dkt. 226 at 228. Commissioner Armstrong admitted that he has no basis to believe he is the candidate of choice among minority voters. Dkt. 230 at 210.

4. Education

325. Educational level is a dependable predictor of political participation. The higher one's education has advanced, the more likely he or she is to be politically active. PXs-335 ¶ 68; 414 at 22; Dkt. 225 at 233–34.

326. Minorities in Galveston County continue to bear the effects of discrimination in education. Dkts. 222 at 73; 225 at 220. Black and Latino residents are much less likely to have high-school diplomas than Anglo residents. PX-414 at 25–26; Dkt. 222 at 76–77. About 87.7% of Blacks and 75.9% of Latinos over twenty-five years old have completed high school—compared to 94.8% of Anglos. PXs-335 ¶ 14; 414 at 26. On the other hand, about 22.1% of Blacks and 17.5% of Latinos over twenty-five years old have earned a bachelor's degree or higher, while the Anglo rate is 37.5%. PX-335 ¶ 14.

327. Schools in Galveston County were under a court desegregation order from 1961 to 2009. *Id.* ¶ 28. During that time, the Galveston Independent School District struggled to achieve racially balanced enrollments in its elementary schools. *Id.*; Dkt. 225 at 209–10.

328. Racial inequality in K-12 educational achievement persists in Galveston County. PX-335 ¶¶ 28–39. Disproportionate numbers of Black

and Latino students are not proficient in reading and math across all school districts in Galveston County. PX-414 at 24; Dkt. 222 at 75–76.

329. There is clear evidence in Galveston County of “practices that limit the integration of schools and deny minority students access to education.” PX-335 ¶ 29. Minorities are less likely than Anglos to benefit from positive programs, such as Advanced Placement classes or gifted and talented programs, and are more likely to suffer disciplinary action, such as in-school and out-of-school suspension. *Id.* ¶¶ 29–39; PX-559; Dkts. 225 at 211–16; 226 at 118–19, 207–08.

330. These educational disparities have contributed to the lower likelihood that minorities in Galveston County will participate in the political process.

5. Employment and Poverty

331. Employment disparities are important to understanding the cost of voting; voters with lower-wage jobs are much more likely to be hindered from accessing the ballot box. PX-414 at 26. Research also shows that the workplace is an important site for recruitment into political participation. *Id.* at 27; *see also* PX-335 ¶ 67. So higher rates of employment and higher-wage jobs mean an increase in electoral participation.

332. Racial disparities in earnings are present in several employment sectors within Galveston County. PXs-335 ¶¶ 40–45; 414 at 26–28. In Galveston County, earnings for Blacks and Latinos are also lower in general than those for Anglo employees, partly because they are clustered in jobs that earn less. PXs-335 ¶¶ 40–45; 414 at 26–27; 559; Dkt. 225 at 222–23. Even when they hold the same types of jobs, Blacks and Latinos earn less than Anglo employees. PXs-335 ¶¶ 40–45; 559.

333. Black Galveston County households have a median income of \$45,831, and Latino households have a median income of \$60,297—markedly lower than Anglo households’ median income of \$86,165. PX-414 at 26; *see also* PX-386 ¶ 40.

334. Likewise, the unemployment rate in Galveston County is disproportionately higher for Black and Latino residents than for Anglo residents. The unemployment rates for Blacks and Latinos are 9.1% and 7.0%, respectively; the unemployment rate for Anglos is 4.8%. PXs-335 ¶ 15; 414 at 28; Dkt. 222 at 79; *see also* PX-386 ¶ 40.

335. About 29.2% of Black households and 15.1% of Latino households rely on the Supplemental Nutrition Assistance Program, whereas only 6.7% of Anglo households do. PX-386 ¶ 40.

336. Additionally, the child-poverty rate in Galveston County is disproportionately higher for Black children—nearly 25%—and Latino children—over 20%—than for Anglo children—under 10%. PX-414 at 27; Dkt. 222 at 78–79; *see also id.* ¶ 40.

337. Black and Latino residents in Galveston County have lower rates of car ownership than do Anglo residents. PX-414 at 28; Dkt. 222 at 79. Black households are four times less likely to have access to a car than Anglo households; Latinos are also less likely to have access to a vehicle. PX-414 at 28.

338. Together, these economic disparities hinder the ability of Galveston County’s Black and Latino communities to participate effectively in the political process.

6. Housing

339. Renters move more frequently than do homeowners and so are less likely to vote, because changing residences frequently increases the administrative burden of maintaining voter registration. *Id.* at 30. Homeowners are also more likely to be mobilized by political campaigns, increasing their likelihood of voting. PX-335 ¶ 69.

340. In 1997, the Department of Housing and Urban Development found that the Galveston Housing Authority, the agency in charge of public-

housing assistance and the management of Section 8 vouchers, had used public housing to reinforce patterns of segregation, in violation of Title VI of the Civil Rights Act of 1964. *Id.* ¶ 48.

341. Disparities in homeownership for Blacks and Latinos as compared to Anglos persist in Galveston County today and have not meaningfully decreased in recent years. *Id.* ¶ 49; PX-559; Dkt. 225 at 230–31. Black and Latino residents are less likely to live in owner-occupied housing than are Anglo residents. Dkt. 222 at 82; PX-414 at 31. About 47.5% of Blacks reside in owner-occupied housing units. PX-335 ¶ 16. Slightly more Latinos, 60.6%, reside in owner-occupied housing. *Id.* Anglo rates, though, are at 73.3%. *Id.*

342. In the aftermath of Hurricane Ike in 2008, disparities in housing grew even more pronounced. PXs-335 ¶¶ 50–59; 412 at 40–42; 414 at 31; Dkts. 221 at 111–13; 222 at 33–34.

343. The city of Galveston lost 16.5% of its overall population between 2000 and 2010, including an 11.4% loss in the Anglo population compared to a 36.7% loss in the Black population. PX-335 ¶ 51. Many of the predominantly minority Galveston Island residents displaced by Hurricane Ike moved to the mainland and have been unable to return due to the lack of affordable housing. Dkt. 222 at 232–33. Rebuilding public housing after Ike

also had a racialized component; predominantly Anglo residents and politicians opposed rebuilding efforts. PX-412 at 40–42.

344. These housing disparities hinder the ability of Galveston County’s Black and Latino communities to participate effectively in the political process.

7. Public Health

345. Healthy individuals are more likely to be civically engaged. Poor health can reduce the odds of voting by 12%. PXs-335 ¶ 70; 414 at 31.

346. Black and Latino residents in Galveston County disproportionately suffer from public-health issues compared to Anglo residents and continue to bear the effects of discrimination in public health. PX-335 ¶ 58; Dkts. 222 at 83; 225 at 232.

347. Discrimination increases incidents of psychological distress, major depression, generalized anxiety disorder, and early initiation of substance abuse. These general patterns have been documented among minority residents in Galveston County. PX-335 ¶ 59. A study of 1,238 Latinos living in Texas City, published in the *Journal of Social Science & Medicine* in 2013, found a significant relationship between experiences with discrimination and poor mental-health outcomes. *Id.*

348. Significant disparities in infant health and life expectancy exist between Blacks and Anglos in Galveston County. *Id.* ¶¶ 60–61; Dkt. 225 at 232–33. Black infants are more than twice as likely to have low birth weight and have nearly double the infant mortality rate as Anglo infants. PX-335 ¶ 60.

349. In Galveston County, Blacks and Latinos suffer disparities in insurance coverage that also affect access to preventative health care. *Id.* ¶ 61. Latinos between the ages of nineteen and sixty-four are more than twice as likely as Anglos to be uninsured. *Id.* ¶ 17. About 12.5% of Blacks between the same ages do not have health insurance. *Id.*

350. Disparities in health outcomes for Blacks and Latinos in Galveston County decrease their level of political participation.

8. Criminal Justice

351. Black and Latino also residents face disparities in the criminal-justice system in Galveston County. Dkt. 222 at 84–85; PX-414 at 32–33. Criminal-justice interactions affect political behavior because higher arrest and incarceration rates can hinder one’s ability to vote. Dkt. 222 at 85–86; PX-414 at 32.

352. Black residents in Galveston County are more likely to be arrested, and Black and Latino residents comprise a disproportionate

percentage of jail and prison inmates compared to their share of the population. Dkt. 222 at 36, 85. Black and Latino residents also testified to over-policing and disparities in treatment by the criminal-justice system. *See, e.g.*, Dkts. 221 at 67–70 (Constable Rose describing instances of being pulled over and treated aggressively); 226 at 13–14 (Quintero describing a complaint LULAC received after police severely damaged a Latino family’s house), 194–95 (Henderson-Lofton describing being pulled over by police in League City).

353. A highly publicized 2019 incident in which police on horseback led a mentally disabled Black man, Donald Neely, by a rope led to widespread criticism, including by the police chief, who stated that the officers “exercised poor judgment.” Dkt. 221 at 73; *see also* Dkt. 222 at 86–87.

III. Conclusions of Law

354. The Fifteenth Amendment was ratified in 1870 “amidst the struggles of Reconstruction to fully guarantee voting rights to newly freed slaves.” *Johnson v. Waller County*, 593 F. Supp. 3d 540, 592 (S.D. Tex. 2022). Section 1 protects citizens’ right to vote from being “denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” U.S. Const. amend. XV, § 1. Section 2 grants

Congress “the power to enforce this article by appropriate legislation.” *Id.* amend. XV, § 2.

355. The first ninety-five years of congressional enforcement of the Fifteenth Amendment “can only be regarded as a failure,” *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 197 (2009), marred by “Jim Crow laws like literacy tests, poll taxes, and ‘good-morals’ requirements,” *Milligan*, 599 U.S. at 9. Motivated by the Civil Rights movement, Congress passed the Voting Rights Act in 1965. *Id.* at 10. The original text of § 2 of the Voting Rights Act “closely tracked the language” of the Fifteenth Amendment and was “‘little-used’ for more than a decade after its passage.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2331 (2021). And in 1980 in *City of Mobile v. Bolden*, the Supreme Court held that § 2 prohibited only the discriminatory *intent* to dilute the voting strength of a minority group—not conduct that has the discriminatory *effect* of diluting its voting strength. 446 U.S. 55, 61–66 (1980) (plurality opinion). As a result, § 2 was greatly weakened in its ability to protect minorities from voting practices producing discriminatory results.

356. *Bolden* “produced an avalanche of criticism.” *Milligan*, 599 U.S. at 11 (quoting Thomas M. Boyd & Stephen J. Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History*, 40 Wash. &

Lee L. Rev. 1347, 1355 (1983)). After vigorous debate, Congress amended the Voting Rights Act in 1982, revising § 2 “to make clear that a violation could be proved by showing discriminatory effect alone.” *Gingles*, 478 U.S. at 35.

A. Section 2 of the Voting Rights Act

357. After its amendment, § 2 specifically prohibits any “voting qualification or prerequisite to voting or standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a). Such a denial or abridgement occurs when “the totality of circumstances” shows that a state’s “political processes . . . are not equally open to participation by” members of a minority group “in that [they] have less opportunity . . . to participate in the political process and to elect representatives of their choice.” *Id.* § 10301(b).

358. Such claims are often called *Gingles* claims because *Thornburg v. Gingles* provides the “framework” for evaluating § 2 vote-dilution claims. *Wis. Legislature v. Wis. Elections Comm’n*, 595 U.S. 398, 402 (2022) (per curiam).¹³ In *Gingles*, the Supreme Court construed § 2 to prohibit the

¹³ *Gingles* itself involved § 2 challenges to multimember districts, 478 U.S. at 46, but the Supreme Court later extended the analysis to apply to § 2 challenges to single-member districts like the ones at issue here. *See Grove v. Emison*, 507 U.S. 25, 40–41 (1993).

“dispersal of [a minority group’s members] into districts in which they constitute an ineffective minority of voters.” *Cooper v. Harris*, 581 U.S. 285, 292 (2017) (quoting *Gingles*, 478 U.S. at 46 n.11). When “minority and majority voters consistently prefer different candidates” in such districts, “the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters,” thus depriving minorities of an equal opportunity to elect representatives of their choice. *Gingles*, 478 U.S. at 48. Today, § 2 still prohibits vote dilution in redistricting plans that “minimize or cancel out the voting strength of racial [minorities in] the voting population.” *Id.* at 47 (alteration in original) (internal citations omitted) (quoting *Burns v. Richardson*, 384 U.S. 73, 88 (1966)); see also *Milligan*, 599 U.S. at 25.

359. In *Gingles*, the Supreme Court “established a two-step analysis for vote-dilution claims.” *Patino*, 230 F. Supp. 3d at 675 (citing *Gingles*, 478 U.S. at 50–51). Plaintiffs must first establish three preconditions: “(1) [t]he minority group must be sufficiently large and compact to constitute a majority in a reasonably configured district, (2) the minority group must be politically cohesive, and (3) a majority group must vote sufficiently as a bloc to enable it to usually defeat the minority group’s preferred candidate.” *Wis. Legislature*, 595 U.S. at 402. If plaintiffs establish the preconditions, they

must then show that, under the “totality of circumstances,” the “political process is [not] equally open to minority voters” without the proposed district. *Id.* (quoting *Gingles*, 478 U.S. at 79). When a § 2 claim is successful, a court will require the creation of a majority-minority election district in which minority voters have an equal opportunity to elect their preferred candidates. *See Bartlett v. Strickland*, 556 U.S. 1, 13 (2009).

360. Plaintiffs must prove § 2 claims by a preponderance of the evidence. *LULAC v. Roscoe Indep. Sch. Dist.*, 123 F.3d 843, 846 (5th Cir. 1997).

361. In *Allen v. Milligan*, decided earlier this year, the Supreme Court upheld the *Gingles* framework. 599 U.S. 1.

1. Step One—Preconditions

362. The first precondition is that the minority group “is sufficiently large and geographically compact to constitute a majority in a single-member district.” *Gingles*, 478 U.S. at 50; *see also id.* at 18. This precondition is “needed to establish that the minority has the potential to elect a representative of its own choice.” *Milligan*, 599 U.S. at 18 (quoting *Grove*, 507 U.S. at 40). Accordingly, the minority group must be able to constitute a majority by CVAP in the proposed district. *Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 853 (5th Cir. 1999); *see also LULAC*

v. Perry, 548 U.S. 399, 428–29 (2006) (analyzing CVAP and noting that “only eligible voters affect a group’s opportunity to elect candidates”). A plaintiff must also allege that its proposed majority-minority district “is consistent with ‘traditional districting principles such as maintaining communities of interest and traditional boundaries.’” *Robinson v. Ardoin*, 37 F.4th 208, 218 (5th Cir. 2022) (per curiam) (quoting *LULAC*, 548 U.S. at 433).

363. The Supreme Court has explained that a “district will be reasonably configured . . . if it comports with traditional districting criteria, such as being contiguous and reasonably compact.” *Milligan*, 599 U.S. at 18; *see also Miller v. Johnson*, 515 U.S. 900, 916 (1995) (identifying traditional districting criteria such as “compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests”). Courts may also consider other traditional redistricting criteria, including equal population, respect for political boundaries, and keeping together communities of interest. *See, e.g., Milligan*, 599 U.S. at 19–20; *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 259 (2015); *Shaw v. Reno*, 509 U.S. 630, 651–52 (1993).

364. Courts often discuss the second and third preconditions together. The second requires the minority group to be “politically cohesive.”

Gingles, 478 U.S. at 51. Cohesiveness concerns whether “a representative of [a minority group’s] choice would in fact be elected.” *Milligan*, 599 U.S. at 18 (quoting *Grove*, 507 U.S. at 40). Relatedly, the third precondition is that “the [Anglo] majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Gingles*, 478 U.S. at 51 (citation omitted). The last precondition “‘establish[es] that the challenged districting thwarts a distinctive minority vote’ at least plausibly on account of race.” *Milligan*, 599 U.S. at 19 (quoting *Grove*, 507 U.S. at 40). Unless both preconditions are met, “the challenged districting [does not] thwart[] a distinctive minority vote by submerging it in a larger [Anglo] voting population.” *Grove*, 507 U.S. at 40.

365. Plaintiffs usually demonstrate minority political cohesion by showing that “a significant number of minority group members usually vote for the same candidates.” *Gingles*, 478 U.S. at 56; see also *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988). That is described as “bloc voting”¹⁴ and typically means that a large majority of the group favors the same candidates. When minorities and Anglos vote in opposing blocs, courts

¹⁴ *E.g.*, *Strickland*, 556 U.S. at 19 (plurality opinion); *Fusilier v. Landry*, 963 F.3d 447, 458 (5th Cir. 2020).

conclude that voting is “racially polarized” and typically hold that a plaintiff has established the second and third preconditions.

366. The second and third preconditions view the redistricting process from different vantages. A plaintiff must show the second precondition for the minority population in its *proposed* district. *See Harris*, 581 U.S. at 302; *LULAC*, 548 U.S. at 427; *Grove*, 507 U.S. at 40. The third precondition must be established for the *challenged* district. *See Harris*, 581 U.S. at 302; *LULAC*, 548 U.S. at 427; *Grove*, 507 U.S. at 40. And each of these preconditions must be shown on a district-by-district basis. *See Wis. Legislature*, 599 U.S. at 404–05; *Abbott v. Perez*, 138 S. Ct. 2305, 2332 (2018); *LULAC*, 548 U.S. at 437.

a. Sufficiently Large and Geographically Compact

367. The defendants do not dispute that Galveston County’s Black and Latino communities, when considered as a coalition, are sufficiently large to satisfy the first *Gingles* precondition. Instead, they contend that coalition claims are *per se* unlawful and that the plaintiffs’ illustrative plans are not reasonably configured. The court rejects these arguments.

368. Coalition districts are “districts in which minorities are together a CVAP majority, but no individual minority group is.” *LULAC v. Abbott*, 604 F. Supp. 3d 463, 500 (W.D. Tex. 2022). The Fifth Circuit permits coalition

claims under § 2. See *LULAC, Council No. 4434 v. Clements*, 999 F.2d 831, 863–64 (5th Cir. 1993) (en banc); *Campos*, 840 F.2d at 1244. The cohesiveness of minority coalitions is “treated as a question of fact, allowing aggregation of different minority groups where the evidence suggests that they are politically cohesive.” *Clements*, 999 F.2d at 864. In the Fifth Circuit, “[t]here is nothing in the law that prevents . . . plaintiffs from identifying the protected aggrieved minority to include both Blacks and [Latinos].” *Campos*, 840 F.2d at 1244.

369. “Precedent in the Fifth Circuit is governed by a strict rule of orderliness, such that later panels of that court, and much less district courts within the circuit, cannot overturn decisions of prior panels.” *Abbott*, 604 F. Supp. 3d at 493. The court will follow well-established Fifth Circuit precedent and recognize that Blacks and Latinos together form to a coalition that satisfies the first *Gingles* precondition.

370. Additionally, the plaintiffs’ illustrative plans—and Map 1—demonstrate that Galveston County’s Black and Latino population is geographically compact enough to form a majority of eligible voters within a reasonably configured commissioners-court precinct. Cooper, Fairfax, and Dr. Rush have provided several illustrative plans that contain one majority Black and Latino commissioners-court precinct and adhere to traditional

redistricting criteria, including equal population, contiguity, and compactness. These illustrative maps are but a few examples of a multitude of potential districts that are reasonably configured and that contain a majority Black and Latino population by CVAP.

371. Additionally, the plaintiffs do not need to consider specific communities of interest when drawing illustrative maps to satisfy the first *Gingles* precondition. *Kumar v. Frisco Indep. Sch. Dist.*, 476 F. Supp. 3d 439, 499 (E.D. Tex. 2020). The plaintiffs' illustrative maps still sufficiently preserve communities of interest—namely the Black and Latino communities in benchmark Precinct 3. As the Supreme Court recently affirmed in *Milligan*, a party satisfies the first *Gingles* precondition by showing that a majority-minority precinct “comports with traditional districting criteria, such as being contiguous and reasonably compact.” 599 U.S. at 18. The plaintiffs have done so here.

372. Furthermore, “cultural compactness” is neither an element of a § 2 claim nor a component of the first *Gingles* precondition. In *LULAC v. Perry*, the Supreme Court held that one of six Latino opportunity districts was not “reasonably compact.” 548 U.S. at 430. The district contained “a 300-mile gap between the Latino communities . . . and a similarly large gap between the needs and interests of the two groups.” *Id.* at 432, 434 (noting

that “the different characteristics, needs, and interests of the Latino community near the Mexican border and the one in and around Austin are well supported and uncontested”). The Court noted that “in some cases members of a racial group in different areas—for example, rural and urban communities—could share similar interests and therefore form a compact district if the areas are in reasonably close proximity.” *Id.* at 435. The Court concluded its discussion with this critical caveat: “We emphasize it is the enormous geographical distance separating the [two] communities, coupled with the disparate needs and interests of these populations—not either factor alone—that renders [the district] noncompact for § 2 purposes.” *Id.*

373. The Black and Latino areas joined in the plaintiffs’ illustrative maps are marked by neither “enormous geographical distance” nor “disparate needs and interests.” *See id.* To the contrary, there is substantial quantitative evidence, supported by lay-witness testimony, that the needs and interests of communities included in the plaintiffs’ illustrative plans are similar, including issues of ongoing discrimination. Galveston County’s Black and Latino community, therefore, is reasonably compact.

374. The plaintiffs’ illustrative plans satisfy the traditional redistricting principle of geographic compactness. Cooper, Fairfax, Dr. Rush, and Dr. Owens testified that the plaintiffs’ illustrative maps are

geographically compact. Indeed, their illustrative plans have compactness scores comparable to—and, in some cases, better than—the enacted plan. Even Dr. Owens agreed that the illustrative plans are as compact as the enacted plan. Dkt. 232 at 229, 276.

375. While district shape is relevant to determining whether a district satisfies the compactness inquiry, the first *Gingles* precondition “does not require some aesthetic ideal of compactness”; instead, it simply mandates “that the [minority] population be sufficiently compact to constitute a majority in a single-member district.” *Houston v. Lafayette County*, 56 F.3d 606, 611 (5th Cir. 1995) (quoting *Clark v. Calhoun County (Clark I)*, 21 F.3d 92, 95 (5th Cir. 1994)). Here, the plaintiffs’ illustrative plans are reasonably compact, and the court does not need to weigh them against the enacted plan in a “beauty contest.” *Milligan*, 599 U.S. at 21.

376. All other traditional redistricting principles are satisfied in the plaintiffs’ illustrative plans. They are all contiguous and satisfy the equal-population criterion. The Supreme Court has recognized that a redistricting plan for local jurisdictions with a maximum overall population deviation under 10% is consistent with the one-person, one-vote principle. *See Evenwel v. Abbott*, 578 U.S. 54, 60 (2016). Cooper, Fairfax, and Dr. Rush applied this deviation measure appropriately when assessing their

illustrative plans. The population deviation in the plaintiffs' illustrative plans is often lower than or like that of the enacted plan.

377. The plaintiffs' illustrative plans maintain "traditional boundaries" by minimizing municipal and voting-district splits. *LULAC*, 548 U.S. at 433 (quotation omitted). The illustrative plans perform better than or similar to the enacted plan in maintaining traditional boundaries.

378. To the extent that the enacted plan had higher compactness scores or lower population deviation than some of the plaintiffs' illustrative plans, such evidence is insufficient to defeat a § 2 claim. *See Milligan*, 599 U.S. at 19–22 (finding that the plaintiffs' illustrative plans were reasonably configured, even where the challenged plan arguably performed better on certain traditional redistricting criteria than the illustrative plans); *Chen v. City of Houston*, 206 F.3d 502, 519 (5th Cir. 2000). It is sufficient that Cooper, Fairfax, and Dr. Rush reliably testified that the illustrative plans comport with traditional redistricting principles such that they are reasonably configured.

379. Finally, the plaintiffs have demonstrated that race did not predominate in drawing the illustrative maps. Cooper, Fairfax, and Dr. Rush credibly testified that neither race nor any single criterion predominated when they drew their illustrative plans. The illustrative plans' compliance

with neutral redistricting criteria confirms this, and the defendants have failed to provide any reliable evidence to the contrary.

380. Moreover, the Supreme Court has recently clarified that “there is a difference between being aware of racial considerations and being motivated by them. The former is permissible; the latter is usually not. That is because redistricting legislatures will almost always be aware of racial demographics, but such race consciousness does not lead inevitably to impermissible race discrimination.” *Milligan*, 599 U.S. at 30 (cleaned up). Indeed, § 2 “demands consideration of race” because “[t]he question whether additional majority-*minority* districts can be drawn . . . involves a ‘quintessentially race-conscious calculus.’” *Id.* at 31 (quoting *Abbott*, 138 S. Ct. at 2315, *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994)). Consideration is not the same as predominance, and none of the defendants’ arguments or expert analyses provide any compelling evidence that race predominated in the plaintiffs’ illustrative plans.

381. The court concludes that the Black and Latino population in Galveston County is sufficiently large and geographically compact to constitute a majority in a commissioners-court precinct, satisfying the first *Gingles* precondition.

b. Political Cohesion

382. “[T]here is no simple doctrinal test for the existence of legally significant racial bloc voting,” *Gingles*, 478 U.S. at 58. But “the most persuasive evidence of inter-minority political cohesion for Section 2 purposes is to be found in *voting patterns*.” *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989) (discussing *Campos*, 840 F.2d at 1244–45). A 51% majority is “far short of the large majority typically required to show political cohesion.” *Abbott*, 604 F. Supp. 3d at 499. Yet unless the evidence indicates that two groups vote for opposing candidates, the court assesses the cohesion of Black and Latino voters “as a whole”—*i.e.*, as one “minority group” under *Gingles*—to determine “whether the minority group *together* votes in a cohesive manner.” *Campos*, 840 F.2d at 1245 (emphasis added).

383. “[L]ay[-]witness testimony concerning cooperation between the minority groups and statistical evidence can be used to prove cohesion.” *Perez v. Abbott*, 274 F. Supp. 3d 624, 669 (W.D. Tex. 2017). A court must undertake “a diligent inquiry into the political dynamics of the particular community” before treating multiple minority groups as a coalition, but “the determinative question is whether [B]lack-supported candidates receive a majority of the [Hispanic] vote [and] whether Hispanic-supported candidates receive a majority of the [Black] vote.” *Brewer*, 876 F.2d at 453.

384. All experts have agreed that general elections are the most probative elections to consider for this case. They also agree that RxC ecological inference is an appropriate method for analyzing the voting patterns of different demographic groups in Galveston County. Using RxC ecological-inference analysis, the undisputed results show that Black and Latino voters frequently prefer the same candidates. When the voter file is used to refine analysis using the BISG method, the results show that even higher estimated percentages of the two groups vote together. The general-election results strongly support a conclusion that a supermajority of Black voters vote for Latino-preferred candidates and vice-versa.

385. Primary elections are relevant but “less probative than general elections for detecting racially polarized voting in an at-large district because general elections present the same candidate pool to every voter, while primary elections limit voters to one party’s candidates.” *Patino*, 230 F. Supp. 3d at 694. The court assigns significantly less weight to the statistical analysis of primary elections. Still, the combined results of Drs. Oskooii’s and Alford’s Democratic-primary analyses show that Black and Latino voters shared a top-choice candidate in most Democratic primaries.

386. The plaintiffs produced significant evidence of non-statistical cohesion between the Black and Latino communities in Galveston County.

This leads the court to conclude that there are distinctive minority interests that tie the two communities together.

387. The statistical analyses from general elections, statistical analyses from primary elections, and non-statistical evidence of cohesion all support the conclusion that Black and Latino voters in Galveston County act as a coalition for purposes of the second *Gingles* precondition because “[B]lack-supported candidates receive a majority of the [Hispanic] vote [and] Hispanic-supported candidates receive a majority of the [Black] vote.” *Brewer*, 876 F.2d at 453.

388. The undisputed evidence shows that the combined Black and Latino coalition is highly cohesive. The undisputed RxC ecological-inference analysis shows that over 75% of Black and Latino voters have voted for the same candidates in numerous elections. This satisfies the *Gingles* standard that “a significant number of minority group members usually vote for the same candidates.” *Gingles*, 478 U.S. at 56.

389. Due to the limited usable data available for local non-partisan elections, the court affords very little weight to them.

390. The plaintiffs’ experts’ electoral-performance/reconstituted-election analyses show that if this cohesive group constitutes a majority of

eligible voters in a county-commissioner precinct, it can elect a candidate of their choice.

391. The court concludes that the county's Black and Latino populations act as a coalition and are politically cohesive.

c. Cannot Elect Candidate of Choice

392. Generally, an Anglo "bloc vote that normally will defeat the combined strength of minority support . . . rises to the level of legally significant [Anglo] bloc voting." *Rodriguez*, 964 F. Supp. 2d at 757.

393. The defendants do not dispute the statistical evidence of Drs. Barreto and Oskooii showing that more than 85% of Anglos vote cohesively for candidates running in opposition to those supported by more than 85% of Black and Latino voters. They also do not dispute the plaintiffs' electoral-performance/reconstituted-election analyses, which show that the degree of Anglo bloc voting is sufficient to defeat a minority-preferred candidate in each commissioner precinct in the enacted plan.

394. The undisputed evidence shows that Anglo voters in Galveston County vote cohesively and for candidates opposing those supported by a majority of Black and Latino voters. Anglo voters do so at a rate sufficient to defeat the minority-preferred candidate consistently in each of the enacted commissioners-court precincts.

395. The plaintiffs must also show “that the challenged districting thwarts a distinctive minority vote at least plausibly on account of race.” *Milligan*, 599 U.S. at 19 (quoting *Grove*, 507 U.S. at 40). After plaintiffs present statistical evidence showing a racially divergent voting pattern, the burden shifts to defendants to show that there is a race-neutral explanation for the racially divergent voting pattern. *Teague v. Attala County*, 92 F.3d 283, 290 (5th Cir. 1996); see *Gingles*, 478 U.S. at 63; *Rodriguez*, 964 F. Supp. 2d at 760. Whether the Anglo-preferred elected officials are responsive to minority communities “is intimately related” to the legal significance of bloc voting because bloc voting “allows those elected to ignore [minority] interests without fear of political consequences.” *Clements*, 999 F.2d at 857 (quoting *Gingles*, 478 U.S. at 48 n.14).

396. Contrary to the defendants’ contentions, the plaintiffs do not need to initially show that partisan affiliation does *not* cause divergent voting patterns. See *Rodriguez*, 964 F. Supp. 2d at 760; *Lopez v. Abbott*, 339 F. Supp. 3d 589, 603 (S.D. Tex. 2018).

397. By establishing the second and third *Gingles* preconditions through acceptable statistical evidence and lay testimony, the plaintiffs have shown that racially polarized voting patterns exist in Galveston County elections.

398. The defendants have failed to present reliable or methodologically sound evidence sufficient to dispute that Anglo bloc voting “thwarts” the Black and Latino voting coalition in Galveston County for reasons wholly unconnected to race. The preponderance of the evidence supports the conclusion that the challenged plan “‘thwarts a distinctive minority vote’ at least plausibly on account of race.” *Milligan*, 599 U.S. at 19 (quoting *Grove*, 507 U.S. at 40).

399. In reaching this conclusion, the court gives considerable weight to the facts that:

- there is a lack of successful minority candidates emerging from Republican primaries,
- there is an extreme degree of Anglo bloc voting for candidates running against minority-preferred candidates,
- minority candidates tend to only be elected from majority-minority areas,
- there are continued racial appeals in Galveston County politics,
- lay witnesses recounted instances of discrimination in Galveston County,
- there are persistent racial disparities across a wide range of measures in Galveston County, and
- Anglo voters in Galveston County overwhelmingly participate in Republican primaries, while Black and Latino voters in Galveston County overwhelmingly participate in Democratic primaries.

400. In sum, the court concludes that the plaintiffs have satisfied all three *Gingles* preconditions.

2. Step Two—Totality of the Circumstances

401. After examining the *Gingles* preconditions, courts must “adhere to the Supreme Court’s instruction to examine challenged laws and practices in an intensely fact-based and local totality-of-the-circumstances analysis.” *Veasey v. Abbott*, 830 F.3d 216, 261 (5th Cir. 2016) (citing *Gingles*, 478 U.S. at 36–38). The totality-of-the-circumstances determination is “flexible” and “guided by factors drawn from the Senate Judiciary Committee report on the 1982 amendments to the Voting Rights Act.” *Teague*, 92 F.3d at 292. These factors include:

- (1) the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of a minority group to register, to vote, or otherwise to participate in the democratic process;
- (2) the extent to which voting in the elections of the state or political subdivision is racially polarized;
- (3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
- (4) if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
- (5) the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in

such areas as education, employment[,] and health, which hinder their ability to participate effectively in the political process;

(6) whether political campaigns have been characterized by overt or subtle racial appeals; [and]

(7) the extent to which members of the minority group have been elected to public office in the jurisdiction.

S. Rep. at 28–29. Other factors include whether “there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group” and whether “the policy underlying the state or political subdivision’s use of such . . . standard, practice, or procedure is tenuous.” *Id.*

402. Ultimately, § 2 violations require “an intensely local appraisal of the electoral mechanism at issue, as well as a searching practical evaluation of the past and present reality.” *Milligan*, 599 U.S. at 19. Importantly, there is “no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” S. Rep. at 29. The court may instead use its “overall judgment, based on the totality of circumstances and guided by those relevant factors in the particular case,” to decide “whether the voting strength of minority voters is . . . ‘minimized or canceled out.’” *Id.* at 29 n.118. “In short, these factors simply suggest a framework for evidence to be presented at trial which is likely to aid a court’s later consideration towards legal conclusions.” *Johnson*, 593 F. Supp. 3d at 600.

403. “[I]t 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.” *Clark I*, 21 F.3d at 97 (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993)).

404. Here, most of the Senate factors support § 2 liability. *See generally* PXs-335; 414. Substantial socio-economic differences between Black and Latino residents and Anglo residents in Galveston County create barriers to voting. The presence of racial appeals in recent local political campaigns, relative lack of Black and Latino electoral success, and lack of responsiveness on the part of Galveston County’s officials to the needs of the Black and Latino communities further support this finding. Finally, the 2021 redistricting plan’s justifications are tenuous and will prevent Galveston County’s Black and Latino communities from electing a candidate of their choice.

405. Senate Factor 2: Racially Polarized Voting. The plaintiffs have shown extensive evidence of racially polarized voting in Galveston County. Racial-bloc voting “allows those elected to ignore [minority] interests without fear of political consequences.” *Rogers v. Lodge*, 458 U.S. 613, 623

(1982). Racial-bloc voting continues to be a reality in Galveston County elections.

406. Senate Factor 3: Voting Practices Enhancing the Opportunity for Discrimination. The plaintiffs have also shown that voting practices exist that may “enhance the possibility that the [c]ounty’s map has a dilutive effect.” *Rodriguez*, 964 F. Supp. 2d at 785. Practices deemed to satisfy this factor exist in Galveston County, including voter purges and racially disparate access to polling places. *Id.* at 780–84. The majority-vote requirement for primaries provides further support. *See Jamison v. Tupelo*, 471 F. Supp. 2d 706, 714 (N.D. Miss. 2007) (“Majority[-]vote primaries reduce the chance that a minority candidate will advance to a general election.”). The court finds that this factor weighs slightly in the plaintiffs’ favor.

407. Senate Factor 5: Effects of Discrimination Hindering Political Participation. The plaintiffs have demonstrated pervasive socio-economic disparities between Galveston County’s Black and Latino communities on the one hand, and the Anglo population on the other. The defendants do not contest this evidence. *See* Dkt. 230 at 280.

408. In addition, Black and Latino voters participate in Galveston County elections at a lower rate than do Anglo voters. Because “courts have

recognized that disproportionate educational[,] employment, income levels[,] and living conditions arising from past discrimination tend to depress minority political participation” plaintiffs “need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation.” S. Rep. at 29 n.114 (citing *White v. Regester*, 412 U.S. 755, 768 (1973), *Kirksey v. Bd. of Supervisors*, 528 F.2d 139, 145 (5th Cir. 1977)); see also *Clements*, 999 F.2d at 867 (noting that the Senate Report does not “insist[] upon a causal nexus between socioeconomic status and depressed participation”).

409. Nevertheless, the plaintiffs’ experts have shown that the effects of the education, economic, housing, health, and other racially linked disparities in Galveston County negatively affect voter behavior.

410. Senate Factor 6: Racial Appeals. Evidence of racial appeals in political campaigns, even while “neither frequent nor routine,” can “contribute” to a finding that minority voters lack equal opportunities to participate politically. See *Patino*, 230 F. Supp. 3d at 715. Here, the plaintiffs have demonstrated this factor by showing unrebutted evidence of racial appeals in recent political campaigns. These racial appeals contribute—albeit much less than other factors—to the court’s finding that Black and Latino voters do not have equal opportunities for political participation.

411. Senate Factor 7: Minority Election to Public Office. Black and Latino candidates' success in elections "has been slow, slight, and disproportionately lower than" their population share in Galveston County. *See Patino*, 230 F. Supp. 3d at 715. In analyzing whether "minority voices are heard in a meaningful way during pertinent political decisions, versus being shut out of the process altogether," the court concludes that the enacted plan's elimination of Precinct 3 falls squarely within the latter category. *Johnson*, 593 F. Supp. 3d at 608; *see also Clark v. Calhoun County*, 88 F.3d 1393, 1397 (5th Cir. 1996) (*Clark II*) (holding that lack of minority electoral success in a relevant district has a significant effect on the evaluation of vote-dilution claims). The defendants' reliance on exogenous elections "not involving the particular office at issue" is "less probative than elections involving the specific office." *Clark II*, 88 F.3d at 1397. This factor strongly supports that Blacks and Latinos do not have an equal opportunity to participate in the political process.

412. Additional Senate Factor: Lack of Responsiveness. Beyond the Senate factors, the totality-of-the-circumstances inquiry "requires a court to ask whether there is a significant lack of responsiveness by elected officials to the minority group members' particularized needs." *Patino*, 230 F. Supp. 3d at 715–16. This factor weighs in the plaintiffs' favor. Numerous witnesses

testified to the lack of responsiveness by the commissioners court in public housing—particularly after Hurricane Ike—as well as in education and criminal justice. Additionally, the process by which the commissioners court adopted the 2021 redistricting plan demonstrates the county’s pattern of “[i]gnoring clear and supported objections about the racially disparate impact of a proposed law,” which is probative of a lack of responsiveness to minority concerns. *Id.* at 717 (citing *Veasey*, 830 F.3d at 262).

413. Additional Senate Factor: Tenuousness of Policy. Moreover, “[a]long with elected officials’ lack of responsiveness to minority needs, a tenuous fit between the expressed policy and the provisions of the law bolsters the conclusion that minorities are not able to equally participate in the political process.” *Veasey*, 830 F.3d at 262–63. Although a jurisdiction “is entitled to make policy choices about when and how it will address various priorities,” a policy’s rationales are tenuous when the enacted law “fail[s] to correspond in any meaningful way to the legitimate interests [it] claims to have been advancing.” *Id.* at 263.

414. Here, very few members of the public advocated for creating a single coastal precinct. This criterion is further undermined by the existence of several maps that both create a single coastal precinct and maintain a

majority-minority precinct. *Id.* Drawing a coastal precinct neither requires nor justifies cracking the county’s minority population.

415. Additional Relevant Factor: Proportionality. Finally, “proportionality is ‘a relevant fact in the totality of circumstances.’” *LULAC*, 548 U.S. at 436 (quoting *De Grandy*, 512 U.S. at 1000); *see also De Grandy*, 512 U.S. at 1025 (O’Connor, J., concurring) (“Lack of proportionality is probative evidence of vote dilution.”). In a vote-dilution claim, “it is the status of the candidate as the *chosen representative of a particular racial group*, not the race of the candidate, that is important.” *Citizens for a Better Gretna v. City of Gretna*, 834 F.2d 496, 503 (5th Cir. 1987) (quoting *Gingles*, 478 U.S. at 69).

416. For that reason, it is irrelevant that Commissioner Armstrong is Black. His precinct is predominantly Anglo, and several witnesses—including Commissioner Armstrong himself—testified that he would not be the candidate of choice of Black and Latino voters.

417. The county’s plan precludes Black and Latino voters from electing a candidate of choice in any commissioners precinct. It does so even though these two groups comprise 38% of the total population in Galveston County. Moreover, it eliminated an existing commissioners precinct where such an opportunity had existed for decades.

418. “Shut Out of the Process Altogether.” Another judge in this district recently noted in another Voting Rights Act case that “an underlying concern” in such cases “is whether minority voices are heard in a meaningful way” or are “shut out of the process altogether.” *Johnson*, 593 F. Supp. 3d at 608 (Eskridge, J.). Looking—as this court must—at the totality of the circumstances, it is stunning how completely the county extinguished the Black and Latino communities’ voice on its commissioners court during 2021’s redistricting.

419. Galveston County was created in 1838. From its founding, it would be 133 years before a Latino, Frank Carmona, was elected to commissioners court. And it would be 150 years before a Black, Wayne Johnson, won a seat. Commissioner Johnson’s district, old Precinct 3, would continue to elect the minority community’s candidate of choice right up until 2021, when Precinct 3 was summarily carved up and wiped off the map. Blacks’ and Latinos’ commissioner of choice was always a lonely voice on the court, but that commissioner’s presence—whether it was Wayne Johnson or Stephen Holmes—meant that “minority voices [were] heard in a meaningful way.” *Id.* The result of 2021’s redistricting, however, has amounted to Black and Latino voters, as a coalition of like-minded citizens with shared concerns, “being shut out of the process altogether.” *Id.*

420. This is not a typical redistricting case. What happened here was stark and jarring. The commissioners court transformed Precinct 3 from the precinct with the highest percentage of Black and Latino residents to that with the lowest percentage. Dkt. 223 at 42. The circumstances and effect of the enacted plan were “mean-spirited” and “egregious” given that “there was absolutely no reason to make major changes to Precinct 3.” *Id.* at 42–43. Looking at the totality of the circumstances, it was a clear violation of § 2 of the Voting Rights Act. And it must be overturned.

421. The plaintiffs have demonstrated that the totality of the circumstances shows that Black and Latino voters in Galveston County have “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Gingles*, 478 U.S. at 63.

3. Strict Scrutiny

422. Finally, the defendants argue in their post-trial briefing that § 2 is “no longer constitutional” because it is “too temporally distant from the wrongs it was built to remedy.” Dkt. 244 at 66. According to them, “the lack of a temporal limit or termination mechanism” in § 2 “no longer satisfies strict scrutiny.” *Id.* at 65. They rely on the Supreme Court’s recent decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard*

College, which reasoned that race-based admissions programs must have reasonable durational limits. *Id.* at 65 (citing 600 U.S. 181, 223–28 (2023)). Additionally, they cite *obiter dictum* from *Shelby County*, where the Court noted that the Voting Rights Act’s coverage formula for preclearance used “decades-old data relevant to decades-old problems, rather than current data reflecting current needs.” *Id.* (citing *Shelby County*, 570 U.S. at 553). Finally, the defendants highlight Justice Kavanaugh’s concurrence in *Milligan*, in which he expressly noted that he did not consider this temporal-limit argument. *Id.* (citing *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring)). From Kavanaugh’s concurrence, the defendants surmise that “a [five-]justice majority might have reached a different result” if the parties preserved such an issue for appeal. Dkt. 244 at 66.

423. In *Milligan*, Justice Kavanaugh briefly discussed this temporal argument:

Justice [Thomas] notes, however, that even if Congress in 1982 could constitutionally authorize race-based redistricting under § 2, for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future. But Alabama did not raise that temporal argument in this Court, and therefore I would not consider it at this time.

599 U.S. at 45 (internal citation omitted). Although the two dissenting opinions “raised arguments about the constitutionality of the *Gingles* framework, neither of them stated that Section 2 of the Voting Rights Act

should be deemed unconstitutional.” *Alpha Phi Alpha Fraternity, Inc. v. Raffensperger*, 2023 WL 5674599, at *20 (N.D. Ga. July 17, 2023) (citing *Milligan*, 599 U.S. at 45–94 (Thomas, J., dissenting), *id.* at 95–109 (Alito, J., dissenting)). As affirmed by a five-justice majority in *Milligan*, the *Gingles* framework remains controlling precedent.

424. The court is unconvinced by this temporal-limit argument. The “mere fact that race [is] given some consideration in the districting process, and even the fact that minority-majority districts were intentionally created, does not alone suffice in all circumstances to trigger strict scrutiny.” *Chen*, 206 F.3d at 506 (citing *Shaw v. Hunt*, 517 U.S. 899, 904–05 (1996)). The Supreme Court has assumed that compliance with § 2 can be narrowly tailored to serve a compelling interest. *Bush v. Vera*, 517 U.S. 952, 977 (1996). And the Fifth Circuit has expressly held that compliance with § 2 “constitutes a compelling government interest” that may narrowly tailor the use of race in restricting plans “at the expense of traditional political concerns no more than is reasonably necessary to remedy the wrong.” *Clark II*, 88 F.3d at 1405–06.

425. Although the defendants speculate that the Voting Rights Act has outlived its usefulness, they have not shown that § 2 does not narrowly remedy the current discriminatory effects in Galveston County’s

commissioners-court elections. Accordingly, § 2’s lack of a temporal limit survives strict scrutiny.

B. Remaining Constitutional Claims

426. In the 1982 amendments to § 2 of the Voting Rights Act, Congress “repudiated’ a requirement that plaintiffs prove intentional discrimination to succeed on a claim that a challenged action violates the Voting Rights Act.” *Patino*, 230 F. Supp. 3d at 718 (quoting *Gingles*, 478 U.S. at 44). The amended § 2 “was designed to restore the ‘results test’—the legal standard that governed voting discrimination cases” before the Supreme Court’s decision in *Bolden*. *Gingles*, 478 U.S. at 44 n.8. Thus, the “right” question following the amendment and *Gingles* is not whether the challenged mechanism “was adopted or maintained with the intent to discriminate against minority voters” but instead whether it left the plaintiffs without “an equal opportunity to participate in the political process and to elect candidates of their choice.” *Id.* at 44 (quoting S. Rep. at 28).

427. This court does not need to make findings on intentional discrimination or racial gerrymandering in this case. When plaintiffs succeed on their *Gingles* claims, the court need not determine the outcome of the intentional-discrimination or racial-gerrymandering claims unless “the remedy to which [the plaintiffs] would be entitled for a discriminatory intent

violation is potentially broader than the remedy the district court may fashion for the discriminatory impact violation.” *Id.* at 230 n.11 (citing *City of Richmond v. United States*, 422 U.S. 358, 378 (1975)).

428. Here, the relief the plaintiffs seek is not broader than that which they are entitled to under § 2. They all seek: (1) declaratory judgments that the enacted plan violates the law; (2) preliminary and permanent injunctions preventing the defendants from calling, holding, supervising, or certifying any elections under the enacted plan; (3) procedures for the commissioners court to adopt a valid redistricting plan; and (4) attorneys’ fees and costs. Dkt. 42 at 32–34; *Galveston County*, No. 3:22-cv-97, ECF No. 38 at 25–26 (May 31, 2022); *Dickinson Bay Area Branch NAACP*, No. 3:22-cv-117, ECF No. 38 at 38–39 (S.D. Tex. May 25, 2022); *see also* Dkts. 241, 242-1, 243-1. The requested relief is neither exclusive to intentional-discrimination or racial-gerrymandering claims nor broader than the relief allowed under § 2.

429. The court acknowledges that in their post-trial briefing the NAACP plaintiffs have asked the court “to determine the appropriateness of retaining jurisdiction under Section 3(c) of the Voting Rights Act”—*i.e.*, instituting a preclearance requirement on Galveston County. Dkt. 242 at 30. Section 3 permits this remedy if the court finds “that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred

within the territory of” the defendant state or political division. 52 U.S.C. § 10302(c). Under § 2 alone, the court could not order § 3(c) preclearance. But the court sees this requested relief as akin to “special damages”—“those which, although resulting from the commission of [a] wrong, are neither such a necessary result that they will be implied by law nor will be deemed within the contemplation of the parties.” *Hycel, Inc. v. Am. Airlines, Inc.*, 328 F. Supp. 190, 193 (S.D. Tex. 1971). None of the plaintiffs pleaded for relief under § 3(c)—let alone with particularity—as required by Fed. R. Civ. P. 9(g). Because the plaintiffs never sought this relief with any specificity before or during trial, the court will not entertain such relief now.

430. Therefore, the court declines to reach the plaintiffs’ remaining intentional-discrimination and racial-gerrymandering claims.

IV. Relief

431. “When devising a remedy to a § 2 violation, the district court’s ‘first and foremost obligation . . . is to correct the [§ 2] violation.’” *United States v. Brown*, 561 F.3d 420, 435 (5th Cir. 2009) (quoting *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1022 (8th Cir. 2006)). Any remedy “should be sufficiently tailored to the circumstances giving rise to the § 2 violation.” *Veasey*, 830 F.3d at 269 (quoting *Brown*, 561 F.3d at 435). When possible, courts “should respect a legislature’s policy objectives when crafting a

remedy,” even “when some aspect of the underlying law is unenforceable.”
Id.

432. The court recognizes that its review of the commissioners court’s redistricting process “represents a serious intrusion on the most vital of local functions.” *Miller*, 515 U.S. at 915. “There are times when a court might give a . . . legislature an opportunity to cure the infirmities . . . before permitting the district court to fashion a remedy.” *Veasey*, 830 F.3d at 269. Generally, courts should “offer governing bodies the first pass at devising” § 2 remedies. *Id.* (quoting *Brown*, 561 F.3d at 435); see also *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (“[R]edistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to preempt.”). But “when it is *not* practicable to permit a legislative body this opportunity because of an impending election, it becomes the unwelcome obligation of the federal court to devise and impose a remedy pending later legislative action.” *Veasey*, 830 F.3d at 270 (cleaned up) (quoting *Wise*, 437 U.S. at 540).

433. Galveston County’s 2024 elections are imminent. The commissioners court must have an election map in place before the statutory opening date for candidate filing on November 11, 2023. See Tex. Elec. Code

§ 172.023(b). As established, the enacted plan violates § 2 of the Voting Rights Act, and so the county cannot use this map for future elections.

434. To balance the commissioners court's control over the redistricting process against the need for a plan that conforms with § 2 for the 2024 election, the court will allow the defendants until **October 20, 2023**, to file a redistricting plan with supporting expert analysis establishing that it adheres to § 2 and has at least one majority-minority precinct. The plaintiffs may file consolidated objections to the defendants' plan with proposed alternative plans and supporting expert analysis by **October 27, 2023**. The court will conduct an in-person hearing on **November 1, 2023, at 2 p.m.** to decide which plan to order into effect.

435. If the defendants fail or prefer not to submit a map and plan, they are ordered to implement the illustrative plan presented by Anthony Fairfax on August 10, 2023 (PX-339), on or before **November 1, 2023**, and use that plan for all future elections until the commissioners court adopts a different plan.

V. Conclusion

The court finds that the 2021 commissioners-court precinct map adopted by the Galveston County Commissioners Court on November 12, 2021, violates § 2 of the Voting Rights Act. Regardless of the intent or

motivation of the commissioners court, the enacted plan denies Black and Latino voters an equal opportunity to participate in the political process and to elect a candidate of their choice. The court will enter a separate order conforming to these findings and conclusions.

Signed on Galveston Island this 13th day of October, 2023.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE

APPENDIX B

ENTERED

October 13, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

TERRY PETTEWAY, *et al.*,

Plaintiffs,

VS.

GALVESTON COUNTY, TEXAS,
et al.,

Defendants.

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3:22-CV-57

ORDER


In its findings of fact and conclusions of law issued today, the court held that the 2021 commissioners-court precinct map adopted by the Galveston County Commissioners Court on November 12, 2021, violates § 2 of the Voting Rights Act. Dkt. 250. The enacted map denies Black and Latino voters the equal opportunity to participate in the political process and the opportunity to elect a representative of their choice to the commissioners court. Accordingly, the court permanently enjoins the defendants from administering, enforcing, preparing for, or in any way permitting the nomination or election of county commissioners from the commissioners-court precinct map as currently configured. The plaintiffs are the prevailing parties and judgment is hereby entered in their favor.

Having failed to comply with § 2 of the Voting Rights Act, the commissioners court must adopt another plan in time for the 2024 election, which means before November 11, 2023—the statutory opening date for candidate filing. So the court orders the following remedial proceedings:

1. By **October 20, 2023**, the defendants shall file with the court a revised redistricting plan with sufficient supporting expert analysis establishing that it complies with § 2 of the Voting Rights Act. Along with these materials, the defendants may include a memorandum of law of no more than 10 pages.
2. By **October 27, 2023**, the plaintiffs may file objections to the defendants' revised plan and, if desired, proposed alternative plans with supporting expert analysis. The plaintiffs' *consolidated* objections shall be no more than 10 pages.
3. The court will conduct an in-person remedial hearing on **November 1, 2023, at 2 p.m.** to decide which redistricting plan will be ordered into effect.
4. If the defendants fail or prefer not to submit a revised plan, they are ordered to implement the illustrative plan presented by Anthony Fairfax on August 10, 2023 (PX-339), on or before **November 1, 2023**, and use that plan for all future elections until the commissioners court adopts a different plan.

The court refrains from deciding attorneys' fees until the plaintiffs seek such relief under Fed. R. Civ. P. 54(d).

Signed on Galveston Island this 13th day of October, 2023.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE

APPENDIX C

ENTERED

October 15, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

TERRY PETTEWAY, *et al.*,

Plaintiffs,

VS.

GALVESTON COUNTY, TEXAS,
et al.,

Defendants.

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3:22-CV-57

ORDER

Before the court is the defendants’ emergency motion to stay injunction pending appeal. Dkt. 254.

A district court considers four factors in deciding motions to stay pending appeal:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested . . . ; and (4) where the public interest lies.

SEC v. Barton, 79 F.4th 573, 581 (5th Cir. 2023) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). Because the defendants have established none of these factors, the court denies their motion.

The defendants also contend that the seven-day deadline the court has imposed for submitting a revised map is “too short,” and the “more

reasonable option is to allow the enacted plan to remain in force pending the outcome of [the] appeal.” Dkt. 254 at 6. But the court’s deadline is entirely appropriate, especially considering that the defendants required Thomas Bryan to draw both Map 1 and Map 2, the enacted plan adopted during the 2021 redistricting cycle, in just eight days. *See* Dkt. 231 at 111–13, 225. Their contention that the court’s deadline is too short lacks credibility.

Further, the defendants argue that if a plan is “found to be unlawful very close to the election date, the only reasonable option may be to use the plan one last time.” Dkt. 254 at 6 (quoting *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018)). But the court is not persuaded. While the candidate-filing period opens in just three weeks, the 2024 primary election is still several months away, and the general election will not occur for another year. The court maintains the position it took in its findings and conclusions: the defendants must adopt a new plan before the 2024 election. Dkt. 250 ¶¶ 431–435.

That said, the court will adjust its remedial schedule to provide additional time. The defendants will have seven more days—until **October 27, 2023**—to file a redistricting plan and supporting expert analysis. The plaintiffs may file objections and, if desired, proposed alternative plans by **November 3, 2023**. The court reschedules its in-person remedial hearing


to **November 8, 2023, at 3:00 p.m.** If the defendants fail or prefer not to submit a revised plan, they are ordered to implement the Fairfax illustrative plan or Map 1, *see infra*, by **November 8, 2023**. The court will not allow further extensions to its remedial schedule.

Finally, the defendants argue that requiring them to potentially adopt the Fairfax plan is improper because “Commissioner Apffel’s house is not within Fairfax’s proposed Precinct 1, which would prevent Apffel from running for re-election.” Dkt. 254 at 2–3. The defendants can avoid this by filing a proposed plan by October 27 that ensures that the current commissioners reside in their new precincts. That said, the court did not intend to choose a map that draws incumbents out of their precincts. Accordingly, to alleviate the court’s oversight, the defendants may adopt Map 1—as considered during the commissioners court’s special meeting on November 12, 2021—instead of the Fairfax map should they fail or prefer not to submit a revised plan. Otherwise, the court will address these concerns at the November 8 hearing.

* * *

The defendants’ emergency motion to stay injunction pending appeal is denied. Dkt. 254. The remedial proceedings outlined in the court’s order of October 13, 2023, are amended as described above.

Signed on Galveston Island this 15th day of October, 2023.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE

APPENDIX D

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

TERRY PETTEWAY, et al.	§	
Plaintiffs,	§	
v.	§	Civil Action No. 3:22-CV-00057
GALVESTON COUNTY, TEXAS, et al.	§	(consolidated)
Defendants.	§	
	§	
	§	
	§	
UNITED STATES OF AMERICA,	§	
Plaintiffs,	§	
v.	§	Civil Action No. 3:22-CV-00093
GALVESTON COUNTY, TEXAS, et al.	§	
Defendants.	§	
	§	
	§	
	§	
DICKINSON BAY AREA BRANCH	§	
NAACP, et al.	§	
Plaintiffs,	§	
v.	§	Civil Action No. 3:22-CV-00117
GALVESTON COUNTY, TEXAS, et al.	§	
Defendants.	§	
	§	

**DEFENDANTS' EMERGENCY MOTION TO STAY
INJUNCTION PENDING APPEAL**

**DEFENDANTS’ EMERGENCY MOTION TO STAY
INJUNCTION PENDING APPEAL**

Defendants Galveston County, Texas, the Galveston County Commissioners Court, County Judge Mark Henry, and County Clerk Dwight Sullivan file this emergency motion asking that the Court stay its October 13, 2023 Order (Dkt. 251) rejecting Galveston County’s adopted redistricting plan, pending the outcome of Defendants’ appeal.

INTRODUCTION

On October 13, 2023, the Court entered an order providing mandatory injunctive relief to Plaintiffs and requiring Defendants to file a revised redistricting plan by October 20, 2023. Dkt. 251 at 2. The Court also set a hearing on November 1st to consider such a plan. In the alternative to submitting a new plan within seven days, the Court has ordered that Defendants must implement the illustrative plan presented by Anthony Fairfax in Plaintiffs’ Exhibit 339 (attached as Appendix A). The Court provides in its Order that a new plan must be adopted “in time for the 2024 election, which means before November 11, 2023—the statutory opening date for candidate filing.” Dkt. 251 at 2.

The Court’s imposition of a 7-day timeline in which to adopt and file with the Court a “revised redistricting plan with sufficient supporting expert analysis establishing that it complies with § 2” of the VRA is simply not enough time. Dkt. 251 at 2 ¶ 1. Moreover, the Court’s decision to put in place the Fairfax map if Defendants do not meet this deadline is, respectfully, improper. The Fairfax map, among other things, cannot be enacted without irreparable harm because its boundaries do not keep each of the Commissioners within their precincts—Commissioner Apffel’s house is not within Fairfax’s proposed Precinct 1,

which would prevent Apffel from running for re-election. *See* Tex. Const. Art. 16 sec. 14 (Commissioners must reside in precinct); Art. 5 sec. 18(d) (when boundaries change, Commissioners serve out the term in the precinct to which they were elected). Defendants have filed a notice of appeal with this request, and ask for an emergency stay of this order, pending the outcome of the appeal.

STANDARD OF REVIEW

Courts consider four factors when determining whether a stay should be granted during the pendency of an appeal:

1. whether the applicants have made a strong showing that they are likely to succeed on the merits;
2. whether the applicants will be irreparably injured absent a stay;
3. whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
4. where the public interest lies.

Nken v. Holder, 556 U.S. 418, 426 (2009). The first two factors are “the most critical.” *Id.* at 434. These factors are not to be applied “in a rigid or mechanical fashion.” *Campaign for S. Equal. v. Bryant*, 773 F.3d 55, 57 (5th Cir. 2014) (alterations accepted). A movant “need only present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.” *U.S. v. Baylor Univ. Med. Ctr.*, 711 F.2d 38, 39 (5th Cir. 1983) (citation omitted).

ARGUMENT

I. Defendants have made a strong showing that they are likely to succeed on the merits, on appeal.

The County believes it is likely to succeed on the merits of the specific claims in

this case. In addition, the Court should have “little difficulty concluding that the legal questions presented by this case are serious, both to the litigants involved and the public at large, and that a substantial question is presented for [the Fifth Circuit] to resolve.” *Campaign for S. Equal.*, 773 F.3d at 57. Defendants’ arguments are more thoroughly set forth in their post-trial briefing and responses, Doc. 244 and Doc. 249, and their findings of fact and conclusions of law, Doc. 245. Defendants have preserved all of these arguments and incorporate them here by reference. Defendants summarize several critical points here.

On appeal, Defendants will present arguments that there is no violation of the Voting Rights Act (“VRA”). As discussed in prior filings, the VRA does not provide a remedy for coalition claims, or entitlement to proportional representation. *See* Dkt. 176 at 20-22, Dkt. 244 at 33-35. While this Court understandably acknowledges prior cases in the Fifth Circuit, the Fifth Circuit can and does clarify, and if necessary overrule, itself. The Fifth Circuit should consider this fundamental issue in light of the conflicting decisions from other appellate courts. Also, Plaintiffs did not meet their *Gingles* I compactness burden (*see* Dkt 176 at 22-38, Dkt. 244 at 35-39, Dkt. 245 at 16-20 & 100-107). Plaintiffs’ evidence falls shockingly short of the requisite local analysis. Dkt. 245 at ¶¶ 426-27, 454-55. Rather, Plaintiffs’ experts largely address a nation-wide discussion of race and voting, rather than circumstances in Galveston County.

And while the Court discusses testimony relating to the significance of primary elections, whether primary elections are relevant in a cohesion analysis is a question for the Court, not witnesses. *LULAC v. Abbott*, 601 F. Supp. 3d 147, 165 (W.D. Tex. May 4, 2023) (“*Abbott I*”). What primary election results show on their face, particularly in a

coalition case, is critical and clear: whether different minority groups select the same candidates. *See id.* at 169 n.10 (“shared voting preferences at the primary level would be powerful evidence of a working coalition” but is not needed to prove cohesion for a single minority group). In fact, in *Abbott I*, the court agreed with Dr. Alford’s view that primary elections “are relevant to analyzing divisions within political coalitions and that partisan affiliation is the main driver of voter behavior in general elections.” *Id.* at 166.¹

Plaintiffs’ experts also failed to analyze data on the precinct level. Mr. Cooper, for example, relied on socioeconomic and other data that was based on municipalities, not precincts—municipalities that are cut into various sections by Plaintiffs’ own proposed precincts. For example, Mr. Fairfax’s proposed map has League City divided among all four precincts. Dr. Rush testified, contrary to Mr. Cooper, that populations from Texas City and League City can be included in one majority-minority precinct, even though he never analyzed whether or why such populations should be paired. Such evidence is no evidence at all. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593-94 (1993); *Curtis v. MS Petroleum*, 174 F.3d 661, 668 (5th Cir. 1999) (the issue of expert reliability includes whether they properly apply their methodology to the facts).

The Court placed the burden on Defendants to prove that politics, rather than race, accounted for racially polarized voting in the County under a *Gingles* analysis. While the voting evidence, including primary evidence considered inconsequential by this Court,

¹ Here, Dr. Alford analyzed 24 primary elections and found in only 2 did Black and Latino voters support the same candidate with 75% or more of their vote. DX 305 at 14-19; Dkt. 245 ¶¶432, 436-439. Even using Dr. Trounstine’s lower standard of cohesion, Latino and Black voters support each other’s candidates in only 8 out of 24 primaries. *Id.* But a one-third cohesion rate is no cohesion at all.

unmistakably shows partisanship explains voting results, the Fifth Circuit has not concluded that such a showing is Defendants’ burden. Rather, Plaintiffs must establish all three *Gingles* preconditions. They did not meet their burden. Rather, polarized voting and polarization are present today—but in politics. Plaintiffs have failed to show that race that drives Galveston voters’ decisions.

As discussed in Defendants’ Closing Brief, the totality of the circumstances do not support a finding of vote dilution under the VRA. *See* Dkt 244 at 52-59. Nor should Plaintiffs’ VRA claim prevail, as VRA effects claims are temporally limited to a very different time in this Country, a time long ago expired. *See* Dkt. 244 at 59-60.

II. Defendants will be irreparably injured absent a stay.

With respect to irreparable harm, “the inability to enforce its duly enacted plans clearly inflicts irreparable harm” on the County. *Abbott*, 138 S.Ct. at 2324 n.17 (explaining, in the context of interlocutory jurisdiction, that where state was barred from conducting elections under an enacted statute, unless the statute is unconstitutional, such an order “would seriously and irreparably harm” the state).

The Supreme Court has directed that, if a plan is “found to be unlawful very close to the election date, the only reasonable option may be to use the plan one last time.” *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). Here, the Court’s Order references the candidate filing period as the impetus for a 7-day timeline to adopt and file a revised plan. Under *Abbott*, that timeline is too short, and the more reasonable option is to allow the enacted plan to remain in force pending the outcome of an appeal.

As Judge Costa wrote in *Thomas v. Bryant*, the defendants in that case (Mississippi

state officials) “can establish irreparable harm” where there was a trial court order “preventing enforcement of a state law, including the drawing of legislative lines, and where there was a “meaningful possibility (but not certainty) that a full appeal cannot be decided in time to provide Defendants relief before” the election at issue. 919 F.3d 298, 303 (5th Cir. 2019) (citing *Abbott*, 138 S.Ct. at 2324 n.17). The court acknowledged the plaintiffs faced “the same risk that the appellate ruling would prove futile” if the Fifth Circuit granted a stay. *Id.*

Understanding these parameters, the court explained that its decision teetered on whether the defendants in *Thomas* have a strong likelihood of success. As discussed above, Defendants have established a strong likelihood of success on the merits.

III. The remaining elements of substantial injury and public interest both support a stay of the Order pending appeal.

In considering harm to other parties, the “maintenance of the status quo is important.” *Louisiana by & through Landry v. Biden*, No. 22-30087, 2022 WL 866282, at *3 (5th Cir. Mar. 16, 2022). A stay would preserve that status quo to permit the Fifth Circuit to address the difficult legal questions such as whether coalition districts are permissible, whether temporal limits on Section 2 are appropriate, the appropriate weight of primary elections in coalition actions. In these circumstances, the alleged harm of an election under the existing plan should not outweigh the numerous harms of an injunction.

As Defendants discuss above, there is a likelihood of success on the merits. Therefore, there is no substantial injury to Plaintiffs because there has been no established violation of the VRA, and no dilutive plan enacted by the County. The public interest

similarly supports the enforcement of properly enacted laws—including redistricting plans adopted by governmental bodies within the State of Texas.

Again, the Court’s order provides a remedial redistricting schedule that is unworkable; consequently it is unlikely to withstand appellate scrutiny. A court that invalidates redistricting legislation must “afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure.” *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). Requiring the County to review and enact redistricting legislation, complete with expert analysis, within seven days of its order will not provide the County necessary time to consider critical County legislation. Therefore, a stay is appropriate, pending appeal.

CONCLUSION AND PRAYER

Defendants ask that the Court enter an order staying its October 13, 2023 Order imposing mandatory injunctive relief pending the outcome of an appeal of this matter.

If the Court is inclined to deny the County any form of relief requested, the County respectfully requests the Court issue a ruling on this request by October 16, 2023, which would enable timely consideration of that denial in an emergency stay motion on appeal.

Respectfully Submitted,

GREER, HERZ & ADAMS, L.L.P.

By: /s/ Joseph Russo

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**admitted pro hac vice*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served to all counsel of record via the ECF e-filing system on October 14, 2023.

/s/ Angie Olalde

APPENDIX E

October 16, 2023

Via Email

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catherine.meza@usdoj.gov

Sarah Xiyi Chen
Texas Civil Rights Project
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Austin, TX 78741
schen@texascivilrightsproject.org

RE: Case No. 3:22-cv-00057; *Petteway et al, v. Galveston County, et al.*; letter notification to Counsel of Emergency Motion to Stay.

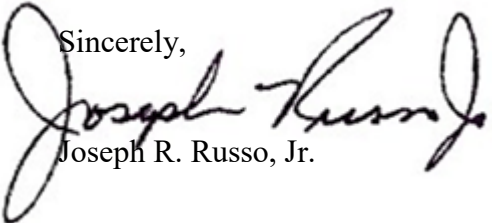
Counsel,

As you are aware, the District Court denied Defendants' request to stay enforcement of its October 13, 2023 Order enjoining Defendants and to implement a remedial plan, and with that denial, changed its deadlines by one week and included Map 1 as an option for a potential court-ordered plan.

Defendants intend to request an emergency stay from the United States Court of Appeals for the Fifth Circuit to stay the enforcement of the District Court's action.

If there are any questions about the information herein, please let me know.

Sincerely,



Joseph R. Russo, Jr.

cc: All counsel for plaintiff groups (*via email*)

JRR/jmj

APPENDIX F

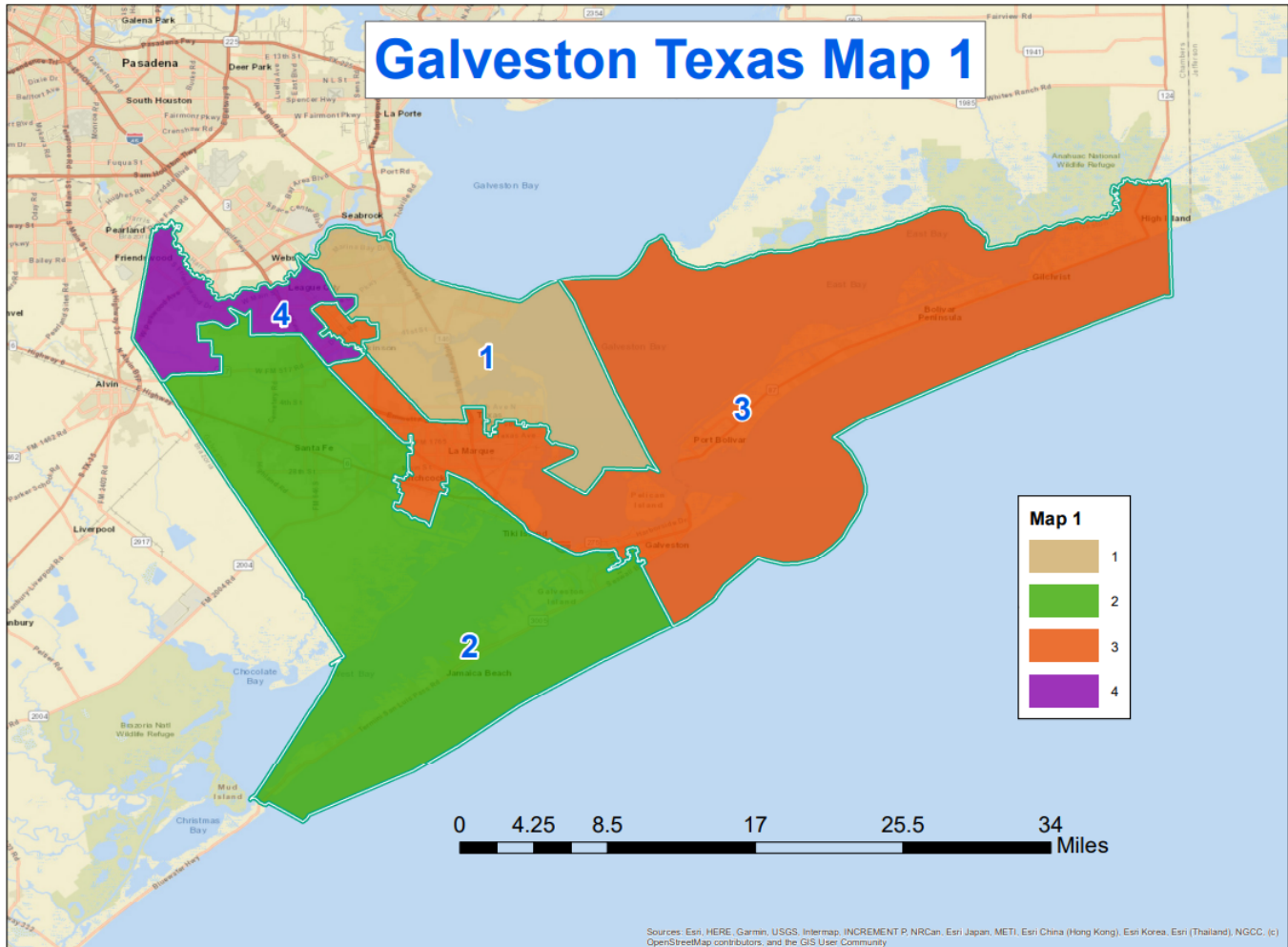
Redistricting

Galveston County Commissioners Proposed Precincts

The Galveston County Commissioners Court will be discussing and voting to redistrict county commissioner's precincts in the next few weeks. Below are the two proposed maps that will be considered. Public comment is now open for county residents via the form on this page.

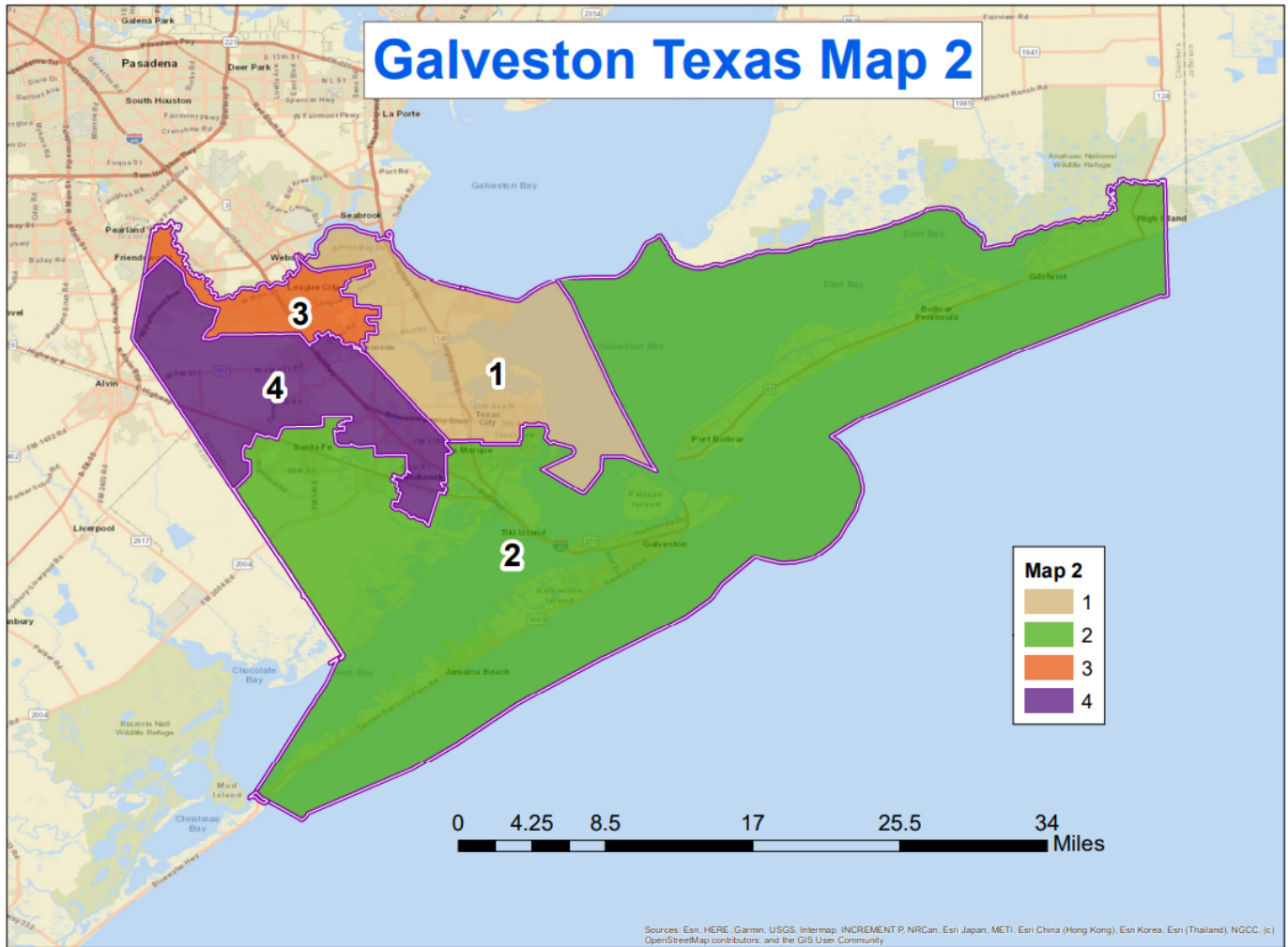
Interactive Redistricting Maps

You may click on the map to access an interactive version.



Proposed Redistricting Map 2

You may click on the map to access an interactive version.



Public Comment

Full Address

Street Number and Name

Unit Number

City

State/Province/Region

Postal/ZIP Code

Full Name

First Name

Last Name

Comment

500 Character limit

500 characters

To receive a copy of your submission, please fill out your email address below and submit.

Email Address

I'm not a robot

reCAPTCHA
Privacy - Terms

[Review](#)

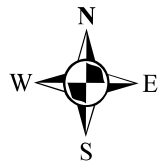
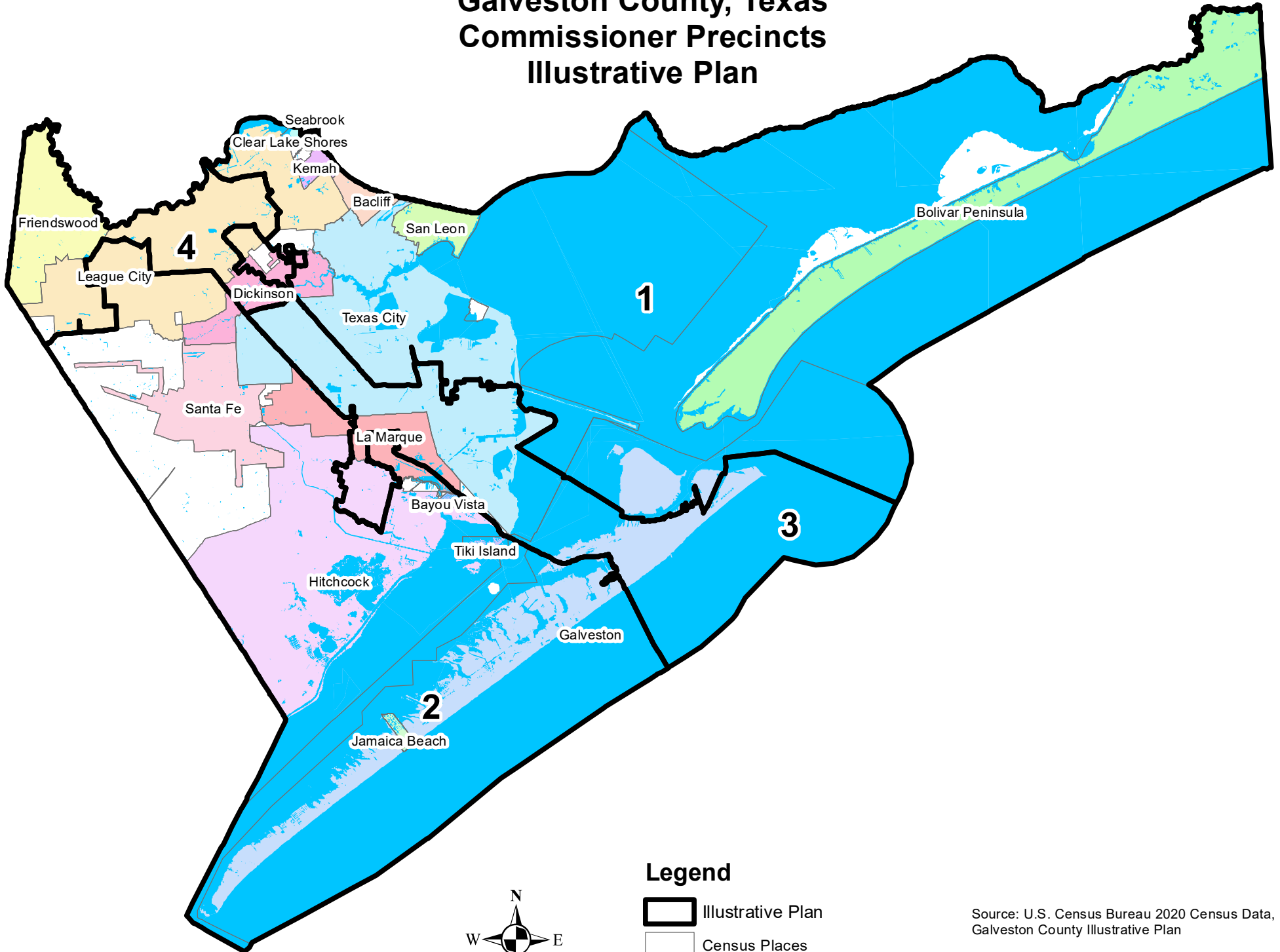
Submit

APPENDIX G




Appendix B
Maps of the Illustrative and
2012-2021 Commissioner Plans



Galveston County, Texas Commissioner Precincts Illustrative Plan



Legend

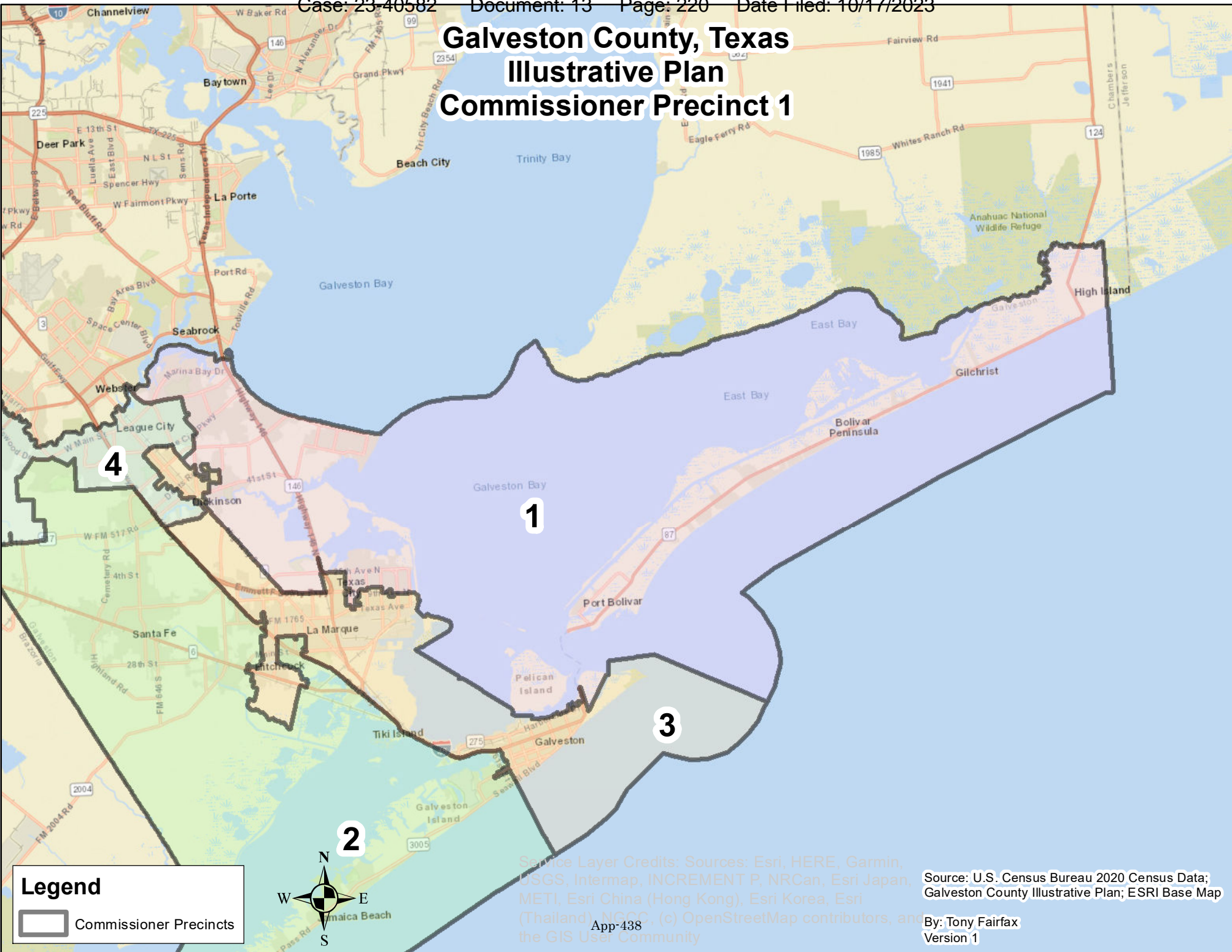
-  Illustrative Plan
-  Census Places
-  Water

App 437

Source: U.S. Census Bureau 2020 Census Data,
Galveston County Illustrative Plan

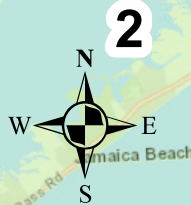
By: Tony Fairfax
Version 1

Galveston County, Texas Illustrative Plan Commissioner Precinct 1



Legend

Commissioner Precincts

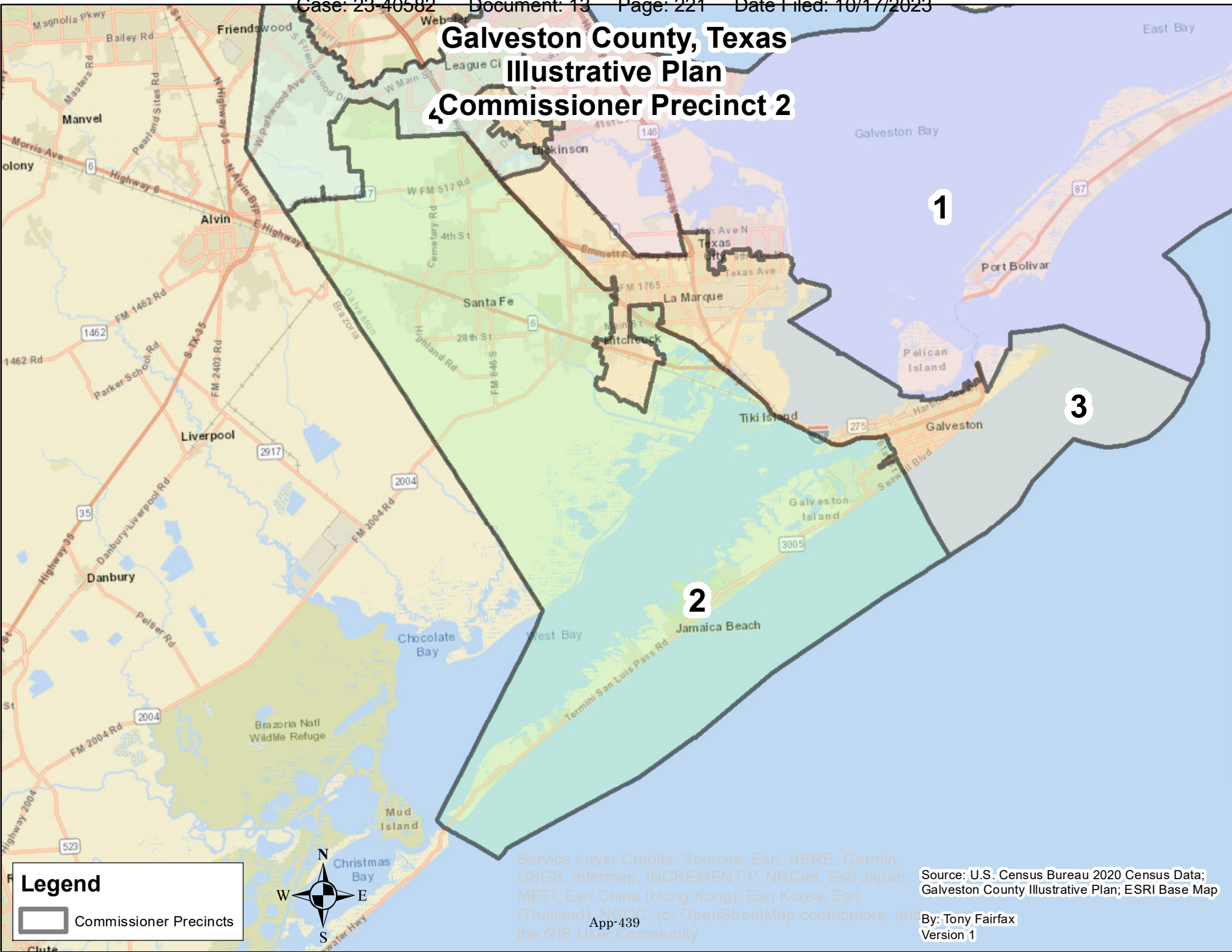


Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

Source: U.S. Census Bureau 2020 Census Data; Galveston County Illustrative Plan; ESRI Base Map

By: Tony Fairfax
Version 1

Galveston County, Texas Illustrative Plan Commissioner Precinct 2



Legend

Commissioner Precincts

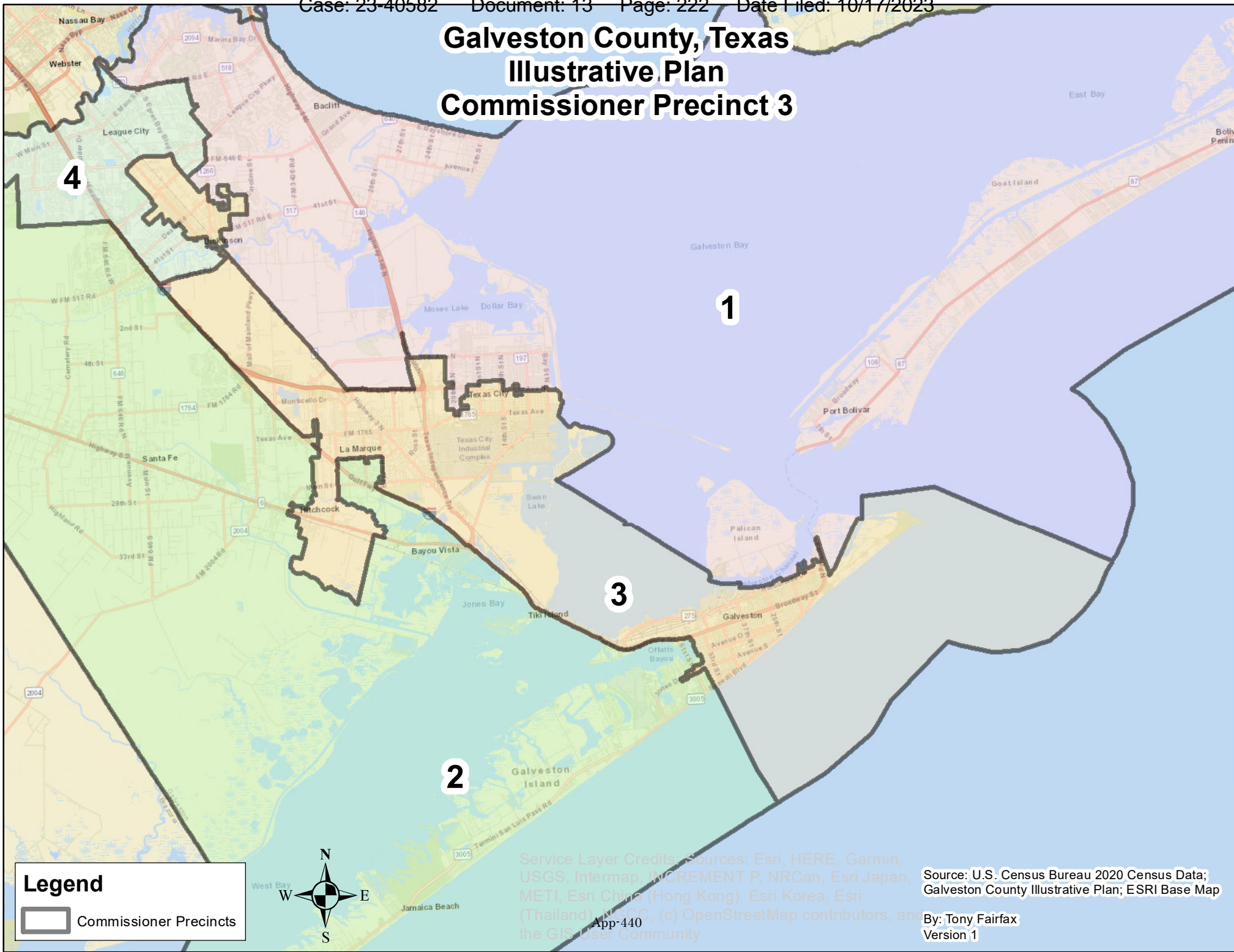


Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community


Source: U.S. Census Bureau 2020 Census Data; Galveston County Illustrative Plan; ESRI Base Map

By: Tony Fairfax
Version 1

Galveston County, Texas Illustrative Plan Commissioner Precinct 3



Legend

 Commissioner Precincts



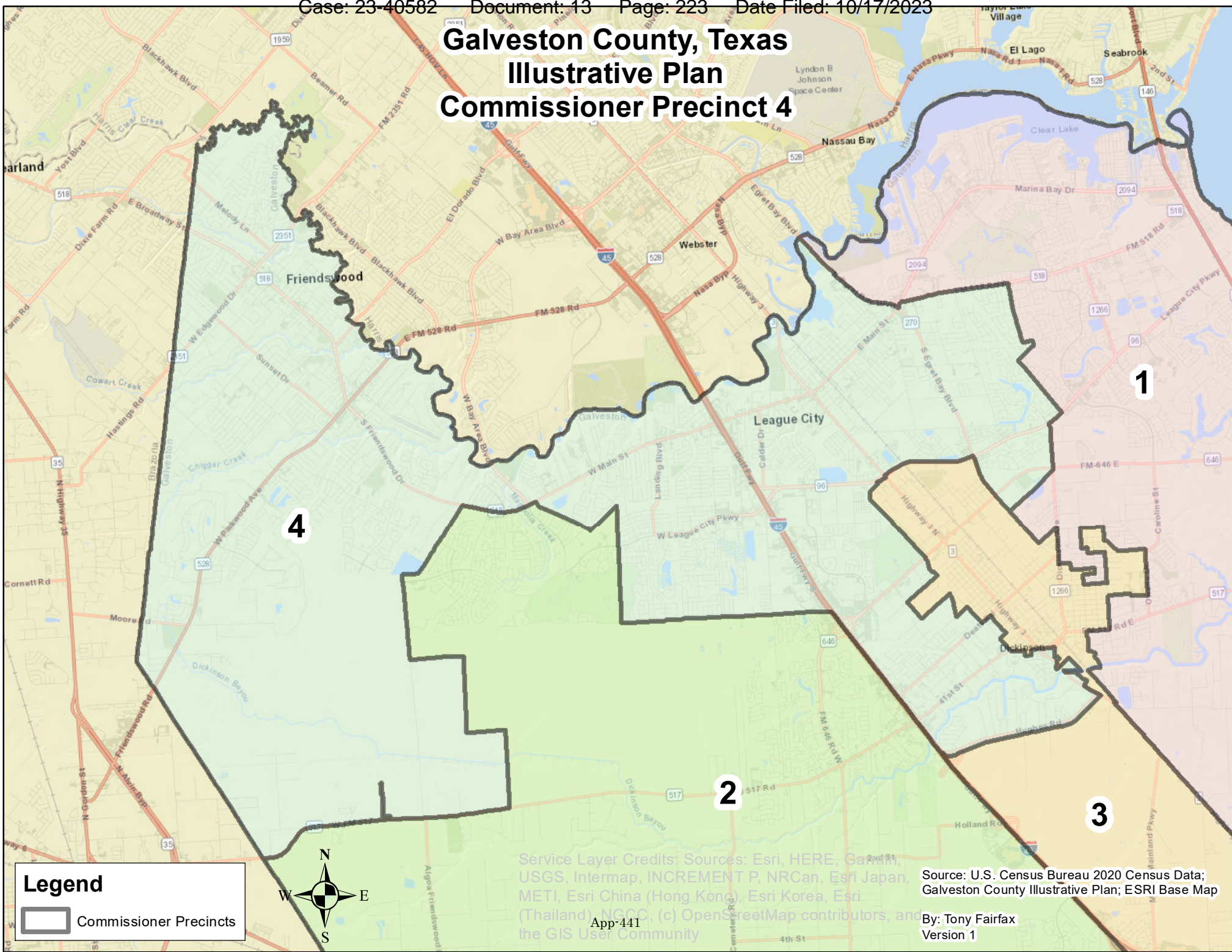
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Source: U.S. Census Bureau 2020 Census Data; Galveston County Illustrative Plan; ESRI Base Map


By: Tony Fairfax
Version 1

App-440

Galveston County, Texas Illustrative Plan Commissioner Precinct 4



Legend

 Commissioner Precincts



Service Layer Credits: Sources: Esri, HERE, Garmin, Swatchway, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

App-441

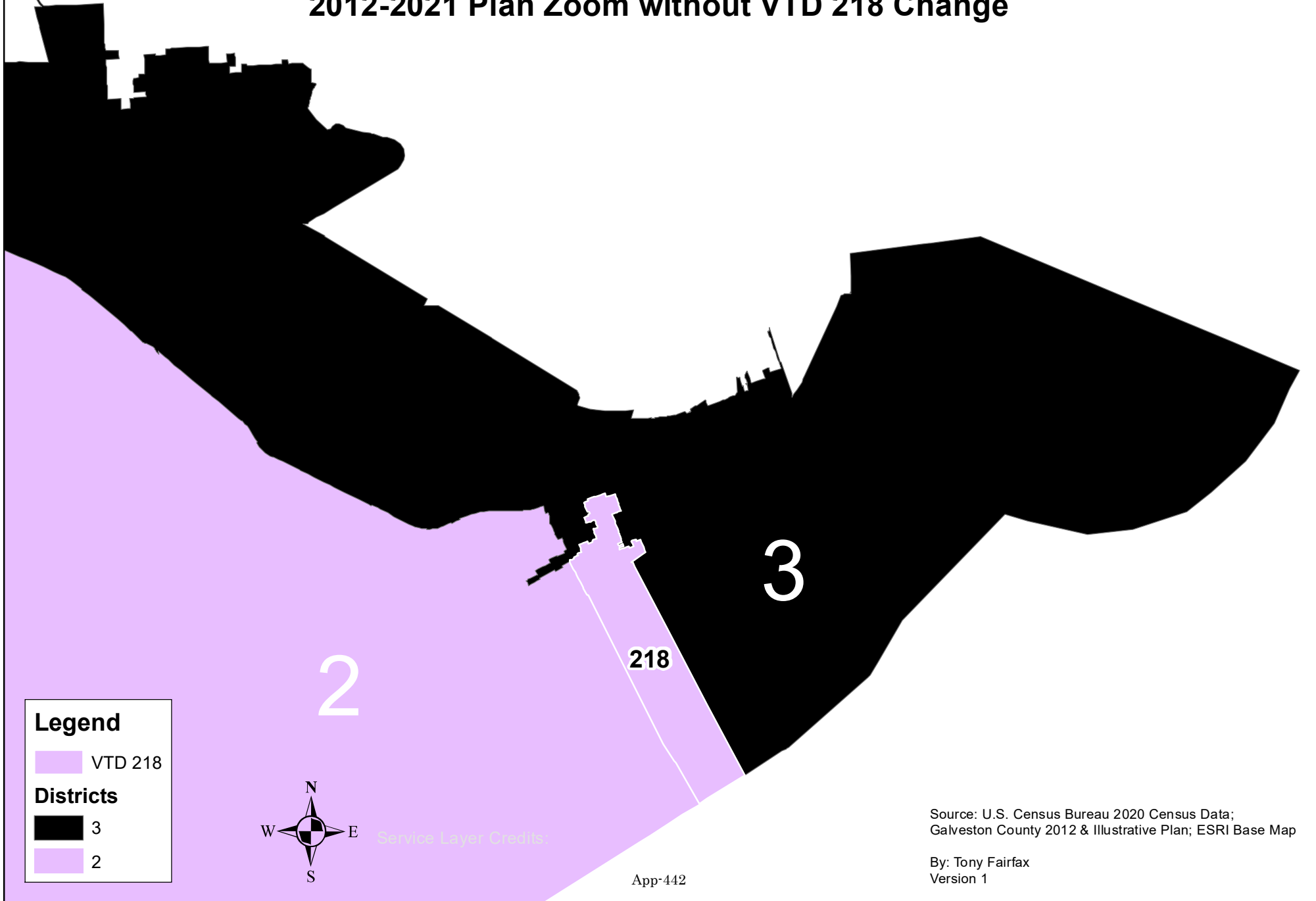
Source: U.S. Census Bureau 2020 Census Data; Galveston County Illustrative Plan; ESRI Base Map

By: Tony Fairfax
Version 1

Galveston County, Texas

Commissioner Precincts 2 & 3

2012-2021 Plan Zoom without VTD 218 Change



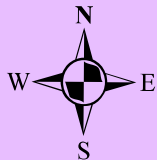
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 VTD 218

Districts

 3

 2



Service Layer Credits:

App-442

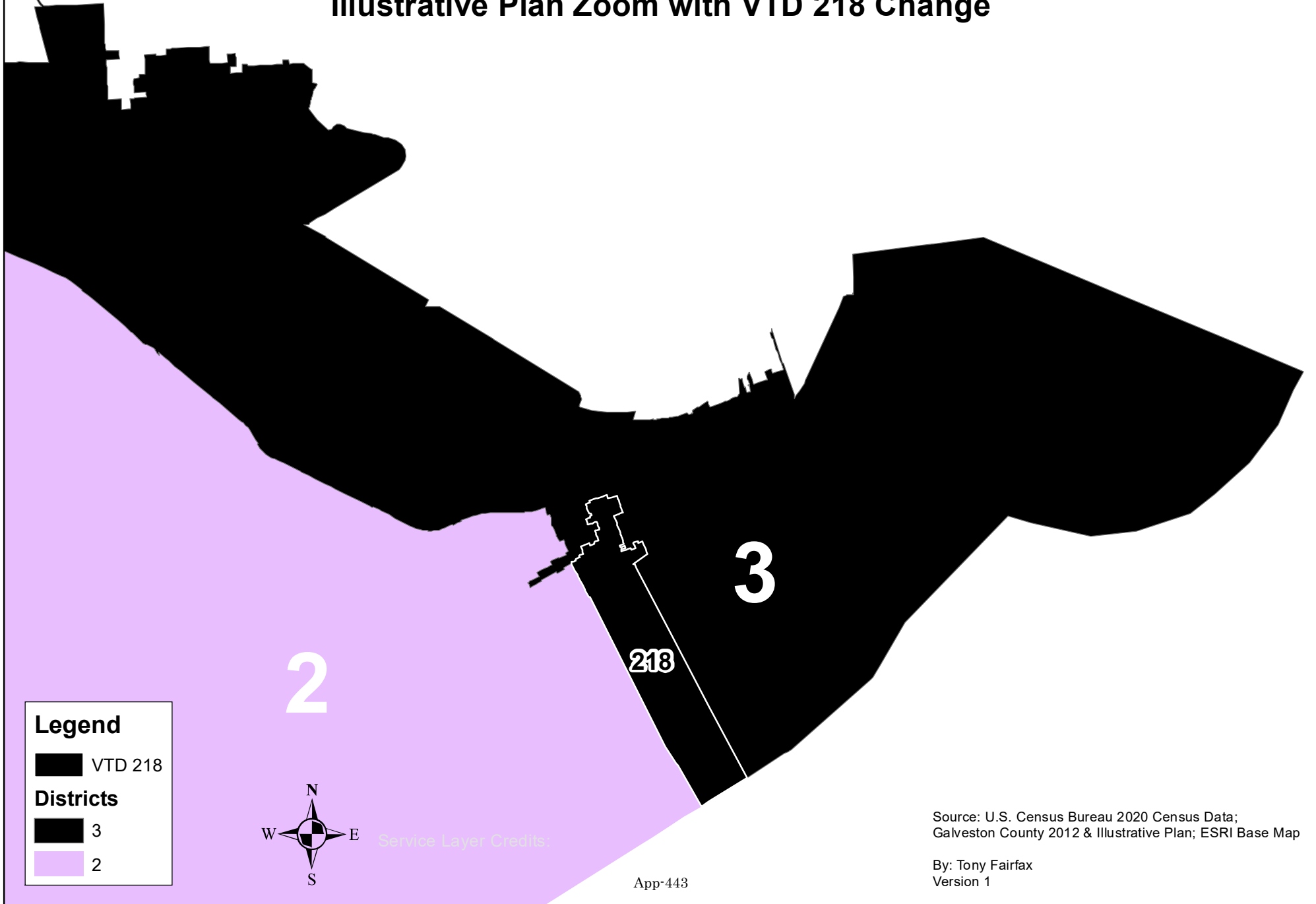
Source: U.S. Census Bureau 2020 Census Data;
Galveston County 2012 & Illustrative Plan; ESRI Base Map

By: Tony Fairfax
Version 1

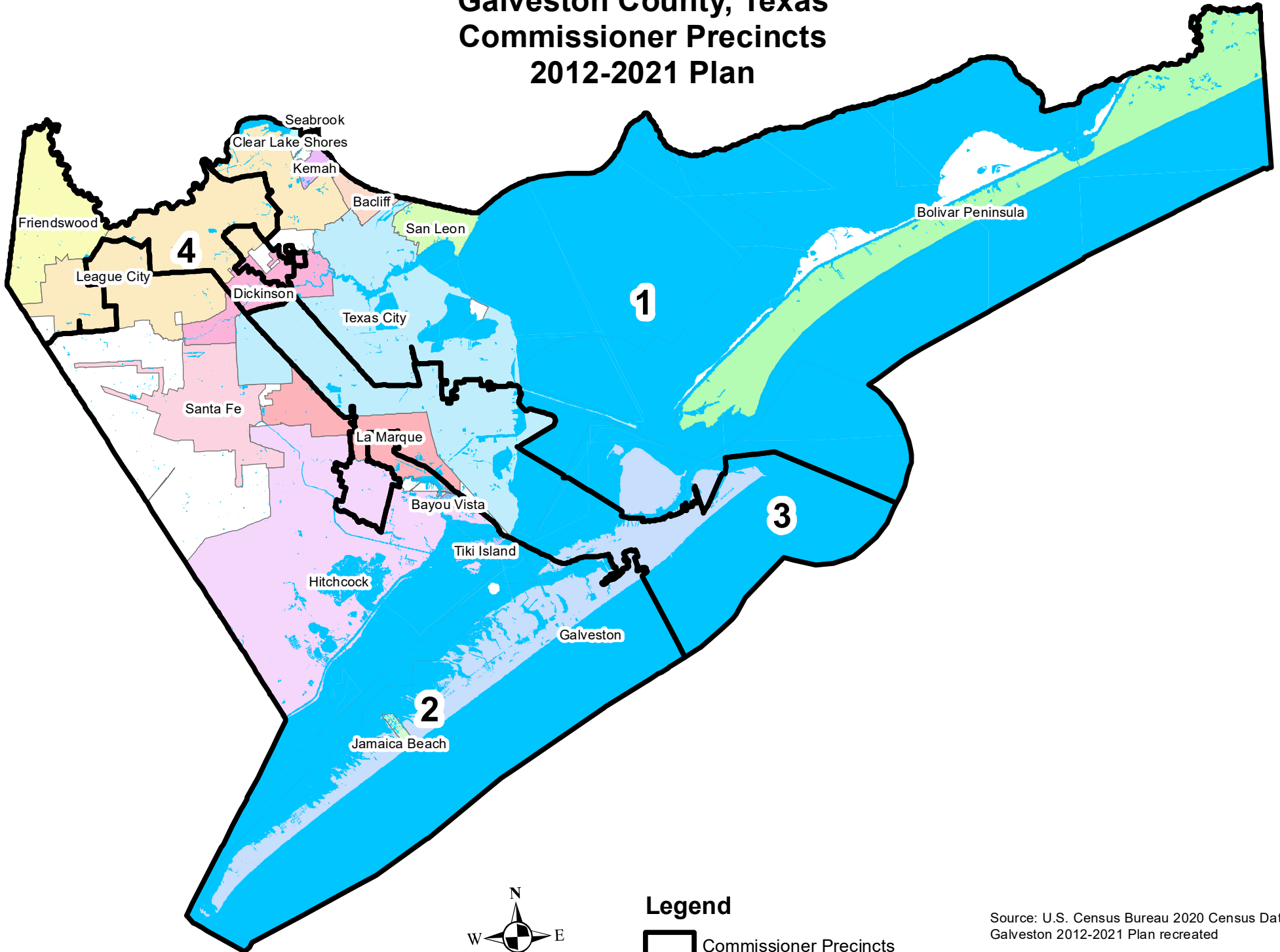
Galveston County, Texas

Commissioner Precincts 2 & 3

Illustrative Plan Zoom with VTD 218 Change



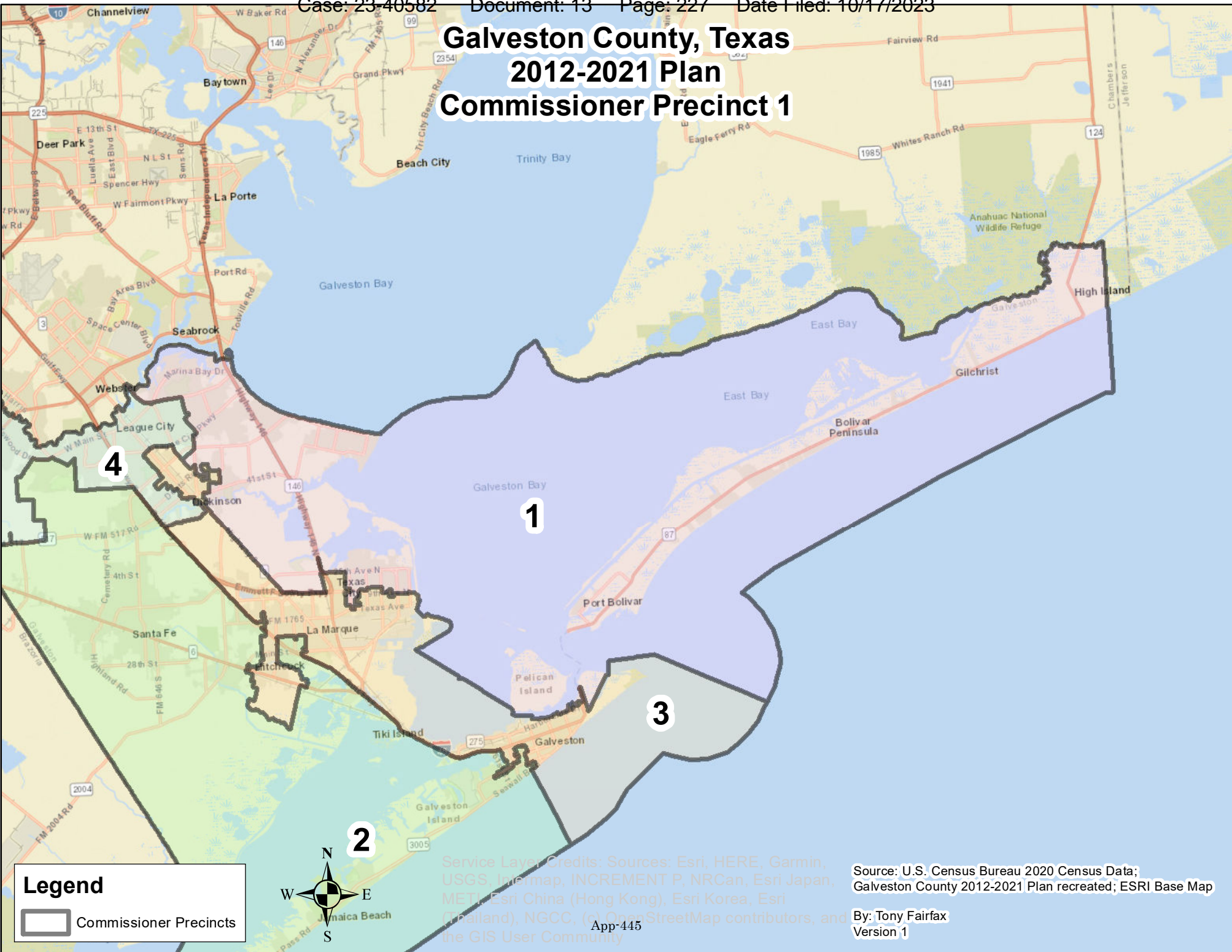
Galveston County, Texas Commissioner Precincts 2012-2021 Plan



Source: U.S. Census Bureau 2020 Census Data,
Galveston 2012-2021 Plan recreated

By: Tony Fairfax
Version 1

Galveston County, Texas 2012-2021 Plan Commissioner Precinct 1



Legend

Commissioner Precincts

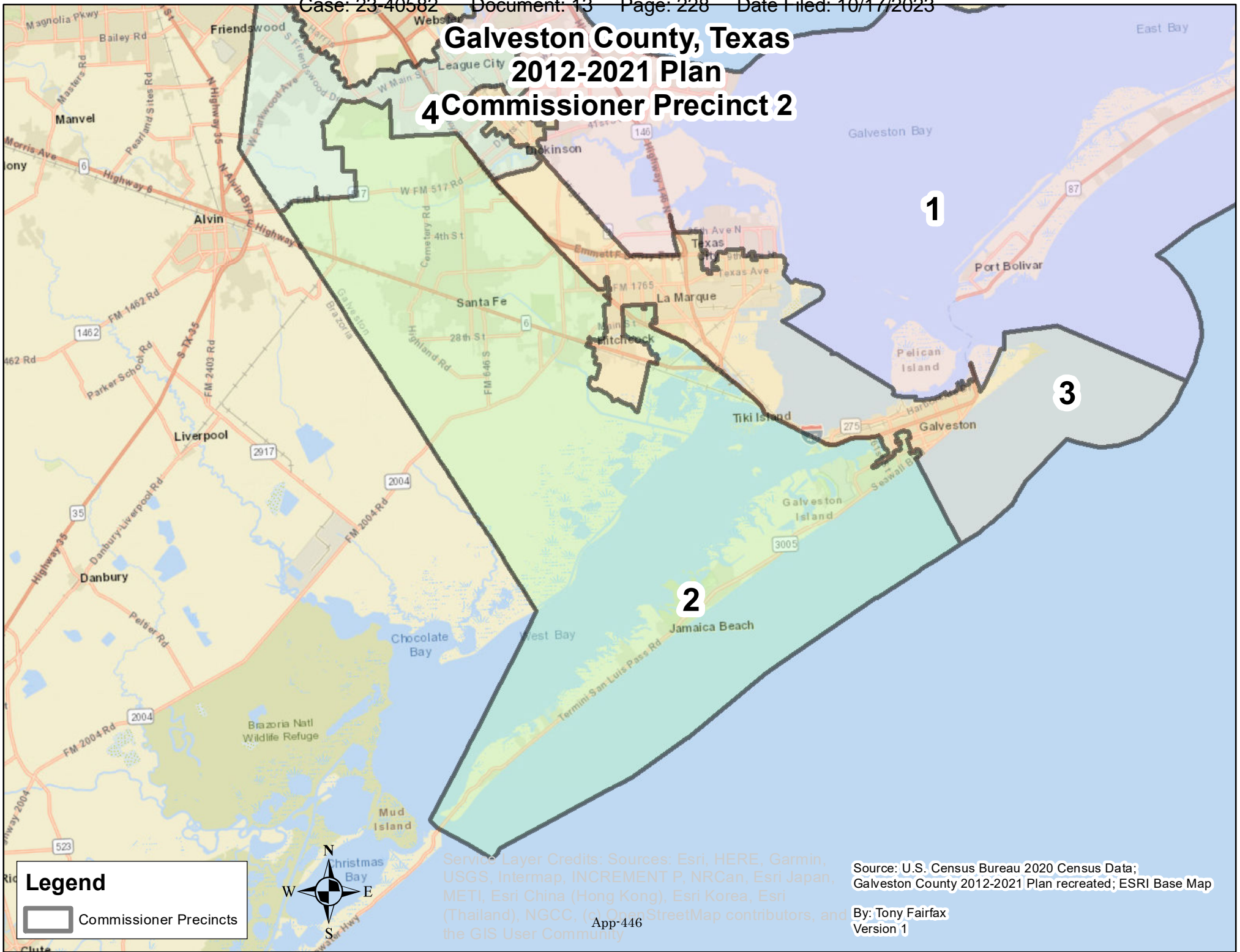


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Source: U.S. Census Bureau 2020 Census Data; Galveston County 2012-2021 Plan recreated; ESRI Base Map

By: Tony Fairfax
Version 1

Galveston County, Texas 2012-2021 Plan 4 Commissioner Precinct 2



Legend

Commissioner Precincts

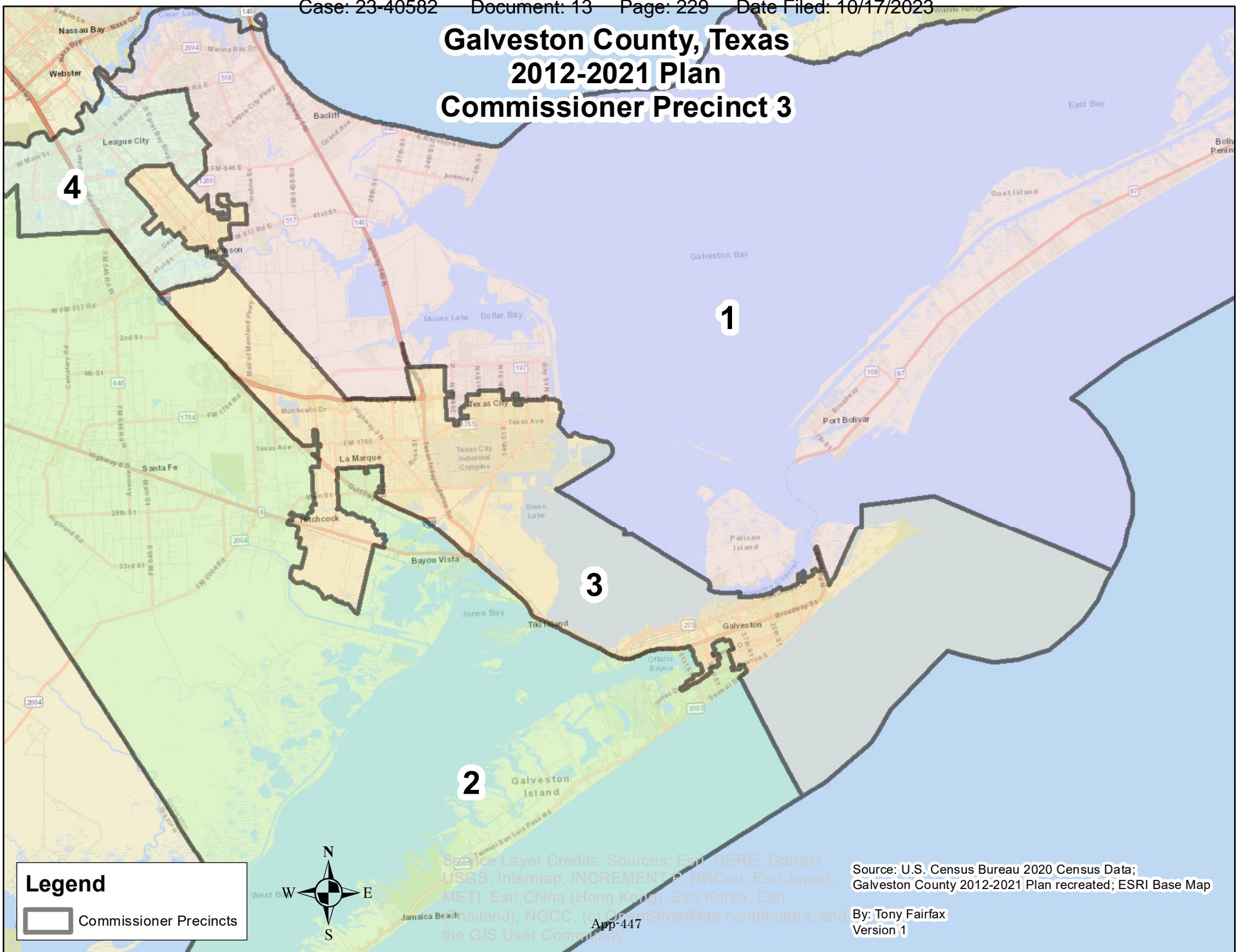


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Source: U.S. Census Bureau 2020 Census Data; Galveston County 2012-2021 Plan recreated; ESRI Base Map

By: Tony Fairfax
Version 1

Galveston County, Texas 2012-2021 Plan Commissioner Precinct 3



Legend

 Commissioner Precincts

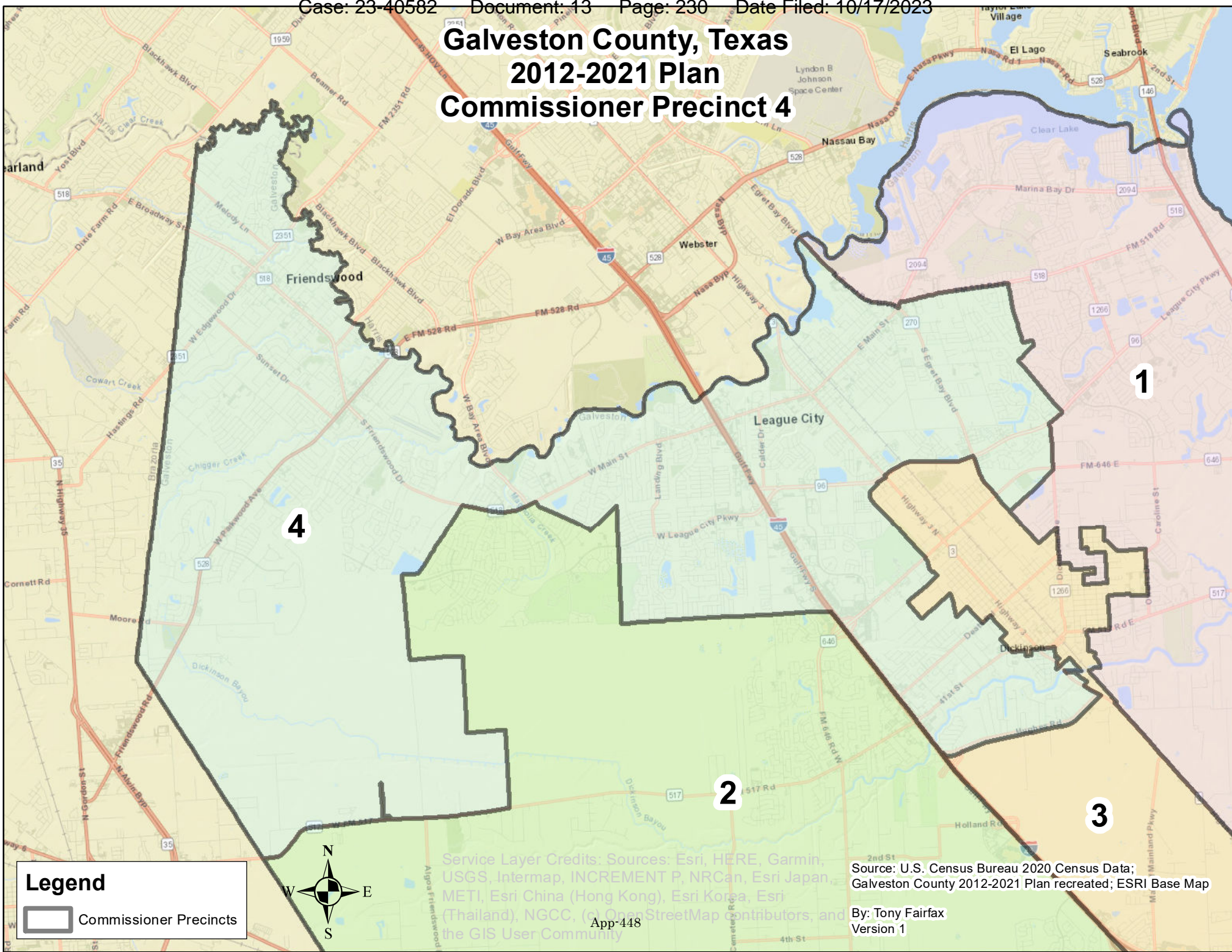


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Source: U.S. Census Bureau 2020 Census Data; Galveston County 2012-2021 Plan recreated; ESRI Base Map

By: Tony Fairfax
Version 1

Galveston County, Texas 2012-2021 Plan Commissioner Precinct 4



Legend

 Commissioner Precincts



Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

App-448

Source: U.S. Census Bureau 2020 Census Data; Galveston County 2012-2021 Plan recreated; ESRI Base Map

By: Tony Fairfax
Version 1

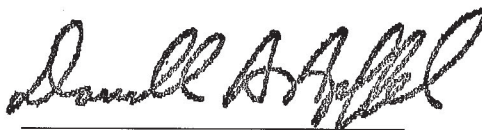
APPENDIX H

Declaration of Darrell Apffel

Darrell Apffel, pursuant to 28 U.S.C. §1746, hereby certifies as follows:

1. My name is Darrell Apffel. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.
2. I currently serve as the elected County Commissioner for Galveston County Commissioner Precinct 1.
3. I was first elected to this position in 2016, and have been re-elected for every four-year term thereafter. My current term is expiring and I will be running for reelection in the November 2024 election.
4. I have reviewed Plaintiffs' Exhibit 339, the Fairfax illustrative map, and my residence is not included in Precinct 1 in that exhibit.
5. There are two County Commissioner positions that will be on the November 2024 ballot—Precinct 1, and Precinct 3.
6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 17, 2023.



Darrell Apffel

APPENDIX 16

No. 23-40582

**United States Court of Appeals
for the Fifth Circuit**

Honorable Terry Petteway; Honorable Derrick Rose; Honorable Penny Pope,
Plaintiffs-Appellees

v.

Galveston County, Texas; Galveston County Commissioners Court; Mark Henry, *in his
official capacity as Galveston County Judge*

Defendants-Appellants

United States of America,

Plaintiff-Appellee

v.

Galveston County, Texas; Galveston County Commissioners Court; Mark Henry, *in his
official capacity as Galveston County Judge*

Defendants-Appellants

Dickinson Bay Area Branch NAACP; Galveston Branch NAACP; Mainland Branch
NAACP; Galveston LULAC Council 151; Edna Courville; Joe A. Compian; Leon
Phillips,

Plaintiffs-Appellees

v.

Galveston County, Texas; Mark Henry, *in his official capacity as Galveston County
Judge*; Dwight D. Sullivan, *in his official capacity as Galveston County Clerk*,

Defendants-Appellants

On appeal from the United States District Court
for the Southern District of Texas

USDC Nos. 3:22-CV-00057, 3:22-CV-00093, 3:22-CV-00117

**PETTEWAY APPELLEES' RESPONSE IN OPPOSITION TO APPELLANTS'
RENEWED EMERGENCY MOTION TO STAY PENDING APPEAL**

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Valencia Richardson
Simone Leeper
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Counsel for Petteway Appellees

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Houston, TX 77069
(281) 580-6310

Counsel for Petteway Appellees

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of 5th Cir. Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Appellants:

Galveston County, TX
Galveston County Commissioners Court
The Honorable Mark Henry
Galveston County Clerk Dwight Sullivan

Counsel for Appellants:

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Andrew Mytelka
Angela Oldade
Jordan Raschke Elton
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INTRODUCTION

The Supreme Court has warned that “[c]ourt orders affecting elections, *especially conflicting orders*,” result in voter and candidate confusion and are inappropriate as election deadlines near. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (emphasis added). This Court allowed the administrative stay previously in effect to terminate last Tuesday, November 28. It confirmed the termination of the stay in an order issued Thursday, November 30. The electoral map for the 2024 Galveston County election is set: Map 1 is governing the election pursuant to the district court’s injunction and candidates are filing to run for county commissioner under that map in reliance on this Court’s November 30 order. The filing deadline is just one week from today, December 11.

The County invites this Court to contradict its order—issued just last *Thursday*—and change the election map with just *one week* left in the candidate filing period. That would directly contravene the Supreme Court’s *Purcell* instructions—something this Court cannot do. The time to seek a stay has come and gone. The County failed to move for a stay with the en banc Court on November 10, notwithstanding the fact that it advised the parties that it would do so, *see* Doc. 153 at 3, and then failed again to do so when the administrative stay terminated on November 28. Instead, it waited three more days until Friday, December 1 to file its “emergency” motion—and boldly demanded that a stay issue *that same day* because

the County viewed it as the last possible day to obtain effective relief. By the County's own admission, time is up.

But even if the County had not delayed and even if issuing a stay would not cause conflicting orders from this Court, a stay is inappropriate. The County seeks to *change* existing law with en banc review in this case. That is not an appropriate circumstance in which to grant a stay—particularly on the eve of an election deadline. This is especially so here, where the County has left unchallenged the district court's factual findings related to intentional discrimination and racial gerrymandering, claims upon which Plaintiffs will quite evidently prevail on remand even if this Court overturns its *Clements* and *Campos* precedent. In findings uncontested by the County, the district court found the circumstance of this case to be “[a]typical,” “stark,” “jarring,” “mean-spirited,” “egregious,” and “stunning.” ROA.16029. The County's redistricting attorney consulted racial shading maps showing concentrations of Black voters and then instructed the mapdrawer with precise instructions that fragmented that population into four pieces. ROA.15953, 15956. His testimony about the use of race in the redistricting process was directly contradicted by the County's own witness. ROA.15956. The district court rejected every non-racial explanation for the map's purpose as false, *post hoc* pretext. ROA.15977-15982. The contemporary political environment in Galveston County includes a local political figure referring to a Black Republican as a “typical nig.”

ROA.15988. Given the facts and circumstances of this case, a stay is wholly unwarranted.

BACKGROUND

I. Factual Background

During the 2021 redistricting process, the Commissioners Court proposed two redistricting maps to the public. ROA.15960. The first proposal, Map 1, largely maintained the same lines as the plan in place for the past decade but added the Bolivar Peninsular to Commissioner Precinct 3. Map 1 retained Precinct 3 as a majority-minority precinct, as it had been for 30 years. ROA.15911, 15988. The second proposal, Map 2, was ultimately adopted. Map 2 “has no commissioners precinct with a Black and Latino CVAP larger than 35%,” and “Precinct 3 now has the smallest such population at 28%.” ROA.15911-15912.

The district court carefully catalogued the events leading up to the adoption of the challenged map under the *Arlington Heights* framework for assessing intentional discrimination claims. ROA.15940-15982. In doing so, the district court rejected as false and pretextual every non-racial justification the County proffered to explain why it “summarily carved up and wiped off the map” the majority-minority precinct. ROA.15977-15982, 16028. The court credited alternative maps illustrating that the County’s proffered justifications were false. ROA.15980-15981. The County Judge and commissioners who voted in favor of the enacted map *disclaimed* any

partisan motivation for the dismantling of the majority-minority precinct. ROA.15981. The County's redistricting lawyer and its demographer offered contradictory testimony about the instructions regarding the use of racial data in the process. ROA.18562-18563; 18872-18873. The redistricting lawyer, whom the district court did not credit in resolving that disputed testimony, was found by the court to have examined racial shading maps of Black population before dictating to the demographer the precise placement of lines that splintered that population among all four precincts and converted the majority-minority Precinct 3 into having the lowest minority share of any precinct. ROA.15953, 15956. The County Judge and commissioners who voted in favor of Map 2 all knew where the minority populations were concentrated and that Map 2 fragmented them, ROA.15953, and Map 2 was the "visualization of the instructions" the County Judge provided the mapdrawers, ROA.15956.

The commissioners who formed the majority in support of Map 2 testified they were fine with Map 1. *See* ROA.15958. The County has conceded that Map 1 is a compact,¹ legally compliant map that was drawn without regard to race. ROA.15912-15913.

¹ The County's counsel conceded at oral argument that Precinct 3 under Map 1 is compact. Fifth Circuit Oral Argument at 10:10-10:40.

II. Procedural Background

On November 10, 2023, a panel of this Court affirmed the district court's injunction, holding that "[t]he district court appropriately applied precedent when it permitted the black and Hispanic populations of Galveston County to be aggregated for purposes of assessing compliance with Section 2." Doc. 118-1 at 5-6. Nevertheless, the panel requested a poll on whether to rehear the case en banc to revisit this Court's precedent holding that there is no single-race threshold requirement for vote dilution claims under Section 2 of the Voting Rights Act. The panel also extended the administrative stay that had been in effect "pending en banc poll." Doc. 122-1.

On November 28, 2023, this Court ordered rehearing en banc, with oral argument to take place in May 2024. The administrative stay previously imposed expired on that day, a fact of which the County was aware. *See* Response to Emergency Application to Vacate Stay at 12, *Petteway, et al. v. Galveston County, et al.*, No. 23A449 (U.S. Nov. 28, 2023). On November 30, 2023, this Court issued an order confirming that the stay had terminated on November 28. The next day, the district court issued an order confirming that Map 1 would be imposed for the 2024 election and scheduling a status conference for today, Monday December 4. That status conference occurred this morning and the County's counsel confirmed that Map 1 is being implemented pursuant to the district court's order without any issues

or need for further court action and the County did not request an extension of the candidate filing period from the district court. On Friday, December 1, the County filed its “emergency” motion requesting that a stay be issued that very day. This came three days after the administrative stay had terminated and three weeks after its prior motion for a stay was rendered moot by the panel’s decision affirming the injunction.

ARGUMENT

I. The *Purcell* principle forecloses a stay.

Purcell considerations make a stay inappropriate in this case. The Supreme Court has held that lower courts must not issue “conflicting orders” on the eve of election deadlines. *Purcell*, 549 U.S. 4-5. The previous administrative stay in this case ended last Tuesday—a fact this Court confirmed in an order issued on Thursday. A contradictory order reimposing a stay now—just one week before the candidate filing deadline—would directly contravene the Supreme Court’s admonition not to issue conflicting court orders in the midst of an election. Candidates are filing for office pursuant to the district court’s injunction and imposition of Map 1, and in reliance on this Court’s order confirming the termination of the stay. The County itself argued that Friday, December 1 was the final day it could obtain effective relief in its emergency stay motion. That date has passed. A decision to reverse course and

change the map at this eleventh hour would directly contravene the Supreme Court's *Purcell* jurisprudence.

Even in the absence of the prospect of late-breaking conflicting orders, *Purcell* would counsel against a stay. The district court adhered to both Supreme Court precedent in *Grove* as well as three decades of this Court's precedent. In such circumstances, a stay is inappropriate. *See Merrill v. Milligan*, 142 S. Ct. 879, 883 (2022) (Mem.) (Roberts, C.J., dissenting) ("I would not grant a stay. As noted, the analysis below seems correct as *Gingles* is presently applied, and in my view the District Court's analysis should therefore control the upcoming election."). Moreover, unlike when the Supreme Court ordered a stay in *Milligan*, the decision in this case is the product of a full trial on the merits, a final judgment, and an affirmance on appeal²—not merely a preliminary injunction. *See id.* at 881 (Kavanaugh, J., concurring) (noting case was at "preliminary juncture" and the merits were not "clearcut"). The map enjoined by the district court *upended*—rather than preserved—"the same basic districting framework that the [County] has maintained for several decades." *Id.* at 879 (Kavanaugh, J., concurring).

Under the unique circumstances of this case, *Purcell* counsels against a stay. The district court's factual findings—"to which the Court of Appeals owes deference"—reveal a starkly discriminatory redistricting process and map infused

² The panel's decision has been vacated in light of the of en banc rehearing.

with racial motivations. *Purcell*, 549 U.S. at 5. The County has not challenged any of the *Arlington Heights* or racial gerrymandering factual findings on appeal. Any further stay would create confusion among the public and potential candidates in light of awareness of the district court's more recent order.³ Any further stay, imposed *at a minimum* almost a week after the prior stay terminated, risks interfering with the orderly conduct of the election.

Under *Purcell*, an eleventh-hour effort to upend decades of existing law should not be permitted to disrupt the electoral process. Yet that is exactly what the County seeks to do. And it has not acted with haste in its effort to do so. On November 10, 2023, the County's counsel indicated that they would file a motion for a stay pending en banc review, but they never did. Doc. 153 at 3 (November 10, 2023 Email). The County then claimed to have immediately known that the administrative stay expired on November 28, yet still it did nothing. *See* Response to Emergency Application to Vacate Stay at 12, *Petteway, et al. v. Galveston County, et al.*, No. 23A449 (U.S. Nov. 28, 2023). Only after plaintiffs filed a motion with the district court regarding remedial issues did the County think to move the en banc

³ *See, e.g.*, B, Scott McLendon, *Judge order Galveston County to use map that largely preserves Pct. 3 for 2024 elections*, The Daily News (Dec. 1, 2023), https://www.galvnews.com/news/judge-orders-galveston-county-to-use-map-that-largely-preserves-pct-3-for-2024-elections/article_31e8e37f-2fa4-545b-97af-b5ebe558124c.html

Court for a stay.⁴ Although the County claimed to urgently need relief by December 1, it sat on its hands before requesting that relief. A party who delays seeking relief in an election case cannot claim it suffers irreparable harm from the injunction. The County's self-identified deadline of December 1 for effective relief has come and gone. It is too late for a new stay.

II. The County is not likely to succeed on the merits.⁵

A. The district court's factual findings evidencing intentional discrimination and racial gerrymandering make a stay unwarranted.

The district court issued 42 pages of factual findings cataloguing a redistricting process in Galveston County marked by intentional racial discrimination and racial gerrymandering and rejecting as false pretext all proffered non-racial justifications for the decimation of a 30-year-old majority-minority precinct. ROA.15940-15982. The evidence of intentional discrimination and racial gerrymandering makes a stay unjust in this case. Although the district court did not need to issue a legal conclusion on intent and racial gerrymandering considering its

⁴ Even this delayed request was procedurally defective as the County failed to file a renewed request for a stay with the district court prior to requesting it of this Court. *See* Fed. R. App. P. 8.

⁵ The County contends that it need only show that it has a "substantial case on the merits when a serious legal question is involved" in order to obtain a stay. Mot. at 6 (quoting *U.S. v. Baylor Univ. Med. Ctr.*, 711 F.2d 38, 39 (5th Cir. 1983)). But the validity of *Baylor* is doubtful following the Supreme Court's decision in *Nken v. Holder*, 556 U.S. 418 (2009).

Section 2 results ruling, the unmistakable conclusion from its factual findings is that the county's enacted plan "bears the mark of intentional discrimination," *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440 (2006) ("*LULAC*"). In *LULAC*, the Supreme Court reached that conclusion based upon the tinkering around the edges of Texas's 23rd congressional district to prevent its burgeoning Latino majority from electing their candidate of choice. *Id.* Here, a thirty-year performing majority-minority precinct was "summarily carved up and wiped off the map." ROA.16028. The district court characterized the process as "[a]typical," "mean-spirited," "egregious," "stark," "jarring," and "stunning." ROA.16028-16029. The district court found that County Judge Henry and the commissioners knew that they were dismantling the sole majority-minority precinct, ROA.15939, and that every single non-racial justification the county offered to justify that deliberate action was false and pretextual. ROA.15977-15982. Normally, courts confront the difficulty of disentangling race from partisanship in these cases. *See, e.g., Abbott v. Perez*, 585 U.S. ___, 138 S. Ct., 2305, 2330 n.25; (2018), *cf. Cooper v. Harris*, 581 U.S. 285, 308 (2017). Not here—the commissioners who voted in favor of the plan, Judge Henry, and the County's redistricting attorney, Mr. Oldham, all expressly denied a partisan motivation. ROA.15981. And the district court credited alternative maps that disproved the *post hoc* litigation explanation that a desire for a "coastal precinct" explained the dismantling of Precinct 3. ROA.15980-15981; *see Cooper*, 581 U.S.

at 317 (such alternative maps “can serve as key evidence” in “undermining a claim that an action was based on a permissible, rather than prohibited, ground”). These facts alone suffice to denial of a stay.

No authority permits the decimation of an existing majority-minority district absent some race-neutral justification (e.g., minority population decline). Indeed, the intentional destruction of a majority-minority district obviates the requirement to satisfy the first Gingles precondition by aggregating Black and Latino voters. *See, e.g., Bartlett v. Strickland*, 556 U.S. 1, 20 (2009) (plurality) (“Our holding does not apply to cases in which there is intentional discrimination against a racial minority”); *id.* at 24 (“[I]f there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments”); *Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 771 (9th Cir. 1990) (holding that first Gingles precondition relaxed in cases of intentional discrimination); *Perez v. Abbott*, 253 F. Supp. 3d 864, 944 (W.D. Tex. 2017) (rejecting argument that statutory VRA intentional discrimination claims required satisfying first Gingles prong); *Comm. for a Fair & Balanced Map v. Ill. Bd. of Elections*, No. 1:11-CV-5065, 2011 WL 5185567, at *4 (N.D. Ill. Nov. 1, 2011) (“[T]he first Gingles factor is appropriately relaxed when intentional discrimination is shown . . .”). The County has offered no truthful nonracial explanation—rational, compelling, or otherwise—nor did the

district court find one, to justify the intentional destruction of Precinct 3 as an effective majority-minority precinct. Even if this Court ultimately interprets Section 2 not to authorize discriminatory results-only claims by multi-racial plaintiff groups, no one contends that intentional discrimination or racial gerrymandering is permissible. The district court’s factual findings related to the “egregious” dismantling of this existing majority-minority precinct thus make a stay of the district court’s order pending further appellate review improper.

Plaintiffs cannot be made to suffer an intentionally discriminatory, racially gerrymandered map simply because the district court simultaneously adhered to this Court’s settled Section 2 precedent authorizing Section 2 claims on behalf of Black and Latino voters—and also adhered to principles of constitutional avoidance to decline to issue legal conclusions to accompany its discriminatory intent and racial gerrymandering factfinding. *See Shelby County v. Holder*, 570 U.S. 529, 557 (2013) (noting that “injunctive relief is available in appropriate cases to block voting laws from going into effect” and observing that “any racial discrimination in voting is too much”). Plaintiffs are likely to ultimately prevail, even if on their constitutional claims on remand, making a stay of the injunction inappropriate.

B. The County’s single-race argument is unlikely to prevail.

A stay is also inappropriate on the merits of the Section 2 claim. The Supreme Court has assumed that Section 2 prohibits vote dilution on account of race

regardless of whether the class of injured persons constitutes a monolithic racial group. In *Growe v. Emison*, the Court “[a]ssum[ed]” that “it was permissible for the District Court to combine distinct ethnic and language minority groups for purposes of assessing compliance with § 2” and held that, in such cases, “proof of minority political cohesion is all the more essential.” 507 U.S. 25, 41 (1993); *see also Bartlett*, 556 U.S. at 13-16 (applying holding to white crossover voter districts and not minority “coalition” districts). Here, the district court found that “the combined Black and Latino coalition is highly cohesive,” ROA.16016, and a merits panel of this Court affirmed that conclusion. *See* Panel Opinion at 5-6, Doc. 118-1. That inquiry is consistent with *Growe* and the majority rule of the circuits. *See Pope v. Cnty. of Albany*, 687 F.3d 565, 574 n.5 (2d Cir. 2012); *Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm’rs*, 906 F.2d 524, 526 (11th Cir. 1990).

This accords with Section 2’s text. “Congress enacted the Voting Rights Act of 1965 for the broad remedial purpose of rid[ding] the country of racial discrimination in voting” and the Supreme Court has held that “the Act should be interpreted in a manner that provides the broadest possible scope in combatting racial discrimination.” *Chisom v. Roemer*, 501 U.S. 380, 403 (1991) (internal quotation marks and citations omitted) (alteration in original). The plain text of Section 2 authorizes vote dilution claims without imposing a “single race” threshold barrier to relief. Section 2(a) of the VRA prohibits any voting standard or practice that “results

in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,” or language-minority status. 52 U.S.C. §§ 10301(a), 10303(f). Section 2(b) sets forth how a violation of Section 2(a) is established, and notes that it applies to “a class of citizens protected by subsection (a).” *Id.* § 10301(b). The “class of citizens” to which Section 2(b) refers is not a singular minority group, but rather those “protected by subsection (a)”—i.e., “any citizen” subject to a denial or abridgment of voting rights “on account of race or color,” or language-minority status. *Id.* § 10301(a), (b). Nothing in the text of Section 2 requires every member of the “class of citizens” to share the same race, as opposed to the same experience of being politically excluded “on account of race,” whatever their race is. *Id.* This is the common legal usage of “class”—a reference to those suffering the same injury caused by the defendant. *See, e.g.,* Fed. R. Civ. P. 23. And reading “class of citizens” to include a combination of protected minority citizens accords with the last antecedent grammatical rule. *See Barnhart v. Thomas*, 540 U.S. 20, 26 (2003).

The County contends that because Section 2 refers to a “class of citizens” rather than to “classes of citizens,” it imposes a single-race threshold for Section 2 claims. Mot. at 11. But Congress rejected this method of statutory interpretation in the Dictionary Act. “In determining the meaning of any Act of Congress, unless the context indicates otherwise—words importing the singular include and apply to

several persons, parties, or things.” 1 U.S.C. § 1. Section 2(b)’s use of “class” therefore includes “classes.”

The exception to this rule—*i.e.*, when “context indicates otherwise”—is not to be readily deployed. Only where the Dictionary Act’s rule would “forc[e] a square peg into a round hole” and create an “awkward” result does the general rule give way. *Rowland v. Cal. Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 200 (1993). In making that determination, Congress’s purpose in enacting the statute guides the analysis. *Id.* at 209-10. For example, in *Wilson v. Omaha Tribe*, the Supreme Court held that the general rule in the Dictionary Act that “person” includes artificial entities like corporations applied to a statute that placed the burden of proof on a “white person” litigating a property claim against an Indian. 442 U.S. 653, 658 (1979) (interpreting 25 U.S.C. § 194). The Court reasoned that the “protective purposes of the Acts in which § 194 . . . [was] a part” would be frustrated if it did not apply to artificial entities, and thus rejected the argument that “context indicate[d] otherwise” to make the Dictionary Act’s rule inapplicable. *Id.* at 666.

If “white person” is insufficiently specific to refer to white humans as opposed to limited liability corporations, then there is no plausible argument that Congress meant to limit “members of a class of citizens” in Section 2(b) to a single racial group, when it specified no racial group at all. This is especially so considering Congress’s “broad remedial purpose of rid[ding] the country of racial discrimination

in voting” through passage of the Voting Rights Act and the judiciary’s obligation to interpret Section 2 “in a manner that provides the broadest possible scope in combatting racial discrimination.” *Chisom*, 501 U.S. at 403 (internal quotation marks and citations omitted) (alteration in original). Interpreting Section 2 to authorize discriminatory vote dilution by a white majority against a cohesive population of Black and Latino voters self-evidently would frustrate Congress’s desire to “rid[] the country of racial discrimination in voting.” *Id.* One need only read the district court’s factual findings in this case to see that.

Moreover, it is the contrary reading that would “forc[e] a square peg into a round hole.” *Rowland*, 506 U.S. at 200. The County’s interpretation assumes that every Section 2 plaintiff can—or must—be of a single race. What of a plaintiff who is half Black and half Latino? Under the “single race” theory advanced by the County, such a plaintiff would seemingly be required to satisfy the *Gingles* preconditions for a class of exclusively half Black, half Latino citizens. Or perhaps she would be forced to choose in her complaint—she can plead herself to be Black or Latina but not both—even though she is both and the totality of circumstances proves both Black and Latino voters in the jurisdiction suffer an unequal opportunity to participate in the political process on account of their race. *See* 52 U.S.C. § 10301(a). As Judge Keith explained in his dissent from the Sixth Circuit’s *Nixon* decision, that circuit’s reading of Section 2 is “most disturbing” in that it “requires

the adoption of some sort of racial purity test. . . . Must a community that would be considered racially both Black and Hispanic be segregated from other Black who are not Hispanic?” *Nixon v. Kent County*, 76 F.3d 1381, 1401 (6th Cir. 1996) (Keith, J., dissenting).

There is also little risk that proportionality will take hold if Section 2 is not limited to single-race plaintiff groups. First, as the Supreme Court explained last Term in *Milligan*, the first *Gingles* precondition and this Court’s case law ward against proportionality. 599 U.S. at 1, 26-27. Second, this case illustrates that the perceived threat of proportionality is misplaced—Black and Latino voters account for 38% of Galveston County’s population but the district court’s injunction merely returns them to having an equal opportunity to elect their candidates of choice in 25% (rather than 0%) of the precincts—the configuration that has existed for three decades.

The County discusses at length how the failure to impose a single-race threshold requirement would merely sanction partisan political alliances untethered to racial discrimination. Mot. at 7-11. For this point, the County relies on *LULAC* and *Bartlett*, in which the Supreme Court held that Section 2 does not extend to claims in which *white voters* are aggregated with minority voters. But the County’s appeal to influence and crossover districts is misplaced. In influence and crossover districts, the white voters necessary for the *Gingles* prong one numerosity

requirement have not suffered “a denial or abridgement of the right . . . to vote on account of race or color.” 52 U.S.C. § 10301(a). They simply share the same *candidate choice* as minority voters who *have* suffered such a denial or abridgment. They are thus definitionally not among the “class of citizens protected by subsection (a)” and do not have “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b). That is nothing like the Galveston County Black and Latino voters whom the district court found—based upon a searching, local appraisal—have an unequal opportunity to vote on account of race.

The County reads Section 2 of the Voting Rights Act to contain a glaring loophole in jurisdictions that have non-monolithic minority populations. Even where those minority voters have suffered a shared history of official discrimination that continues to burden their ability to participate in the political process, vote cohesively, and see their preferred candidates defeated by the strength of overwhelming white bloc voting, the County would have the Court exempt those minority voters from the protections of the Voting Rights Act. The basis for this discrimination exemption? Congress’s use of the word “class” instead of “classes.” Never mind that nowhere did Congress specify that “class” refers to a single racial group, and never mind that Congress codified its rejection of precisely this sort of plural/singular nitpicking of congressional intent on the opening page of the U.S.

Code. *See* 1 U.S.C. § 1. Congress did not sanction racial discrimination in voting by omitting the letters “-es” in Section 2.

II. The County fails to show that it will be irreparably injured absent a stay

The County faces no irreparable injury, or any injury, if this Court denies a stay. The district court’s injunction merely returns the status quo *ex ante* districting plan that governed County elections for decades and puts in place a map that the County drew and has conceded is lawful. The County’s main defense at trial was that it *would have adopted Map 1* if only Commissioner Holmes—then the only Black Commissioner—had pleaded more vociferously for it. *See, e.g.*, ROA.16149-16150, 18317, 18579-18580, 18581, 18597, 18681, 18950-18951, 19578. The County cannot claim that a map it drew, says is lawful, and contends would have been adopted possibly causes it irreparable harm.

The County contends that the imposition of Map 1 harms potential Republican candidates who live in Map 2’s iteration of Precinct 3 but not Map 1’s iteration of Precinct 3. Mot. at 13-14. But the same is true of potential Democratic candidates who live in Map 2’s iteration of Precinct 3 but not Map 1’s. In any event, the County does not explain how *it* is irreparably harmed by Map 1. Potential candidates do not have any right to a particular election map—least of all one that dilutes minority voting strength. Moreover, the district court made a factual finding—one that has not been challenged on appeal—that partisanship did not motivate the selection of

Map 2. ROA.15955. The effort by the County’s litigation counsel to make partisanship the *post hoc* rationale for the plan fails.

III. Plaintiffs, not the County, will be substantially injured by a stay.

Plaintiffs will be seriously and irreparably injured by a stay. Irreparable harm occurs where it “would be difficult—if not impossible—to reverse the harm,” *Hollingsworth, v. Perry*, 558 U.S. 183, 195 (2010), or where a party cannot “be afforded effective relief” even if she eventually prevails on the merits, *Nken*, 556 U.S. at 435. Vote dilution, no less than vote denial, causes irreparable harm because of the “strong interest” in the right to vote, *Purcell*, 549 U.S. at 4, and to do so free of discrimination. “[O]nce [an] election occurs, there can be no do-over[s] and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin [a discriminatory] law.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

If the discriminatory map enjoined by the district court is permitted to stay in effect for the 2024 election, Galveston County’s minority voters—including Appellees—will for the first time in thirty years be fragmented across four precincts and have no opportunity to elect a commissioner of their choice. Because the office is for a four-year term, Appellees would not see redress until 2028—nearly the end of this decennial redistricting cycle. Commissioners—unlike members of Congress or state legislators—do not primarily spend their time voting on partisan policies.

They are the face of government for their constituents—providing direct and critical services on the front lines of their communities, including responding to hurricanes, local emergencies, and constituent needs. The County—in a “mean-spirited” and racially motivated scheme sought to “extinguish the Black and Latino communities’ voice on its commissioners court.” ROA.16029. The harm from this sordid affair is irreparable if the enacted map is permitted to take effect.

IV. Public Interest does not support a Stay pending appeal

The public interest does not support a stay because the public interest favors elections conducted under lawful, nondiscriminatory election maps. The County contends that “public interest similarly supports the enforcement of properly enacted laws—including redistricting plans adopted by governmental bodies within the State of Texas.” Mot. at 14-15. But Map 2 was not “properly enacted.” As detailed in the district court’s 157-page opinion, this case was not a close call. The district court described the County’s redistricting process as “[a]typical,” “stark,” “jarring,” “mean-spirited,” “egregious,” and “stunning.” ROA.16029. The Court should not permit the November 2024 election to take place under a map that silences the voices of 38% of the county’s population.

CONCLUSION

For the foregoing reasons, the County’s renewed motion for a stay pending appeal should be denied.

December 4, 2023

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Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because this document contains 5,109 words which is within the 5,200 word-count limit, excluding the portions exempted by the Rules.

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/s/ Chad W. Dunn

Chad W. Dunn

Counsel for Petteway Appellees

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2023, this document was electronically served on all counsel of record via the Court's CM/ECF system.

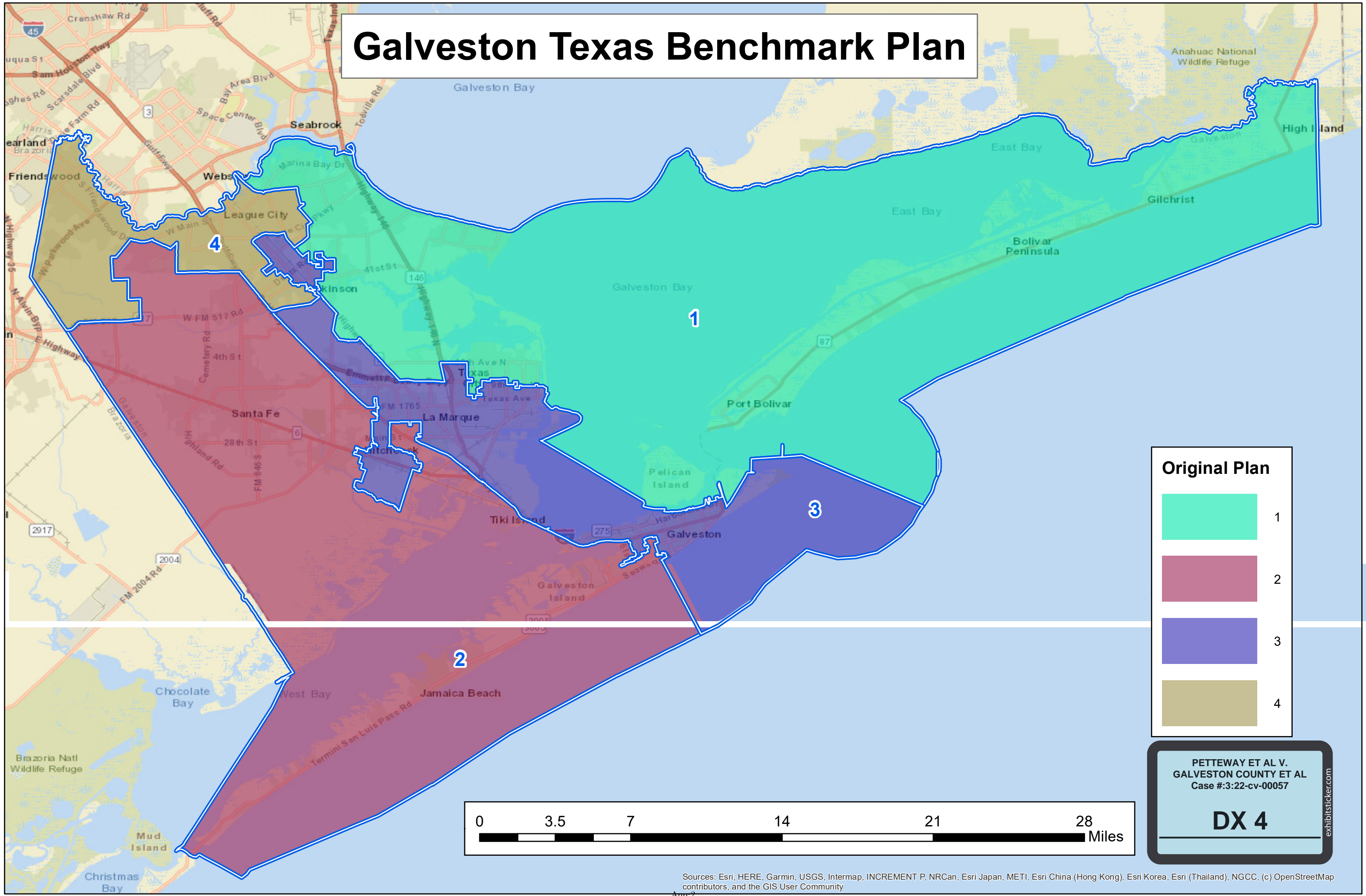
/s/ Chad W. Dunn

Chad W. Dunn

Counsel for Petteway Appellees

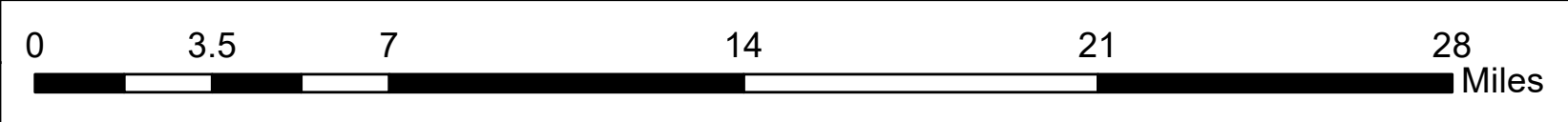
APPENDIX 1

Galveston Texas Benchmark Plan



Original Plan

	1
	2
	3
	4



PETTEWAY ET AL V.
 GALVESTON COUNTY ET AL
 Case #:3:22-cv-00057

DX 4

exhibitsticker.com

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

APPENDIX 2

Conference Call Dale Oidham + Paul Ready

~~Assumptions of Estimate~~

- * Address I plan on running from
- * Need to gain 8,000 people
- * 87,670.5
- * Deviation is still 10%
- * Fuzz in census numbers
- * Keeps asking me what assets I would like to have
- * All
- * They have already spoken with event other member of the court
- * I believe event other member of the court has seen maps with updated data
- * Paul Ready says Filer Drummond has the updated data and he will call + ask him to send it to me
- * Did not even talk about Restrictive Principles



9/21/20

Asked ENS. weeding if they
can run precinct data

① Pct 192

Boundary to south of Pct is 21st St. Draw line from Dickerson Avenue to TEXAS AVE. make it part of 341 or 391
make it part of 341

② Pct 144

Boundary to south is FM 517. Draw line from California down 517 to Owens Drive to Melvin Utter Drive

③ Pct 142

Boundary Down Palmer HWY from 25th St to 29th St north makes it part of Pct 343

④ Pct 232

* Either split Pct at I-45 from Barton to Vanhook or move the entire Pct

Alternatives

Ⓐ Pct 439

Extend Barton from Sunset to Deats Rd. makes it part of Pct 389

Ⓑ Take in remainder of St. Edwards Green

10/19/21

Meetings w/ Dale Olohan + Paul Ready - Mt Office 9:00AM

- Olohan presented 2 maps on his laptop
- * 1st map had Pct 3 picking up all of the Island currently in Pct 1, Pelican Island + all of Bolivar.
- * 2nd map had Pct 3 going no further south than Dickinson + majority of Pct 3 was League City + appears part of Friendswood.
- * Olohan said he would send copies of maps + data

Zoom meeting w/ Jed Webb, Joe Giusti,

10/22/21

+ Paul Ready, Zack Davidson, Dale Olohan + Demographer

* Webb, Giusti + Davidson at Calder Road

* I connected on the FERRY

* Olohan connected from South Carolina

* Ready not sure where he or demographer were located

* Showed 2 maps. SAME I saw on 10/19/ from Mt Office

* Showed population + racial data

* I asked Ready to get copies of maps + data

10/29/21

Tyler Drummond

Spoke w/ Tyler. He called me as he was driving to Dallas. Informed me that maps would be going up on the County website that DAY. Said that there would be 2 maps displayed. The 2 maps that O'Brien had shown me before. I asked about a timeline for this redistricting process & he said that one would be set. He said there would be a place for public comment on website. I asked was this a contest to see which map would get more votes & he said no.

11/2/21

Tyler Drummond. Spoke w/ him & he said they were trying to set a special meeting for next Tuesday, 11/9/21, to vote on the redistricting maps. He said Clark would be out the rest of week & Giusti would be off next Weds & Thurs. He said maybe I could convince them at the next Tues meeting to not support map 2 & maybe get if the vote postponed to next Friday. Said SOS had sent email stating maps must be ^{sent} rec'd by 11/13/21

11/4/21 Tyler called said they were still working on setting the meetings posted for next Tuesday. Said that Nathan from our engineering department was finalizing the maps & trying to get it ready. Said he was gonna send DIANA home & have her come back on Saturday mornings to get it posted.

11/5/21 Tyler called me Saturday morning. Said the meeting
was probably going to be next Friday 11/12/21 b/c maps were
still not ready.

Appl'd to Rose on

10/21/20

"~~Doesn't look good for Holmes~~"

"~~It is~~ There are a
couple maps floating around,
It's not looking good for Holmes"

11/9/21

12:58pm

* Got a call from Commissioner Apffel about redistricting maps. He wanted to let me know that he would be voting to support map 2. He said the Judge (Henry) would jump out & make a motion to approve map 2. Said he was inclined to support that motion for political purposes. I informed him that map 2 was discriminatory to the minority voters currently in pct 3. He stated that the minority population currently in pct 3 was divided fairly evenly amongst all pcts in map 2 & that Dale Oldham told him this was a legal map. Also informed me that Mike Guarino called him & chastised him for supporting map 2. I told Comm Apffel that map 2 clearly runs afoul of section 2 of the Voting Rights Act & I ~~did~~ did not want the members of Comm Court to vote Friday & act like they ~~did~~ did not know this map is discriminatory. He talked about what Harris County was doing to Republican members of their Comm Court by changing their pcts. I told him this was not about Republican or Democrat, but about the protections guaranteed to minority groups in the VRA. He said he was going to call Dale Oldham & ask if this map 2 was in fact discriminatory. Comm Apffel also asked if I sided the NAACP on 'em. Told him I've had no conversations with the NAACP.

Speakers

11/12/21
Comm Court
Vote on MAPS

- ① TOMMY WATKINS - Stephen Holmes Justice for Stephen Holmes
- ② COLLEY JACKSON - Speaks about the people vote for MAP 2 to keep Gov Cnty Red
- ③ ELIJAH: Represent the people no to MAP 2
- ④ EVELYN McBRANIC: MAP is dishonorable & Does not Represent people CLIPS AWAY AT DEMOCRACY
- ⑤ WINDY GILMORE: To citizens lines drawn to delete Stephen Holmes. REDRAW MAP
- ⑥ DEBRA JONES - Extract County where Damon Holmes Represent Two Propositions RACISM IS NOT DEAD. WE THE PEOPLE ~~protect~~
- ⑦ ANDEE RATHSO - Done w/ Tortuous intent. Right time to DO THIS
- ⑧ LILLIAN McGEOWN - Black Nurses Association. Neither map be Accepted
- ⑨ BARBARA ANDERS - Maintains NAACP. Both MAPS Bad. DCS Rejected Bolivar in 2011
- ⑩ DR. ANNETTE SINKS: Comm did not Get Luck on their own
- ⑪ NAOMI PAPPAS - Republican Pet chair. Commmanding Base
- ⑫ HANNAH MELTZER - Neither Dem nor Republ. MAPS Racist & you know it. How much will we spend on another lawsuit
- ⑬ EONIA COONVILLE: PC Destroys Pet 336. Selfish & Arrogant DISRESPECT people.
- ⑭ PASTOR JERRY LEE: MAPS Discriminatory. Trust fellow man Right mov'ns the Goal post. Will have to answer to God
- ⑮ HENRY GOMEZ:
- ⑯ WENDY LANGHAM: No intention of changing map on getting input Politicians Pickings Voters.
- ⑰ NAKISHA PAUL: Preserve Precinct. Relationship b/w you and your const understands Experiences. Keep neighborhoods together.

- 18 Pastor King: Appalled this court w/ submit a map
One vote 1 person, not a small room full of people standing
Do the right thing
- 19 Judith Oppenheim: Friendswood 15th Representing myself + husband
"Keep Calvestar Red text" One party maps no good. Elections have
been games. Calling out names for points this. maps were
Rejected 10 yrs ago.
- 20 Derrick Johnson: Can't believe we are here discuss this.
Done things for ALB + Brown populations
- 21 Joseph Mitchell:
- 22 Heidi Gosow: would be rejected by pre-announced
- 23 ~~Sharon~~ ^{Right} ~~Watt~~: I sense this court came here a disabled network.
- 24 Lucretia Coffey: 45% courts minorities. Attempt to dilute minority vote.
meeting time conflicts w/ peoples jobs. Lack of Democrat
Deborah Bar Area NARCP
- 25 Roxey Williamson: Suther coalition for social justice. Not going down
without a fight.
- 26 Stephanie Swanson: Pet 3 people have worked together.
Blks + H form coalition district. Courts uphold coalition districts
Remove Bolivar from map.
- 27 Pastor Bedford: Been here 71 years. When I came here we
had no rights. Mainland Economic Alliance
- 28 Debra Warren: If you fine us up you'll see us at polls
- 29 Mary Steadham: Tear maps up + do what's right ^{judged}
- 30 Tera Gibson: man 2 ridiculous. Even plaintiffs fields
- 31 Leon Phillips: GAV Coalition for Justice. Signs up banner
- 32 Keith Hedley: Be good stewards of all constituents
- 33 Pastor Kendall: GSM decision will make us stronger

34) Timmy Skeg: Same thing going on 23 years ago, going on
today. God not sleeping

35) Linda Alcorn: Ran 1986 B/c no representation!

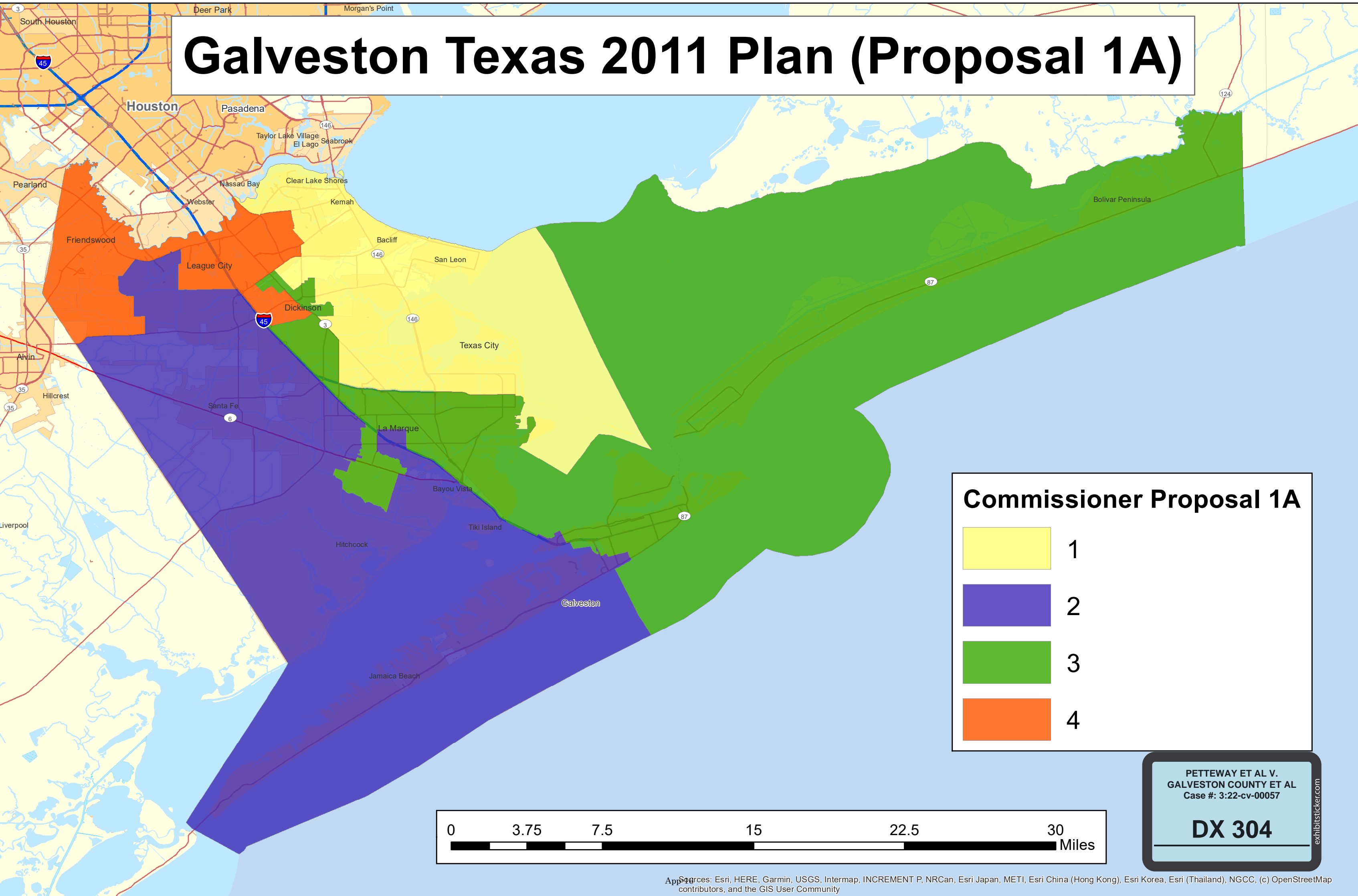
36) Sharon Lewis: Examples for students. This is a teaching moment

37) Anne Willis: 60yr resident Bolivar. Support MAP 2
Better serves w/ MAP 2





38)

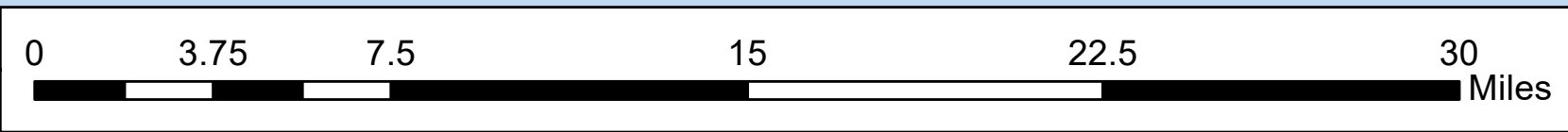
APPENDIX 3

Galveston Texas 2011 Plan (Proposal 1A)



Commissioner Proposal 1A

	1
	2
	3
	4



PETTEWAY ET AL V.
GALVESTON COUNTY ET AL
Case #: 3:22-cv-00057

DX 304

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AppSources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

APPENDIX 4



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D C 20530

MAR 05 2012

James E Trainor III, Esq
Beirne, Maynard & Parsons
401 West 15th Street, Suite 845
Austin, Texas 78701

Dear Mr Trainor

This refers to the 2011 redistricting plan for the commissioners court, the reduction in the number of justices of the peace from nine to five and the number of constables from eight to five, and the 2011 redistricting plan for the justices of the peace/constable precincts for Galveston County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U S C 1973c We received your response to our December 19, 2011, request for additional information on January 4, 2012, additional information was received on February 6, 2012

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the county's previous submissions. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group *Georgia v United States*, 411 U S 526 (1973), *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965*, 28 C F R. 51 52(c) For the reasons discussed below, I cannot conclude that the county's burden under Section 5 has been sustained as to the submitted changes Therefore, on behalf of the Attorney General, I must object to the changes currently pending before the Department

According to the 2010 Census, Galveston County has a total population of 291,309 persons, of whom 40,332 (13 8%) are African American and 65,270 (22 4%) are Hispanic. Of the 217,142 persons who are of voting age, 28,716 (13 2%) are black persons and 42,649 (19 6%) are Hispanic The five-year American Community Survey (2006-2010) estimates that African Americans are 14.3 percent of the citizen voting age population and Hispanic persons comprise 14 8 percent The commissioners court is elected from four single-member districts with a county judge elected at large. 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.

We turn first to the commissioners court redistricting plan. With respect to the county's ability to demonstrate that the commissioners court plan was adopted without a prohibited purpose, the starting point of our analysis is the framework established in *Village of Arlington Heights v. Metropolitan Housing Development Corp*, 429 U S 252 (1977). There, the Court provided a non-exhaustive list of factors that bear on the determination of discriminatory purpose, including the impact of the action on minority groups; the historical background of the action, the sequence of events leading up to the action or decision; the legislative or administrative history regarding the action, departures from normal procedures, and evidence that the decision-maker ignored factors it has otherwise considered important or controlling in similar decisions. *Id.* at 266-68.

Based on our analysis of the evidence, we have concluded that the county has not met its burden of showing that the proposed plan was adopted with no discriminatory purpose. We start with the county's failure to adopt, as it had in previous redistricting cycles, a set of criteria by which the county would be guided in the redistricting process. The evidence establishes that this was a deliberate decision by the county to avoid being held to a procedural or substantive standard of conduct with regard to the manner in which it complied with the constitutional and statutory requirements of redistricting.

The evidence also indicates that the process may have been characterized by the deliberate exclusion from meaningful involvement in key deliberations of the only member of the commissioners court elected from a minority ability-to-elect precinct. For example, the county judge and several – but not all – of the commissioners had prior knowledge that a significant revision to the pending proposed map was made on August 29, 2011, and would be presented at the following day's meeting at which the final vote on the redistricting plans would be taken. This is particularly noteworthy because the commissioner for Precinct 3, one of two precincts affected by this particular revision, was one of the commissioners not informed about this significant change. Precinct 3 is the only precinct in the county in which minority voters have the ability to elect a candidate of choice, and is the only precinct currently represented by a minority commissioner.

Another factor that bears on a determination of discriminatory purpose is the impact of the decision on minority groups. In this regard, we note that during the current redistricting process, the county relocated the Bolivar Peninsula – a largely white area – from Precinct 1 into Precinct 3. This reduced the overall minority share of the electorate in Precinct 3 by reducing the African American population while increasing both the Hispanic and Anglo populations. In addition, we understand that the Bolivar Peninsula region was one of the areas in the county that was most severely damaged by Hurricane Ike in 2008, and lost several thousand homes. The county received a \$93 million grant in 2009 to provide housing repair and replacement options for those residents affected by the hurricane, and has announced its intention to spend most of the grant funds restoring the housing stock on Bolivar Peninsula. Because the peninsula's population has historically been overwhelmingly Anglo, and in light of the Census Bureau's

estimated occupancy rate for housing units in the Bolivar Census County Division of 2.2 persons per household, there is a factual basis to conclude that as the housing stock on the peninsula is replenished and the population increases, the result will be a significant increase in the Anglo population percentage. In the context of racially polarized elections in the county, this will lead to the concomitant loss of the ability of minority voters to elect a candidate of choice to office in Precinct 3. *Reno v. Bossier Parish School Board*, 528 U.S. 320, 340 (2000) (“Section 5 looks not only to the present effects of changes but to their future effects as well.”) (citing *City of Pleasant Grove v. United States*, 479 U.S. 462, 471 (1987)).

That this retrogression in minority voting strength in Precinct 3 is neither required nor inevitable heightens our concern that the county has not met its burden of showing that the change was not motivated by any discriminatory purpose. Both Precincts 1 and 3 were underpopulated, and it would have been far more logical to shift population from a precinct that was overpopulated than to move population between two precincts that were underpopulated. In that regard, benchmark Precinct 4 was overpopulated by 23.5 percent over the ideal, and its excess population could have been used to address underpopulation in the other precincts. Moreover, according to the information that the county supplied, its redistricting consultant made the change based on something he read in the newspaper about the public wanting Bolivar Peninsula and Galveston Island to be joined into a commissioner precinct; but a review of all the audio and video recordings of the public meetings shows that only one person made such a comment.

Based on these factors, we have concluded that the county has not met its burden of demonstrating that the proposed commissioners court redistricting plan was adopted with no discriminatory purpose. We note as well, however, that based on the facts as identified above, the county has also failed to carry its burden of showing that the proposed commissioners court plan does not have a retrogressive effect.

The voting change at issue must be measured against the benchmark practice to determine whether it would “lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.” *Beer v. United States*, 425 U.S. 130, 141 (1976). Our statistical analysis indicates that minority voters possess the ability to elect a candidate of choice in benchmark Precinct 3, and that ability has existed for at least the past decade.

As noted, the county’s decision to relocate the Bolivar Peninsula from Precinct 1 into Precinct 3 had the effect of reducing the African American share of the electorate in Precinct 3, while increasing both the Hispanic and Anglo populations. In specific terms, the county decreased the black voting age population percentage from 35.2 to 30.8 percent and increased the Hispanic voting age population 25.7 to 27.8 percent, resulting in an overall decrease of 2.3 percentage points in the precinct’s minority voting age population. There is sufficient credible evidence to prevent the county from establishing the absence of a retrogressive effect as to this change, especially in light of the anticipated and significant population return of Anglo residents to the Bolivar Peninsula, as discussed further above.

We turn next to the proposed reduction in the number of election precincts for the justice of the peace and constable, and the 2011 redistricting plan for the justices of the peace/constable precincts. 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.

In addition, we understand that the county's position is that the court's order in *Hoskins v. Hannah*, which required the county to maintain two minority ability to elect districts for the election of justices of the peace and constables, has expired. If it has, then it is significant that in the first redistricting following the expiration of that order, the county chose to reduce the number of minority ability to elect districts to one. A stated justification for the proposed consolidation was to save money, yet, according to the county judge's statements, the county conducted no analysis of the financial impact of this decision. The record also indicates that county residents expressed a concern during the redistricting process that the three precincts electing minority officials were consolidated and the precincts with white representatives were left alone. The record is devoid of any response by the county.

In sum, there is sufficient credible evidence that precludes the county from establishing, as it must under Section 5, that the reduction of the number of justice of the peace/constable districts as well as the redistricting plan to elect those officials will not have a retrogressive effect, and were not motivated by a discriminatory intent.

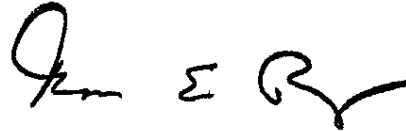
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *Georgia v. United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the county's 2011 redistricting plan for the commissioners court and the reduction in the number of justice of the peace and constable districts as well as the redistricting plan for those offices.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the

objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, the submitted changes continue to be legally unenforceable. *Clark v Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10. To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that Galveston County plans to take concerning this matter. If you have any questions, you should contact Robert S. Berman (202/514-8690), a deputy chief in the Voting Section.

Because the Section 5 status of the redistricting plan for the commissioners court is presently before the United States District Court for the District of Columbia in *Galveston County v. United States*, No. 11-cv-1837 (D.D.C.), we are providing the Court and counsel of record with a copy of this letter. Similarly, the status of both the commissioners court and the justice of the peace and constable plans under Section 5 is a relevant fact in *Petteway v Galveston County*, No. 3:11-cv-00511 (S.D. Tex.). Accordingly, we are also providing that Court and counsel of record with a copy of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', with a stylized flourish at the end.

Thomas E. Perez
Assistant Attorney General

APPENDIX 5

McCorkle, Perry C (CRT)

NO. 2012-1597

From: Joe Compian [joec@gulfcoastinterfaith.org]
Sent: Thursday, March 22, 2012 6:35 PM
To: Berkower, Risa (CRT); vot1973c (CRT); Bell-Platts, Meredith (CRT)
Cc: Guerrero (Cornyn)
Subject: RE: #2011-4317 Objection to Proposed Settlement with DOJ Litigation Section to Galveston County Commissioner's Court Map adopted on March 22, 2012
Attachments: 3.22.12 Final Objection to Galveston County Commissioners Court 2nd Map to DOJ.pdf; Galv Co Redist final11.29.11.pptx; galvnewsopinionGALCOREDISTRICT3.18.12.pdf

Dear Mr. Perez, Ms. Bell-Platts and Ms. Berkower:

We continue to earnestly objection to the proposed settlement map that was passed by Galveston County Commissioner's Court today by a vote of 3 - 2.

The Galveston County Collaborating Organizations are amazed that the United States Department of Justice under the administration of President Obama would permit a redistricting map that packs minorities into one precinct and absolutely does not recognize the growth of the Latino population in this County. Based upon the remarks of the Galveston County's attorney attributed to the Department of Justice lawyers that the DOJ only asked about African American percentages, our Latino congregations and organizations are beginning to believe that the DOJ places a greater value on the voting rights of African Americans. If this is true, we unanimously find this attitude by the DOJ repugnant.

We ask that you reject the map settlement offer of Galveston County. The Galveston County Collaborating Organizations have offered advice on how to amend lines to permit fairness and compliance with the Voting Rights Acts for ALL.

Respectfully,

Joe Compian
409 939 8017 (talk & text)
281 300 3235 (talk & text)

"Love the poor. Do you know the poor of your place, of your city? Find them. Maybe they are right in your own family?" - Mother Teresa



GALVESTON COUNTY
COALITION
FOR
JUSTICE



THE GALVESTON
NORTHSIDE
TASKFORCE



March 22, 2012

The Honorable Thomas E. Perez
Chief, Voting Section
Civil Rights Division
United States Department of Justice
Room 7254-NWB
1800 G Street, NW
Washington, DC 20006
VIA vot1973c@USDOJ.gov

Meredith Bell-Platts
Voting Section
Civil Rights Division
United States Department of Justice
VIA Meredith.Bell-Platts@usdoj.gov

Re: #2011-4317 Objection to Galveston County Commissioners Court Map adopted on
March 13, 2012

Dear Department of Justice,

The undersigned collaborating organizations from Galveston County, Texas present this objection to the Galveston County Commissioners Court map adopted on March 22, 2012. We believe the Department of Justice should not accept the March 22, 2012 map for any purpose. We anticipate more signatures will be forthcoming over the next few days.

Our Collaborating Organizations in Galveston participated in the redistricting process for the City of Galveston and the map we supported was eventually adopted by the Galveston City Council and approved by the Department of Justice. We have worked with members of the community, our respective organizations, and with each other in good faith to arrive at a fair compromise map for the Galveston County Commissioners Court that complies with the Voting Rights Act.

We believe any adopted final map must be fair for the community for years and many elections beyond the upcoming election.

Background

Under Section 5, the Attorney General was required to determine whether Galveston County has met its burden of showing that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group. *Georgia v. United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52(c). With respect to Galveston County's ability to demonstrate that the Commissioners Court map was adopted without a prohibited purpose, the starting point in the analysis is the framework established in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). The Court provided a non-exhaustive list of factors that could bear on finding a discriminatory purpose, including the impact of the action on minority groups; the historical background of the action; the sequence of events leading up to the decision or action; the legislative or administrative history regarding the action; departures from normal procedures; and evidence that the decision-maker ignored factors it has otherwise considered important or controlling in similar decisions. *Id.* At 266-68.

Prior to Galveston County's October 16th submission of its proposed map to DOJ public hearings had been held where a significant portion of the public expressed their concern about the fairness of the various maps and the process and raised other questions. During the process the lone minority commissioner on the Galveston County Court submitted a map for the Commissioners Court.¹ At the final hearing an alternate new map was suddenly submitted, discussed and adopted with a 3-2 vote along partisan political lines. The map was eventually presented to the Department of Justice and at the same time a law suit was filed by Galveston County in USDC in Washington DC. Since the late presentation of the map to the DOJ created time constraints and problems for potential candidates a group of elected Democratic public officials from Galveston County filed a lawsuit in USDC in Galveston, Texas. A hearing was held on November 21, 2011 and an order issued shortly thereafter. Some individual Galveston County residents intervened in the Galveston USDC case and additional hearings were scheduled to review possible interim maps. On November 22, 2011 we sent a letter to the Department of Justice objecting to Galveston County's proposed redistricting map that had been submitted on October 16, 2011. We submitted a supplemental objection with our proposed map on November 29th and provided Galveston County a copy. Another hearing for an interim map is scheduled for March 23, 2012.

The Attorney General was required to carefully consider the proposed October 16th map and supporting data and documentation as well as the supplemental information that

¹ It is probable the 2011 map submitted by Commissioner Holmes would have passed the scrutiny of the Department of Justice. That map, however, was rejected in a partisan 3-2 vote and now the parties are locked in an ever spiraling cycle of litigation and mounting legal expenses.

was requested to determine whether Galveston County failed to establish the absence of a discriminatory purpose. However, it has to be noted that, simply based on the data submitted, Galveston County failed to carry its burden of showing that its proposed map did not have a retrogressive effect on the ability of minority voters to elect, or impact the election of, their candidate of choice and therefore an objection was warranted by DOJ.

On March 5, 2012, the Department of Justice objected to the Commissioner Court map as well as the Justice of the Peace and Constable map.

On March 12, 2012 a supplemental objection to DOJ and a separate letter to the County Judge and Commissioners, each with our attached compromise map, was distributed before the scheduled March 13th hearing via County Attorney Harvey Baseman. On March 13, 2012 Galveston County held a public hearing in an attempt to adopt another map for submission to the Department of Justice. Questions concerning notice for the hearing and the legality of the process were raised by Commissioners Holmes and Doyle. After several hours a vote was taken that was boycotted by Holmes and Doyle. A 3-0 vote adopted the map and it was then immediately offered for public comment. Although the courtroom had been packed earlier in the day with about 90% African-American attendees, only about ten residents testified against the process that resulted in the approval of the map. There was no testimony against the newly approved March 13th map since copies of the map and supporting data was being passed out as the public hearing commenced and there was not time to read and consider, much less research, the merits of the map. <http://galvestondailynews.com/comments/299314>

After the March 13, 2012 hearing, an objection was filed by the undersigned organizations. The Department of Justice promptly directed inquiries to some of the undersigned organizations as well as to Galveston County officials. The Galveston County Daily News raised questions about the map submitted by Galveston County as well as the process that was followed in adopting the map. See Ex. 2 attached hereto. On or about March 19, 2012 a new map was posted at the Galveston County website and a public hearing was scheduled for 3:00 and 7:00 on March 22, 2012.

The newest March 22nd map includes minor cosmetic changes that do not hide that it is clearly fatally flawed and should be rejected by the Department of Justice.

Discussion

After the 2000 census Galveston County created a map that was submitted to the Department of Justice. It was approved for pre-clearance. The statistics simply and clearly show there was one over 50% Latino/African-American district.

Galveston County Map 2001 (population 250,158 with 63.1% Anglo) See Ex. 1, p3.
Anglo Latino African-American L/A-A Asian/other

#1	60.53	22.22	12.55	34.77	4.70
#2	72.45	16.97	7.33	24.30	3.25
#3	38.16	21.36	38.35	59.71	4.14
#4	80.12	11.60	3.67	15.27	4.56

Since 2000 Galveston County has had an increase in population. There has been a significant increase in the northern part of the county which has resulted in one precinct that clearly violated the “one man-one vote” constitutional principle established in *Baker v. Carr*. Further, Galveston County suffered through Hurricane Ike in 2008 which contributed to a population reduction in the southern part of Galveston County. Finally, the other significant change has been the increase of Latino residents throughout Galveston County. These changes have created additional challenges to drawing a map that would fairly represent the interests of Latinos and African-Americans in Galveston County and comply with the Voting Rights Act. In the decade between the 2000 and the 2010 Census, the county added more than 41,100 persons, of whom 20,300 (49%) were Latino, 14,800 (36%) were non-Hispanic White and the remainder 6,000 (15%) were African-Americans or other minorities. Despite the significant increases in minority population share in Galveston County, the 2011 Galveston County map still only managed to create one precinct where there is a majority minority, and the percentage minority in Precinct 1, the second most minority district, retrogressed from 40% minority in 2000 to 37% minority in the Galveston County map.

Galveston County Map 10/16/11 (population 291,309 with 59.27% Anglo) See Ex. 1, p.4.

	Anglo	Latino	African-American	L/A-A	Asian/other
#1	63.42	23.02	9.13	32.15	4.43
#2	70.21	17.62	7.41	25.03	4.76
#3	33.54	31.53	31.36	62.89	3.57
#4	70.74	17.17	5.35	22.52	6.74

The proposed 2011 Galveston County map clearly diminishes the voting strength of Latinos/African-Americans when compared to Galveston County’s map in 2001 and thus affects their ability to elect and influence the election of candidates of their choice. The map presented by the Collaborating Organizations almost achieves two majority minority precincts with more compact precinct lines. The map more fairly reflects the minority population of Galveston County and is in compliance with the Voting Rights Act.

Gulf Coast Interfaith Map 2011 (population 291,309 with 59.27% Anglo) See Ex. 1, p.5.

	Anglo	Latino	African-American	L/A-A	Asian/other
#1	50.43	31.44	13.90	45.34	4.22
#2	72.38	16.16	5.24	21.40	6.22

#3	37.48	28.21	31.05	59.26	3.26
#4	76.62	13.76	3.94	17.70	5.69

The new March 13th Galveston County map once again clearly diminishes the voting strength of Latinos/African-Americans when compared to Galveston County's map in 2001 and thus affects their ability to elect and influence the election of candidates of their choice. <http://galvestondailynews.com/photos/2012.March/GALCOredistrictDOJ.pdf>

Galveston County Map 3/13/12 (population 291,309 with 59.27% Anglo)

	Anglo	Latino/Asian/other	African-American
#1	80.26	13.12	6.62
#2	81.72	11.07	7.21
#3	45.82	18.10	36.08
#4	81.71	12.95	5.34

Despite the significant increases in minority population share in Galveston County, the March 13th Galveston County map still only manages, according to the supporting data from Galveston County, to create one precinct (Pct. 3) where there is a majority minority but retrogressed from 64% to 54% majority minority, and the percentage minority in Precinct 1, the second most minority district, retrogressed from 40% minority in 2000 to 19% minority in the Galveston County map.

The March 13th Galveston County map is more retrogressive than the rejected October 16th map and should, once again, be rejected by the Department of Justice for any purpose.

The new March 22nd Galveston County map once again clearly diminishes the voting strength of Latinos/African-Americans when compared to Galveston County's map in 2001 and thus affects their ability to elect and influence the election of candidates of their choice.

Galveston County Map 3/22/12 (population 291,309 with 59.27% Anglo)

	Anglo	Latino	African-American	L/A-A	Asian/other
#1	67.19	21.86	6.39	28.25	4.56
#2	69.80	18.69	6.97	25.66	4.54
#3	28.37	32.79	35.43	68.22	3.41
#4	71.33	16.44	5.32	21.76	6.91

Despite the significant increases in minority population share in Galveston County, the March 22nd Galveston County map still only manages, according to the supporting data from Galveston County, to create one precinct (Pct. 3) where there is a majority minority

that has been packed to increase from 64% minority to 72%, and the percentage minority in Precinct 1, the second most minority district, retrogressed from 40% minority in 2000 to 33% minority in the March 22nd Galveston County map.

The March 22nd Galveston County map packs minorities into Pct. 3, and is retrogressive for Pct.1. and therefore the March 22nd map should, once again, be rejected by the Department of Justice for any purpose.

Conclusion

Galveston County had the burden of demonstrating to the Department of Justice the proposed precinct changes in the map it submitted on October 16, 2011 were free of discriminatory purpose and retrogressive effect. Galveston County was notified on March 5th that it had failed. Galveston County then submitted a different map to the Department of Justice on March 13th to settle the ongoing litigation in the United States District Court in Washington D.C. on March 13th that prompted objections from many Galveston County organizations and questions from the Department of Justice. The March 13th map has now been substituted with the March 22nd map.

Under the 2001 map approved by the Department of Justice the Latino/African-American voters had the ability to elect a candidate of choice in one of four precincts. Ten years later, despite a significant increase of minorities, Galveston County submitted an October 16, 2011 map that, once again, created the ability for Latino/African-American voters to only elect or influence the election of a candidate of choice in one of four precincts. Further, the minority population percentage was decreased in the second most minority district. We believed the Galveston County 2011 map violated the Voting Rights Act and filed our objection.

Unfortunately, as discussed above, after the Department of Justice rejected the 2011 map on March 5th, an even more retrogressive map was adopted by Galveston County on March 13th to be replaced by another objectionable map on March 22nd.

We believe the compromise map of the undersigned collaborating organizations better reflects the minority population of Galveston County by creating two districts where Latino/African-Americans have more opportunity to elect or influence the election of their candidate of choice. The compromise map was sent to the Department of Justice on November 29, 2011 as an attachment to our objection and a copy provided to County

Attorney Harvey Baseman. It was once again provided to DOJ and Galveston County officials on March 12, 2012. The map was published in the Galveston County Daily News on March 18, 2012 and appears to have some public support. This compromise map has not been considered at a public hearing.

We welcome the opportunity to visit with the Department of Justice, members of the Commissioners Court individually, collectively, with or without a room full of lawyers, to discuss this compromise map. We would welcome a public discussion and hearing to see if a reasonable compromise map can be adopted by the Galveston County Commissioners Court or if Galveston County will choose to be compelled to operate under a court ordered map.

Respectfully submitted,

__(Signed by Consent)_____
David Miller
President, NAACP, Galveston Unit 6180
PO BOX 2023, Galveston TX 77553

__(Consent Pending)_____
Anna Olivares
President, Galveston LULAC Council #151
P.O. BOX 4433, Galveston TX 88553/3728 Avenue Q Galveston TX 77550

__(Signed by Consent)_____
Leon Phillips
President, Galveston County Coalition for Justice
600 59th Street, Galveston TX 77551

__(Consent Pending)_____
Cornelia Banks
Chair, North Side Task Force
Mt. Olive Baptist Church 3602 Sealy St #4, Galveston TX 77550

__(Signed by Consent)_____
Joe Compian
Leader, Gulf Coast Interfaith
1010 35th Street, Galveston TX 77550

__(Signed by Consent)_____
Stephen McIntyre

Leader, Gulf Coast Interfaith
1010 35th Street, Galveston TX 77550

_____(Signed by Consent)_____

Dotti Jones
President, Barbour's Chapel Community Development Corporation
7420 FM 1765, Texas City TX 77591

_____(Signed by Consent)_____

Dotti Jones
President, NAACP Mainland Branch Unit 6201 (LaMarque)
PO BOX 291, Texas City TX 77590

_____(Signed by Consent)_____

Maxine Jones
President, NAACP Mainland Branch Unit 6280 (Dickinson)
PO BOX 1878, Dickinson TX 7539

_____(Signed by Consent)_____

Carlos Garza
Legal Counsel, Texas City LULAC Council #255
1100 Rosenberg, Galveston TX 77550



OUR VIEW

A cleaner, simpler district map

If you want to see what's wrong with the county's plan for drawing new district lines for county commissioners, all you have to do is look at an alternate plan drawn by Gulf Coast Interfaith.

Interfaith is not a political organization.

People who volunteer with the organization usually do so for reasons of faith, rather than politics. There are Democrats and Republicans among the volunteers, but politics are generally checked at the door, as are denominational lines.

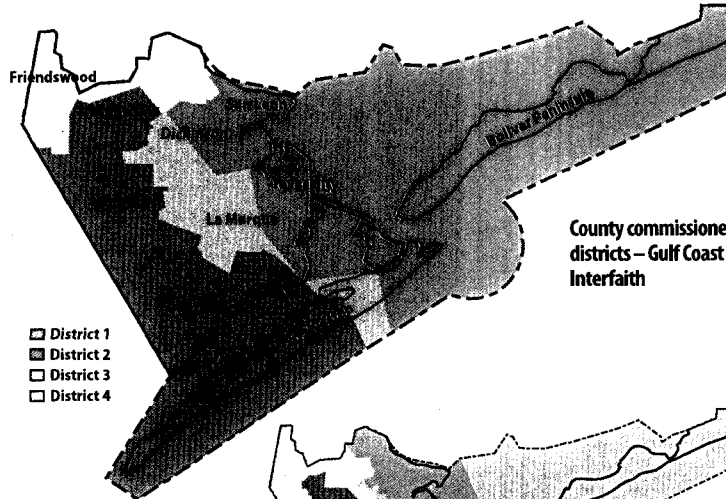
The map, similar to one proposed by County Commissioner Stephen Holmes, is different from the county's map, which was rejected by the U.S. Department of Justice, in one obvious way and one less obvious way.

Obviously, the lines are cleaner. The map prepared by the county's consultants looks like a classical gerrymander. Its district boundaries are convoluted. The map's critics, including the justice department's lawyers, might suspect that the lines were drawn for political gain, rather than to comply with the Voting Rights Act.

The folks at Gulf Coast Interfaith drew a much simpler map. Unlike the county's map, it tends to keep the smaller cities in one commissioner's precinct. Where it divides cities among county commissioner districts, it uses landmarks, such as railroads or highways. You don't need a global positioning system to tell which county commissioner's district you're in.

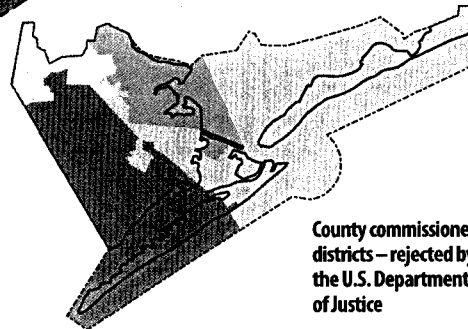
The less obvious thing about Interfaith's map? Unlike the county's map, it wouldn't be a challenge for the justice department.

The boundary lines of the districts of elected officials are redrawn after every census to reflect changes in population.

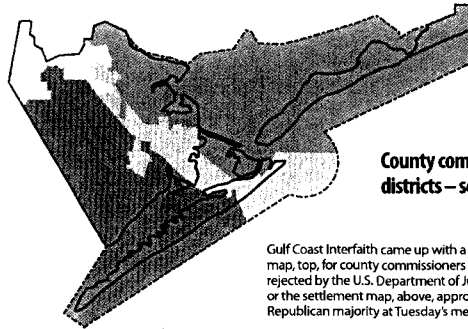


County commissioner districts – Gulf Coast Interfaith

- District 1
- District 2
- District 3
- District 4



County commissioner districts – rejected by the U.S. Department of Justice



County commissioner districts – settlement

In Galveston County, the trends are obvious: First, the growth was in the north county.

Second, Galveston lost population.

Third, the county's overall population still grew, and the fastest growing segment was the Latino population.

If you draw a map that reflects those basic facts, you can do so simply. Interfaith proved that.

It drew District 3, now represented by Stephen Holmes, to remain a district that is made up mostly of minorities.

It drew District 1, now represented by Pat Doyle, to be a 50-50 precinct, a "minority impact" district in the lingo of the justice department.

Democrats, of course, would love to see that kind of map.

Another option, of course, is to ignore the growth in the minority population and draw a map that forces that growth into one district with just one vote on the commissioners court.

Republicans control the commissioners

court this time. Democrats controlled the commissioners court for decades past. Neither party has proved to be above politics each time districts are re-

drawn after each census. And so the county has a map that the justice department doesn't like.

There is a new map offered as an alternative, but even if accepted by

the justice department, the argument remains the same. If simple fairness is what you're after, you can draw a simple map.

— Heber Taylor

Gulf Coast Interfaith came up with a simpler district map, top, for county commissioners than the one rejected by the U.S. Department of Justice, middle, or the settlement map, above, approved by the Republican majority at Tuesday's meeting.

Galveston County redistricting effort no laughing matter

During the recent "State of the County & Cities" business luncheon hosted by the Texas City-La Marque Chamber of Commerce, La Marque Mayor Bobby Hocking joked with County Judge Mark Henry about how smoothly the city's redistricting effort went compared to the county's.

"Redistricting accomplished in one day and recently receiving pre-clearance from the U.S. Department of Justice," Hocking told the 300 or so gathered for the luncheon before turning to Henry at the head table and adding, "Sorry



Patrick Graham
Patrick Graham is president and publisher of the Daily News.

to bring that up, judge, but I had to get that in there."

It was a great line from Hocking delivered in a good-natured way. I laughed along with everyone else at the time, but unfortunately, what is going on right now with the county's redistricting isn't very funny.

At all.

The first proposed precinct map the county delivered to the U.S. Department of Justice was rejected mainly because the feds felt like it diluted minority voting by shifting the majority white Bolivar Peninsula out of District 1 and into majority minority District 3.

While I'm not sure I agree with that premise since it is impossible for the commissioners to really know how many people will eventually return to the peninsula, I agree even less with the way commissioners handled the task of the getting the Department

of Justice another map that would pass muster.

During a meeting last week, the Republican majority on the court (Henry, Ken Clark and Kevin O'Brien) went behind closed doors with the county's redistricting attorneys to hammer out a new map. The Democratic minority (Patrick Doyle and Stephen Holmes), which had pushed a failed vote during the meeting to have the redistricting discussions in open session, refused to take part in the closed-door meeting.

Good for the Democrats. I'm sure that line has my dad, William Graham, who used to be

chairman of the Republican Party in Madison County, Ala., for many years, rolling over in his grave right now.

Although it's possible the Republican majority did not violate the state's open meetings laws in this instance, in my opinion, it's never a good idea for elected officials to conduct the public's business behind closed doors.

There are exemptions that have been written into the law, and the discussion surrounding the new map might fall under one of them, but those exemptions were made more for the benefit of public officials, not the public.

Trust me.

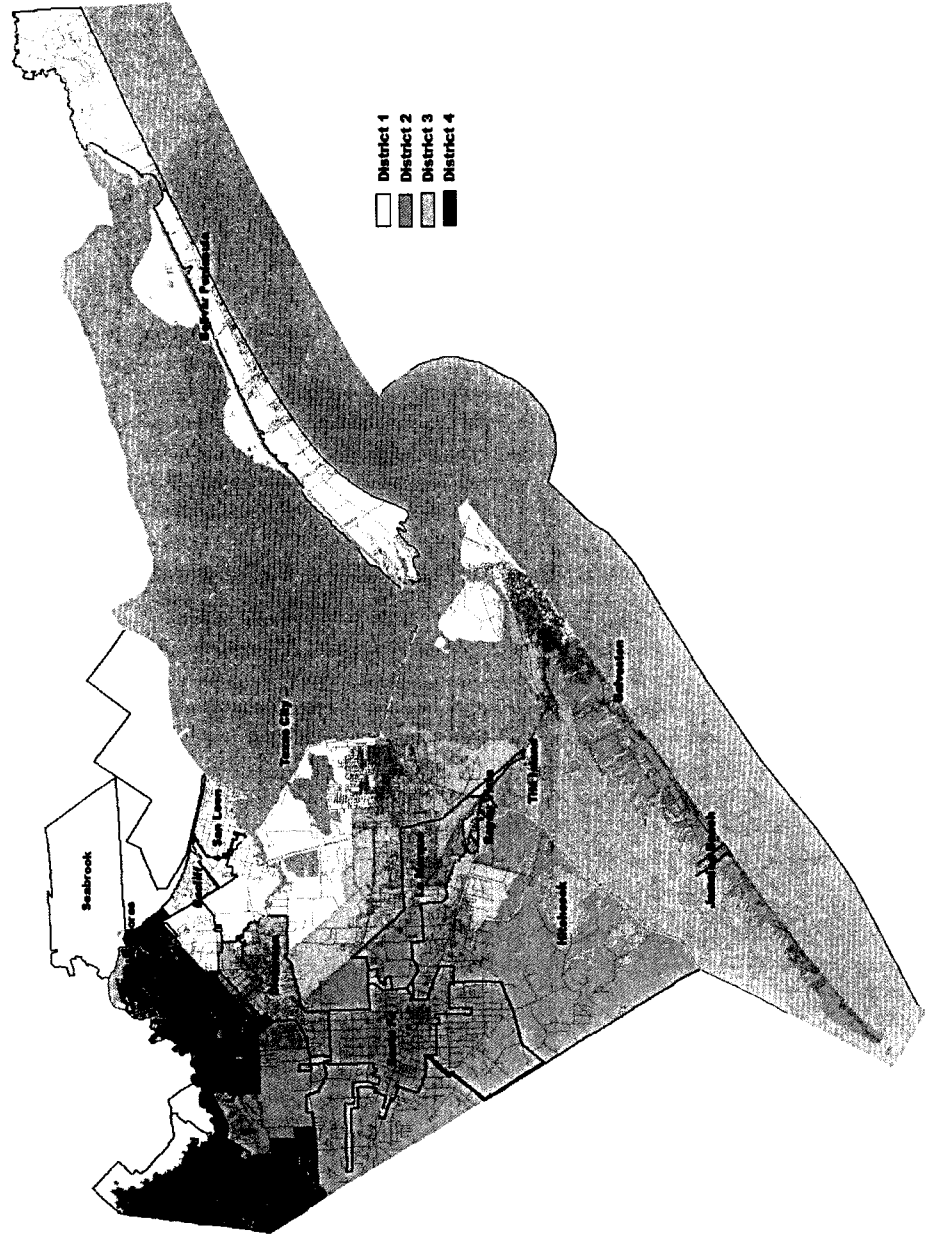
Another reason the Department of Justice didn't approve the first map was because the feds felt like the process to develop it lacked openness. Despite the fact the commission held a number of public hearings on redistricting, the Department of Justice didn't believe commissioners took the public's input into account when designing the original map.

Do you think the latest move by the majority of the commission helps address that concern by the Department of Justice? Nope. Not funny at all.

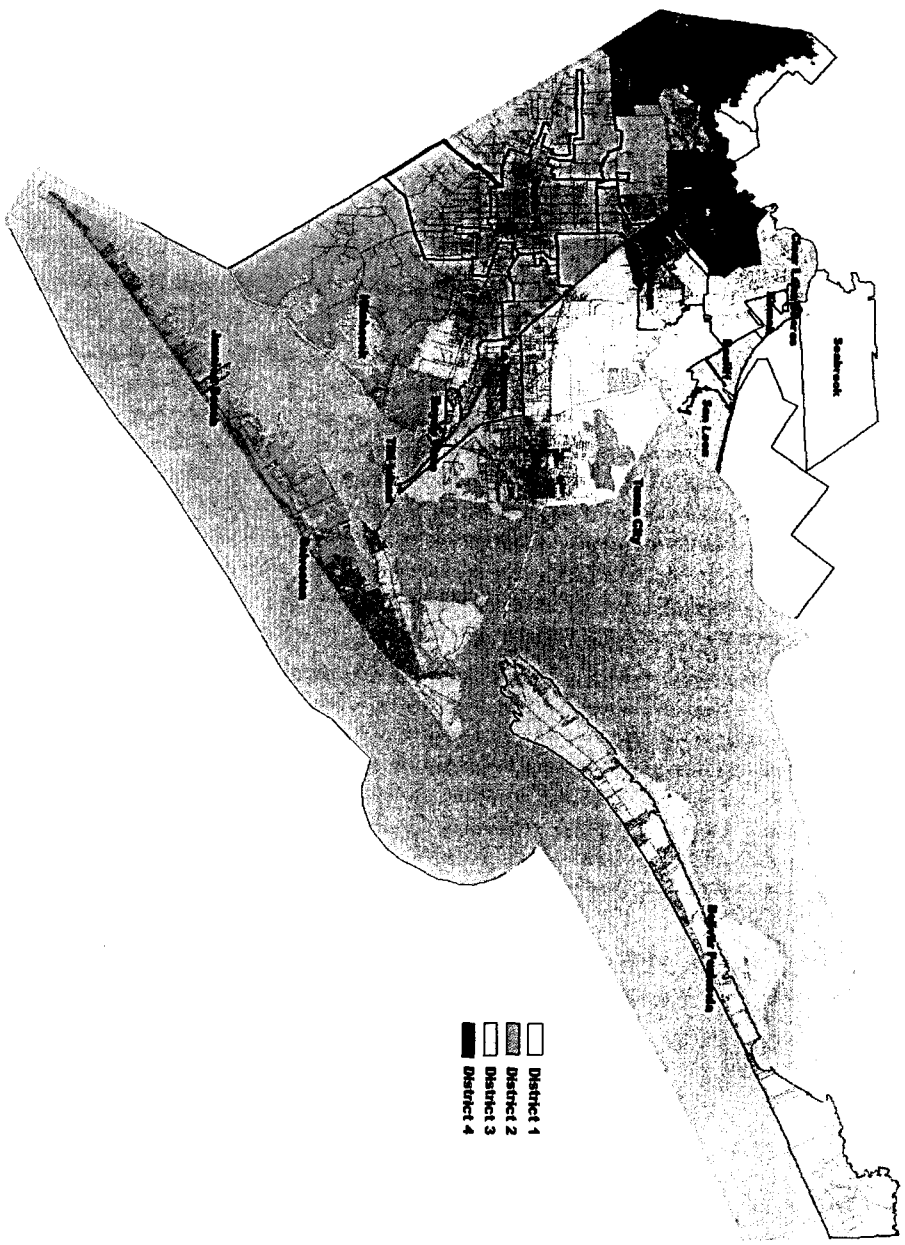
Galveston County Redistricting Possibilities

EXHIBIT 1

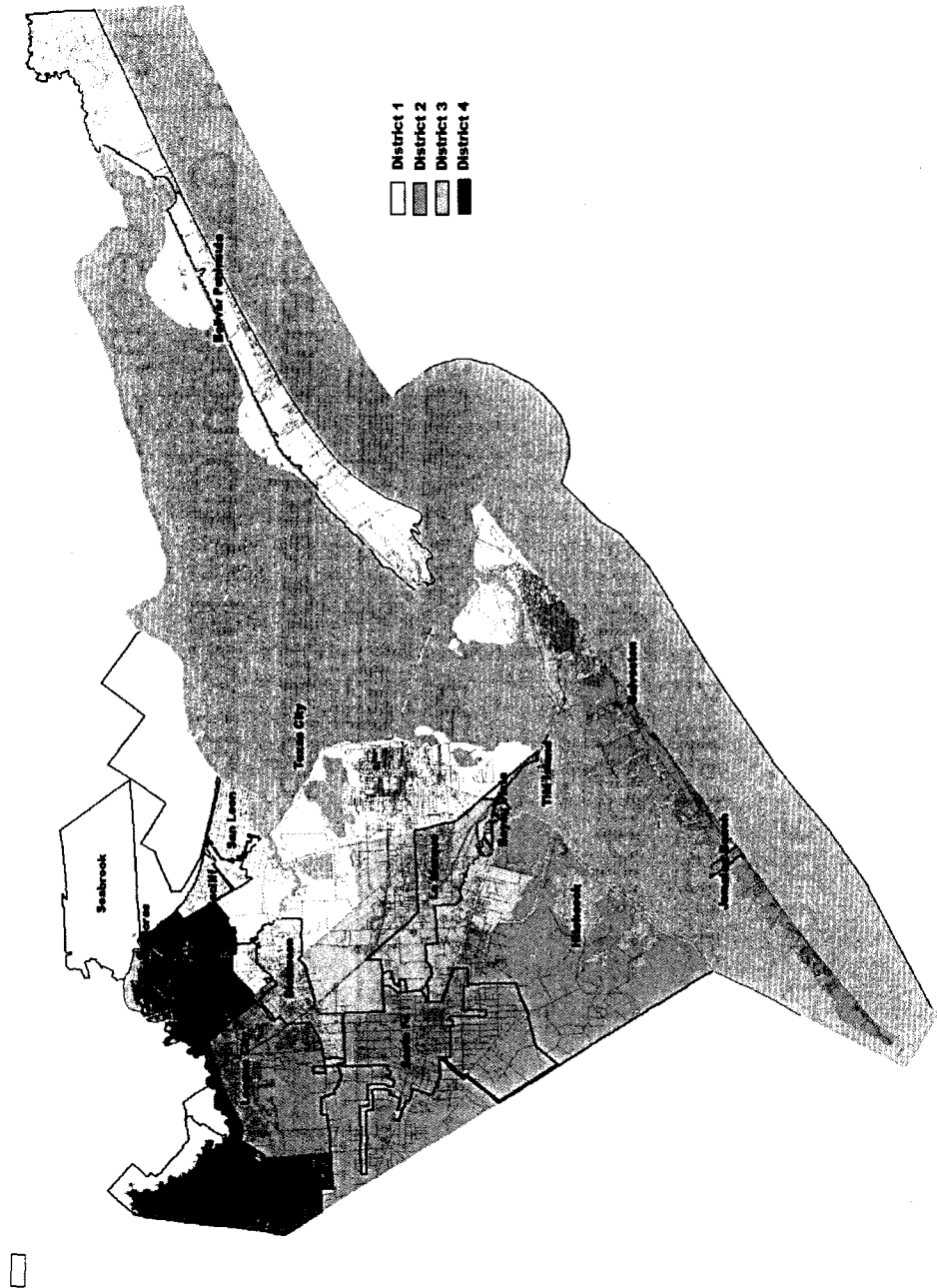
Galveston County Map 2001



Galveston County Map 2011



Gulf Coast Interfaith Map 2011 "Clean Lines Plan"



Principles of “Clean Lines” Map

- Bacliff, Bolivar CDP, Friendswood, Jamaica Beach, La Marque, San Leon, Santa Fe, Tiki Island are not divided.
- Dickinson, Galveston City, Hitchcock, and Texas City are divided using identifiable boundaries to create minority-majority District 3 (63%/37%) and minority-impact District 1 (50%/50%), respecting principles of Voting Rights Act.
- League City divided using identifiable boundaries to respect incumbent residences in District 2 and 4.
- No Block-level tweaking for partisan or racial/ethnic impact.

Current Numbers 2010 Census

District 1	61,152	34,313	17,556	6,577	2,980
District 2	76,684	51,769	15,375	6,002	3,538
District 3	69,634	40,583	13,774	5,296	1,707
District 4	89,939	66,073	13,596	4,243	6,027
Total	291,309	172,697	60,301	22,118	14,158
District 1	100.00%	55.99%	28.70%	10.73%	4.70%
District 2	100.00%	67.51%	20.05%	7.83%	4.61%
District 3	100.00%	32.56%	20.51%	35.27%	2.65%
District 4	100.00%	73.46%	15.12%	4.72%	6.70%
Total	100.00%	59.27%	22.41%	13.47%	4.86%

County Plan Numbers*

District 2	72,956	51,224	12,852	5,407	3,473		
District 3	74,809	23,803	23,949	23,420	2,608		
District 4	71,860	50,835	12,341	3,845	4,839		
District 1	100.00%	70.21%	17.62%	9.13%	4.43%		
District 2	100.00%	70.21%	17.62%	7.41%	4.76%		
District 3	100.00%	70.21%	17.62%	11.30%	1.97%		
District 4	100.00%	70.74%	17.17%	5.35%	6.73%		

*Percentages supplied by county; population numbers calculated from percentages.

Conclusions

- County grew fast in north county.
- Two-thirds of county growth was minority population growth.
- Many south county cities increased their minority populations, lost Anglo population.
- By using District 1 to grow District 3, and League City to grow District 1, the County plan ignored the possibility of expanding Districts 1 and 3 to minority areas in south county, creating a retrogression in minority voting impact potential, despite minority population growth.

Gulf Coast Interfaith Plan

“Clean Lines” Numbers

District 1	73,005	37,120	25,100	10,210	3,115
District 2	75,123	54,374	12,140	3,935	4,674
District 3	70,787	39,374	20,271	2,841	2,341
District 4	70,824	54,262	9,747	2,787	4,028
Total	291,308	172,657	65,276	39,228	14,158
District 1	100.00%	50.43%	31.44%	13.98%	4.22%
District 2	100.00%	72.38%	16.16%	5.24%	6.22%
District 3	100.00%	37.48%	28.21%	31.05%	3.26%
District 4	100.00%	76.62%	13.76%	3.94%	5.69%

APPENDIX 6

From: Joe Compian [joec@gulfcoastinterfaith.org]
Sent: 3/23/2012 3:54:37 PM
To: vot1973c (CRT) [Shared.vot1973c@crt.usdoj.gov]; Bell-Platts, Meredith (CRT) [Meredith.Bell-Platts@crt.usdoj.gov]
CC: Guerrero (Cornyn) [Jay_Guerrero@cornyn.senate.gov]; info@maldef.org; info@LULAC.org
Subject: RE:2011-4317 Objection to Galveston County Proposed Settlement Map

Good Morning,

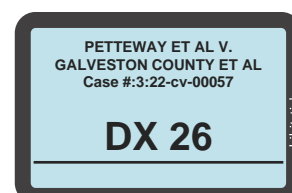
We continue to urge the Department of Justice to reject a settlement with Galveston County for their Commissioner's Court Redistricting plan.

It, quite simply, does not have community support. The plan undervalues Latinos. We find this position surprising by a Department of Justice under President Obama.

<http://galvestondailynews.com/story/301486>

Joe Compian
409 939 8017 (talk & text)
281 300 3235 (talk & text)

"Love the poor. Do you know the poor of your place, of your city? Find them. Maybe they are right in your own family?" - Mother Teresa



APPENDIX 7

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

TERRY PETTEWAY, THE HONRABLE
DERRICK ROSE, MICHAEL MONTEZ,
SONNY JAMES, and PENNY POPE,

Plaintiffs,

v.

GALVESTON COUNTY, TEXAS and
HONRABLE MARK HENRY, in his official
capacity as Galveston County Judge,

Defendants.

Case No. 3:22-cv-57

EXPERT REPORT OF DR. MARK OWENS

(amended from March 17, 2023)



March 31, 2023

PETTEWAY ET AL V.
GALVESTON COUNTY ET AL
Case #: 3:22-cv-00057

DX 290

exhibitster.com

I am a tenured associate professor of Political Science at The University of Texas at Tyler. In the seven years I have taught at UT Tyler, I have taught courses on Congress, voting behavior, state politics, and research methods at the undergraduate and graduate level. I have authored numerous journal articles on legislative politics and social behavior, which can be found in *American Political Research*, *Legislative Studies Quarterly*, *Social Sciences Quarterly*, and other academic journals. I also co-authored a recent book, *Battle for the Heart of Texas*, about the changing preferences of voters in Texas and the increasing civic engagement of Hispanic voters. A full list of my qualifications and publications are available in my CV as Exhibit A.

I have also provided expertise relevant to the 2021 redistricting cycle on three occasions. I used Maptitude GIS software to help a non-profit organization in the state of Oklahoma prepare districting plans of state and federal legislative offices for public submission. I submitted an analysis of whether racially polarized voting was occurring in *Black Voters Matter Capacity Building Institute, Inc., et al. v. Laurel Lee*, No. 2022 CA 066, before the Circuit Court of the Second Judicial District in Leon County, Florida last year. I also provided analyses about racially polarized voting in the case *Palmer et al. v. Hobbs*, No. C22-5035RSL, before the United States District Court Western District of Washington (2022). My compensation to prepare and write this report is \$350 per hour. My compensation is in no way dependent on the opinions offered in this report.

Summary

I have been asked by counsel for the Defendants to evaluate the Galveston County Commissioner's Court Precinct map with specific attention to the compactness of districts within the county. Since this is a county-level analysis, an intensely local analysis is required. The first step is to identify if residents of the county live in compact areas. I will see if individuals in those compact areas have similar characteristics (e.g., work status, age, geographic mobility, culture, income levels, education, and lifestyle). The analysis of compactness and characteristics of county residents is to evaluate if residents with shared interests and backgrounds live in a local geographic area. My conclusion is that the Hispanic population in particular is not geographically compact as the Hispanic population in Galveston is both far apart and disparate.

I begin by describing how the county has changed over the last decade. Galveston's population grew to 350,682 in the 2020 Census making the ideal number of persons in each Commissioners Court precinct is approximately 87,671 people. Galveston County's Hispanic total population from the Census is 88,636 (25%) and the ACS 2020 5-year estimate (2016-2020) of citizen voting age population is 45,962 (19%). Galveston County's Black population is 43,120 (12%) and Black citizen voting age population is 30,465 (13%).¹ Therefore, my analysis will focus on how closely the Hispanic and Black populations are concentrated within the county, as they are the predominant minority groups in the county and the subject of this Section 2 lawsuit. I will compare Hispanic residents across the county's geography to see if they are

¹ Throughout this report I refer to residents as Hispanic, instead of Latino, because the Census Bureau uses "Hispanic" I do the same here. The intent is to include persons of Latin American descent based on their identification as Hispanic in the Census and American Community Survey.

similar to each other despite living in different municipal areas. I will also see how concentrated Black communities are in the county.

Later in the report, I evaluate the numerous alternative plans submitted by the Plaintiffs to determine if those illustrative plans comply with traditional redistricting criteria or if they prioritize race over traditional redistricting criteria. I find that each illustrative alternative selectively ignores traditional redistricting practices in an effort to group Black and Hispanic residents into Precinct 3.

The illustrative alternatives split municipalities, islands, and other subdivisions violating traditional redistricting principles. Plaintiffs’ proposed alternatives surgically splice voting precincts on racial grounds, carving the Anglo portion and placing it in Commissioner Precincts 1, 2, or 4. The cuts fold a higher portion of the Black citizen voting age population (BCVAP) into Precinct 3.

Tables 1 and 2 clearly shows the degree this occurs in each plan. All plans, except one preserve the Benchmark Map’s inclusion of BCVAP in Precinct 3 that is three times larger than any other precinct. The illustrative alternatives also propose an opposite impact for the non-Hispanic white citizen voting age population (WCVAP) by creating a difference of at least 15% to 25% in the WCVAP between Precinct 3 and Precincts 1, 2, and 4. The distant pockets of HCVAP populations allow its share of a precinct population to be relatively stable in any plan. The Enacted Map is the only plan, which keeps the non-Hispanic white population from making up more than two-thirds of the CVAP in any two precincts.

Table 1: Comparison of Citizen Voting Age Population, by Precinct and Plan

	Benchmark HCVAP	Benchmark BCVAP	Benchmark WCVAP	Enacted HCVAP	Enacted BCVAP	Enacted WCVAP
Precinct 1	12125 (20.1%)	5093 (8.4%)	41079 (68.0%)	13274 (21.7%)	6403 (10.4%)	39296 (64.2%)
Precinct 2	11056 (16.6%)	5375 (8.1%)	47201 (70.8%)	13250 (20.5%)	9121 (14.1%)	40186 (62.2%)
Precinct 3	13311 (24.2%)	16904 (30.7%)	22833 (41.5%)	10436 (18.8%)	5032 (9.1%)	35881 (64.8%)
Precinct 4	9470 (16.6%)	3093 (5.4%)	40337 (70.5%)	9002 (15.5%)	9909 (17.0%)	36087 (62.1%)
Total	45962	30465	151450	45962	30465	151450
Not in P3 (Pct of Total)	32651 (71.0%)	13561 (44.5%)	128617 (84.9%)			

Table 2: Comparison of Citizen Voting Age Population, by Precinct and Illustrative Plan

	Cooper 1 HCVAP	Cooper 1 BCVAP	Cooper 1 WCVAP	Cooper 2 HCVAP	Cooper 2 BCVAP	Cooper 2 WCVAP	Cooper 3 HCVAP	Cooper 3 BCVAP	Cooper 3 WCVAP
Precinct 1	12848 (20.7%)	5103 (8.2%)	41979 (67.7%)	12542 (20.9%)	5154 (8.6%)	40429 (67.2%)	13882 (22.2%)	9075 (14.5%)	37490 (59.9%)
Precinct 2	9779 (15.9%)	4565 (7.4%)	44345 (72.2%)	10572 (16.5%)	4370 (6.8%)	46365 (72.2%)	8901 (14.6%)	2935 (4.8%)	45462 (74.5%)
Precinct 3	14591 (24.2%)	17717 (29.4%)	25700 (42.6%)	14848 (24.7%)	17590 (29.3%)	25553 (42.6%)	13663 (23.6%)	15309 (26.4%)	26684 (46.1%)
Precinct 4	8744 (15.7%)	3080 (5.5%)	39426 (70.9%)	8000 (14.6%)	3351 (6.1%)	39103 (71.2%)	9516 (16.4%)	3146 (5.4%)	41814 (72.4%)
Total	45962	30465	151450	45962	30465	151450	45962	30465	151450
Not in P3 (Pct of Total)	31371 (68.3%)	12748 (41.8%)	125750 (83.0%)	31114 (67.7%)	12875 (42.3%)	125897 (83.1%)	32299 (70.3%)	15156 (49.8%)	124766 (82.4%)

	Fairfax HCVAP	Fairfax BCVAP	Fairfax WCVAP	Rush 1 HCVAP	Rush 1 BCVAP	Rush 1 WCVAP	Rush 2 HCVAP	Rush 2 BCVAP	Rush 2 WCVAP	Rush 3 HCVAP	Rush 3 BCVAP	Rush 3 WCVAP
Precinct 1	12122 (20.1%)	5090 (8.4%)	41048 (68.0%)	11660 (18.8%)	5878 (9.9%)	42161 (67.9%)	11261 (18.9%)	4481 (7.5%)	41356 (69.4%)	11672 (19.4%)	4361 (7.2%)	41753 (69.3%)
Precinct 2	10183 (16.1%)	5073 (8.0%)	45186 (71.3%)	9876 (15.7%)	3927 (6.2%)	45740 (72.7%)	9707 (15.5%)	3843 (6.2%)	45565 (73.0%)	10050 (15.9%)	3817 (6.0%)	46008 (72.9%)
Precinct 3	14187 (24.3%)	17209 (29.5%)	24859 (42.6%)	15378 (25.6%)	16982 (28.2%)	25789 (47.6%)	16224 (25.3%)	18585 (29.0%)	27222 (42.5%)	15729 (25.2%)	18385 (29.5%)	26373 (42.3%)
Precinct 4	9470 (16.6%)	3093 (5.4%)	40337 (70.5%)	9048 (16.7%)	3678 (6.9%)	37760 (69.7%)	8770 (16.5%)	3556 (6.7%)	37307 (70.0%)	8511 (15.9%)	3902 (7.3%)	37316 (69.8%)
Total	45962	30465	151450	45962	30465	151450	45962	30465	151450	45962	30465	151450
Not in P3 (Pct of Total)	31775 (69%)	13256 (43.5%)	126591 (83.6%)	30584 (66.5%)	13483 (44.3%)	125,661 (83.0%)	29738 (64.7%)	11880 (39.0%)	124228 (82.0%)	30233 (65.8%)	12080 (39.7%)	125077 (82.6%)

My report shows compact precincts were enacted in 2021 for the Galveston Commissioner’s Court. Those compact precincts follow traditional redistricting criteria by joining communities that have common characteristics beyond race, which is discussed in more detail below. The current map removes the “hooks” and “claws” from the prior map’s Precinct 3 boundaries. The result is that fewer local communities are divided under the current map, and the precincts preserve existing political boundaries.

Collectively, these results show that Plaintiffs’ illustrative maps fail to meet the *Gingles* 1 criteria in three important ways. First, neither Black nor Latinos are sufficiently numerous in and of themselves to constitute the majority in a single member district. This is important because all of the Plaintiffs’ illustrative maps require the combination of Black and Hispanic voters to form a majority-minority district. Second, the pairing of Black and Hispanic voters together is inappropriate because Black and Hispanic voters in Galveston County are not geographically compact. Third, and finally, the illustrative plans violate traditional redistricting principles to push the number of Black and Hispanic CVAP above 50%+1 in each illustrative plan.

Galveston County’s Dynamic Growth

Between 2010 and 2020, Galveston County’s population grew by 59,373. The proportional increase of 20% of the county’s population was the largest since 1970.² The growth also continued changes in the county’s demography, shared below in Table 1. A look at the 2020 Census population count in each Commissioner Court Precinct shows that Galveston County’s growth since 2010 was not even across the county. Prior to the county’s 2021 redistricting process, both Precincts 2 and 4 were overpopulated and Precinct 3’s population growth lagged the county by almost 9%. To keep district populations within plus or minus 5% of an equal distribution of individuals among four commissioner precincts, Precinct 2 needed fewer people and Precinct 3 needed additional people.

Table 1: Change in Galveston County from 2000 to 2010 to 2020

	2000	2010	2020
Total Population	250,198	291,309	350,682
Ideal Precinct Population (4)	62,550	72,827	87,671
Hispanic Population	44,939 (18%)	65,270 (22%)	88,636 (25%)
NH Black Population	38,179 (15%)	39,229 (14%)	43,120 (12%)
NH White Population	157,851 (63%)	172,652 (59%)	191,358 (55%)

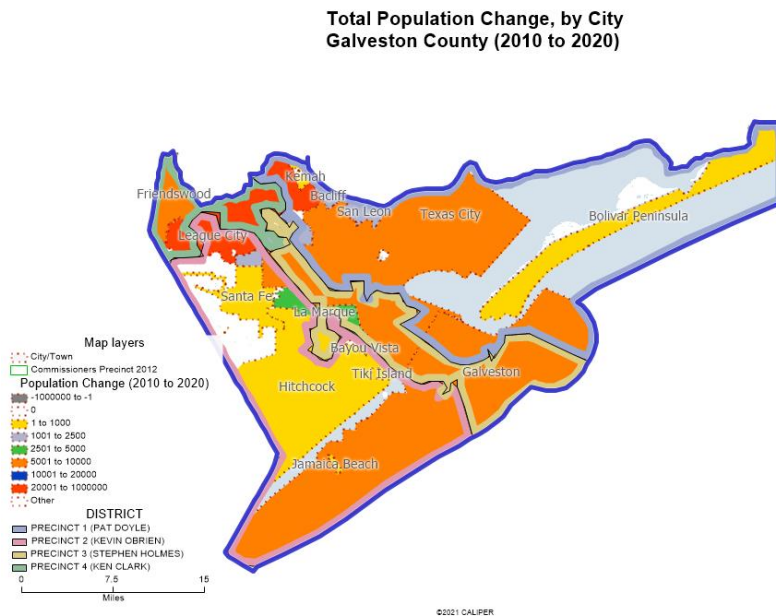
Figure 1, on the next page, illustrates that League City predominantly contributed to Galveston County’s growth with more than 30,802 new residents. This area is shaded in red to

² Texas Almanac. 2011. Population History of Counties from 1850–2010. Texas State Historical Association. <https://www.texasalmanac.com/drupal-backup/images/topics/ctypophistweb2010.pdf>

Also, Ferguson, John Wayne. 2021. “Galveston County population tops 350k, according to census.” *Galveston Daily News*, August 12, 2021. galvnews.com/news/article_15c68cc2-73f6-58b9-8162-07f7a74186e1.html

reflect that the population growth exceeded 20,000 individuals. Under the prior map, portions of League City were split between all four districts, but only one of League City’s voting districts was in Commissioner Court Precinct 3. Precinct 3 under the Benchmark Map was comprised of cities with lower population growths over the past decade like Dickinson (2,167 new residents) and La Marque (3,521 new residents).

Figure 1: Population Growth in Galveston County (2010 to 2020), by City with overlay of 2012 Commissioner’s Court Precinct Map



I. None of the Illustrative Maps Are Compact Under *Gingles I*

A. Determining Compactness

Comprehensive evaluations of compactness require multiple levels of analysis. Traditional redistricting principles encourage following political boundaries, major roadways, major waterways or other recognizable markers to align precincts in a North-South or East-West configuration. The first reason for compactness is to reflect communities of interest (e.g., income, education, cultural communities, population centers, etc.). Districts are determined to be reasonably configured and less burdensome administratively if districts minimize splits of municipalities and are more compact. Contiguous districts are not always uniform in size, so compactness can be measured with statistical scores that describe the shape of the polygon. The scores submitted by the Plaintiffs (Reock, Polsby-Popper, and Convex-Hull) are commonly used to measure compactness. While all scores have different assumptions about measurement, they serve the same purpose of comparing districts to one another and across a plan (here, Galveston County as a whole).

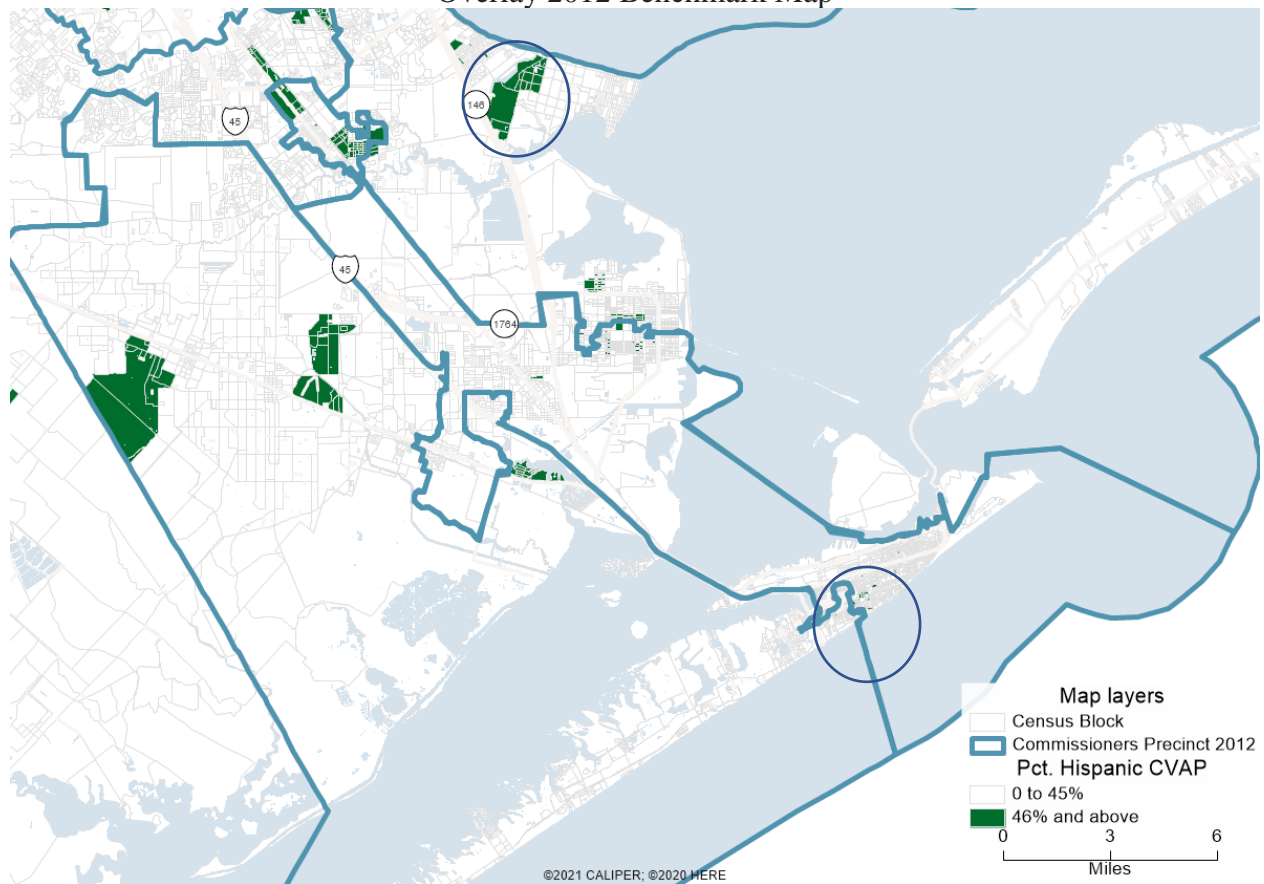
A *Gingles I* evaluation for the Galveston County Commissioner’s Court Precinct Map must answer a few direct questions. Does Galveston County’s Hispanic CVAP (19%) live in a

compact area? Does Galveston County’s Black CVAP live (13%) in a compact area? These questions lead to understanding the compactness of Galveston’s two largest minority communities. Compactness is not defined by the boundaries of the prior district, but where people live.

B. Galveston County’s Hispanic Citizen Voting Populations are geographically dispersed at the North and South ends of the County.

The Hispanic population in Galveston County is not compact. Population growth in the past decade shows that the Hispanic population is growing in different parts of the county. Figure 2 below shows the weight of the Hispanic population is largest and most concentrated in the northeast and southeast parts of the county. But the Benchmark Precinct 3 excluded swaths of Hispanic residents across the county and in voting districts adjacent to Precinct 3’s boundary and selectively chose some Hispanic residents at the top and bottom of that majority-minority precinct. Additionally, Figures 2 and 3 show that the concentration of Hispanic CVAP in Galveston County at the census block and voting tabulation district level look different. This is because the Hispanic CVAP population is concentrated within the smallest geographic units, but not adjacent to other communities.

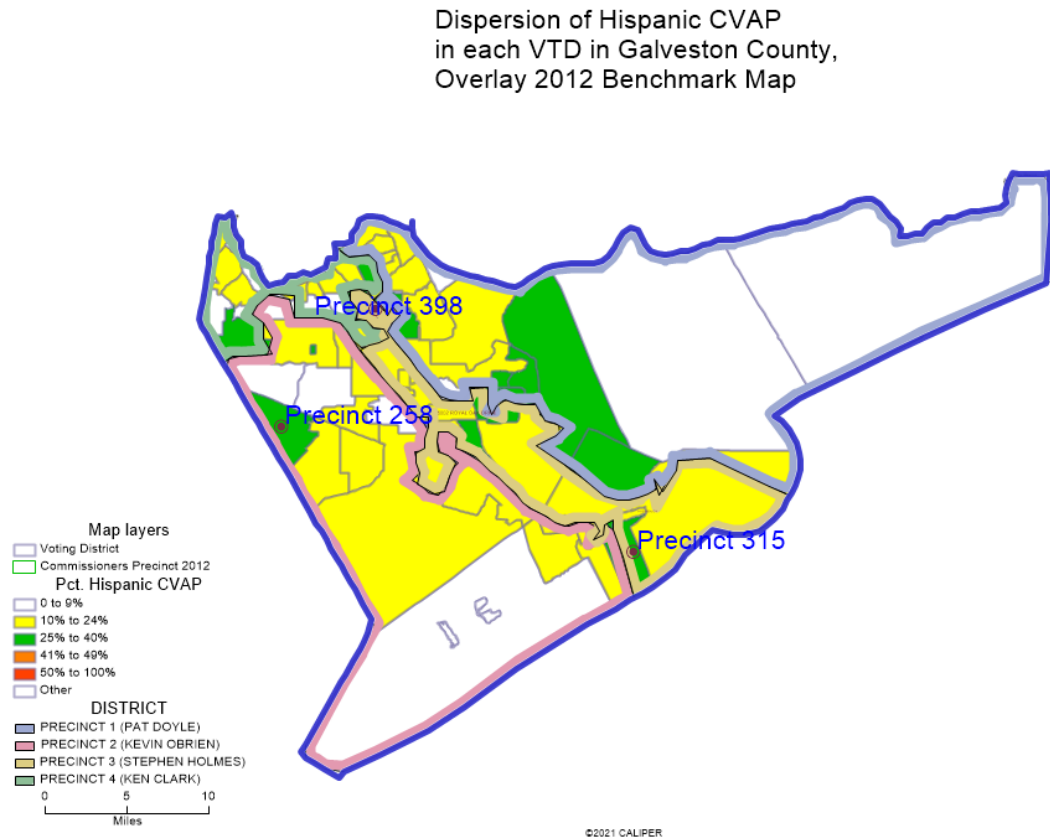
Figure 2: Dispersion of Hispanic Citizen Voting Age Population, by Census Block Overlay 2012 Benchmark Map



On Galveston Island there are 7,637 Hispanic residents who are voting age citizens. Those citizens live 18 miles away from the concentration of 305 Hispanic voting age citizens in the census blocks that are circled in Figure 2 to the north.

Figure 3 illustrates the range of Hispanic citizen voting age population's (HCVAP) concentration in the former voting districts (VTDs). In Texas, voting tabulation districts (VTD) are a collection of census blocks. Therefore, the VTD represents the political geography where residents live. If multiple census blocks are concentrated in a compact community, then the VTD will also show higher levels of concentration. At the VTD level there is, again, a pattern of a geographically dispersed Hispanic population in Galveston County. There are large concentrations of heavily Hispanic VTDs in the northwest corner of the county around Dickenson and League City and the southeast portion of the county near the Gulf Coast of Galveston City, a distance of 24.8 miles. The northern concentration includes a Hispanic CVAP of 980 citizens southern concentration a Hispanic CVAP of 1545 citizens. We see that Hispanic voters are not highly concentrated in the central portion of Galveston County, rather they are at the northern and southern ends of the county. These two clusters of Hispanic populations are not culturally similar, and should not be assumed to be so, as described in more detail below.

Figure 3: Share of Hispanic Voting Age Population in Voting Tabulation Districts



From top to bottom, the areas where we see clusters of the highest percent are in the north-central portion of the county. Voting districts 341 and 398 are adjacent and are the only

voting tabulation districts where more than 40% of the citizen voting age population is Hispanic (HCVAP). The HCVAP in Voting district 398 is 43% or 272 residents and it was assigned to Commissioner Precinct 3 in the 2012 Benchmark map. Old voting district 315, which is 22 miles apart from voting district 398, is the southernmost concentration of HCVAP. The 1,545 Hispanic citizens make up a 34% HCVAP. Voting district 315 was also in Commissioner Precinct 3 of the Benchmark map. Additionally, old voting district 315 is more than 26 miles away from old voting district 258, which is the western-most concentration of 1,383 Hispanic citizens of voting age, with a HCVAP of 35%. Old voting district 258 was assigned to Commissioner Precinct 2 and continues to be assigned to it in all of the plans that are reviewed in this case. The locations of these VTDs with very high concentrations of HCVAPs are not geographically compact.

C. In All Illustrative Plans, the current Precinct 3 Does Not Form A Community Of Interest of Hispanics

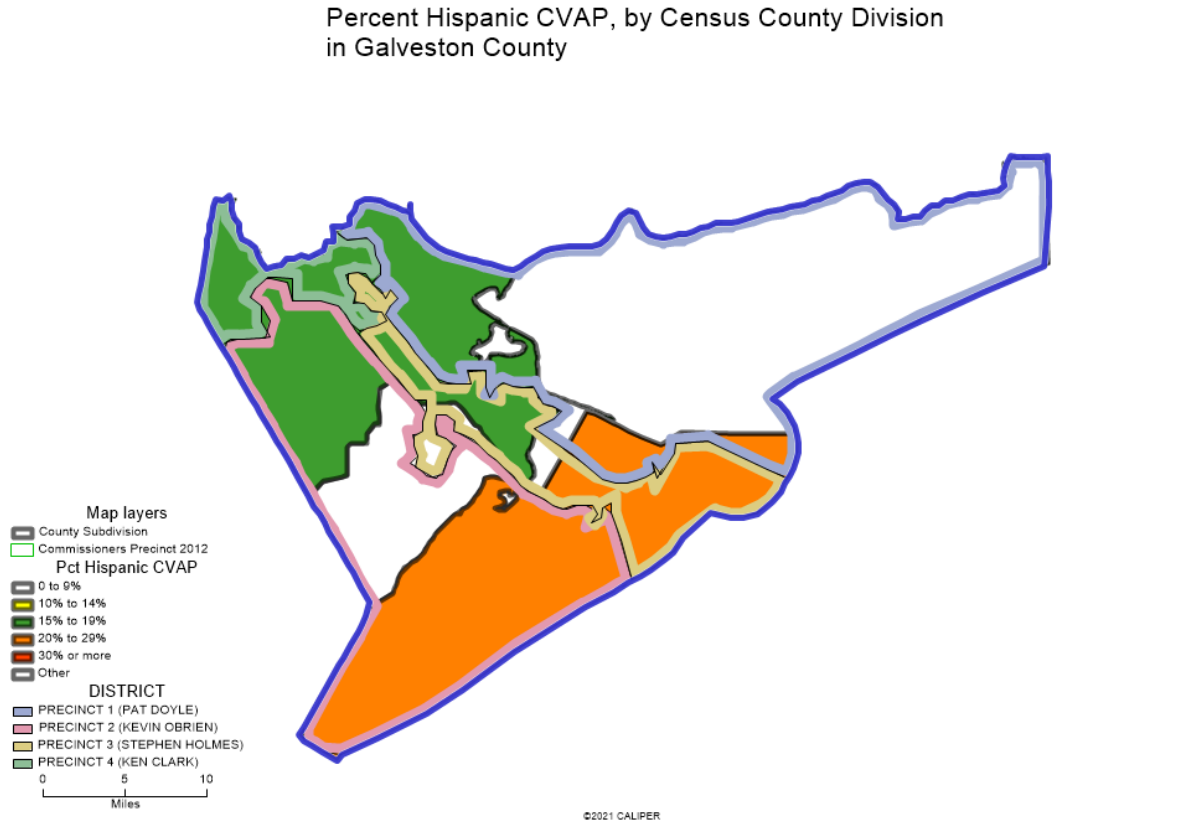
Galveston County's HCVAP is both distant and disparate. This indicates that a compact community of interest does not exist among the current Hispanic population in Galveston County. My analysis focuses on the citizen voting age population. These numbers reflect responses to the American Community Survey's robust set of questions in order to provide the most reliable estimate of subgroups at a local geographic level. The estimates of Galveston County's citizen voting age population by race and ethnicity also show that the Hispanic populations are disparate, and unable to be placed into one commissioner precinct that would form a majority Hispanic population. There is even less justification to join Hispanic and Black voters as a single community of interest even when they live in the same area, as described in more detail below.

Analyzing differences within populations and comparing them to neighbors shows how diverse and distinct a population is in a local area. I examine the diversity within the Hispanic population, with the 5-year estimates of the American Community Survey by the U.S. Census Bureau (2020), which provides insight into the different levels of education attainment, income, employment status, and other characteristics by age, gender, as well as race and ethnicity within these populations. The most granular level at which these data are available is the Census County Division (CCD). Using data tables from the Census, subpopulation counts can be determined within a more general spatial layer to maintain the anonymity of a respondent (<https://data.census.gov/>). In Galveston County, the four CCD's are Bolivar, Galveston, La Marque and Hitchcock, as well as Texas City and League City.³ In Maptitude for Redistricting,⁴ each CCD is identified as the "County Subdivision." Figure 4, on the next page, shows the percent of Hispanic CVAP in each CCD in Galveston County, these divisions are visible as grey lines and with the 2012 Benchmark Map overlaid.

³ Since the Bolivar Peninsula is geographically distinct, I direct my comparisons to the three divisions that are a part of the illustrative Precinct 3 proposals.

⁴ Maptitude for Redistricting is a GIS software designed specifically for the purpose of creating and analyzing redistricting plans. Similar to ArcGIS this is used by multiple states to create their redistricting plans, therefore I use it in my analysis to align my analysis with the processes used to create a district.

Figure 4: Hispanic Citizen Voting Age Population in Census County Divisions of Galveston County



A substantial difference between the Hispanic population across Galveston County is who in the population is employed full time. Hispanic men in the northern part of Galveston County are 12% more likely to have a full time job than Hispanics on Galveston Island. This exceeds the difference in the difference we see in the median age of Hispanic males between the regions of the county.

Table 4: Median Age and Population Working Full Time Among Hispanics, by County Area

	Category	Galveston	La Marque, Hitchcock	Texas City, League City
Median Age	Male	32	34	28
	Female	32	30	30
Pct. Working Full time	Male	47	62	59
	Female	35	35	32

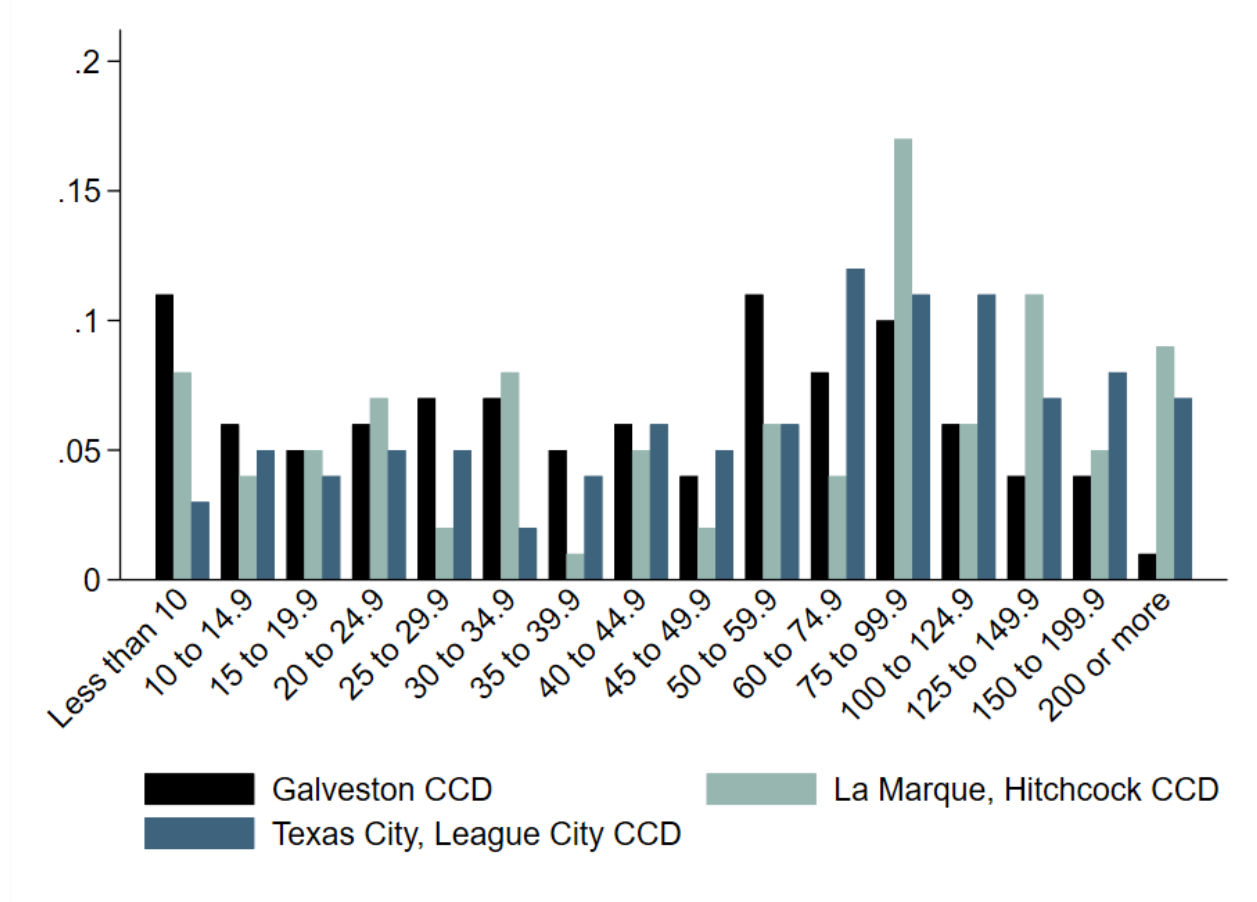
These details provide a more consistent context to understand population dynamics within the county than that depicted by Plaintiffs' expert William Cooper, in Figure 5 of his report (p. 16). The Plaintiffs' expert identified an economic community of interest that was conditioned on income and having a child in the household. His analysis omits that there is

substantial variation between the Hispanic population’s workforce status by gender and geography.

Figure 4 presents the ACS 5-year estimates for household income ranges in 16 categories. Each bar reflects the percent of the population that has an income within that category, in thousands of dollars. The category definitions are designed to create enough buckets to capture individual differences in incomes earned so that we can make reliable comparisons across the income distribution.

Across Galveston County there is a clear difference by geographic region in the income distribution of Hispanic residents. Hispanic residents in La Marque and Hitchcock make up the larger share of both lower incomes and high incomes. Hispanic household incomes in Texas City and League City are more evenly distributed and Hispanic households on Galveston Island are more often middle to lower income.

Figure 5: Hispanic Household Income in Past 12 months, by Population Group and Geography



Hispanics in the southern end of the county are different from Hispanics in the northern end. This is reflected in who is employed full-time and the distribution of household incomes in the community.

D. Galveston County’s Black Citizen Voting Populations are geographically dispersed at the North and South ends of the County.

Figure 6 shows population dispersion in Galveston county the same way that was just done for Hispanic CVAP. The Black citizen voting age population (BCVAP) in Galveston County is concentrated in the northern and southern portions of the county. The distance from the northern most concentration of BCVAP to the census blocks with high concentration of BCVAP on Galveston Island is 21 miles, point to point. From east to west it is 8 miles between the census blocks with the highest concentration of BCVAP in Texas City to those in Hitchcock.

Figure 6: Dispersion of Black Citizen Voting Age Population, by Census Block

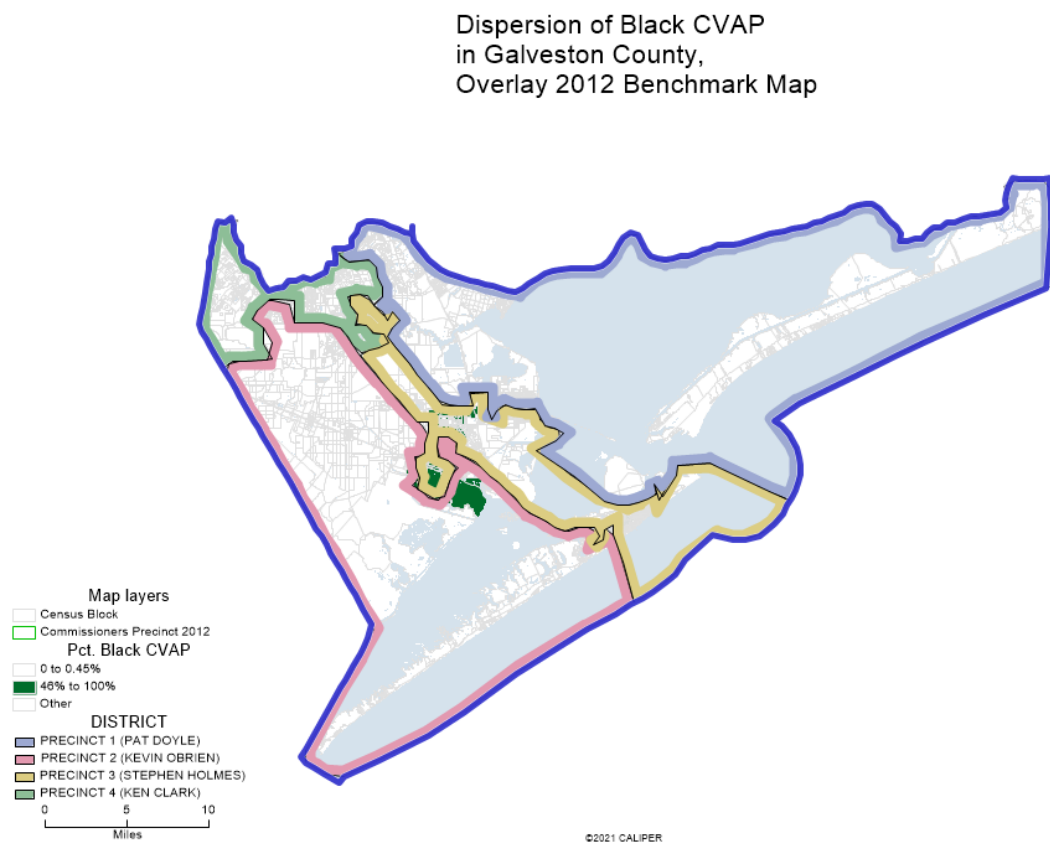
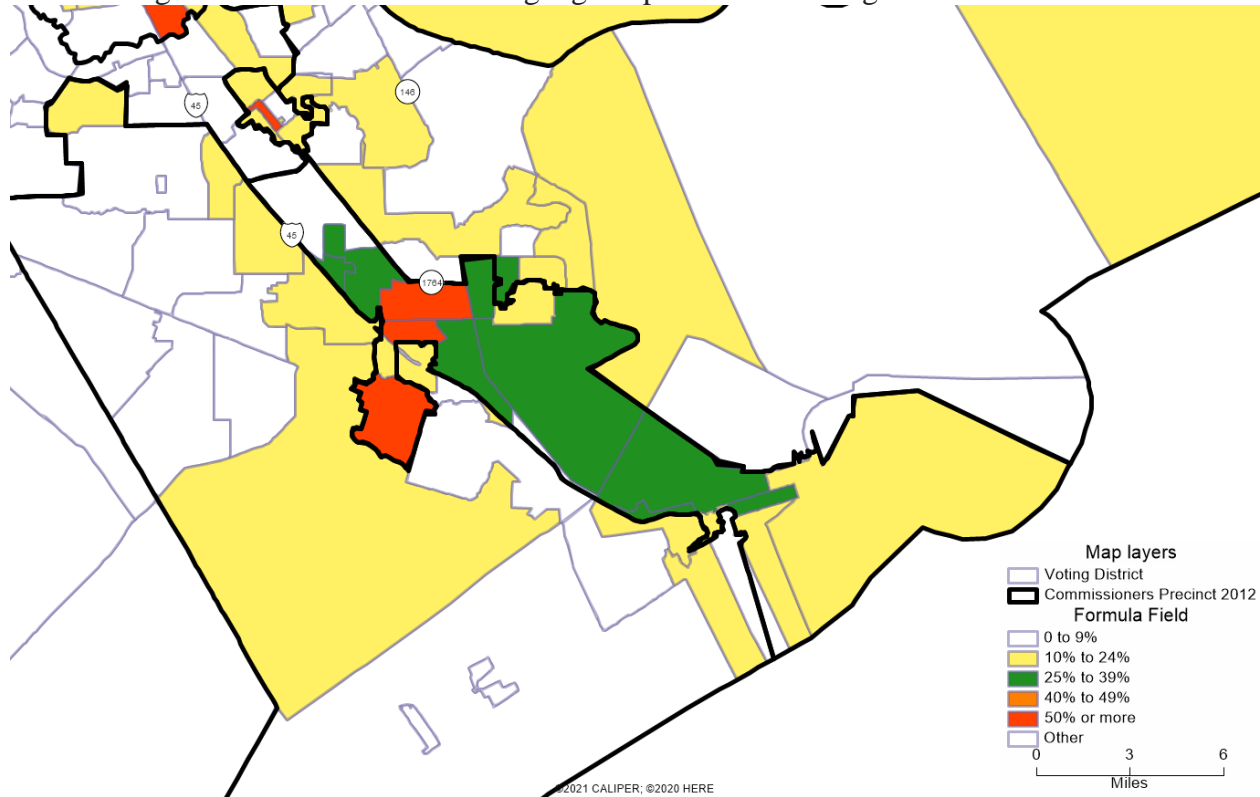


Figure 7 illustrates the Black CVAP in the voting tabulation districts (VTDs). Although the Black CVAP population appears concentrated in the center of the county, the population does not come close to having a substantial influence for a district of more than 85,000 residents. The Benchmark Precinct 3 combined a population of 14,159 Black citizens of voting age who reside in the green and red areas in the center and southern portion of the county with a small northern peninsula of 1,151 BCVAP residents in Dickinson (3.8% of the county’s BCVAP). The distance from the south of old voting district 336 to north of old voting district 340 is just under 10 miles to join these populations. One concern is that decisions to draw these communities into one Commissioner’s precinct does not consider other differences Black citizens have in these different cities and areas of the county.

Figure 7: Share of Black Voting Age Population in Voting Tabulation Districts



E. In All Illustrative Plans, the current Precinct 3 Does Not Form A Community Of Interest of Black CVAP

The distance between the geographic dispersion of BCVAPs indicates that a compact community of interest does not exist among the current Black population in Galveston County. The estimates of Galveston County’s citizen voting age population show that the Black populations are disparate, and unable to reliably be placed into one commissioner precinct that would form a majority community of interest. Clear differences emerge between geographic areas related to where people moved from to reside in Galveston County, employment, and income.

Among the Black residents who did move to a new area of county from elsewhere in Texas, Black residents were more likely to move to Texas City and League City than anywhere else. Hispanic residents, who previously lived in Texas, did not move to any part of Galveston County more often than any other. The movement of Black residents within the county is primarily moving to Galveston Island, whereas the movement of Black resident to the county from elsewhere in Texas heads towards Texas City and League City.

Table 6: Geographic Mobility Among Blacks, by Population

		Galveston	La Marque, Hitchcock	Texas City, League City
Geo. Mobility	Same House 1 year	76	83	81
	Moved within county	17	12	9
	Moved from elsewhere in Texas	5	4	8
	Moved from other state	1	1	1
	Moved from abroad	0	0	0

Another substantial difference between the Black populations in Galveston County is the median age of Black population. We see that the Texas City and League City communities are substantially younger than other areas of Galveston County to the south and west. The gap in the median age of each gender population in La Marque and Hitchcock varies the most, with Black women in La Marque and Hitchcock skewing 13 years older than Black women in Texas City and League City. Despite these age differences, the share of Black men and Black women in the workforce is the same in Galveston, La Marque, and Hitchcock.

Table 7: Median Age and Population Working Full Time Among Blacks, by County Area

	Category	Galveston	La Marque, Hitchcock	Texas City, League City
Median Age	Male	40	38	31
	Female	38	49	36
Pct. Working Full time	Male	28%	33%	48%
	Female	29	33	41

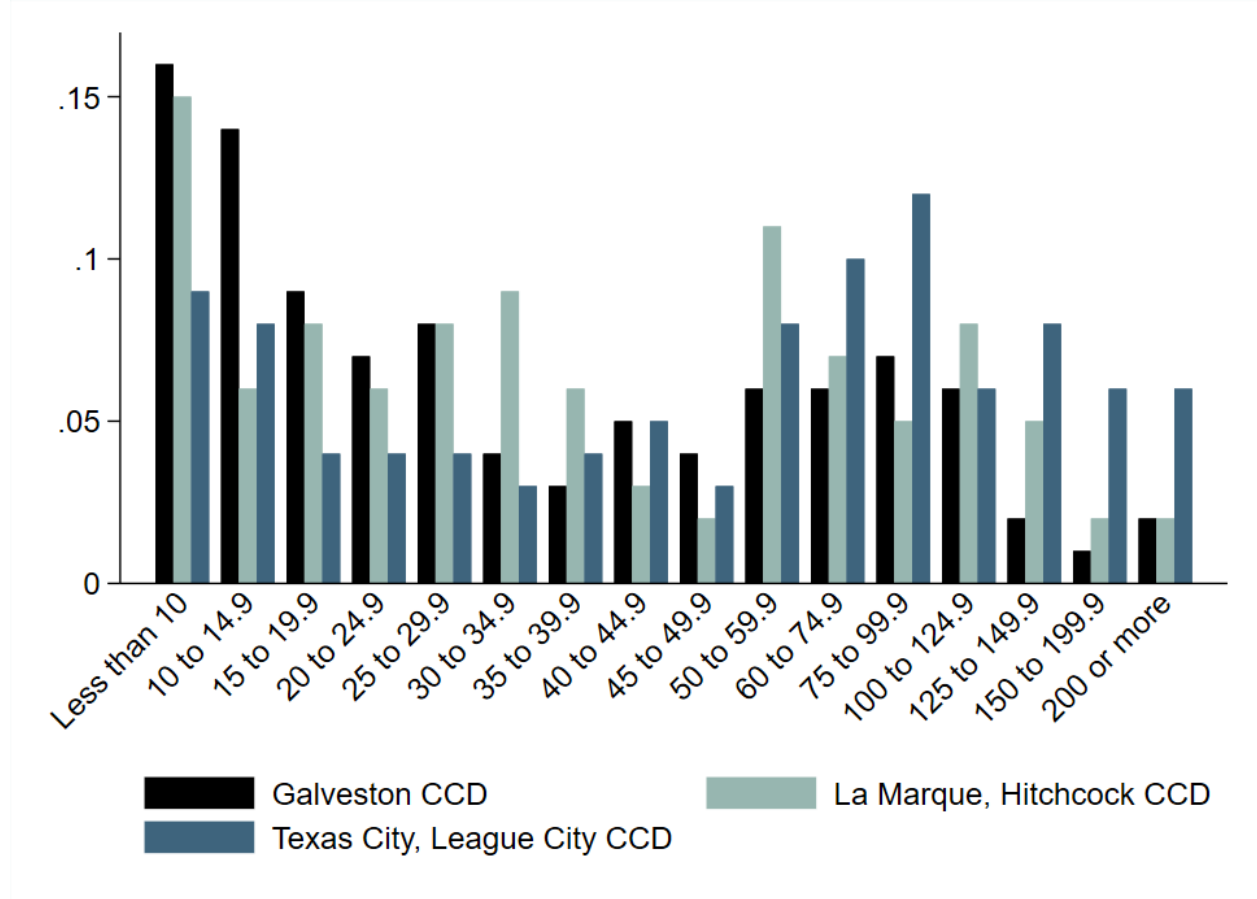
The rates of education offers another substantial difference. Black males have much higher levels of college degrees and collegiate attendance in La Marque, Hitchcock, Texas City, and League City than Black men on Galveston Island. The distribution of education attainment, race, and gender also shows the share of Black women with a college degree in Texas City and League City is substantially higher than the rest of the county. The range within the Black population is stark, as 14% more Black men and women in Texas City and League City have a college degree compared to Black men and women on Galveston Island. So, in addition to being younger, Black men and women also have higher education attainment in the areas closer to Houston.

Table 8: Education Attainment Among Blacks, by County Area

Education	Population	Galveston	La Marque, Hitchcock	Texas City, League City
Less than High school	Male	28%	12%	12%
High school	Male	33	31	24
Some college	Male	29	46	39
Bachelor's degree	Male	9	11	25
Less than High school	Female	12	12	9
High school	Female	33	18	31
Some college	Female	39	56	31
Bachelor's degree	Female	16	14	30

Finally, Figure 8 shows a clear difference by geographic region in the income distribution of Black residents. Black residents of Texas City and League City have higher household incomes than Black residents in La Marque, Hitchcock, and Galveston.

Figure 8: Black Household Income in Past 12 months, by Population Group and Geography



Education, income, and geographic mobility are ways that the Black population in Galveston County is disparate in addition to being geographically distant. The Black population in the southern end of the county is different from the northern end in a few disparate ways. This reduces the claim that this is one cohesive community of interest.

F. Illustrative Alternatives for Precinct 3 are Not Compact

In addition to considering the concentration of the Hispanic population included and those excluded from illustrative alternatives for Precinct 3, I present the set of compactness measures and deviation statistics for each plan. This includes the Benchmark prior Commissioners Precinct Map that was in place until 2021, the 2021 Enacted Map, and all Illustrative Maps from Plaintiffs’ experts. The scores all range from 0 to 1, where 1 reflects a more compact geographic shape. I also report the average score and the standard deviation for all four Commissioner Precincts in order to show how compact they are in comparison to others in the same plan. This is important because any extension of a voting district from a traditional polygon will affect the compactness of its adjacent district (losing area from its shape).

Table 9 presents the percent of the Precinct population that is above the ideal population of 87,671 residents. The redistricting process is centered on reducing the population deviation between of each precinct, which is how governments are able to reduce the ratio of representation to ensure the equal protection of all voters. The table below reports all the deviation statistics for each plan together. A point of caution, the Cooper Illustrative Map 2 as exhibits less population deviation than the Enacted Map but the way this occurs is problematic and a point I discuss later in the report.

Table 9: Population Deviation for Precinct Plans

Deviation	Precinct 1	Precinct 2	Precinct 3	Precinct 4	Avg.	Std. Dev.
Benchmark Map	-2.6%	9.0%	-8.8%	2.4%	5.7%	6.6%
Enacted Map	0.02	0.03	0.5	0.6	0.3	0.3
Fairfax Illus 1	-2.6	3.8	-3.6	2.4	3.1	3.1
Rush Map 1	1.1	-1.7	-0.8	1.35	1.2	0.3
Rush Map 2	-2.7	-1.7	5.7	1.4	2.9	1.7
Rush Map 3	-1.3	0.1	2.6	-1.4	3.2	3.6
Cooper Illus 1	-0.4	-0.7	1.0	0.2	0.3	0.6
Cooper Illus 2	0.0	-0.3	0.3	0.04	0.1	0.2
Cooper Illus 3	0.6	1.7	-0.5	-1.8	0.6	1.2

Three statistical scores, the Reock score, Polsby-Popper score, and the Convex-Hull score are used to compare the symmetry and consistency of all boundaries of the shape in a standardized way. In Tables 10, 11, and 12, I present the scores for all Precinct plans under consideration. The Enacted Map is more compact than each illustrative map. The Enacted map has an average score that is consistent with the other plans, but the standard deviation of the scores across all districts is the lowest. A close examination of the scores per precinct shows that the lowest compactness score in all illustrative maps is Precinct 3. The one Illustrative Map that offers one-tenth of a percent less population deviation than the 2021 Enacted Map (Cooper Map 2) has lower average compactness scores and higher standard deviations of compactness (Reock, Polsby-Popper).

Table 10: Reock scores for Precinct Plans

Reock score	Precinct 1	Precinct 2	Precinct 3	Precinct 4	Avg.	Std. Dev.
Benchmark Map	0.28	0.39	0.16	0.34	0.22	0.15
Enacted Map	0.30	0.24	0.23	0.29	0.27	0.04
Fairfax Illus 1	0.28	0.39	0.16	0.34	0.29	0.10
Rush Map 1	0.29	0.34	0.21	0.26	0.28	0.05
Rush Map 2	0.30	0.33	0.16	0.31	0.28	0.08
Rush Map 3	0.30	0.33	0.16	0.28	0.27	0.07
Cooper Illus 1	0.28	0.37	0.17	0.34	0.29	0.09
Cooper Illus 2	0.27	0.25	0.20	0.39	0.28	0.08
Cooper Illus 3	0.23	0.29	0.35	0.21	0.27	0.06

Table 11: Polsby-Popper scores for Precinct Plans

Polsby-Popper	Precinct 1	Precinct 2	Precinct 3	Precinct 4	Avg.	Std. Dev.
Benchmark Map	0.23	0.28	0.09	0.14	0.19	0.09
Enacted Map	0.28	0.21	0.12	0.22	0.21	0.07
Fairfax Illus 1	0.23	0.30	0.10	0.14	0.19	0.09
Rush Map 1	0.22	0.25	0.12	0.14	0.18	0.06
Rush Map 2	0.25	0.26	0.12	0.17	0.20	0.07
Rush Map 3	0.25	0.27	0.12	0.14	0.20	0.08
Cooper Illus 1	0.24	0.29	0.11	0.12	0.19	0.09
Cooper Illus 2	0.27	0.25	0.20	0.39	0.39	0.08
Cooper Illus 3	0.24	0.23	0.18	0.13	0.20	0.05

Table 12: Convex-Hull scores for Precinct Plans

Convex-Hull	Precinct 1	Precinct 2	Precinct 3	Precinct 4	Avg.	Std. Dev.
Benchmark Plan	0.69	0.71	0.48	0.15	0.51	0.26
Enacted Plan	0.76	0.71	0.47	0.67	0.65	0.13
Fairfax Illus 1	0.69	0.73	0.49	0.55	0.62	0.11
Rush Map 1	0.66	0.65	0.56	0.56	0.61	0.06
Rush Map 2	0.68	0.67	0.54	0.58	0.62	0.07
Rush Map 3	0.68	0.67	0.53	0.60	0.62	0.07
Cooper Illus 1	0.69	0.69	0.51	0.55	0.61	0.09
Cooper Illus 2	0.74	0.64	0.60	0.62	0.65	0.06
Cooper Illus 3	0.68	0.74	0.60	0.52	0.64	0.10

Another factor of compactness is the distance it takes to travel from one end of the precinct to another. Maptitude for Redistricting’s GIS software provides a Travel Contiguity Analysis tool to calculate the percentage of residents who drive in the district, the distance they travel by car, and the time they report to travel by car. The software tool generates a complete and accurate measure by computing a matrix of distances from all points along the boundary of a district. In another column, I also add to this analysis the miles from the northern most point to the southern most point of the Precinct Plan.

Table 13: Travel Contiguity Analysis of Precinct 3 in Illustrative Plans, Plus Length of Precinct 3

District Plan	Pct who drive	Max Drive Distance	Max Drive Time	Precinct 3’s Distance North to South
Fairfax	91.0%	31.82 miles	52.43 minutes	22 miles
Cooper 1	92.3	31.82 miles	52.15 minutes	22 miles
Cooper 2	91.7	29.01 miles	52.15 minutes	22 miles
Cooper 3	92.4	18.13 miles	34.45 minutes	14 miles
Rush 1	92.9	29.84 miles	52.15 minutes	21 miles
Rush 2	92.3	28.13 miles	52.15 minutes	22 miles
Rush 3	92.7	28.13 miles	52.15 minutes	21 miles

As shown above in Table 13, the illustrative maps for Precinct 3 are not compact. Moreover, there are substantial differences between the Hispanic and Black populations in the regions that are the focus of the Plaintiff’s complaint. The lack of geographic compactness and

the substantial differences between these populations discussed above shows they do not have sufficient shared interests to compel a majority-minority district composed of both Hispanics and African Americans.

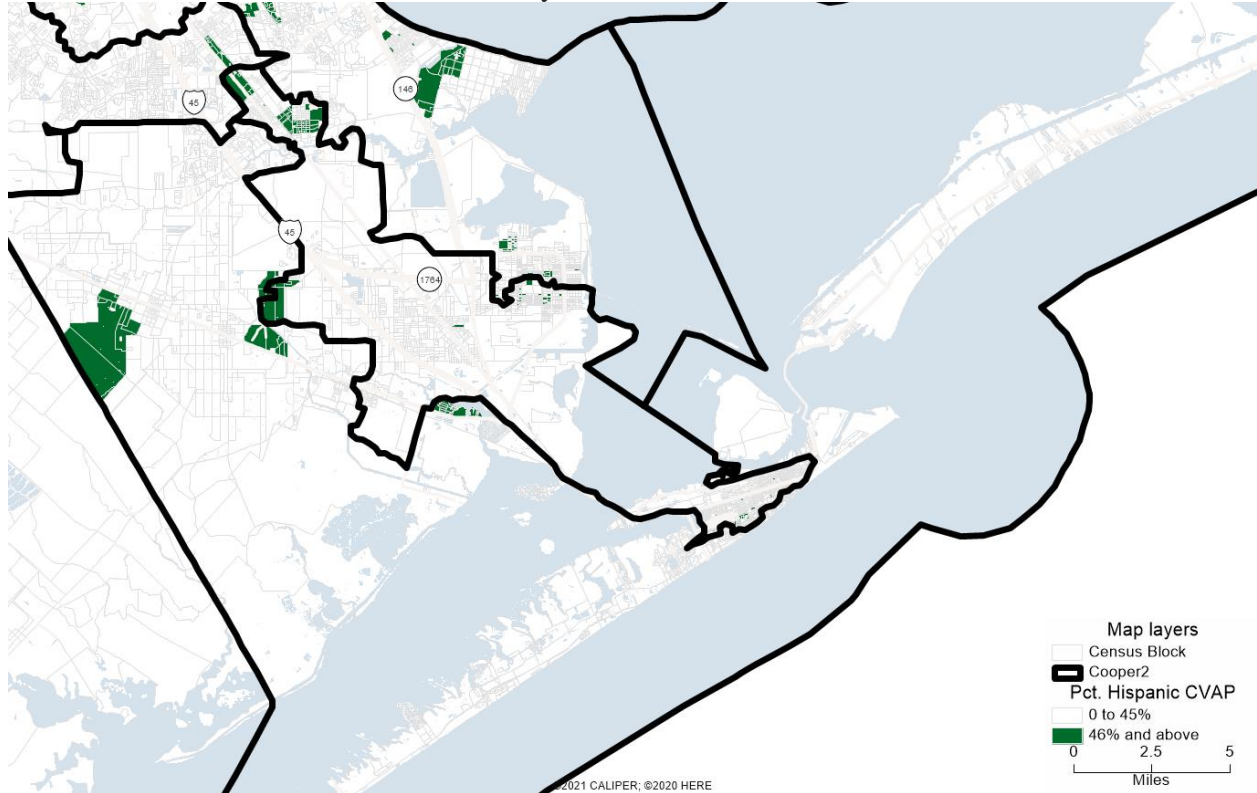
G. The Proposed Alternative Plans Prioritize The Racial Identity of Persons Above Traditional Redistricting Principles.

An analysis of the illustrative plans reveals that plaintiffs have prioritized race over traditional redistricting practices. Earlier in this report, I show that Hispanic voters are concentrated in different parts of Galveston County and are uniquely different from Black residents in the same places. I also show the consistent lack of compactness in the illustrative maps submitted by the Plaintiffs.

Six of the seven proposed plans divide Galveston Island into multiple precincts. Most of those plans divide the island into three precincts. Cooper's Illustrative Map 3 is the only one that does not. Any division of Galveston Island is unnecessary given that its population of 54,774 (including Pelican Island) is less than the ideal district population. Redistricting principles allow minimal population deviation so that geographically distant areas like islands are not cracked into multiple districts.

Another concerning pattern in the illustrative maps is that the non-compact illustrative maps reach out to grab Black voters and combine far-flung segments of the Hispanic population. Figure 4 offers a clear example of how Cooper's Illustrative Map 2 confirms that the Hispanic population is not compact.

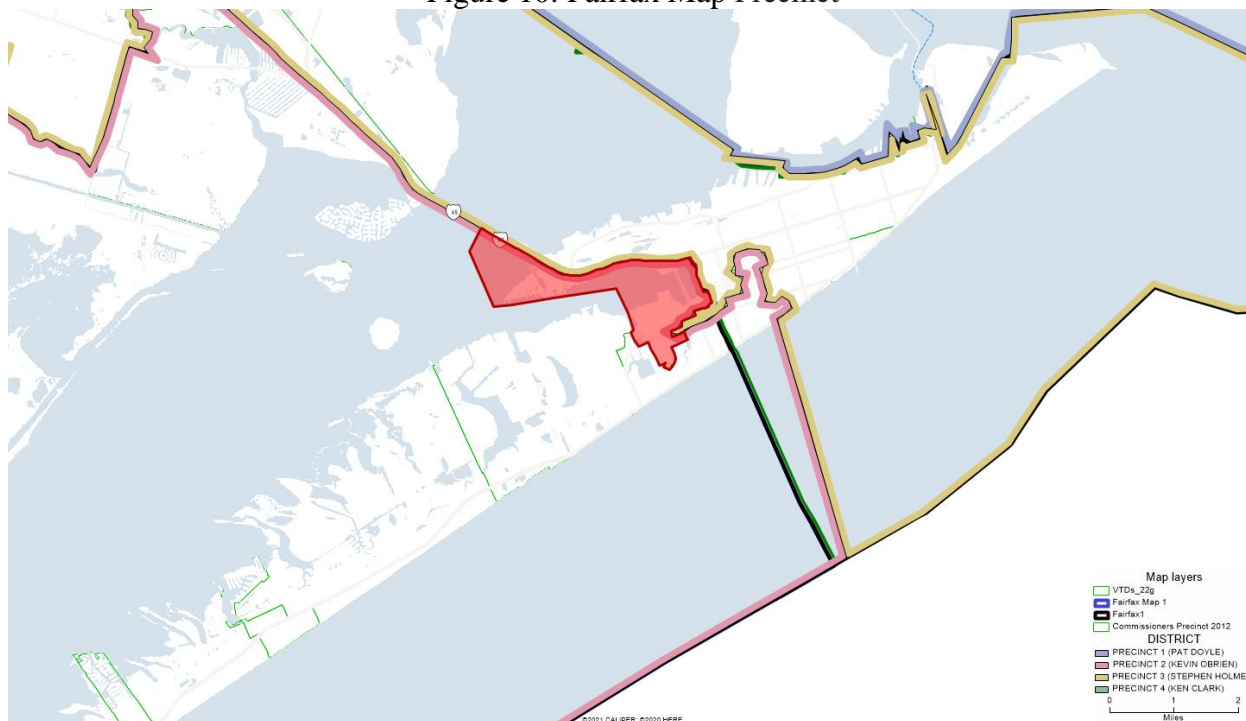
Figure 9: Precinct 3 Overlaid with Dispersion of Hispanic Citizen Voting Age Population, by Census Block



Building from this point, I will identify how each illustrative map violates traditional redistricting principles in an effort to maximize the racial composition of the district. I will begin with Anthony Fairfax’s illustrative map, then discuss Cooper’s three illustrative maps, and end with an evaluation of the maps from Tye Rush.

The Fairfax Illustrative Map attempts to recreate Precinct 3 by staying close to the previous boundary. Figure 10 shows one voting district was added. Fairfax added the area where the black line extends beyond the pink line. The voting district that was selected added 873 Hispanic citizen voting age residents (25%) and 302 Black citizens of voting age (9%). This selectively chose a diverse voting district to add, when other voting districts were also adjacent to Precinct 3 and could have improved the compactness of the Precinct.

Figure 10: Fairfax Map Precinct



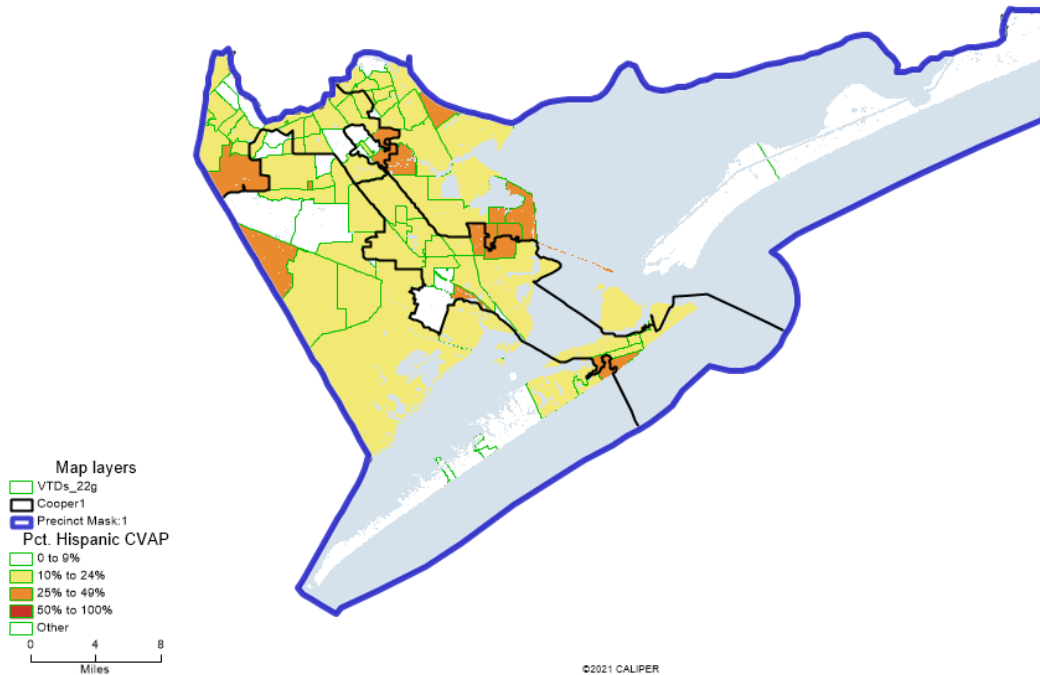
The process exhibits a selective choice under the guise of offering the least changes. Precinct 3, as proposed in Fairfax Map 1, continues to be underpopulated by 3.6%. This selection excludes the more populous voting district 223 (shaded above with a citizen voting age population of 4,045). Voting district 223 would have reduced the population deviation further and had a higher concentration of 870 Black voting age citizens (22%) than voting district 218. The remaining demographic composition of voting district 223 includes 777 Hispanic voting age citizens (19%) and 2263 non-Hispanic white voting age citizens (56). This opportunity to increase the Black and Hispanic populations in Precinct 3 would limit the ability for Precinct 2 to be contiguous on the island.

The process exhibits a selective choice under the guise of offering the least changes. Precinct 3, as proposed in Fairfax Map 1, continues to be underpopulated by 3.6%. This selection excludes the more populous voting district 223 (shaded above with a population of 6,093). voting district 223 would have reduced the population deviation further and had a higher concentration of BCVAP than voting district 218. The demographic composition of voting district 223 includes 19% HCVAP, 56% WCVAP, and 22% BCVAP, as compared to 27% HCVAP, 62% WCVAP, and 9% BCVAP. This opportunity to increase the Black and Hispanic populations in Precinct 3 would limit the ability for Precinct 2 to be contiguous on the island.

The first illustrative map proposed by William Cooper enlarges the geographic footprint of Precinct 3 in order to add population to the underpopulated Precinct. The district includes the northern part of the Precinct where concentrations of Hispanic voters are split into Precinct 1, 3, and 4. Precinct 3 grows west to add voting districts 219 and 232.

Figure 11: Cooper Map 1, Precinct 3

**Cooper Illustrative Map 1,
Dispersion of Hispanic CVAP by VTD**



While it would appear the illustrative plan now rounds out Precinct 3’s previous extended arm into Hitchcock, there are three substantial violations of traditional redistricting practices that lead to increasing the population of Black residents in Precinct 3.

1. The substantial changes to Precinct 3 does not limit the representation of Galveston Island to two voting districts, as the Plaintiff’s expert says. This illustrative map continues to exclude 713 voting age citizens in voting district 105.1 from Precinct 3 by assigning coastal area in Precinct 1. The voting district has a CVAP population includes 92 Hispanic citizens, 523 non-Hispanic white, and 33 non-Hispanic Black citizens (13% HCVAP, 73% WCVAP, and 5% BCVAP).
2. Adding more of La Marque and Hitchcock to Precinct 3 and give the visual appearance of compactness, relies on adding voting district 232 (population 2,205 CVAP). The newly added population in this area was 24% HCVAP, 55% WCVAP, and 17% BCVAP).
3. The added population needed to reduce population deviation came from adding Voting district 419. Voting district 219 is not adjacent to the area where most voting districts were added, but it has a citizen voting age population of 2,689 (24% HCVAP, 53% WCVAP, and 14% BCVAP). This ignored the concentrated Hispanic population across Highway 6 in voting district 225 that goes on the shoreline. Voting district 225 is adjacent to three of the newly added voting districts and has a similar population to the

areas it is adjacent to. The citizen population of voting district 225 is 3,606 (14% HCVAP, 81% white, 2% BVAP).

I addressed the second illustrative map submitted by William Cooper above, but want to identify additional selective choices that were made in Cooper Map 2. The cartographer's attention on this map is directed to the furthest northern and southern sections of Precinct 3. At the north, there are clear attempts increase the number of adjacent voting districts from one to two before the district moves up capture a set of voting districts that are clearly of interest to the Plaintiffs. In this case:

1. The map splits voting district 192 north and south. The split occurs south of voting district 391 and captures a little more than half of the voting district's population. This voting district that has a citizen voting age population of 32% HCVAP, 52% WCVAP, and 14% BCVAP is split so, Precinct 3's share of voting district 391 is 29% HCVAP, 34% WCVAP, and 14% BCVAP. The share of voting district 391 sent to Precinct 1 is 28% HCVAP, 49% WCVAP, and 15% BCVAP. Splitting this voting district did not add to the compactness of the district in a meaningful way, but it increased the share of Black CVAP.
2. Compactness was not likely the reason for voting district 192's split, since voting district 391 runs north of that area. The voting district that remained part of Precinct 3 in Cooper Map 2 has a HCVAP of 28%, WCVAP of 49%, and BCVAP of 16%. Voting district 391 was part of the Benchmark Commissioner Precinct Map and the split of voting district 392's only benefit was to add visual compactness to the hook that existed to include voting district 391 in the first place. The southern portion of voting district 392 was essential to maintaining the contiguity of voting district 391 without relying on the geographically small voting district 394.
3. Voting district 218 is also split along census block lines. In this case Precinct 3 comes within 0.2 miles of Seawall Blvd. The wide-open ocean and Precinct 3, which extends to north Galveston County, are separated are separated by a census block of 16 residents. Using this small intersection to connect a district that is just shy of 58 miles from the northeast corner to the southwest corner violates traditional expectations of compactness and clearly divides local communities from receiving the same representation.
4. Voting district 315 is adjacent to voting district 218 and has the same problem. In this case, Precinct 3 goes all the way east to Seawall Boulevard on three occasions (as seen in Figure 9). Within those jagged selections, 5 voting age citizens are split from Precinct 3 into Precinct 2 in order to be joined with Porretta Beach. Across from Stewart Beach Park, another 144 voting age citizens residents find they are part of Precinct 2 and not Precinct 3 because of their access to the water. The affected individuals are 7% HCVAP, 83% WCVAP, and 10% BCVAP. Precinct 2 is given beach access to continue as a contiguous precinct, which it barely achieves with a tiny strip of beach. The contiguity of Precinct 2 becomes dependent on the weather conditions and high tide.

Figure 12: Cooper Map 2, Precinct 3



The first departure from a traditional redistricting practice divided a voting district to assign census blocks with more Hispanic residents to Precinct 2. The communities that remained had a higher Black CVAP. The beach contiguity problem is also a sign of racial gerrymandering, since 218 individuals were selectively discarded from Precinct 3 even though the non-Hispanic Black population was consistent with the county’s population share. In each case the exclusion of certain populations allowed the district to extend to reach areas with larger non-Hispanic Black populations, like on Galveston Island. This allowed Precinct 3 to include the entire 314th voting district, which has a larger than average concentration of non-Hispanic Black residents at the far east end.

A third illustrative map from William Cooper acknowledges the county’s interest in reducing the political divisions on Galveston Island, acknowledges the unnecessary split of voting district 192, and ends the narrowest contiguity of Precinct 3 at Robinson’s Auto Repair in Dickinson. This narrow point of contiguity was part of the Benchmark district and allowed someone to be in one of three different Commissioner Precincts, depending on which side of the business you were on. Despite those changes, the illustrative plan continues to make selections that show the prioritization of race over redistricting principles.

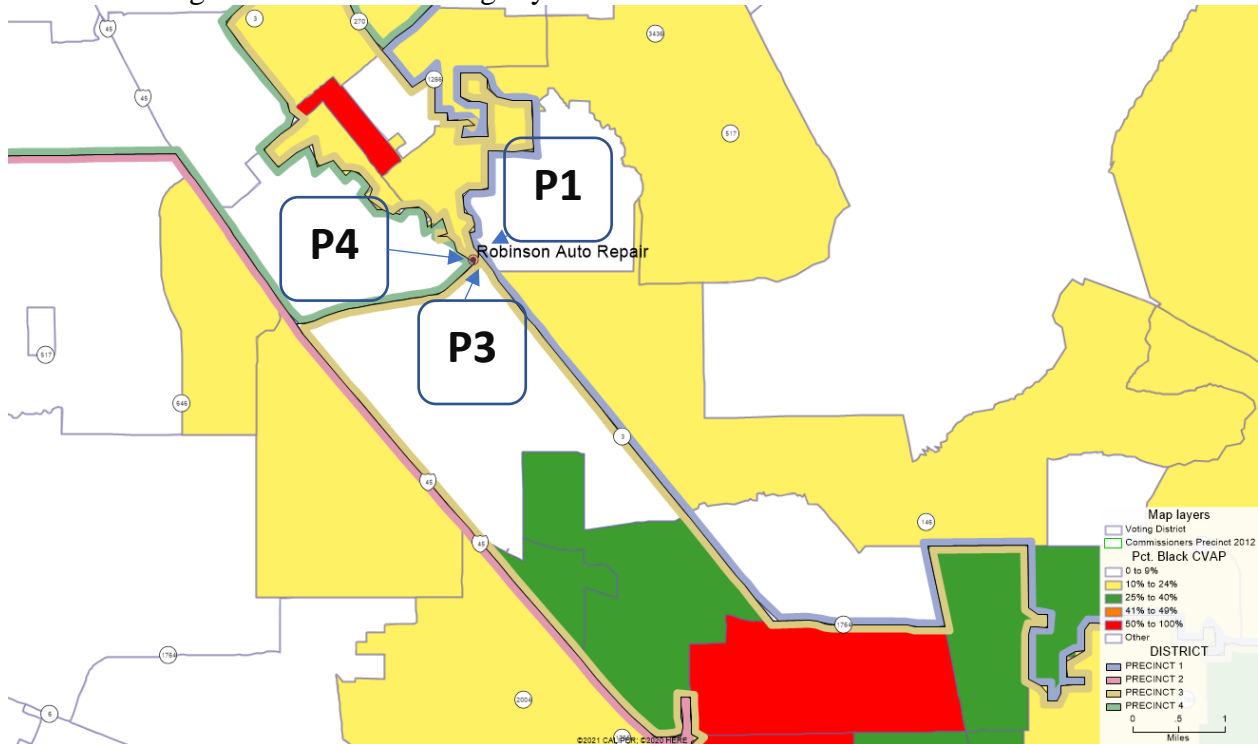
1. This map increases the share of Texas City that is in Precinct 3, by adding voting districts 142, 148, and 150. However, because voting district 150 goes up to the south shore of Moses Lake, Precinct 1 becomes contiguous only through the Moses Lake Floodgate on the north edge of Moses Lake. The extension of this hook around Texas City also uses a large area with zero population to connect the northern and southern sides of Precinct 1. This is another example of how adjustments to Precinct 3 reduce the compactness of adjacent districts. This version of Precinct 1 had the lowest compactness score of the three illustrative maps William Cooper submitted.
2. The district still maintains a division of the Hispanic population in the city of Dickinson in the northern section of the district and attempts to pair it with population in Hitchcock. The distance to achieve his combination is more than 13 miles. A district would be more

compact if the community of interest in Dickinson was joined with a community in League City, where the populations are more similar.

The first illustrative map prepared by Tye Rush is another example of prioritizing race in the selection of voting districts over traditional redistricting principles. The first illustration:

1. Separates Galveston Island into Precincts 1, 2, and 3. The plan deviates from the historical map, by assigning voting district 314 to Precinct 1 (now voting district 214). Doing this makes Precinct 3 on the island narrower than 1 mile east to west. The citizen voting age population of voting district 314 is 4621 (22% HCVAP, 42% WCVAP, and 35% BCVAP).
2. More than 19 miles to the north, the map splits voting district 439 and 144 with voting district 341. This is the same narrow community that has been previously described as being 0.05 miles wide and the site of Robinson's Auto Repair. Precinct 3 is unable to pick up the concentration of 3,107 BCVAP+HCVAP if it does not take this narrow pass over Dickinson Bayou. That is 9.6% of the BCVAP+HCVAP used to create the illustrative versions of Precinct 3 that keep this intact.
 - a. The 341st voting district included is 47% HCVAP, 38% WCVAP, and 12% BCVAP. The two adjacent voting districts have a BCVAP of 6% (voting district 439) and 5% (voting district 144). The HCVAP of the same two districts is 16% (voting district 439) and 25%. (voting district 144). Voting district 341 was selected to be in Illustrative Precinct 3 at the exclusion of the two adjacent voting districts, because it had double the BCVAP.

Figure 13: Narrow Contiguity of Precinct 3 - Where Three Districts Meet



3. Also, instead of expanding the northern section of Precinct 3 to be more compact, this map excludes voting district 399 from Precinct 3. The citizen voting age population

of this voting district is 456 (37% HCVAP, 17% non-Hispanic White, and 18% non-Hispanic Black). The estimated CVAP population is 456 (HCVAP is 38%, BCVAP is 18%, and WCVAP is 38%).

4. The adjacent voting district below has a population distribution of 48% Hispanic, 7% non-Hispanic white, and 41% non-Hispanic Black. This shows Rush Map 1 split a younger Hispanic community (HCVAP 37%) from its adjacent neighbor (HCVAP 42%), in order to prioritize maintain voting districts with higher BCVAP in the center of the county in Precinct 3.
5. Rush's first illustrative map has the same additions in Texas City to Precinct 3 that force Precinct 1 around Moses Lake and reduce the compactness of Precinct 1. Although, this configuration occurred with the Cooper maps, the addition of Pelican Island to Precinct 3 extends the distance Precinct 1 is only contiguous via Galveston Bay.

The second illustrative map by Tye Rush continues to prioritize the northwest by southeast version of Precinct 3. This version makes notable changes to the first Rush illustrative.

1. Galveston Island continues to be split into Precincts 1, 2, and 3. In this version voting district 314 (now 214) is returned back to Precinct 3.
2. The effort to add more of Texas City to Precinct 3 recedes in this version, as voting district 148 is split away from Texas City. This voting district was previously joined with Precinct 3 in Map 1, as well as maps by William Cooper's third illustrative map. The decision to assign voting district 148 to Precinct 1 moves a citizen voting age population in voting district 148 that is 27% HCVAP, 59% WCVAP, and 11% BCVAP. Rush Map 2 kept the adjacent voting district 150 (29% HCVAP, 60% WCVAP, and 10% BCVAP) and adjacent voting district 142 (29% HCVAP, 42% WCVAP, and 26% BCVAP). The action to add voting district 142 selectively chooses the voting district with the highest percentage of Black CVAP. The extension to include voting district 150 also, includes one of the Plaintiffs into the district. Those to steps are done at the exclusion of a voting district that has the largest HCVAP population.
3. Additionally, this map includes the greatest population deviation of 8.4% between the least populated and most populated Commissioner Precincts by packing more residents into Precinct 3 than any other illustrative map submitted by the Plaintiffs.

Rush's third illustrative map continues to follow a similar approach to the second map with three notable changes.

1. Illustrative Map 2 drops voting district 219 in Hitchcock from the unnecessarily overpopulated Precinct 3 in Map 2.
2. Illustrative Map 2 drops voting district 218 from the version just discussed from the unnecessarily overpopulated Precinct 3 in Map 2.
3. Precinct 218 is assigned to Precinct 2, which was done in other illustrative maps to drive the district as far south as possible.

Conclusion: Galveston County Lacks a Compact Community of Interest

My report has focused an intensely local analysis on Galveston County's residents to identify if the areas with concentrations of Hispanic residence are adjacent or disparate. In addition to finding that Galveston County's Hispanic residents are disparate, I also did not find patterns within subdivisions of the county where the Hispanic and Black populations are substantially similar to be considered a combined community of interest.

Galveston County's population growth has primarily been centered around its largest city League City. The county's fastest growing demographic group are Hispanics, but they are concentrated in cities across the county with unique individual characteristics in each geographic area. These two factors and the acceleration of the county's population growth have reshaped the county's political geography. It has changed so much, that the Benchmark Precinct 3 no longer represents a clear community of interest. A view of population distributions at the census blocks and voting districts show that illustrative maps that are set to prioritize representation of Black residents excludes adjacent Hispanic residents.

The illustrative versions of Precinct 3 that have been proposed constitute a collection of multiple racial gerrymanders that stretch definitions of compactness, population deviation, and how to maintain contiguity. Moreover, six of the seven districts perpetuate significant political divisions of Galveston Island. My report describes how on multiple occasions each map plan chose to include a voting district that had a higher concentration of Black citizens of voting age, even when adjacent voting districts with similar populations had higher concentrations of Hispanic voters could have been selected.

The illustrative maps are prime examples of how racial considerations are prioritized over traditional redistricting principles to achieve a majority-minority district built on an overgeneralized assumption of similarities between the Hispanic and Black communities. The distant Hispanic populations and their distinct cultural characteristics lead us to infer that minority status was the only characteristic that was considered when trying to join these populations. The long and distant Precinct 3 may appear as an opportunity to give representation to the central part of the county, but any analysis that breaks down the population statistics will identify the Benchmark and illustrative Precinct 3 boundaries joins two very different Hispanic populations that are at the north and south ends of the smaller Black population.

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Curriculum Vitae

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EDUCATION

University of Georgia - Ph.D. in Political Science	2014
University of Oxford - Visiting Doctoral Student in the Department of Politics	2013
Johns Hopkins University - M.A. in Government	2008
University of Florida - B.A. in Political Science, <i>magna cum laude</i>	2006

ACADEMIC POSITIONS

University of Texas at Tyler	
Associate Professor & Honors Faculty	2020 - present
Assistant Professor	2015 - 2020
Reinhardt University - Adjunct Professor of Public Administration	May 2014 & May 2017
Bates College - Visiting Assistant Professor	2014 - 2015

PROFESSIONAL EXPERIENCE

APSA Congressional Fellow, <i>Office of the President Pro Tempore</i> , United States Senate.	2015 - 2016
Legislative Assistant, two former U.S. Representatives. Washington, D.C.	2007 - 2009

BOOKS

Owens, Mark, Ken Wink, and Kenneth Bryant, Jr. 2022. *Battle for the Heart of Texas: Political Change in the Electorate*. Norman, OK: University of Oklahoma Press.

Bryant, Jr., Kenneth, Eric Lopez, and Mark Owens. 2020. *Game of Politics: Conflict, Power, & Representation*. Tyler, TX: The University of Texas at Tyler Press (Open Source Textbook).

ARTICLES

- 10 Howard, Nicholas O. and Mark Owens. 2022. "Organizing Staff in the U.S. Senate: The Priority of Individualism in Resource Allocation." *Congress & the Presidency* 49(1): 60-83.
- 9 Johnson, Renee M. Cassandra Crifasi, Erin M. Anderson Goodell, Arkadiusz Wiśniowski, Joseph W. Sakshaug, Johannes Thrul, and Mark Owens. 2021. "Differences in beliefs about COVID-19 by gun ownership: A cross-sectional survey of Texas adults." *BMJ Open* 11(11): 1-7.
- 8 Goldmann, Emily, Daniel Hagen, Estelle El Khoury, Mark Owens, Supriya Misra, and Johannes Thrul. 2021. "An examination of racial/ethnic differences in mental health during COVID-19 pandemic in the U.S. South." *Journal of Affective Disorders* 295(1): 471-478.

- 7 Owens, Mark. 2021. "Changes in Attitudes, Nothing Remains Quite the Same: Absentee Voting and Public Health." *Social Science Quarterly* 102(4): 1349-1360.
- 6 Johnson, Renee M. and Mark Owens 2020. "Emergency Response, Public Behavior, and the Effectiveness of Texas Counties in a Pandemic." *Journal of Political Institutions & Political Economy* 1(4): 615-630.
- 5 Howard, Nicholas O. and Mark Owens. 2020. "Circumventing Legislative Committees: Use of Rule XIV in the U.S. Senate." *Legislative Studies Quarterly* 45(3): 495-526.
- 4 Madonna, Anthony J., Michael Lynch, Mark Owens and Ryan Williamson. 2018. "The Vice President in the U.S. Senate: Examining the Consequences of Institutional Design." *Congress & The Presidency* 45(2): 145-165.
- 3 Owens, Mark. 2018. "Changing Senate Norms: Judicial Confirmations in a Nuclear Age." *PS: Political Science and Politics* 51(1): 119-123.
- 2 Carson, Jamie L., Anthony J. Madonna, and Mark Owens 2016. "Regulating the Floor: Tabling Motions in the U.S. Senate, 1865-1946." *American Politics Research* 44(1): 56-80.
- 1 Carson, Jamie L., Anthony J. Madonna, and Mark Owens 2013. "Partisan Efficiency in an Open-Rule Setting: The Amending Process in the U.S. Senate, 1865-1945." *Congress & The Presidency* 40(2): 105-128.

BOOK CHAPTERS

- 2 McWhorter, Rochell, Mark Owens, Jessie Rueter, Joanna Neel, and Gina Doepker. 2020. "Examining Adult Learning of 'Giving Back' Initiatives." In *Handbook of Research on Adult Learning in Higher Education*. Hershey, PA: IGI Publishers. With Rochell McWhorter, Jessie Rueter, Joanna Neel, and Gina Doepker.
 Reprinted in 2021 by Information Resources Management Association (Ed.), in *Research Anthology on Adult Education and the Development of Lifelong Learners* (pp. 1039-1066). IGI Global.
- 1 Carson, Jamie L. and Mark Owens. 2015. "Lawmaking." In Robert A. Scott and Stephen M. Kosslyn, eds. *Emerging Trends in the Social and Behavioral Sciences*. New York: Wiley.

BOOK REVIEWS

- Owens, Mark. 2023. "Johnson, Marc. Tuesday Night Massacre: Four Senate Elections and the Radicalization of the Republican Party." *Great Plains Research*. **Forthcoming**.
- Owens, Mark. 2021. "Lewallen, Johnathan. Committees and the Decline of Lawmaking in Congress." *Congress & the Presidency* 48(3): 404-406.

AWARDS

- | | |
|---|------|
| Burns "Bud" Roper Fellow. American Association of Public Opinion Researchers. | 2021 |
| Prestige Impact Award, Dean of the College of Arts & Sciences at UT Tyler. | 2019 |
| Outstanding Faculty Mentor Award, UT Tyler Office of the Provost. | 2019 |
| Teaching and Learning Award, UT Tyler Center for Excellence in Teaching and Learning. | 2018 |

Community Engaged Learning Award, Harvard Center at Bates College.	2015
Outstanding Teaching Assistant Award, University of Georgia Provost.	2013
Charles S. Bullock, III Scholar, UGA School of Public and International Affairs.	2009

GRANT & CONTRACT SUPPORT

10. Texas Vaccine Hesitancy Survey, (Co-Investigator & PI for Subaward). 2022. PI's: Paul McGaha (UT Tyler HSC) & Paula Cuccaro (UT SPH-Houston) PI of \$1.3 million subaward: Mark Owens (UT Tyler). Scope of Survey: Statewide survey of hard to reach respondents (Apr. to Nov.). Funded by: Texas State Department of Health and Human Service.	\$2.6 million
9. El Paso County Social Survey, (Investigator). 2022. PI: Gregory Schober, UTEP Scope of Survey: Countywide survey, oversampling low-income households (May-July) Funded by: University of Texas at El Paso (UTEP).	\$46,200
8. Southern Cities Survey, (Co-PI). 2020. PI's: Emily Goldmann (NYU) & Mark Owens Scope of Survey: Sample of 5 major Southern Metropolitan areas in May. Funded by: UT Tyler & New York University School of Global Health.	\$12,000
7. Small Grant, Center for Effective Lawmaking (Co-PI). 2020. PI's: Mark Owens & Nicholas Howard (Auburn-Montgomery) Scope of Work: Content Analysis of all Senate committee reports, 1985-2020. Funded by: UVA & Vanderbilt.	\$2,300
6. Texas Mental Health Survey, (Co-PI). 2020 PI's: Renee Johnson (JHU) & Mark Owens Scope of Survey: Three wave statewide panel (April, May, & June) Funded by: UT Tyler & Johns Hopkins Bloomberg School of Public Health	\$45,000
5. East Texas Survey on Education & Property Tax Reform, (Co-PI). 2019 PI's: Kyle Gullings (UT Tyler) & Mark Owens Scope of Work: Regional sample to compare East Texas to DFW and Houston. Funded by: UT Tyler	\$10,000
4. Faculty Undergraduate Research Grant, (PI) Studying Vote Centers in Texas. 2018. Scope of Work: Mentor undergraduates to gather data and submit FOIA requests. Funded by: UT Tyler Office of Research and Scholarship.	\$3,000
3. Congressional Research Grant, (PI) Bicameralism's Effect on Appropriations. 2015. Scope of Work: Archival visits to Concord, Tempe, and Washington, D.C. Funded by: The Dirksen Congressional Center.	\$3,133
2. Faculty Development Grant, (PI) Majority Party Power in a Bicameral Congress. 2015. Scope of Work: Mentor undergraduate researchers to analyze archived documents. Funded by: Office of the Dean of Faculty at Bates College.	\$2,575
1. Richard Baker Award, (PI) Majority Party Power in a Bicameral Congress. 2011. Scope of Work: Archival visits to Austin, TX and Washington, D.C.. Funded by: Association of Centers for the Study of Congress.	\$1,000

COMMENTARY

Owens, Mark. "Why our poll got it wrong on Biden but right on so much more." *Dallas Morning News*. Sunday November 15, 2020. Page, 5P.

Howard, Nicholas O. and Mark Owens. "Are Amendment Strategies Learned Through Experience or Contingent on the Institution?" *LegBranch*. May 27, 2019.

Bryant, Jr. Kenneth, Ken Wink, and Mark Owens. "Conflicting Attitudes of Texans on Wall and Border Policies." *Austin American-Statesman*. March 11, 2019.

Owens, Mark. "Are Courtesy Meetings Nuked?" *LegBranch*. July 10, 2018.

Owens, Mark. "East Texans support Trump, but at lower levels than 2012." *Tribtalk: Texas Tribune*. November 8, 2016.

INVITED TALKS

League of Women Voters, Tyler/Smith County	"Policies in Texas's Legislative Session"	2023
Dallas Democratic Forum	"Battle for the Heart of Texas"	2022
Southern Methodist University, Tower Center	"Battle for the Heart of Texas"	2022
East Texas Heritage Museum Association	"Polls in Today's Elections"	2022
League of Women Voters, Houston	"Battle for the Heart of Texas"	2022
Texas A&M San Antonio	"Public Attitudes on Equity and Inclusivity"	2022
Delta Sigma Theta Sorority, Tyler Alumnae	"Social Action & Election Education"	2022
League of Women Voters, Tyler/Smith County	"Your options under TX's new Election Law"	2022
Texas Associated Press Managing Editors	"Texas Politics Panel"	2021
League of Women Voters, Oklahoma	"All about Redistricting."	2021
League of Women Voters, Tyler/Smith County	"Essential Conversation on Voting in Texas"	2021
League of Women Voters, Oklahoma	"Representation & Redistricting"	2021
Kilgore College	"Why We Poll Texans"	2020
Smith County Republican Women Club	"Understanding the 2020 Election Polls"	2020
League of Women Voters, Tyler/Smith County	"Processes of the Electoral College"	2020
Kilgore College	"What Primary Voters in Texas Care About"	2019
League of Women Voters, Tyler/Smith County	"Census & Redistricting Forum"	2019
Tyler Area Chamber of Commerce	"Public Input on Transportation"	2019
League of Women Voters, Tyler/Smith County	"Representation & Redistricting"	2018
Bates College, Martin Luther King, Jr Day	"Legacy of the Voting Rights Act of 1965"	2015
Rothemere American Institute, Oxford, UK	"Effect of Bicameralism on Policy"	2013

CONFERENCE PRESENTATIONS

Hofstra University Presidential Conference on Barack Obama's Presidency	2023
The Citadel Symposium on Southern Politics	2014 - 2022
Congress & History Conference	2012, 2016, 2018
Election Science, Reform, and Administration Conference	2020
American Association of Public Opinion Researchers Meeting	2020, 2021, 2023
American Political Science Association Meeting	2011 - 2016, 2020
Midwest Political Science Association Meeting	2011 - 2018, 2023
Southern Political Science Association Meeting	2011 - 2014, 2017 - 2023
Southwest Social Science Association Annual Meeting	2017, 2021

PROFESSIONAL SERVICE

Book Review Editor. <i>Public Opinion Quarterly</i> .	2023 - 2024
Co-Chair. Election Sciences Conference within a Conference at SPSA, San Antonio, TX.	2022
Speaker: AAPOR Send-a-Speaker Program.	2020 - 2021
Field of Study Advisory Committee. <i>Texas Higher Education Coordinating Board</i> .	2018 - 2021
Co-Editor. <i>PEP Report</i> for the APSA Presidency and Executive Politics Section.	2018 - 2019
Grant Reviewer. Hurricane Resilience Research Institute (HURRI), University of Houston.	2018
Grant Reviewer. Administration on Children, Youth, and Families, US Dept. of HHS.	2007

EXTERNAL SERVICE

Expert Witness for neither party, <i>Palmer et al. v. Hobbs</i> , racially polarized voting analysis.	2022
Expert Witness for Florida's Secretary of State, <i>BVM v. Lee</i> , racially polarized voting analysis.	2022
Map Consultant for People not Politicians OK, Independent U.S. House and state district plans.	2021

TEACHING EXPERIENCE

Graduate Course	Institution	Recent Evaluation	Years Taught
Scope & Methods	UT Tyler	4.6	2017 - 2022
Seminar on American Politics	UT Tyler	4.4	2015 - 2022
Budgeting & Public Finance	UT Tyler; Reinhardt	5	2014 - 2017
Program Evaluation	UT Tyler	4.7	2018
Advanced Quantitative Research	UT Tyler	3.8	2018
Undergraduate Course			
Campaigns & Elections	UT Tyler; Bates; UGA	4.6	2013 - 2022
Congress & Legislation	UT Tyler; UGA	4.3	2013 - 2021
Research Methods	UT Tyler	4.4	2016 - 2023
Southern Politics	UT Tyler	4.6	2018 - 2023
U.S. Presidency	UT Tyler; Bates	3.9	2014 - 2017
Intro. to Texas Government (Honors)	UT Tyler	4.1	2020 - 2023
Intro. to American Government	UT Tyler; Bates; UGA	3.8	2013 - 2019

CURRENT COMMUNITY INVOLVEMENT

<i>KVUT 99.7FM UT Tyler Radio</i> (NPR), Advisory Board Member. Secretary (2022-23)	2021 - 2023
<i>League of Women Voters - Tyler/Smith County, TX</i> , Nominating Committee. Chair of Nominating Committee (2021-22)	2020 - 2022

APPENDIX 8

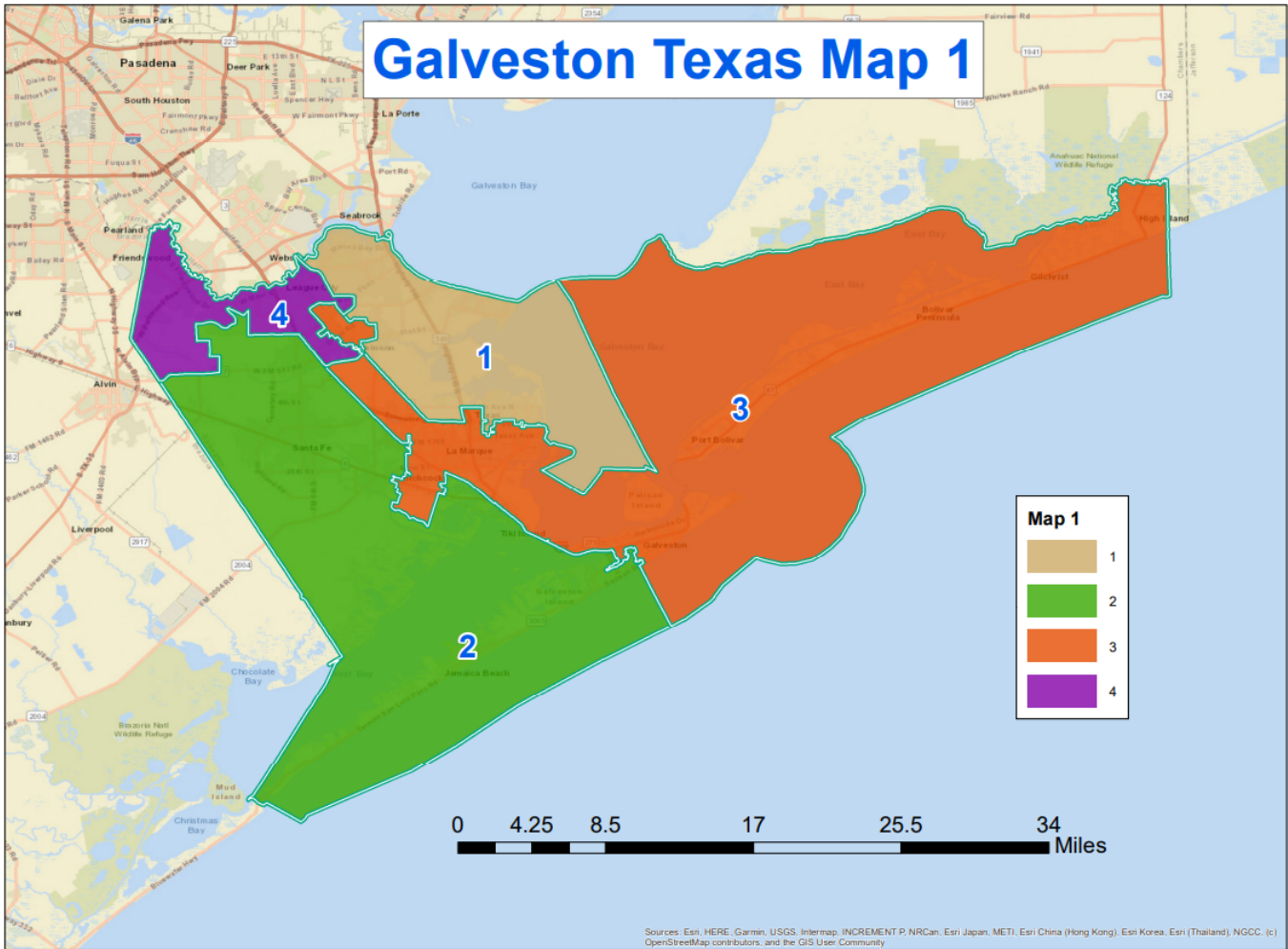
Redistricting

Galveston County Commissioners Proposed Precincts

The Galveston County Commissioners Court will be discussing and voting to redistrict county commissioner's precincts in the next few weeks. Below are the two proposed maps that will be considered. Public comment is now open for county residents via the form on this page.

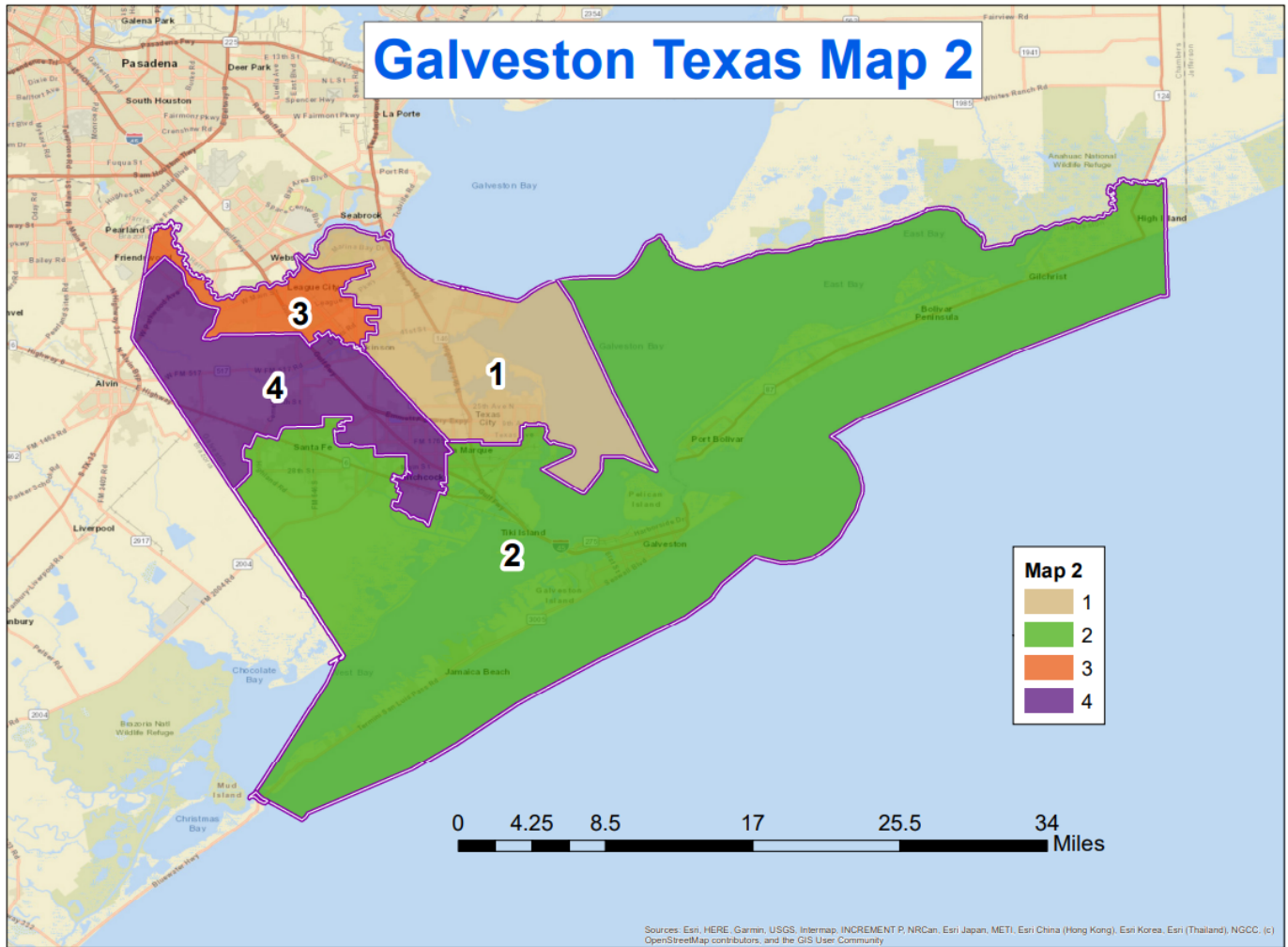
Interactive Redistricting Maps

You may click on the map to access an interactive version.



Proposed Redistricting Map 2

You may click on the map to access an interactive version.



Public Comment

Full Address

Street Number and Name

Unit Number

City

State/Province/Region

Postal/ZIP Code

Full Name

First Name

Last Name

Comment

500 Character limit

500 characters

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APPENDIX 9

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

**HONORABLE TERRY § 3:22-CV-00057
PETTEWAY, ET AL §
§
V. § 9:09 A.M. TO 2:27 P.M.
§
GALVESTON COUNTY, TEXAS, §
ET AL § AUGUST 7, 2023**

**BENCH TRIAL
BEFORE THE HONORABLE JEFFREY V. BROWN
Day 1 of 10 Days**

APPEARANCES:

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Laura Wells, RPR, RMR, CRR, RDR

1 Q. Did you learn any of the demographics about Map 1?

2 A. Not really. Like I said, the only thing I know was
3 about 30 percent.

02:08:13

4 Q. Do you have any understanding as to whether or not
5 Map 1, if adopted, would elect Commissioner Holmes?

6 A. Not if they broke up Precinct 3, it couldn't.

7 Q. You don't think Map 1 here in Precinct 3 would elect
8 Commissioner Holmes?

02:08:39

9 A. Like I said, I can't see which precincts are in
10 Precinct 3.

11 Q. All right.

02:08:53

12 A. Because that way you will know who is voting for who.
13 Just having just a map like this without the breakdown, I
14 can't see the numbers unless somebody printed the numbers
15 out, and then that's their numbers. I'm just taking their
16 word for it.

17 Q. All right. And I want to make really clear. Did at
18 any --

19 A. Okay.

02:09:03

20 Q. -- time Commissioner Holmes or anybody else ever tell
21 you that he could get elected from Map 1?

22 A. No. No one ever told me that.

23 Q. Would you have expected Commissioner Holmes to have
24 told you that if it were true?

02:09:19

25 A. If it were true, but I can't say that because I don't

1 know that, because, like I said, if you do the breakdown
2 and show me the precincts, the voting precincts, then I
3 could determine who is in those precincts.

02:09:40 4 MR. NIXON: Can you pull up Defendants' Exhibit
5 Number 144, please.

6 BY MR. NIXON:

7 Q. All right. This is an e-mail from Mr. Dunn, the
8 Lawyer Dunn, to Commissioner Holmes.

02:10:08 9 MR. NIXON: And if you scroll down a little bit.
10 Keep scrolling. Right. Down one more. Go back one page,
11 please. Blow up this paragraph right here, Galveston
12 County Map 1.

13 BY MR. NIXON:

02:10:35 14 Q. I'm going to represent to you -- this is already in
15 evidence, but Lawyer Chad Dunn on November 6th, 2021, six
16 days before the vote, informed Mr. Holmes, at Mr. Holmes'
17 request, and told him, "County proposed Map 1 makes only
18 minor changes in the benchmark map. The core
19 neighborhoods within each precinct are maintained. The
02:11:10 20 population deviation in the majority-minority Precinct 3
21 is resolved by adding heavily Republican Bolivar Peninsula
22 to the west, which produces the Black CVAP in Precinct 3
23 to 32 percent, and the Black" -- or the B plus H, which
24 means Black plus Hispanic -- "CVAP to 55 percent.

02:11:36 25 However, the district appears to continue to perform for

1 Black and other minority voters."

2 Did you know that?

3 **A.** No. You are telling me that.

4 **Q.** Commissioner Holmes knew that on November 6th. Did he
02:11:50 5 tell you?

6 **A.** Personally, no.

7 **Q.** Did he tell anybody to support Map 1, to your
8 knowledge? Did you hear that?

9 **A.** No. I can't say that because I can't speak for

02:12:02 10 everyone else, but I can only speak for myself. And this
11 is the first I am hearing this.

12 **Q.** Commissioner Holmes at that meeting had every right to
13 speak. He is a commissioner. Did he say this to the
14 crowd?

02:12:19 15 **A.** I didn't hear it.

16 **Q.** Did he tell or ask any other commissioner to vote for
17 Map 1?

18 **A.** I didn't hear it.

19 **Q.** We have a recording. That's not on it. I didn't hear
02:12:30 20 it either.

21 When Commissioner Holmes spoke, what did he tell you
22 to do?

23 **A.** When he spoke at the meeting in November?

24 **Q.** Yes, ma'am.

02:12:47 25 **A.** He said that they were basically taking the

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HONORABLE TERRY § 3:22-CV-00057
PETTEWAY, ET AL §
§
V. § 9:04 A.M. TO 5:34 P.M.
§
GALVESTON COUNTY, TEXAS, §
ET AL § AUGUST 8, 2023

BENCH TRIAL
BEFORE THE HONORABLE JEFFREY V. BROWN
Day 2 of 10 Days

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1 Q. So the first time you saw the map was after the vote
2 for the map, when the maps appeared in a newspaper?

3 A. No. The first time was November 10th. That's the
4 date that's on the -- do you want to see it? That's the
5 date that's on the paper.

10:02:19

6 Q. Okay.

7 A. And I think that was before -- that was, like, two
8 days before the vote.

9 Q. Did you call Commissioner Holmes at that time and ask
10 him to -- offered your help in any way --

10:02:29

11 A. I did.

12 Q. Okay. What did he say?

13 A. He said, "Thank you. I really appreciate it."

14 Q. Did he tell you that he wanted to get Map 1 passed?

10:02:41

15 A. No. He was busy. And that's about all we talked
16 about.

17 Q. He didn't tell you that Map 1 would have re-elected
18 him?

19 A. No. We didn't talk about the maps. I just offered my
20 support, and he thanked me. And he needed to go, and I
21 needed to get back to work.

10:02:53

22 Q. Okay. Good.

23 At some point as JP, Bolivar Peninsula was in your JP
24 district?

10:03:09

25 A. Yes.

1 and I will pop my head in at some of those, yes.

2 **Q.** Do you know whether or not Hispanic voters in
3 Galveston County vote Republican more often than Black
4 voters in Galveston County?

05:27:58 5 **A.** I can't answer that because I really don't know.

6 **Q.** You are also aware that there are many different
7 cultures within the broader term "Hispanic," right?

8 **A.** You bet.

9 **Q.** And there are many different cultures within the
05:28:10 10 broader term "Hispanic" in Galveston County?

11 **A.** Yes.

12 **Q.** The statue in front of 722 Moody, the Confederate
13 statue, you recall that debate, correct?

14 **A.** Yes.

05:28:31 15 **Q.** You recall that it was not taken down, correct?

16 **A.** I don't think it was.

17 **Q.** Okay. Did you ever see the statue up-close?

18 **A.** Not really.

19 **Q.** Okay. There was a plaque on it. Do you remember ever
05:28:46 20 seeing a plaque on that statue?

21 **A.** I didn't see it up-close. So, no.

22 **Q.** Okay. So you are not aware whether or not that plaque
23 was taken down?

24 **A.** No.

05:29:00 25 **Q.** Okay. During that November 12th meeting, did

1 Commissioner Holmes ever advocate for the approval of
2 Map 1?

3 **A.** I don't remember him advocating for that map, no.

05:29:21

4 **Q.** Okay. He never said that he could still get elected
5 under Map 1, so, guys, let's do Map 1? Nothing like that?
6 He left that information out?

7 **A.** He didn't say anything like that at that meeting, no.

8 **Q.** Okay. I think this might be the last question.
9 Famous last words.

05:29:49

10 But you said that the assistant who was at the meeting
11 who was handing out agendas, she only had, like, 25 of
12 them?

13 **A.** Maybe. I didn't count them, but there were few.

05:30:01

14 **Q.** You don't know whether or not she went back, printed
15 some more out, handed them out in the hallway? You just
16 don't know?

17 **A.** I don't know. She didn't come back where I was
18 passing anything out.

05:30:10

19 **Q.** You don't know why Commissioner Holmes was sitting at
20 the table?

21 **A.** I guess he just chose to sit down.

22 **Q.** I mean, you remember at the meeting he said, "They
23 didn't make me sit down here," right?

24 **A.** I'm sorry?

05:30:18

25 **Q.** Do you remember when he said that at the meeting,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HONORABLE TERRY § 3:22-CV-00057
PETTEWAY, ET AL §
§
V. § 9:01 A.M. TO 6:17 P.M.
§
GALVESTON COUNTY, TEXAS, §
ET AL § AUGUST 15, 2023

BENCH TRIAL
BEFORE THE HONORABLE JEFFREY V. BROWN
Day 7 of 10 Days

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1 Q. I asked if -- we're just talking about Map 1. Did you
2 tell any of your constituents that Map 1 would elect a
3 candidate of their choice?

4 A. That's not what Map 1 says. That's not what he says.
12:51:29 5 It says it appears. It does not say it does. It says
6 "appears." It doesn't say it does.

7 Q. Listen, I don't have -- I don't have a problem with
8 that position. I understand that.

9 Did you tell anybody that Map 1 appears to be able to
10 elect a candidate of their choice?
12:51:50

11 A. No.

12 Q. Okay. Thank you, sir.

13 MR. NIXON: Let's put up DX-120, please.

14 BY MR. NIXON:

12:52:19 15 Q. Okay. This is an e-mail from Roxy Hall to several
16 people, including you. Do you see that?

17 A. I am actually looking for my name.

18 Q. It's in the "to"?

19 A. In the "to"?

12:52:52 20 Q. To. And then it's got -- yeah. There you go. There
21 you go. Do you see it? It's highlighted?

22 A. Yeah. Okay. Yeah. Yes.

23 Q. Okay. It talks about you speaking at a redistricting
24 event in Galveston County, it looks like, on November 3rd
12:53:12 25 or 4th.

1 in attendance spoke against both Map 1 and Map 2 --

2 **A.** Yes.

3 **Q.** -- do you recall that?

4 **A.** Yes.

03:37:38

5 **Q.** Would you say that's -- most of the comments were
6 that, right?

7 **A.** I don't recall the breakout now. There were many
8 people that said we should just start all over again.

03:37:52

9 **Q.** Really, there was no advocacy for either one of the
10 maps for most of the speakers. Would you agree with that?

11 **A.** That, I don't recall. I would have to go back and
12 watch the video again.

03:38:03

13 **Q.** Prior to attending -- going -- attending the meeting,
14 did you have an opportunity to review the comments that
15 y'all had collected?

16 **A.** Yes.

17 **Q.** And what did you glean from those?

18 **A.** I read it into the record at the end of the meeting.
19 As I recall, it was 2:1, favoring Map 2 over Map 1.

03:38:15

20 **Q.** Okay. And Map 2 -- or Map 2 was the coastal precinct
21 map?

22 **A.** Correct.

23 **Q.** And Map 1 was the minimum change?

24 **A.** Right.

03:38:26

25 **Q.** Now, do you recall at the end of the meeting

1 had been the opposite, if it had been 2:1 for Map 1 over
2 Map 2, that would have been very hard to move along.

03:42:53

3 **Q.** Okay. And what about the discussion that was actually
4 ongoing during the meeting? Do you think that could have
5 changed your mind?

6 **A.** Sure. I mean, I wanted to hear a reason and argument
7 as to why Map 1 would be a better map. That's what I
8 wanted to hear from folks.

03:43:08

9 **Q.** Well, did you ever -- I mean, you thought about
10 whether -- if Commissioner Holmes had asked you to
11 consider Map 1, would you have?

12 **A.** If Commissioner Holmes had asked me to consider Map 1?
13 I would have a hard time telling him no. He has never
14 asked me for a thing in 12 years.

03:43:30

15 **Q.** But did he ask?

16 **A.** He did not ask.

17 **Q.** Did y'all get the maps submitted to the State of Texas
18 timely?

19 **A.** We did.

03:43:56

20 **Q.** At the time that you voted for Map 2, was it your
21 intention to discriminate against either Commissioner
22 Holmes or the public in any way?

23 **A.** No.

03:44:33

24 **Q.** Up until the voting and after, had you given much
25 consideration to the racial breakdown within any of the

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HONORABLE TERRY § 3:22-CV-00057
PETTEWAY, ET AL §
§
V. § 8:33 A.M. TO 5:24 P.M.
§
GALVESTON COUNTY, TEXAS, §
ET AL § AUGUST 16, 2023

BENCH TRIAL
BEFORE THE HONORABLE JEFFREY V. BROWN
Day 8 of 10 Days

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1 say we hit the date exactly, but it would have been close.

2 **Q.** Okay. And to your recollection, what was the result
3 of the preclearance letters sent to the Department of
4 Justice?

08:38:49

5 **A.** Well, the first preclearance letter, prior to the date
6 of having to file an answer on the DCDC case, the
7 Department of Justice filed an objection to preclearance
8 on the Galveston County Commission plan.

08:39:13

9 **Q.** Okay. And do you recall the -- that being around
10 March of 2012?

11 **A.** That would probably be about right.

12 **Q.** All right. And then what happened next?

13 **A.** Well, at that time, we began to negotiate with DOJ to
14 see what could be done in order to obtain a preclearance.

08:39:34

15 **Q.** Okay. And did the Department of Justice come down to
16 Galveston to work on those details?

17 **A.** They did. As a matter of fact, we conducted the
18 negotiations in a room in the county courthouse that was
19 just over the lobby. I remember it because it had this
20 big window right out there, and I was staring at the DOJ
21 people on the other side of the table, straight out that
22 window.

08:39:49

23 **Q.** And so were y'all able to resolve the matter with the
24 Department of Justice?

08:40:04

25 **A.** We were.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HONORABLE TERRY § 3:22-CV-00057
PETTEWAY, ET AL §
§
V. § 8:31 A.M. TO 5:54 P.M.
§
GALVESTON COUNTY, TEXAS, §
ET AL § AUGUST 17, 2023

BENCH TRIAL
BEFORE THE HONORABLE JEFFREY V. BROWN
Day 9 of 10 Days

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Laura Wells, RPR, RMR, CRR, RDR

1 know that he doesn't that can comment on it.

2 **Q.** At what point in time did you start to think about one
3 map more than the other?

10:31:52

4 **A.** When the idea started going around about a coastal
5 precinct, me being a coastal guy, I kind of liked that
6 idea of a coastal precinct because the issues are pretty
7 similar for Bolivar Peninsula, the unincorporated area, to
8 Galveston Island.

10:32:08

9 **Q.** At any point before the meeting on November 12th, are
10 you aware of Commissioner Holmes ever advocating for the
11 adoption of Map 1?

12 **A.** No.

13 **Q.** To your knowledge, was Commissioner Holmes excluded
14 from the redistricting process?

10:32:22

15 **A.** No.

16 **Q.** Were you having communications with other
17 commissioners behind the scenes and leaving him out?

18 **A.** No.

19 **Q.** Are you aware of that happening?

10:32:30

20 **A.** No.

21 **Q.** Do you know how big Bolivar's -- Bolivar Peninsula's
22 voting population is?

23 **A.** I'm not sure.

24 **Q.** In comparison with the rest of your precinct, is it
25 big? Little? Medium?

10:32:44

1 **A.** Still do.

2 **Q.** And, ultimately, you did vote to adopt Map 2, right?

3 **A.** Yes.

4 **Q.** At what point did you make up your mind that Map 2 was
5 the better map for you?

04:56:05

6 **A.** Well, when Stephen Holmes offered no solutions or
7 modifications, I thought that the coastal district was a
8 great idea, especially since it was 20 miles of that had
9 been my baby.

04:56:30

10 **Q.** And were there any other reasons for voting for Map 2?

11 **A.** I mean, no. Just that's it.

12 **Q.** We have already discussed that up until the time that
13 the motion had been made and seconded, did Commissioner
14 Holmes ever ask you to support Map 1?

04:56:55

15 **A.** No. He did not.

16 **Q.** Did he ever discuss with you that it might elect him
17 and keep his Precinct 3 as much intact as possible really?
18 Did you ever have that discussion?

19 **A.** Well, I mean, I believe we had that --

04:57:15

20 **Q.** Did Commissioner Holmes ever have that discussion with
21 you?

22 **A.** No.

23 **Q.** Never shared any other maps with you?

24 **A.** Never.

04:57:25

25 **Q.** Have you had a chance to think about what might have

Galveston County, Texas

COMMISSIONERS COURT SPECIAL SESSION

November 12, 2021

Available at:

<https://livestream.com/accounts/21068106/events/6315620/videos/227296657>

AUDIO TRANSCRIPTION

LENGTH OF AUDIO FILE: 1:36:31

MAGNA LEGAL SERVICES

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PETTEWAY ET AL V.
GALVESTON COUNTY ET AL
Case #:3:22-cv-00057

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1 Proceedings

2 Commissioner Apffel for his support of
3 Bolivar Peninsula of the last few years.
4 We may be small, but, you know, we're
5 getting big enough that we do have a lot
6 of problems. Thank y'all very much.

7 COUNTY JUDGE HENRY: Okay. That's
8 all we have for --

9 UNKNOWN SPEAKER: Did you sign up
10 as well?

11 Okay. That's all we have for
12 public comment.

13 COUNTY JUDGE HENRY: Before we get
14 to the next part, I would like to let
15 everyone know we did online questions
16 and people responded. 430 440 total
17 responses as of about 12:30 this
18 afternoon. These are open to reporters,
19 open records request, of course. If you
20 want to call, just make sure that, you
21 know, this is as of 12:30, if any had
22 come in since then I wouldn't know about
23 them.

24 Of the 440 that came in, 168 did
25 not discuss a particular map, they just

1 Proceedings

2 called me names, mostly. Of the people
3 who did choose a map preference, Map 1
4 was -- received 64 responses. Map 2
5 received 208 responses. So of those
6 responding to a particular map, 76.4,
7 Map 2. 23.5, Map 1.

8 With that, I'm going to make the
9 motion to approve Map 2.

10 COMMISSIONER APFFEL: I second the
11 motion.

12 COUNTY JUDGE HENRY: I have a
13 second.

14 There's discussion.

15 Commissioner Holmes, I believe you
16 have something to --

17 COMMISSIONER HOLMES: Yeah, I have
18 some discussion, Judge, if I may.

19 First of all, let me say -- first
20 of all, thank you, everybody for coming.
21 I didn't personally call anybody or ask
22 anybody to come down here, but certainly
23 for your comments -- I'm certainly
24 overwhelmed at the number of people that
25 showed up and support I certainly

APPENDIX 10

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

DICKINSON BAY AREA BRANCH	§	
NAACP, et al.,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. 3:22-cv-117- JVB
	§	
GALVESTON COUNTY, TEXAS, et al.,	§	
	§	
<i>Defendants.</i>	§	

TERRY PETTEWAY, et al.,	§	
	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. 3:22-cv-57-JVB
	§	[Lead Consolidated Case]
	§	
GALVESTON COUNTY, TEXAS, et al.	§	
	§	
<i>Defendants.</i>	§	

UNITED STATES OF AMERICA,	§	
	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. 3:22-cv-93-JVB
	§	
	§	
GALVESTON COUNTY, TEXAS, et al.	§	
	§	
<i>Defendants.</i>	§	

EXPERT DECLARATION AND REPORT OF WILLIAM S. COOPER

JANUARY 13, 2023



Figure 2: Galveston County – 2000-2020 Voting Age Population & Estimated Citizen Voting Age Population by Race and Ethnicity⁸

	2000 VAP	2000 VAP Percent	2010 VAP	2010 VAP Percent	2020 VAP	2020 VAP Percent	2006-2010 CVAP Percent	2016-2020 CVAP Percent
Total 18+	183,289	100.00%	217,142	100.00%	267,382	100.00%	100.00%	100.00%
NH White 18+	121,028	66.03%	136,259	62.75%	155,020	57.98%	67.40%	63.29%
Total Minority 18+	62,261	33.97%	80,883	37.25%	112,362	42.02%	32.60%	36.71%
Latino 18+	29,292	15.98%	42,649	19.64%	60,159	22.50%	14.84%	19.20%
NH Black 18+	26,549	14.48%	28,423	13.09%	32,289	12.08%	14.31%	12.75%
NH Black + Latino 18+	55,841	30.46%	71,072	32.73%	88,582	33.13%	29.15%	31.95%
NH DOJ Black 18+	26,655	14.54%	28,716	13.22%	33,341	12.47%	14.62%	12.83%
NH AP Black 18+					33,972	12.71%		
NH DOJ Black 18+Latino 18+	55,947	30.52%	71,365	32.86%	93,500	34.97%	29.46%	32.03%
NH AP Black 18+ Latino 18+					94,131	35.21%		

32. According to estimates from the 5-Year 2016-2020 ACS (rightmost column of Figure 2), of the countywide CVAP, African Americans account for 12.83% (NH DOJ BCVAP), Latinos 19.20%, and NH Whites 63.29%. The combined Black/Latino CVAP is 32.03%.

33. The Black/Latino CVAP percentage in Galveston County is poised to go up this decade. According to the 2016-2020 Special Tabulation, Black citizens of *all* ages represent 13.67% (NH DOJ Black) of all citizens and Latino citizens of *all* ages represent 22.21% of all citizens. The combined Black/Latino citizen population is 35.88% of all citizens, over 2 percentage points more than the CVAP. This suggests that there will be an increase in the percentage of Black/Latino CVAP as younger individuals in these groups reach the age of 18.

34. An ongoing uptick in minority CVAP is already reflected in the 1-Year 2021 ACS, which estimates that the countywide Latino CVAP stands at 21% and the NH White CVAP has

⁸ Sources: PL94-171 Redistricting File (Census 2020) and 2016-2020 ACS Special Tabulation.

APPENDIX 11

No. 23-40582

**United States Court of Appeals
for the Fifth Circuit**

Honorable Terry Petteway; Honorable Derrick Rose; Honorable Penny Pope,
Plaintiffs-Appellees

v.

Galveston County, Texas; Mark Henry, *in His Official Capacity as Galveston County Judge*; Dwight D. Sullivan, *in his official capacity as Galveston County Clerk*
Defendants-Appellants

United States of America,

Plaintiff-Appellee

v.

Galveston County, Texas; Galveston County Commissioners Court; Mark Henry, *in his official capacity as Galveston County Judge*
Defendants-Appellants

Dickinson Bay Area Branch NAACP; Galveston Branch NAACP; Mainland Branch NAACP; Galveston LULAC Council 151; Edna Courville; Joe A. Compian; Leon Phillips,

Plaintiffs-Appellees

v.

Galveston County, Texas; Mark Henry, *in his official capacity as Galveston County Judge*; Dwight D. Sullivan, *in his official capacity as Galveston County Clerk*,
Defendants-Appellants

On appeal from the United States District Court
for the Southern District of Texas
USDC Nos. 3:22-CV-00057, 3:22-CV-00093, 3:22-CV-00117

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The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of 5th CIR Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument is set for November 7, 2023 at 9:00 a.m. *Petteway* Appellees intend to participate at oral argument.

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STATEMENT OF ISSUES

1. Whether the district court was correct to follow binding *en banc* Circuit precedent authorizing coalition claims under Section 2 of the Voting Rights Act.
2. Whether the district court did not clearly err in concluding that the first *Gingles* precondition was satisfied because the evidence showed that Black and Latino voters were sufficiently numerous and geographically compact to comprise the majority of eligible voters in a reasonably configured alternative precinct.
3. Whether the district court’s decision to afford less weight to primary elections than to general elections in assessing the second *Gingles* precondition—which all parties’ experts agreed it should—was not clearly erroneous and whether the district court’s factual findings that race explained voting patterns in Galveston County were not clearly erroneous.
4. Whether the district court correctly concluded that Section 2 is not unconstitutional because the County contends it lacks “temporal limits.”

INTRODUCTION

Judge Jeffrey Vincent Brown presided over a two-week trial and, in a carefully reasoned 157-page opinion, observed that

[t]his is not a typical redistricting case. What happened here was stark and jarring. The commissioners court transformed Precinct 3 from the precinct with the highest percentage of Black and Latino residents to that with the lowest percentage. The circumstances and effect of the enacted plan were mean-spirited and egregious given that there was absolutely no reason to make major changes to Precinct 3. Looking at the totality of the circumstances, it was a clear violation of §2 of the Voting Rights Act. And it must be overturned.

ROA.16029 (internal quotation marks and citation omitted). Later, the Court observed that it was “stunning how completely the county extinguished the Black and Latino communities’ voice on its commissioners court during 2021’s redistricting.” ROA.16028.

Although the district court’s Section 2 ruling rendered it unnecessary for it to formally decide Plaintiffs’ intentional discrimination claim, the court’s lengthy factual findings under the *Arlington Heights* intentional discrimination framework illustrate in detail why the district court found the circumstances of this case “[a]typical,” “stark,” “jarring,” “mean-spirited,” “egregious,” and “stunning.”

The County challenges none of these factual findings. Nor could it. Instead, it has presented an “emergency” appeal and sought a stay of the district court’s injunction because it disagrees with *en banc* precedent that has been the settled, binding law of this Circuit for over three decades. The County announced in its brief

that it intends to devote its oral argument time to this issue—despite this Circuit’s rule of orderliness that forecloses the relief the County seeks.

The County’s claim of irreparable harm in its stay motion is deeply ironic. The district court’s injunction permits the County to use its *own* map—Map 1—as the remedy in this case. The County’s entire theory of the case at trial was that it was *Commissioner Holmes’s* fault that Map 1 was not adopted because a majority of the commissioners would have apparently approved it if only Commissioner Holmes had sufficiently lobbied them. *See, e.g.*, ROA.16149-16150, 18317, 18579-18580, 18581, 18597, 18681, 18950-18951, 19578. The County cannot claim harm from a map that it drew, says is lawful, and contends would have become law if only the sole Black commissioner had lobbied his white colleagues more fervently not to enact a discriminatory map.

The district court’s decision should be expeditiously affirmed and the County’s stay motion denied. A case involving a “jarring,” “mean-spirited,” and “egregious” “extinguish[ment]” of minority voting rights is a particularly poor vehicle for the County’s campaign to upend three decades of settled precedent.

STATEMENT OF THE CASE

I. Factual Background

Between 2010 and 2020, Galveston County’s total population increased by more than 20 percent, with the Black total population increasing from 39,229 to

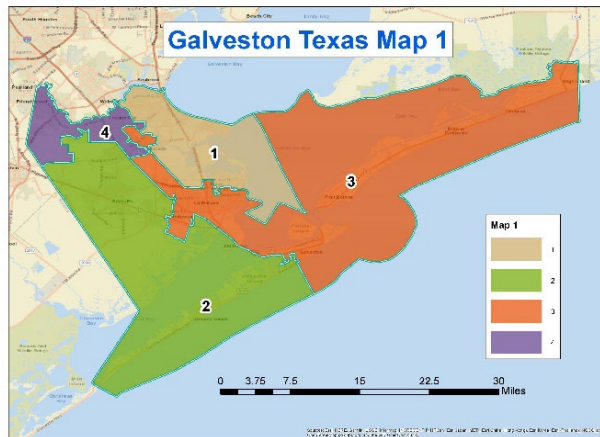
43,120 and the Latino total population increasing from 65,270 to 88,636. ROA.8168. As a result of substantial growth in the County’s minority population, the white share of the County’s total population fell from 59.3 percent in 2010 to 54.6 percent in 2020. ROA.8167. According to the 2020 Census, Galveston County now has a total population of 350,682—54.6 percent white, 25.3 percent Latino, and 13.3 percent Black, with the combined Black and Latino population representing approximately 38.6 percent of the countywide population. ROA.8167. In addition to a shift in demographics, the 2020 Census revealed population imbalances among the Galveston County Commissioners Court precincts. ROA.8168.

Commissioner Precinct 3, which historically covered portions of Dickinson, La Marque, Texas City, and the city of Galveston, existed as the only majority-minority Commissioners Court precinct in Galveston County for thirty years—from 1991 to 2021. ROA.15911 (citing ROA.35188, 35252-35253). As the district court recognized, “[t]he historic core of Precinct 3 was the product of advocacy by Black and Latino activists to create a majority-minority precinct in which they could elect a candidate of choice in the 1991 redistricting cycle,” and “[o]ver time, Precinct 3 became an important political homebase for Black and Latino residents.” ROA.15911 (citing ROA.35251-35256); *see also* ROA.15950. While Black and Latino voters’ candidate of choice “was always a lonely voice on the court,” the very presence of that commissioner ““meant that ‘minority voices [were] heard in a

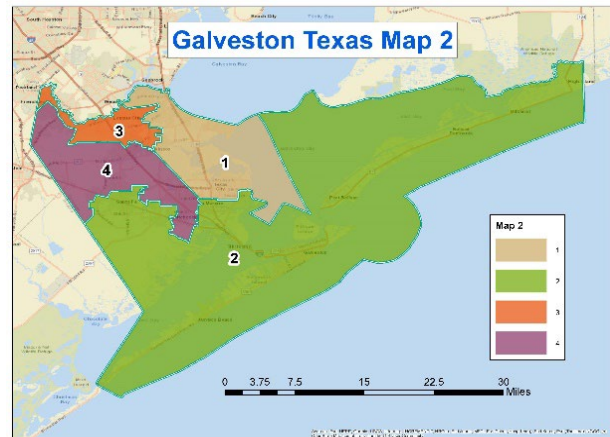
meaningful way.” ROA.16028 (quoting *Johnson v. Waller Cnty.*, 593 F. Supp. 3d 540, 608 (S.D. Tex. 2022)). By 2020, the citizen voting age population (“CVAP”) of Precinct 3 in the Benchmark Plan—the plan used for Commissioners Court elections from 2012 to 2021—was 58.31 percent Black and Latino. ROA.15911 (citing ROA.35193).

During the 2021 redistricting process, the Commissioners Court proposed two redistricting maps to the public on October 29, 2021. ROA.15960. The first proposal, Map 1, largely maintained the same lines as the Benchmark Plan, but added the Bolivar Peninsular to Commissioner Precinct 3. Under this proposal—which Defendants’ legal consultant, Dale Oldham, testified was legally defensible and had been drawn without consideration of race—Precinct 3 would have retained its status as a majority-minority precinct, and Black and Latino voters would have constituted over 55 percent of the precinct’s CVAP. ROA.15912. At trial, the County contended

the Commissioners Court would have adopted Map 1 had Commissioner Holmes advocated more aggressively for it. *See, e.g.*, ROA.16149-16150.



Proposed Map 1



Proposed Map 2 (Enacted Plan)

The second proposal, Map 2 (“Enacted Plan”), which was ultimately adopted, dismantled Precinct 3 and fragmented Galveston County’s minority population evenly among all four precincts. *See, e.g.*, ROA.16028 (explaining that the Enacted Plan “summarily carved up and wiped off the map” historic Precinct 3). As the district court explained, “after the 2021 redistricting, Precinct 3 now includes the lowest Black and Latino CVAP proportion of any precinct—about 28%—and the Black and Latino population is evenly distributed throughout the remaining precincts—with each one containing a range of 32% to 35% Black and Latino CVAP.” ROA.15938 (citation omitted). The Enacted Plan thus ensured that “minority voters have been subsumed in majority-Anglo precincts in a county with legally significant racially polarized voting,” such that “Black and Latino voters, as

a coalition of like-minded citizens with shared concerns [are] . . . ‘shut out of the process altogether.’” ROA.15887, 16028 (citation omitted).

The Enacted Plan enables the County’s white majority to vote together to block the growing minority community from electing its preferred candidates. In most recent general elections, “over 85% of Anglos across Galveston County voted for candidates running against the minority-preferred candidates” and “[s]imilarly high levels of bloc voting are present at the individual-precinct level in the enacted commissioners precincts.” ROA.15933. Under the Enacted Plan, Anglo bloc voting will defeat the candidate of choice of Black and Latino voters “in every election in every commissioners precinct.” ROA.15932.

Black and Latino voters in Galveston County likewise demonstrate a high level of political cohesion, based on a long history of shared political and social interests. *See, e.g.*, ROA.16016 (concluding that “there are distinctive minority interests that tie the two communities together”). Indeed, undisputed evidence from Plaintiffs’ experts shows that, on average, 85 percent of Black and Latino voters have voted for the same candidate countywide and within the illustrative Precinct 3 plans offered by Plaintiffs, and most Black and Latino voters have separately voted for the same candidate in almost all general elections. ROA.15925. Further, both Plaintiffs’ and the County’s experts agreed that Black and Latino voters support the same candidate in primary contests. *See* ROA.15929 (noting that even primary elections

“show a steady presence of inter-group cohesion between Black and Latino voters,” with Black and Latino voters voting cohesively in nine out of ten primary elections studied, and “[b]etween Drs. Oskooii and Alford, the analyzed results show that Blacks and Latinos usually support the same top-choice candidate in primary contests.”). Accordingly, as the district court recognized, there is a direct relationship “between a precinct’s demographic composition and a specific candidate’s likelihood of success in any given election”: “[a]s the minority percentage moves up or down, the performance of minority-preferred candidates moves in direct proportion.” ROA.15933.

Galveston County’s Enacted Plan thus impedes minority voters’ effective participation and representation in the political process. Indeed, from Galveston County’s founding in 1838, it took 133 years before a Latino candidate—the only Latino ever to serve—was elected to the Commissioners Court, and it took 150 years before a Black candidate won a seat. ROA.16028. As the district court recognized, the dearth of minority representation on the Commissioners Court is connected to Galveston County’s long history of racial discrimination, which extends to voting and redistricting in particular, and persists today in the form of: contemporary barriers to voting that weigh more heavily on Black and Latino voters; a continued lack of electoral success for minority candidates; unresponsiveness by Galveston County officials to the needs of the minority community; racial appeals in recent

local political campaigns; and enduring discrimination and racial disparities in areas including education, income, employment, housing, and public health. *See* ROA.15940-15947, 15982-16000, 16023-16026. Lasting negative effects of these conditions, in turn, have contributed to the minority community’s disproportionately low voter turnout rates. ROA.15984.

Galveston County’s 2021 redistricting process itself exemplified a lack of transparency and public input and included substantial procedural and substantive departures from past redistricting cycles. For example, in past redistricting cycles, the Commissioners Court held several hearings at various locations around the county to solicit public input on map proposals, including seven public hearings during the 2011 redistricting cycle. ROA.15970. In 2021, in contrast, the only opportunities for public input were an online public comment portal¹ and one public meeting on November 12, 2021—held at the League City Annex, a small and inaccessible facility located twenty-seven miles from the city of Galveston (the county seat and where the Commissioners Court holds its regular meetings), and just one day before the deadline to submit enacted plans to the Texas Secretary of State. ROA.15971-15974. Thirty-five of the thirty-six members of the public who spoke

¹ County Judge Mark Henry admitted that he reviewed fewer than a dozen of the 446 public comments that were submitted. ROA.15974. Instead, he relied on a breakdown of those comments provided by his staff, which the district court found disregarded “public commentary expressing concern over the discriminatory impact of redistricting on Galveston County’s minority community.” ROA. 15974.

at the November 12 meeting opposed Map 2, and the remaining comments “noted the inconvenience of the meeting and the lack of public transparency in the process.” ROA.15975-15976. Only Commissioner Holmes, the sole minority member of the Commissioners Court, attempted to respond to the audience’s concerns. ROA.15976. As the district court recognized, the other three members of the Commissioners Court present nevertheless adopted the Enacted Plan without addressing any public comments received at the meeting or publicly debating either of the proposed redistricting plans. ROA.15976. Other procedural departures during the 2021 redistricting process that the district court identified include the County’s: (1) failure to adopt a redistricting timeline; (2) failure to adopt any publicly available redistricting criteria to guide the process; (3) lack of transparency in engaging redistricting counsel; (4) lack of public notice; (5) conduct surrounding the November 12 special meeting; (6) disregard for minority input; and (7) exclusion of the sole minority commissioner, Commissioner Holmes, from the redistricting process. ROA.15963; *see generally* ROA.15950-15982.

In addition to the discriminatory circumstances and effect of the Enacted Plan, *see* ROA.16029, the district court, following the framework of the *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), made several factual findings suggesting it was indeed the intent of the

Defendants to dilute the votes of the County’s Black and Latino voters, although the district court found it unnecessary to ultimately decide the issue. ROA.15940.

For example, the County had received six objection letters from the Attorney General since 1976. The County most recently received an objection letter in 2012 from the U.S. Attorney General that noted several procedural deficiencies in the 2011 redistricting process that raised concerns of intentional discrimination, including the failure to adopt redistricting criteria and the deliberate exclusion of Commissioner Holmes. ROA.15963-15964. As the district court recognized, “[t]he 2012 objection letter put Judge Henry on notice of procedural defects that could raise concerns about the exclusion of minority stakeholders and lack of transparency”— lapses the court found to have occurred once again in 2021 and which “could be viewed as evidence of intentional discrimination.” ROA.15964; *see also* ROA.15965, 15976-15977.

In addition to the deficiencies mimicking those outlined in the 2012 objection letter, the district court found several other deficiencies in the County’s 2021 redistricting process. For example, even with delays in the release of census data caused by the COVID-19 pandemic, the County moved unusually slowly in their map drawing process. The County waited until October 14 to contact a demographer, ROA.15952, 15954-15955, even though a map feasibly could have been drawn

immediately following the release of 2020 Census data in August 2021.² ROA.15968. Similarly, there is no evidence of the County publicly announcing the drawing of draft maps, aside from a post on Judge Henry’s Facebook page and a repost by Commissioner Giusti. ROA.15960-15961. The limited information the County released omitted any quantitative data about the population and demographic makeup of the proposed districts. ROA.15967.

The map-drawing process itself also proved suspect. Shortly after engaging Dale Oldham as the County’s legal consultant, Judge Henry and the county’s general counsel, Paul Ready, contacted Oldham to ask whether the county “had to draw a majority[-]minority district.” ROA.28546. Subsequently, Mr. Oldham—who was the “lead person” responsible for providing instructions about configuring the County’s proposed redistricting plans and told the County’s demographer exactly “where to place the lines,” ROA.15955-15956—provided a chart to Mr. Ready, “to distribute to the commissioners,” reflecting each precinct’s racial demographic changes from 2010 to 2020, ROA.15952. Mr. Oldham himself reviewed this racial data, as well as racial-shading maps of Galveston County after the 2020 Census was released, “to identify where Black populations were concentrated.” ROA.15953. The district court found that Mr. Oldham’s understanding was “generally consistent with

² As a result of this delay, demographer Thomas Bryan was forced to draw maps for the County on a flight back from vacation and forgo his usual practice of visiting and researching the jurisdiction prior to drawing a map. ROA.15969.

Judge Henry and Commissioners Apffel and Giusti’s understanding that Galveston County’s Black and Latino population was centered around Precinct 3, which had consistently elected Commissioner Holmes.” ROA.15952 (citing, *e.g.*, ROA.18350-18352, 18999-19000, 19221)). Nevertheless, Judge Henry told Mr. Oldham directly that he wanted “the configuration that ultimately became Map 2,” ROA.15954, a configuration that entirely dismantled Precinct 3. Mr. Oldham likewise testified that Map 2 was “the visualization of the instructions’ Judge Henry had provided.” ROA.15956 (citation omitted).

The district court found that all three of the commissioners who approved the Enacted Plan understood, before voting, that the Enacted Plan would have a racially discriminatory impact on Galveston’s Black and Latino residents, fracturing the core of historic Precinct 3 across all four districts such that minority voters could no longer elect their candidate of choice. ROA.15939.

Ultimately, none of the County’s litigation counsel’s purported justifications explained the configuration of the Enacted Plan. *See* ROA.15977-15982. Based on Mr. Oldham’s and the commissioners’ denial of a partisan motivation, the district court found that partisanship did not explain the configuration of the map. ROA.15955. Similarly, the goal of creating a coastal precinct was not one that was backed by public support nor initially raised with the demographer, Thomas Bryan. ROA.15956, 16026. Even when drawing a map with a coastal precinct, Bryan was

given virtually no discretion. ROA.15956 (highlighting that Oldham provided “very specific instructions about how he wanted Map 2 to look”). Indeed, the district court found the creation of a coastal precinct did not actually require the dismantling of the majority-minority precinct nor did it explain the adoption of the Enacted Plan. ROA.15957.

II. Procedural Background

In August 2023, the district court held a 10-day bench trial where it heard live testimony from several lay and expert witnesses. *See* ROA.15890-15892. On October 13, 2023, the court issued a 157-page order finding “defendants’ actions to be fundamentally inconsistent with § 2 of the Voting Rights Act.” ROA.15886. As the district court explained, “[t]his is not a typical redistricting case. What happened here was stark and jarring. The Commissioners Court transformed Precinct 3 from the precinct with the highest percentage of Black and Latino residents to that with the lowest percentage. The circumstances and effect of the enacted plan were ‘mean-spirited’ and ‘egregious’ given that ‘there was absolutely no reason to make major changes to Precinct 3.’” ROA.16029 (citations omitted). Accordingly, the court concluded that the Enacted Plan was a “clear violation” of Section 2 and “must be overturned.” ROA.16029. The district court also concluded—despite finding a number of facts that would support a finding of intentional discrimination, *see, e.g.*, ROA.15964-15967 (noting the procedural irregularities in the redistricting process,

including the lack of a redistricting timeline, lack of redistricting criteria, lack of transparency in engaging redistricting counsel, and lack of public involvement)—that it “need not determine the outcome of the intentional-discrimination or racial-gerrymandering claims,” because the relief Plaintiffs sought for those claims is not broader than that to which they are entitled under Section 2. ROA.16032-16033.

The district court found that Plaintiffs established the three *Gingles* preconditions for Section 2 liability. Plaintiffs satisfied the first *Gingles* precondition by submitting over a dozen illustrative maps showing that Galveston County’s minority community is “sufficiently large and geographically compact to constitute a majority in a single commissioners precinct that is both reasonably configured and comports with traditional redistricting principles.” ROA.15922; *see also generally* ROA.15914-15922, 16007-16013.³ Indeed, as the court recognized, “defendants do not dispute that Galveston County’s Black and Latino communities, when considered as a coalition, are sufficiently large to satisfy the first *Gingles* precondition.” ROA.16007. The district court also recognized that, while Plaintiffs “do not need to consider specific communities of interest when drawing illustrative

³ The district court found “widespread shortcomings” in Defendants’ *Gingles* I expert, Dr. Owens, and thus assigned “little to no weight” to his opinions on traditional redistricting principles, the geographic dispersion of minority populations, and the first *Gingles* precondition. ROA.15902. Even still, Dr. Owens generally agreed that Plaintiffs’ illustrative plans were “about as reasonably compact as the enacted plan” and did not dispute that Plaintiffs’ experts used non-racial traditional redistricting criteria. ROA.15919.

maps,” their illustrative plans “sufficiently preserve communities of interest—namely the Black and Latino communities in benchmark Precinct 3.” ROA.16009 at 129 (citation omitted); ROA.15919.

Plaintiffs also established the second and third *Gingles* preconditions because “Black and Latino voters in Galveston County are cohesive in that a large majority of these voters have consistently favored the same candidates across a series of elections,” and “voting in Galveston County is racially polarized such that Anglo voters usually vote as a bloc to defeat the candidate of choice of Black and Latino voters.” ROA.15923, 15934; *see also generally* ROA.16014-16020. The district court credited Plaintiffs’ experts’ analyses and testimony showing that Black and Latino voters vote cohesively, as the undisputed results of their analyses show that “on average, over 85% of Black and Latino voters have voted for the same candidate countywide” and “Latinos and Blacks have separately voted for the same candidate in almost all general elections.” ROA.15925. All the experts—including Defendants’ expert, Dr. Alford—“agreed that general elections are more probative than primary elections in this case” to determine cohesion between Black and Latino voters, for a variety of reasons. ROA.15928. Even recognizing their lower probative value, the district court found that the analyses of Plaintiffs’ expert Dr. Oskooii and Defendants’ expert Dr. Alford nevertheless “show that Blacks and Latinos usually support the same top-choice candidate in primary contests,” with Black and Latino

voters voting cohesively in nine out of ten primary elections Dr. Oskooii studied. ROA.15929.

Likewise, even Defendants' expert Dr. Alford testified that it would be hard to find "a more classic pattern of what polarization looks like in an election" than what exists in Galveston County. ROA.15927 (quoting ROA.19311-19312). Accordingly, the district court found that "[a]ll experts agree that Anglo bloc voting usually defeats the Black and Latino candidate of choice in Galveston County elections in every precinct analyzed in the enacted plan." ROA.15934; *see also generally* ROA.16017-16020. The district court also recognized that, "[t]o the extent that partisanship explains the voting patterns in the county, it still does not change the fact that the data unerringly points to racially polarized voting." ROA.15934; *see also generally* ROA.15935-15938. Indeed, the levels of cohesion between Black and Latino voters versus white voters, and the racial composition of Galveston County's political parties, confirm that the County's electorate is racially polarized. ROA.15936-15937, 16018-16019.

The district court further concluded that the totality of circumstances supported Section 2 liability. ROA.16020-16029. In particular, the court evaluated the factors that guide the totality analysis, enumerated in *Thornburg v. Gingles*, 478 U.S. 30, 36-38, and concluded that "most of the Senate factors support § 2 liability." ROA.16022-16027.

SUMMARY OF ARGUMENT

The district court’s decision should be affirmed. It follows decades of settled precedent and correctly enjoins a redistricting map that arose from a “jarring,” “egregious,” and “mean-spirited” process.

First, the County’s plea that this Court overturn binding *en banc* precedent is a nonstarter. A panel of this Court cannot do that. Moreover, the settled precedent is correct—the plain text of Section 2 protects a class of voters who share a common characteristic—experiencing a minimized opportunity to participate in the electoral process on account of their race. A jurisdiction’s voting maps violate Section 2 when they result in an unequal opportunity to participate in the electoral process for minority voters—whatever their skin color. That shared discriminatory experience—and not the color of one’s skin—defines the class that Section 2’s plain text protects. Every circuit but one has so concluded.

Second, the County offers no basis to disturb the district court’s factual finding that the first *Gingles* precondition is satisfied. On appeal, the County mimics the positions advanced by their expert—that the minority population in Galveston County is too dispersed or lacks shared interests. But the district court correctly gave this testimony little to no weight—a determination the County does not challenge on appeal. Its effort to repackage its failed expert testimony into appellate arguments likewise fails.

Third, the district court did not err—much less clearly so—by affording primary elections less weight than general elections in its *Gingles 2* analysis nor in rejecting the County’s contention that partisanship, not race, explains the racially polarized voting in the county. The County’s own expert agreed with the district court’s weighing of primary elections, and the County has not shown clear error in the district court’s findings with respect to the racial basis for polarized voting.

Fourth, the County’s contention that Section 2 is unconstitutional for lack a “temporal limit” is foreclosed by Supreme Court precedent and is nonsensical. The statute itself limits liability to jurisdictions *currently* experiencing the effects of discrimination. Like this one. Congress does not offend the Constitution by designing a statute that remedies *present day* discriminatory effects.

STANDARD OF REVIEW

This Court reviews the district court’s legal conclusions *de novo* and its factual findings for clear error. *Harding v. Cnty. of Dallas, Tex.*, 948 F.3d 302, 306-07 (5th Cir. 2020). Under the clear error standard, “‘If the district court's findings are plausible in light of the record viewed in its entirety, we must accept them, even though we might have weighed the evidence differently if we had been sitting as a trier of fact.’” *Veasey v. Abbott*, 830 F.3d 216, 229 (5th Cir. 2016) (citing *Price v. Austin Indep. Sch. Dist.*, 945 F.2d 1307, 1312 (5th Cir. 1991)).

ARGUMENT

I. Binding Circuit precedent forecloses Appellants’ challenge to Section 2 coalition claims.

A coalition of two or more politically cohesive minority groups may seek relief under Section 2. Applying Section 2 to protect minority coalitions is “necessary and appropriate to ensure full protection of the Fourteenth and Fifteenth Amendments rights,” because voting discrimination is just as problematic when it prejudices one minority group as when it harms several. *See Bush v. Vera*, 517 U.S. 952, 992 (1996) (O’Connor, J., concurring). This Court’s binding precedent, as well as persuasive authority in the Supreme Court and other circuits, confirm that Section 2 permits minority coalition claims. Section 2’s plain text and legislative history confirm as much.

A. This Court and the vast majority of other courts have held that Section 2 protects coalition districts.

Under this Court’s rule of orderliness, one panel may not overturn another panel’s decision—let alone a prior *en banc* decision—“absent an intervening change in the law, such as by a statutory amendment, or the Supreme Court, or our *en banc* court.” *Martinelli v. Hearst Newspapers, L.L.C.*, 65 F.4th 231, 234 (5th Cir. 2023) (citation and internal quotation marks omitted); *see also, e.g., United States v. Avants*, 367 F.3d 433, 441 (5th Cir. 2004) (“Of course, we must follow precedent established by an earlier panel, not to mention a decision by our *en banc* court.”)

(citation omitted); *Terrell v. Household Goods Carriers' Bureau*, 494 F.2d 16, 21 n.9 (5th Cir. 1974) (a panel “could hardly decide that the en banc decision was subject to later revision”). No intervening change in law exists here; accordingly, this panel is bound to follow existing Circuit precedent, which recognizes that Section 2 permits coalition claims. See *LULAC v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (en banc) (“*Clements*”); *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989); *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989) (per curiam); *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988); *LULAC, Council No. 4386 v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1500-02 (5th Cir. 1987) (“*LULAC I*”).⁴ This alone should end the matter.

This Court has made clear that “[t]here is nothing in the law that prevents the plaintiffs from identifying the protected aggrieved minority to include both Blacks and Hispanics.” *Campos*, 840 F.2d at 1244. Indeed, “Congress itself recognized ‘that voting discrimination against citizens of language minorities is pervasive and national in scope,’ and similar discrimination against Blacks is well documented.” *Id.* (citation omitted). Consequently, if together, Black and Latino voters “are of such numbers residing geographically so as to constitute a majority in a single member

⁴ Although the *en banc* court vacated the *LULAC I* panel decision on other grounds, see 829 F.2d 546 (5th Cir. 1987) (en banc), the Fifth Circuit subsequently reinforced the panel’s ruling and adopted its reasoning to allow coalition claims, see, e.g., *Brewer*, 876 F.2d at 453; *Campos*, 840 F.2d at 1244.

district, they cross the *Gingles* threshold as potentially disadvantaged voters.” *Id.* Plaintiffs need only prove—as has occurred here—that “the minorities so identified actually vote together and are impeded in their ability to elect their own candidates by all of the circumstances, including especially the bloc voting of a white majority that usually defeats the candidate of the minority.” *Id.*; *see also id.* at 1244-45 (recognizing that the most persuasive evidence of inter-minority political cohesion for Section 2 purposes is to be found in voting patterns).

Consistent with this Court’s precedent, the vast majority of courts to consider the issue have held that Section 2 prohibits vote dilution against minorities, whether alone or in combination. While the Supreme Court has not expressly resolved the issue, it has assumed that Section 2 allows coalition claims. *Grove v. Emison*, 507 U.S. 25, 41 (1993); *White v. Regester*, 412 U.S. 755, 767 (1973); *see also Bartlett v. Strickland*, 556 U.S. 1, 13-14 (2009) (plurality op.) (declining to address whether minority coalition claims are cognizable); *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994) (explaining in the context of § 2 that “there are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups”). In *Houston Lawyers’ Association v. Attorney General of Texas*, for example, the Court entertained a Section 2 challenge pursued by “a statewide organization composed of both Mexican-American and African-American residents.” 501 U.S. 419, 421 (1991). Similarly, in *Wright v. Rockefeller*, the Court

accepted that a coalition of Black and Puerto Rican voters brought a constitutional vote dilution challenge but rejected the merits. *See* 376 U.S. 52, 54 (1964). The Supreme Court also recognizes coalition claims in the vote denial context. Indeed, just two years ago, the Court evaluated a coalition of Black, Hispanic, and Native American voters' Section 2 vote denial claims. *See Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2322 (2021). Courts in the First, Second, Ninth, and Eleventh Circuits agree even more clearly with this Court in recognizing that Section 2 protects minority voter coalitions.⁵

Nevertheless, the County urges this Court to depart from its own precedent and from the majority rule, and instead follow a single outlier, the Sixth Circuit. *See Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996) (en banc). But the *Nixon* majority misinterpreted Section 2's text to reach its conclusion foreclosing coalition claims, detaching the word "class" from its context to mean a single racial group. *Id.* at 1386-87. This is contrary to the plain text, as discussed *infra* at Part I.B The Sixth Circuit's decision also depends on questionable "policy concerns," suggesting that even if

⁵ *See, e.g., Huot v. City of Lowell*, 280 F. Supp. 3d 228, 235-36 (D. Mass. 2017) (applying *Latino Political Action Comm., Inc. v. City of Boston*, 784 F.2d 409 (1st Cir. 1986)); *NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 379-80 (S.D.N.Y. 2020) (applying *Bridgeport Coal'n for Fair Representation v. City of Bridgeport*, 26 F.3d 271 (2d Cir. 1994)); *aff'd sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021); *Badillo v. City of Stockton, Cal.*, 956 F.2d 884 (9th Cir. 1992) (holding that factual record did not demonstrate the coalition's cohesion); *Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990) (same).

there is proven discrimination against minority groups, “there is no basis for presuming such a finding regarding a group consisting of a mixture of both minorities.” *Id.* at 1391. But as the *Nixon* dissent emphasized, the more problematic “policy concern” is that rejecting coalition claims “requires the adoption of some sort of racial purity test” that is inconsistent with Section 2’s goal to eliminate racial divisions in voting. *Id.* at 1401 (Keith, J., dissenting) (reasoning that if courts “are to make these [racial] distinctions, where will they end? Must a community that would be considered racially both Black and Hispanic be segregated from other Blacks who are not Hispanic?”). *Nixon* is thus a significant outlier based on dubious textual and policy interpretations.

In claiming a broader circuit split, the County also points, Br. at 31, to *Hall v. Virginia*, 385 F.3d 421 (4th Cir. 2004) and *Frank v. Forest County*, 336 F.3d 570 (7th Cir. 2003) as holding that the VRA does not protect minority coalitions, or at least indicating “strong concerns” with coalition claims. But both cases are inapposite. *Hall* does not proscribe coalition claims as the County contends, because it concerned only an alleged crossover district including “black and white voters,” not a minority coalition district. 385 F.3d at 430. Far from limiting Section 2 minority coalitions, the *Hall* court “noted that “[t]here are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups” and seek to enforce their rights. *Id.* at 431 n.13 (quoting *Georgia v. Ashcroft*, 539

U.S. 461, 483 (2003)). The court’s nuanced discussion of coalitions simply concluded that Section 2 does not “create an *entitlement* for minorities to form an alliance with [white crossover] voters in a district who do not share the same statutory disability as the protected class.” *Id.* (emphasis added). But the inverse of this observation is that Section 2 *does* recognize a claim when minority voters *can prove* they “form an alliance with other voters” who *do* “share the same statutory disability” of discriminatory vote dilution. *See id.* *Hall* reinforces that a coalition must be composed of cohesive, statutorily protected minority groups; it “does not stand for the proposition that minority groups cannot be combined.” *See NAACP, Spring Valley Branch*, 462 F. Supp. 3d at 380 n.11.

Frank likewise did not proscribe minority coalitions. *See* 336 F.3d at 575-76. *Frank* turned solely on the lack of cohesion between Black and Native American voters, where evidence of their voting patterns was “limited to voting in Presidential elections—a far cry from voting in county board elections,” and where the “only thing” that Black residents of a Job Corp Center had in common with Native American voters in the proposed district “is that they are not Caucasian,” *id.* The plaintiffs even admitted that they had “no evidence that the Job Corps residents have any interests in county government that are in common with those of” Native American voters, *id.* at 576—a far cry from the voluminous record here of common

interests shared by Galveston County's Black and Latino residents, *see, e.g.*, ROA.15982-16000.

In sum, this Court and every other circuit to consider the issue, save one, have concluded that Section 2 protects coalition districts. This panel is bound by existing Fifth Circuit precedent to conclude the same. *See, e.g., Avants*, 367 F.3d at 441.

B. Section 2's plain text and legislative history, as well as the broader remedial purpose of the VRA, support coalition claims.

While the County largely eschews analysis of Section 2's text in favor of reliance on legislative history, *see* Br. at 24-28, Section 2's plain language authorizes coalition districts. Its legislative history and the VRA's broad remedial purpose confirm as much.

Section 2, like other civil rights statutes, is "written in starkly broad terms," *see Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731, 1753 (2020), and should be interpreted in "the broadest possible scope," *Chisom v. Roemer*, 501 U.S. 380, 403 (1991) (citation omitted). It empowers "any citizen" to challenge any "qualification or prerequisite to voting or standard, practice, or procedure" that discriminatorily "deni[es] or abridge[s]" the right to vote. 52 U.S.C. § 10301(a). Section 2's "broad language" does not limit its protections to a single minority group bringing claims *seriatim*; it instead reflects "Congress's presumed point to produce general coverage." *Bostock*, 140 S. Ct. at 1749 (internal quotation marks omitted). Accordingly, the absence of any express reference to coalition claims in the text of

Section 2 is not dispositive to interpretation of the provision. *See Bostock*, 140 S. Ct. at 1747 (“[T]here [is no] such thing as a ‘canon of donut holes,’ in which Congress’s failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception.”).

Section 2(a) of the VRA prohibits any voting standard or practice that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,” or language-minority status. 52 U.S.C. §§ 10301(a), 10303(f). Section 2(b) sets forth how a violation of Section 2(a) is established, and notes that it applies to “a class of citizens protected by subsection (a).” *Id.* § 10301(b). The “class of citizens” to which Section 2(b) refers is not a singular minority group, but rather those “protected by subsection (a)”—*i.e.*, “any citizen” subject to a denial or abridgment of voting rights “on account of race or color, or” language-minority status. *Id.* § 10301(a), (b). Nothing in the text of Section 2 requires every member of the “class of citizens” to share the same race, as opposed to the same experience of being politically excluded “on account of race,” whatever their race is. *Id.* Section 2 protects all minority voters and reading it to protect only one at a time defeats its broad textual mandate.

The County’s sole engagement with Section 2’s text is a brief, strained statutory interpretation of “class” in subsection (b) to mean only a single harmed minority group. Br. at 34. But this reading improperly plucks “class” from its

statutory context. *See Yates v. United States*, 574 U.S. 528, 537 (2015) (the “meaning of a word cannot be determined in isolation”) (citation omitted). “Class” instead means “[a] *group of people* . . . that have common characteristics or attributes,” Black’s Law Dictionary (11th ed. 2019) (emphasis added), and refers to the plural of “citizens” listed as protected groups in subsection (a): racial, ethnic, *and* language-minority citizens. Accordingly, “class of citizens” means the class members must merely share the common characteristic of being a Section 2 protected racial, ethnic, or language minority voter experiencing vote dilution. Reading “class of citizens” to include a combination of protected minority citizens accords with both the last antecedent grammatical rule, *see Barnhart v. Thomas*, 540 U.S. 20, 26 (2003), and the singular-plural canon of statutory interpretation, *see, e.g., F.D.I.C. v. RBS Sec. Inc.*, 798 F.3d 244, 258 (5th Cir. 2015) (applying 1 U.S.C. § 1).

Even if it were ambiguous whether Section 2’s text protects minority coalitions, its legislative history and the broad remedial purpose of the VRA both support recognizing such claims. Courts may “consult[] the understandings of the law’s drafters as some (not always conclusive) evidence,” *Bostock*, 140 S. Ct. at 1750, and the Supreme Court often relies on Section 2’s legislative history, *see, e.g., Brnovich*, 141 S. Ct. at 2332-33; *Gingles*, 478 U.S. at 43 & n.7.

The 1975 amendment to Section 2—which the County ignores entirely—added language-minority protections because Congress sought to address “pattern[s]

of racial discrimination that ha[ve] stunted . . . black *and* brown communities.” S. Rep. No. 94-295, at 30 (1975) (citation omitted; emphasis added); *see also generally id.* at 22-31. Congress knew that Texas, for example, had a substantial minority population “comprised primarily of Mexican Americans and [B]lacks” and “has a long history of discriminating against members of *both* minority groups.” *Id.* at 25 (emphasis added).⁶ Congress thus sought to protect together all “racial or ethnic groups that had experienced appreciable prior discrimination in voting,” noting that Latinos “suffered from many of the same barriers to political participation confronting [B]lacks,” including ““invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others””—like that present here. *Salas v. Sw. Tex. Junior Coll. Dist.*, 964 F.2d 1542, 1549 & n.19 (5th Cir. 1992) (quoting S. Rep. No. 94-295, at 30). Indeed, the Senate stressed that “racial discrimination against language minority citizens seems to follow density of minority population” overall, citing examples of jurisdictions and electoral systems that have “den[ied] Mexican Americans *and* [B]lack voters in Texas political access.” S. Rep. No. 94-295, at 27-28.

Importantly, in its discussion of the history of discrimination and the need for expanded Section 2 protection, the Senate was aware of “at least one case in which

⁶ The 1975 House Report included identical language regarding patterns of discrimination, including in Texas, against both racial and ethnic minorities. *See* H.R. Rep. No. 94-196, at 17, 25, 30 (1975).

African-Americans and Hispanics brought a joint claim” under the VRA. *Nixon*, 76 F.3d at 1395 (Keith, J., dissenting) (citing *Wright*, 376 U.S. 52). The Senate also repeatedly referenced another case—*Graves v. Barnes*, affirmed by *White v. Regester*—in which several voting rights claims involving Black and Latino voters were consolidated in one action with their rights evaluated collectively. See S. Rep. No. 94-295, at 27 (“In January, 1972, a three-judge Federal court ruled that the use of multi-member districts for the election of state legislators in Bexar and Dallas counties, Texas, unconstitutionally diluted and otherwise cancelled the voting strength of Mexican Americans and [B]lacks in those counties.”) (emphasis added); see also *id.* at 30. “If Congress was thus aware that more than one minority group could be considered to constitute one plaintiff class in determining the availability of Voting Rights Act protection, certainly the absence of an explicit prohibition of minority coalition claims compels a construction of Section 2 which allows them.” *Nixon*, 76 F.3d at 1395 (Keith, J., dissenting).

When Congress amended Section 2 in 1982 it was no less aware of coalition claims. In its Report on the 1982 amendments, the Senate Judiciary Committee twice referenced *Wright*—involving a coalition of Black and Hispanic voters, just as here. S. Rep. No. 97-417, at 19 n.60, 132 (1982) (citing *Wright*, 376 U.S. at 52-54). The Senate likewise again repeatedly cited to *Graves* as affirmed by *White*, describing *White* as “the leading pre-*Bolden* vote dilution case” and among “the leading cases

involving multi-member districts.” *Id.* at 2, 22.⁷ The Senate made clear its understanding that, in that case, multimember districts “operated to dilute the voting strength of racial *and* ethnic minorities.” *Id.* at 21 (quoting *White*, 412 U.S. at 767) (emphasis added); *see also id.* at 130 (noting that the Supreme Court relied upon evidence that included “a long history of official discrimination against *minorities*”) (emphasis added).

Beyond citation to cases involving coalition claims, the 1982 Senate Report spoke repeatedly of the need to protect racial and ethnic minorities together, explaining that “the amendments would make racial and ethnic groups the basic unit of protection.” *Id.* at 94; *see also, e.g., id.* at 122 (local electoral arrangements are expected to conform with guidelines “established to maximize the political strength of racial *and* ethnic minorities”) (emphasis added).⁸ For example, in recounting an

⁷ The House Report on the 1982 amendments likewise cited to *White*. H.R. Rep. No. 97-227, at 20 (1981).

⁸ The Senate Report also includes dozens of references to minorities plural, without differentiating each time between protections for racial and ethnic minority groups. *See, e.g., S. Rep. 97-417*, at 27 (plaintiffs must prove either intent or that the challenged system “results in *minorities* being denied equal access to the political process”) (emphasis added); *id.* at 16 (the “crucial question” for judicial inquiry is “whether *minorities* have equal access to the electoral process”) (emphasis added).

The House Report likewise repeatedly discusses minorities plural, without distinguishing between different racial and ethnic groups. *See, e.g., H. Rep. No. 97-227*, at 3 (“The Voting Rights Act of 1965 was primarily designed to provide swift, administrative relief where . . . racial discrimination continued to plague the electoral process, thereby denying *minorities* the right to exercise effectively their franchise.”), 7 (describing “progress in increasing registration and voting rates for

illustrative list of municipalities “in jeopardy of court-ordered change under the new results test,” the Senate spoke of the overall minority population in each, without differentiating among Black, Latino, or other groups—including in jurisdictions like New York City, where its 40 percent minority population necessarily encompassed multiple minority groups. *See id.* at 154-57. The Senate thus reinforced that minority groups, together, must have “a fair chance to participate” and “equal access to the process of electing their representatives.” *Id.* at 36. Just as in 1975, if Congress meant to exclude coalitions, “Congress would have made it explicit in the statute, or at least some of the Members would have identified or mentioned it at some point in the unusually extensive legislative history of the 1982 amendment.” *Chisom*, 501 U.S. at 396 (holding that the absence of exclusion of judicial elections from Section 2’s statutory text meant they were within Section 2’s ambit).

The County nevertheless insists, Br. at 26-27, that Congress in 1982 “nowhere references the concept of a multiracial . . . fusion claim,” but rather only ever cites to “a single minority, as opposed to in plural terms.” But this ignores entirely: the myriad references to protections for minorities plural; the discussion of racial and ethnic groups together as “the basic unit” (singular) of protection; the repeated cites “minorities” and “improvements in the election of minority elected officials,” citing registration and election rates for both Blacks and Latinos); *see also id.* at 28, 34-35 (noting the “overwhelming evidence of a continuing pattern and practice of voting discrimination against racial *and* language minorities” and that the VRA sought to extend protections “to all minorities”) (emphasis added).

to cases upholding challenges by coalitions of minority voters; and the discussion of the combined total minority populations of jurisdictions “in jeopardy of court-ordered change.” It is thus clear that Congress, in both 1975 and 1982, was aware of and approved of coalition claims in its extension of protections for minority voters.

Moreover, while the County urges that “[p]ermitting different racial minority groups to ban together” would “vastly overstep[] the VRA’s intended purpose,” Br. at 26, this is not true. Recognizing coalition claims is wholly consistent with the VRA’s broad remedial purpose, of “rid[ding] the country of racial discrimination in voting.” *Chisom*, 501 U.S. at 403 (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966); *see also id.* (“The VRA should be interpreted in a manner that provides the broadest possible scope in combating racial discrimination.”) (cleaned up)).

To paraphrase the recent Supreme Court, “Congress is undoubtedly aware [that the Supreme Court and nearly every circuit entertains coalition claims]. It can change that if it likes. But until and unless it does, statutory stare decisis counsels our staying the course.” *Allen v. Milligan*, 599 U.S. 1, 31 (2023) (citing *Kimble v. Marvel Entm’t, LLC*, 576 U. S. 446, 456 (2015)).

Section 2’s text and legislative history confirm that Congress contemplated statutory protection for minority coalitions, which advance the broad remedial purpose of the VRA.

C. Recent Supreme Court cases do not indicate that coalition claims are improper.

As explained *supra* and as the County acknowledges, Br. at 28, 34, the Supreme Court has explicitly reserved judgment on the legality of coalition claims. And none of the Court's recent precedent indicates that such claims are improper.

The County, points for support to *Bartlett v. Strickland*, 556 U.S. 1 (2009), Br. at 34-37, but such reliance is misplaced. First, the Court in *Bartlett* explicitly did not address coalition districts, *see* 556 U.S. at 13-14 (plurality op.), and its reasoning does not apply to minority coalitions. The *Bartlett* plurality was concerned only that factually distinct *crossover* claims by minority *and white voters* would pose a “serious tension” with Section 2’s racially polarized voting precondition. *Id.* at 15-16. That tension is not present for coalition claims, which require proof that a cohesive minority coalition is stifled by oppositional white-bloc voting. Whereas crossover voting by its nature represents a division within the majority bloc, *see id.* at 16, coalition claims do not. Coalition claims thus do not involve any “serious tension” with the third *Gingles* prong and, consequently, are distinct from the purely “political coalitions” that crossover claims necessarily entail. *Id.* at 15.⁹

Second, coalitions of minority groups go beyond merely “political alliances” because coalition claims depend on all minority claimants necessarily proving that

⁹ The County’s reliance on *Hall* is misplaced for the same reason. *See Hall*, 385 F.3d at 430.

they suffer from discrimination because of their minority status. Vindication of the rights of minority coalitions thus addresses discriminatory treatment not based on political alliance but rather on being historically disadvantaged on account of race—the underlying motivation for passage of Section 2. *See id.* at 10. Indeed, contrary to the County’s assertion, Br. at 26, that recognizing coalition claims “contradicts the [VRA]’s intent to eliminate racially discriminatory structures,” coalition claims actually *reduce* racial distinctions. Allowing coalitions to sue advances Section 2’s goal to address the lasting effects of discrimination without “produc[ing] boundaries [that] amplify[] divisions between” voting groups. *See Cooper v. Harris*, 137 S. Ct. 1455, 1469 (2017). Having an arbitrary limitation requiring minority groups to sue separately would discount that varying minority groups—as here—may face the same impediment to vote for their preferred candidates as a result of their race.

The *Bartlett* Court was also concerned with abandoning the majority requirement of *Gingles* prong one, which it thought would leave jurisdictions uncertain of when Section 2 obligations might arise. 556 U.S. at 17 (plurality op.). But no such administrability issue exists here; Plaintiffs do not advocate jettisoning the majority-minority requirement. Accordingly, while the County contends, Br. at 36, that coalitions are unworkable because they could involve “any combination or

number of minority voter groups,” addition is not too steep an administrative hurdle.¹⁰

Finally, the County insists, Br. at 36, 39, that coalition claims, like crossover voting, invite speculation and force courts to make decisions based on political judgments. But this is not so. A court assessing a coalition claim need not try to predict political variables of any sort. Instead, a court—as the district court did here—must only ask whether a jurisdiction has an aggregated minority population that makes up over 50 percent of the voting population, whether that minority group votes cohesively together, and if minority voters have regularly been defeated in electing candidates of their choice due to high levels of majority bloc voting. This is a simple and straightforward analysis, regardless of the County’s insistence otherwise.

D. Coalition claims do not sanction proportional representation.

The County finally contends, Br. at 23-34, 37-38, that allowing coalition claims amounts to impermissible proportional representation of minority voters. But the Supreme Court foreclosed that argument this year. In *Milligan*, the Supreme

¹⁰ The County contends, Br. at 40, that an “objective, numerical test” that asks whether minorities make up more than 50 percent of the voting-age population in the relevant geographic area would be “much less fraught.” It fails to acknowledge however that this is already the test; coalition claims require only basic arithmetic by courts, to assess whether cohesive groups of minority voters make up a majority in a given district.

Court rejected Alabama’s argument that Section 2 “inevitably demands racial proportionality in districting,” reasoning that “the *Gingles* framework itself imposes meaningful constraints on proportionality.” 599 U.S. at 26. This was so, the Court explained, because the first *Gingles* precondition includes limitations—such as requiring reasonably compact districts and respect for traditional districting principles—that prevent the types of districts that seek proportional representation. *Id.* at 28. The County does not explain how coalition claims are any different. The same *Gingles* 1 constraints with respect to compactness and traditional districting principles apply to coalition claims, and here the district court correctly found as a matter of fact that Plaintiffs satisfied those requirements. *See infra* Part II.

Here, the combined Black and Latino population of Galveston County is 38.6 percent. Prior to the Enacted Plan’s adoption, the Black and Latino community was able to elect their candidate of choice to 25 percent of the precincts—less than their proportional share. The County sought to make that number 0 percent of the precincts, and the district court’s injunction returns it to 25 percent. Anglo residents, who are 54.6 percent of the population, will be able to elect their candidates of choice in 75 percent of the precincts as a result of the district court’s injunction. This is hardly a recipe for proportional representation for Galveston’s minority voters.

II. The district court did not clearly err in finding *Gingles* 1 satisfied.

The district court did not clearly err in finding *Gingles* 1 satisfied. There is no genuine dispute that Galveston County’s Black and Latino community is sufficiently large and geographically compact as to constitute a majority in a Commissioners Court precinct, and the district court did not clearly err by so finding. The County is correct, Br. at 16, that “neither compactness nor traditional redistricting principles can be assumed based on race alone,” which is why neither Plaintiffs nor the district court made those assumptions. Rather, Plaintiffs presented numerous illustrative maps which the district court found to be “but a few examples of a multitude of potential districts that are reasonably configured and that contain a majority Black and Latino population by CVAP.” ROA.16008-16009. In so finding, the district court considered the illustrative maps themselves as well as the credible testimony and analyses presented by Plaintiffs’ three experts regarding each plan’s compliance with traditional redistricting criteria. ROA.15914-15920, 16010-16013. Moreover, the Commissioners Court itself proposed a plan, Map 1, containing a majority Black and Latino CVAP district which the commissioners’ legal consultant for redistricting testified was legally defensible and had been drawn without any regard to race, and which the district court found to be “reasonably compact.” ROA.15912-15913 (citing ROA.18613-18614).

The County contends, Br. at 41-42, that *Gingles* 1 cannot be met because while Black voters are concentrated in the central portion of the County in benchmark Precinct 3, Latino voters are “evenly disbursed throughout the County.” Although the County obviously wishes Section 2 did not protect coalitions of minority voters, this Court has held that it does. The relevant inquiry is thus whether—in proposed *Gingles* 1 demonstrative alternative precincts—there is a geographically compact minority population that constituted a majority of eligible voters. The district court correctly found that there was—based on a multitude of such demonstrative maps, including one drawn by the County *itself*. The County’s argument goes awry because it shifts the focus from the compactness of the combined minority population within the proposed demonstrative precinct to the distribution of Latino voters in the remainder of the precincts countywide.

Neither the distribution of the minority population in Galveston County nor the characteristics of that population prevent Plaintiffs from meeting the compactness requirement of the first *Gingles* precondition. In *LULAC v. Perry*, the Supreme Court held that one of six Latino opportunity districts, which contained “a 300-mile gap between the Latino communities . . . and a similarly large gap between the needs and interests of the two groups,” was not “reasonably compact.” 548 U.S. 399, 430, 432, 434 (2006). The district court cited to this precedent, noting the Supreme Court’s “critical caveat” that ““it is the enormous geographical distance

separating the [two] communities, coupled with the disparate needs and interests of these populations—not either factor alone—that renders [the district] noncompact for § 2 purposes.” ROA.16010 (quoting 548 U.S. at 435). The district court found that, in this case, “[t]he Black and Latino areas joined in the plaintiffs’ illustrative maps are marked by neither ‘enormous geographical distance’ nor ‘disparate needs and interests.’ [] To the contrary, there is substantial quantitative evidence, supported by lay-witness testimony, that the needs and interests of communities included in the plaintiffs’ illustrative plans are similar.” ROA.16009-16010 (internal citation omitted).¹¹

In any event, the County’s reliance on *Perry* is misplaced because in that case the two geographically distant Latino populations were necessary in order for the district to be majority minority. 548 U.S. at 424. Here, the County objects, Br. at 43, primarily to the inclusion of League City in Plaintiffs’ illustrative plans, contending that Black and Latino voters have different socioeconomic statuses. But the various illustrative Precinct 3 configurations proffered by Plaintiffs contain few League City residents and their inclusion is not necessary to satisfy the *Gingles* 1 majority-minority requirement. *See* ROA.17112, 35576-35623. Moreover, the district court

¹¹ In light of this finding, it is no surprise that even the Enacted Plan contains two precincts—Precincts 1 and 4—that combine portions of Texas City and League City, two of the municipalities which the County now puzzlingly claims share no commonalities such that their grouping necessarily offends traditional redistricting principles. ROA.24459.

specifically concluded that the County’s *Gingles* 1 expert, Dr. Mark Owens, who proffered the same opinions that the County now asserts as its arguments on appeal, had such “widespread shortcomings” in his testimony and analysis that it assigned “little to no weight to [his] opinions on traditional redistricting principles, the geographic dispersion of minority populations, and the first *Gingles* precondition.” ROA.15902. The County does not appeal that determination, but its identical arguments on appeal suffer from the same shortcomings.

III. The district court did not clearly err in finding *Gingles* 2 and 3 satisfied.

A. The district court did not clearly err in its assessment of primary elections in its *Gingles* 2 analysis.

The district court did not clearly err in its assessment of primary elections in its *Gingles* 2 cohesion analysis. The district court found, based upon the agreement among the County’s and Plaintiffs’ experts, that general elections were more probative of voting patterns in Galveston County than primary elections. ROA.15928, 16015-16016. Indeed, Dr. Alford—the County’s expert—testified that general elections provide the “clearest picture” of voting patterns and that general election results should be afforded greater weight. ROA.19440-19442 (Dr. Alford testifying that if evidence from “the primary . . . contradicted what we found in the general . . . in my view, it would be the general [that] is more important”). Accordingly, the district court afforded general elections greater weight and primary elections lesser weight. The County’s brief skips past this point entirely. But the

district court could not have erred—much less clearly so—by assigning probative weight to the various elections consistent with the unanimous expert testimony. In any event, the district court *did* consider primary elections, and while the court assigned them less weight, it concluded that they too support a finding of cohesive voting.

Based upon an intensely local appraisal of conditions, the district court determined that primary elections were not as probative as general elections. ROA.15928, 15930. In Galveston County in particular, primary elections provide limited information. Galveston County Commissioners Court elections are usually uncontested. ROA.15928, 16904.¹² Moreover, all racial groups rarely participate in such elections, with Black and Latino voters participating in exceptionally low levels. ROA.15928, 16904, 17340-17341; *see also generally* ROA.34913-34942, 35459-35483. Significantly, the County's appellate position regarding primary elections was disclaimed several times by its own expert. *See, e.g.*, ROA.19440, 19441-19442, 19443.

¹² According to election records before the Court, Precinct 3 had no contested primary elections over the last decade. *See* ROA.35465-35466. On the Democratic side where an overwhelming majority of Galveston Black and Latino voters vote, there has not been a single competitive primary election for any County Commissioners' Court Precinct or County Judge from 2012 to 2022. ROA.35465-35466.

Despite the limited value of primary elections, the district court credited Plaintiffs' expert Dr. Oskooii's analysis of recent primary elections, concluding that it illustrated cohesion between Black and Latino voters in Galveston County in nine out of those ten elections. The County relegates this to a footnote, Br. at 50 n.16, and dismisses the district court's factual findings because the candidates supported by Black and Latino voters were also supported by white primary voters. But on cross examination, the County's expert, Dr. Alford, testified that the behavior of the small number of white Democratic primary voters is irrelevant to the question of *Gingles* 2 cohesion between Black and Latino voters. ROA.19421-19422, 15929-30. White voter behavior is relevant at *Gingles* 3, and in this case in the general election, a conclusion that flows directly from *Gingles* itself. The district court did not clearly err adhering to Supreme Court precedent and the County's own expert's position.¹³

The County next highlights various results of Dr. Trounstine's, Br. at 48, but omits that the County itself—through the report and testimony of Dr. Alford—established that Dr. Trounstine had run an outdated statistical code in producing her results. ROA.19327, 19394, 19412, 23999. Dr. Alford agreed with Plaintiffs' experts Dr. Barreto and Dr. Oskooii that a more modern approach should now be used, and he re-ran the primary elections examined by Dr. Trounstine using that method.

¹³ Likewise, the County's fleeting reference to a 75 percent threshold for cohesion, Br. at 48, omits that Dr. Alford testified on cross examination that utilizing a threshold is methodologically unsound. ROA.19394-19397, 19456-19457.

ROA.19320-19322. As the district court correctly found, Dr. Alford’s analysis shows cohesion between Black and Latino voters in those primary elections. Under his replications, five out of eight exogenous primary elections, ROA.19323-19324, and four out of six¹⁴ endogenous primary elections show Latino and Black cohesion in voting for the same candidates, ROA.19434-19435.

Further, as the district court concluded, several of the endogenous primary elections examined by Dr. Trounstine, some from as far back as 2002, are too far removed temporally to be probative. *See* ROA.19433. The most recent, and thus most probative endogenous primary election—the 2012 primary for Precinct 3—shows overwhelming cohesion between Black and Latino Voters in Galveston County. *See* ROA.19434, 24002.

The County’s concerns about broad confidence intervals for estimating Hispanic voter patterns are similarly undermined by the testimony of their own expert. Dr. Alford testified that these intervals did not affect the ultimate conclusions he drew—the “same overall conclusion from the general elections that all of the experts have testified here draw.” ROA.19358-19359. Further, the County’s claim that Plaintiffs’ expert Dr. Barreto “agreed his analysis did not show Hispanic voter

¹⁴ Dr. Alford’s testimony that only one out of eight exogenous primary elections and zero out of the six endogenous primaries analyzed exhibited racial polarization was again based upon his own admittedly irrelevant inclusion of the White voting patterns in his primary analysis. *See* ROA.19431-19432, 19434-19435.

cohesion levels ‘consistently above 75%,’” is similarly false. Br. at 49.¹⁵ Rather, Dr. Barreto testified that his Bayesian Improved Surname Geocoding (“BISG”)¹⁶ analysis showed Hispanic cohesion levels in the 80 percent range. ROA.16901-16902.

The County correctly asserts that the significance of primary elections is a question for the district court’s factual determination. Here, the district court, based upon testimony and significant agreement between the parties’ experts, determined that primary elections provided limited probative value. Nonetheless, even if primary elections needed to be considered, the district court fulfilled this obligation reviewing the results of primary analysis by all experts that demonstrated significant cohesion between Black and Latino voters in Galveston County.

B. The district court did not clearly err in rejecting the County’s partisanship arguments.

The district court did not clearly err in rejecting the County’s partisanship arguments. Plaintiffs alleging Section 2 vote dilution claims have no affirmative duty, in the first instance, to “attempt to eliminate, as a causative factor, the impact

¹⁵ The County’s citation points to Dr. Barreto describing the BISG process.

¹⁶ In a thorough analysis the district court concluded that “BISG is particularly useful for narrowing in on the vote choices of Latino voters,” ROA.15924, and concluded that “the court finds that BISG is a reliable methodology for assessing racially polarized voting patterns,” ROA.15925. The County does not challenge that finding on appeal.

of politics on voting patterns.” Br. at 53. Rather, Plaintiffs are first only required to prove racial bias through satisfying the *Gingles* preconditions. *Teague v. Attala Cnty., Miss.* 92 F.3d 283, 290 (5th Cir. 1996). If Plaintiffs satisfy the *Gingles* preconditions, the burden shifts to Defendants to “rebut the plaintiffs’ evidence by showing that no such bias exists in the relevant voting community.” *Id.* Here, the County misunderstands¹⁷ the burden shifting required in showing that white bloc voting is driven by racial, not political motives. *Id.* Plaintiffs satisfied their burden in presenting sufficient evidence of racial bias in voting patterns of Galveston County by proving the three *Gingles* preconditions with expert and lay witness testimony. *See generally* ROA.16004-16020. The burden thus shifted to the County to show some evidence that partisanship, not racial bias caused the voting patterns. *Teague*, 92 F.3d at 290. The County failed to do so.

The record is devoid of evidence from the County showing that partisanship, not racial bias, is the cause of Galveston County’s divergent voting patterns. Instead, the County propounded “general statements that race played no role at the polls.” *Id.* at 291. For example, the County cites the fact that during the pendency of this litigation, a Black man was appointed to the Commissioners Court as evidence that

¹⁷ The County seems to deliberately misread *Teague*, which expressly explains the burden shifting does not require Plaintiffs to face the “insurmountable burden of coming forward with evidence disproving all nonracial reasons that can explain election results in spite of the fact that the defendant itself produced no real evidence that factors other than race were at work.” 92 F.3d at 291.

race and partisanship are not “inextricably intertwined.” Br. at 52. The County similarly attempts to support its position by noting that Dwight Sullivan, a Hispanic Republican, was successfully elected to County Clerk of Galveston County for several terms. Br. at 53. However, Sullivan was unopposed in almost all of his elections, ROA.19555-19556, and the County presented no evidence of Sullivan, whose first and last names present as Anglo, running openly as a Hispanic candidate or being the minority candidate of choice,¹⁸ *see* ROA.17859. Rather than “scuttle over” the reality of minority elected officials in Galveston County, the district court thoroughly considered the very limited number of minority officials and the exceptional circumstances surrounding their election, finding this minimal evidence unpersuasive. ROA.15988-15989.

Similarly, Dr. Alford failed to show that “race played no role at the polls.” Dr. Alford simply made broad statements that partisanship explains Galveston County voting patterns without conducting any reliable analysis to support this claim. *See* ROA.19401-19402 (denying doing any analysis to determine whether the candidates’ positions on issues had racial components that led to the voting patterns, and denying conducting any sort of survey to determine if election results were related to race.); *see also* ROA.19405-19406. Similarly broad and unsupported

¹⁸ The same is true for Judge Patricia Grady, a Hispanic Republican judge in Galveston County whom the County also cite in their brief. *See* ROA.17860.

statements by Dr. Alford have been rejected by several courts as “speculative and unreliable.” *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 587 F. Supp. 3d 1222, 1305-07 (N.D. Ga. 2022) (listing seven other courts discounting Dr. Alford’s testimony regarding the cause of voter behavior). Indeed, Dr. Alford himself agreed with these criticisms by prior courts. ROA. 19381-19382. These speculative and unreliable statements by Dr. Alford are insufficient to meet the County’s burden. *See Teague*, 92 F.3d at 291.

Even if Plaintiffs did have the burden of proving that race, not partisanship, motivated voting patterns in Galveston County, the district court found a series of facts establishing that race explained the divergent voting patterns. ROA.15936-15937. In *Clements*, 999 F.2d 831, the court considered the following evidence for determining whether partisan politics predominated racial concerns for polarized voting: the racial composition of membership of the political parties in the jurisdiction at issue and the extent to which a political party recruits minority persons as candidates or nominees. *Id.* at 861. Here, the district court found that the racial composition of political parties was starkly along racial lines. Indeed, “all experts agree that relatively few Anglo voters in Galveston County participate in Democratic Party primaries” ROA.15936-15937 (citing ROA.35461-35462); *see also* ROA.17341, 19402-19403. Similarly, “relatively few Black and Latino voters in Galveston County participate in the county’s Republican primaries.” ROA.15936;

see also ROA.17341, 19404. Further, it is clear that the political party that Anglo voters associate with in Galveston, specifically the Republican party, has not recruited nor nominated minority persons as their candidates or nominees for county elected positions. Tellingly, “[n]o Black or Latino *Republican* has ever won a primary election to be the Republican Party’s nominee for county judge or a county commissioner.” ROA. 15936. The County cannot and did not dispute this evidence nor adduce any contrary evidence.

Additionally, the *Clements* court viewed factors such as history of lack of access to the political process and whether there is a lack of responsiveness by elected and public officials to be probative in assessing whether polarized voting was on account of race. *Clements*, 999 F.2d. at 853, 857-58. In Galveston County, there is a lengthy history of lack of access to the political process for both Black and Latino voters. *See, e.g.*, ROA.15941; *see also* ROA.33885. Based on a thorough appraisal of the County, the district court found that “the history of discrimination resulting in ongoing socio-economic disparities and barriers to voting along racial lines also contributes to a finding that race, not partisanship alone drives the voting patterns seen in Galveston County.” ROA.15937.

The district court also found, based on testimony from the County Judge and Commissioners themselves, that there was a lack of responsiveness by elected and public officials. ROA.15990 (“Anglo commissioners are evidently not actively

engaged in specific outreach to Galveston County’s minority residents . . . Commissioner Apffel could not identify any wants, needs, or desires that African American and Latino constituents have.”); *see generally* ROA.15990-15992. These findings were also informed by the testimony of three of Plaintiffs’ expert witnesses, Drs. Burch, Rocha and Krochmal, *see, e.g.*, ROA.16427-16432, and the lay testimony of several Galveston County residents detailing the discrimination they face and the failure of the local government to address the needs of their community, *see, e.g.*, ROA.16362-16364 (detailing the failure of Galveston to rebuild public housing following Hurricane Ike.)

The County identifies no clear error in the district court’s conclusion that race explains the polarized voting patterns in Galveston County.

IV. Section 2 does not have an unconstitutional temporal scope.

Faced with sound factual findings and legal conclusions, the County attempts to fall back on a new defense, raised only after trial, that Section 2 is unconstitutional on its face for lack of temporal limits. This novel theory defies precedent and ignores Section 2’s self-limiting terms and operation.

No court has conditioned Section 2’s validity on its eventual termination. Rather, the Supreme Court has long upheld and recently reaffirmed Section 2’s nationwide ban on discriminatory results as an appropriate means of enforcing the Fifteenth Amendment. *See City of Rome v. United States*, 446 U.S. 156, 173 (1980)

“We hold that . . . the prior decisions of this Court foreclose any argument that Congress may not, pursuant to § 2 [of the Fifteenth Amendment], outlaw voting practices that are discriminatory in effect.”); *Milligan*, 599 U.S. at 41 (reaffirming the same). In *City of Rome*, the Court “ma[de] clear” that Congress could “prohibit state action that . . . perpetuates the effects of past discrimination.” 446 U.S. at 176.¹⁹ This Circuit has likewise held that Section 2, in its current form, is an appropriate “prophylactic measure[]” to ensure compliance with the Fourteenth and Fifteenth Amendments. *Jones v. City of Lubbock*, 727 F.2d 364, 375, 373-74 (5th Cir. 1984).

The County’s cases lend no support for imposing a time limit on Section 2. *Shelby County v. Holder* expressly disclaimed any effect on Section 2, holding that the VRA’s preclearance coverage formula no longer matched current conditions and could not be justified under a principle of “equal [state] sovereignty” that is irrelevant to Section 2, which applies nationwide. 570 U.S. 529, 550-51, 557 (2013).

¹⁹ The Court has since held up the VRA as an exemplar of congruent and proportional enforcement of the Fifteenth and Fourteenth Amendments. *See, e.g., City of Boerne v. Flores*, 521 U.S. 507, 518 (1997) (“[M]easures protecting voting rights are within Congress’ power to enforce the Fourteenth and Fifteenth Amendments, despite the burdens those measures place [] on the States.”); *Bd. of Trs. v. Garrett*, 531 U.S. 356, 373 (2001) (“[T]he [VRA is] a detailed but limited remedial scheme designed to guarantee meaningful enforcement of the Fifteenth Amendment in those areas of the Nation where abundant evidence of States’ systematic denial of those rights was identified.”); *Nev. Dep’t of Hum. Res. v. Hibbs*, 538 U.S. 721, 738 (2003) (likening Family and Medical Leave Act to VRA as a “valid exercise[] of Congress’ § 5 power” under the Fourteenth Amendment).

The Supreme Court’s latest affirmative action decision in *Students for Fair Admissions, Inc. v. Pre. & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) (“*Students*”), is also inapplicable. There, applying strict scrutiny and a 25-year durational limit already imposed in *Grutter v. Bollinger*, 539 U.S. 306 (2003), the Court struck down university affirmative action programs that allocate admission preferences based on race and lack an endpoint beyond achievement of some measure of racial proportionality. *Students*, 600 U.S. at 218-20. Section 2, by contrast, is not an affirmative action program: it neither confers benefits or burdens based on race nor seeks any measure of racial proportionality. It is, rather, an antidiscrimination statute, a purely defensive or prophylactic measure that *prohibits* voting discrimination based on race. *See* 52 U.S.C. § 10301. Like other federal antidiscrimination statutes, Section 2 permits only those remedies that are tailored to eliminate the offending practice. *See Veasey*, 830 F.3d at 253.

As such, Section 2 does not “demand exception to equal protection” and is not subject to strict scrutiny in its application to redistricting. Br. at 54. Indeed, Section 2 was enacted *pursuant* to the Fourteenth and Fifteenth Amendments to *enforce* those amendments. “[T]he mere fact that race [is] given some consideration in the districting process, and even the fact that minority-majority districts were intentionally created, does not alone suffice in all circumstances to trigger strict scrutiny.” *Chen v. City of Houston*, 206 F.3d 502, 506 (5th Cir. 2000) (citing *Shaw v.*

Hunt, 517 U.S. 899 (1996) (“*Shaw I*”). Strict scrutiny applies only when it is shown that race was the *predominant* factor in drawing district lines, subordinating race-neutral criteria. *See id.*; *Milligan*, 599 U.S. at 33 (“The line we have long drawn is between consciousness and predominance.”). While Section 2 compliance may require race consciousness in certain places under limited circumstances to avoid discriminatory results, it does not demand that race predominate in redistricting. Indeed, in cases where it is proven that race predominated in a given redistricting, compliance with Section 2 is a compelling justification *only* if the government had a strong basis in evidence for concluding that the three *Gingles* preconditions exist. *See Clark v. Calhoun Cnty., Miss.*, 88 F.3d 1393, 1405-06 (5th Cir. 1996); *Cooper v. Harris*, 583 U.S. 285, 301 (2017); *Shaw II*, 517 U.S. at 915 (assuming compliance with Section 2 is a compelling interest distinct from a “generalized” interest in remedying past discrimination without any “identified discrimination”).

Thus, Section 2 would be appropriately tailored without any temporal limitation because its application is “confine[d] . . . to *actual* racial discrimination.” S. Rep. 97-417, at 43 (emphasis added). Far from requiring an end to Section 2, the Supreme Court has only confirmed its enduring necessity, noting recently that the law “provides vital protection against discriminatory voting rules, and *no one suggests that discrimination in voting has been extirpated or that the threat has been eliminated.*” *Brnovich*, 141 S. Ct. at 2343 (emphasis added).

In any event, the County’s misguided search for a sunset provision overlooks the obvious fact that Section 2 already has temporal limitations embedded in its text and operation. On its face, Section 2 requires courts to consider “the totality of the circumstances” in determining whether election districts interact with social and historical conditions to deny minority voters equal opportunity to elect candidates of choice. 52 U.S.C. § 10301(b); *see Brnovich*, 594 U.S. at 2341 (preventing Section 2 from becoming a “freewheeling disparate-impact regime”). This inquiry demands “an intensely local appraisal of the electoral mechanism at issue, as well as a ‘searching practical evaluation of the past *and present* reality.’” *Milligan*, 599 U.S. at 19 (emphasis added). For example, courts must consider not only historical voting-related discrimination in the jurisdiction but also the extent to which the minority groups *presently* bear the effects of past discrimination in areas that hinder their ability to participate effectively in the political process. This test necessarily incorporates temporal limitations. If the intensely local appraisal reveals that past discrimination no longer causes discriminatory effects in the present, the claim fails. *See, e.g., Meza v. Galvin*, 322 F. Supp. 2d 52, 74 (D. Mass. 2004).

Finally, the County has also “failed to shoulder [its] heavy burden to demonstrate that the Act is ‘facially’ unconstitutional.” *United States v. Salerno*, 481 U.S. 739, 745 (1987). A facial challenge is “the most difficult . . . to mount successfully” because the County must show that “no set of circumstances exists

under which [Section 2] would be valid.” *Id.* The County does not and cannot argue that the passage of time has rendered Section 2 invalid in *all* its applications. The “stark and jarring” incident of discrimination found here in Galveston County is a case in point. ROA.16029.

CONCLUSION

For the foregoing reasons, the district court’s judgment should be affirmed and the County’s motion for a stay pending appeal denied.

November 2, 2024

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/s/ Chad W. Dunn

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2024, this document was electronically served on all counsel of record via the Court's CM/ECF system.

/s/ Chad W. Dunn

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APPENDIX 12

(ORDER LIST: 601 U.S.)

FRIDAY, DECEMBER 1, 2023

ORDER IN PENDING CASE

23A449 PETTEWAY, TERRY, ET AL. V. GALVESTON COUNTY, TX, ET AL.

 The application to vacate stay presented to Justice Alito
and by him referred to the Court is dismissed as moot.

APPENDIX 13

No. 23-40582

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Galveston County, Texas, the Galveston County Commissioners
Court, Galveston County Judge Mark Henry, and Galveston County
Clerk Dwight Sullivan,
Appellants

v.

Terry Petteway, Constable Derrick Rose, the Hon. Penny Pope,
Mainland Branch NAACP, Dickinson Bay Area Branch NAACP,
Galveston Branch NAACP, and Galveston LULAC Council 151, and
the United States of America,
Appellees

On appeal from the United States District Court
for the Southern District of Texas, Galveston Division
No. 3:22-CV-00057 (consolidated with Nos. 3:22-CV-00093 and 3:22-CV-00117)

**APPELLANTS' REPLY IN SUPPORT OF THEIR RENEWED
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**APPELLANTS’ REPLY IN SUPPORT OF THEIR RENEWED
EMERGENCY MOTION TO STAY PENDING APPEAL**

Appellants Galveston County, Texas, the Galveston County Commissioners Court, Galveston County Judge Mark Henry, and Galveston County Clerk Dwight Sullivan (collectively, the County or Appellants) file this brief reply in support of their renewed emergency request to stay the district court’s final judgment pending the outcome of this appeal, to address the following points.

No motion for stay was delayed. Petteway Appellees argue the County “failed to move for a stay on November 10.” Dkt. 162 at 1.¹ This recitation is misleading.

On November 10th at 9:56 a.m. CST, the panel issued its opinion affirming the district court’s judgment. Dkt. 118. At 1:06 p.m. CST, counsel for the County emailed Appellees to request their positions on, inter alia, an emergency motion to stay. Dkt. 153 at 3.² At 1:38 p.m. CST, the panel extended the administrative stay “pending en banc poll.” Dkt. 122. The en banc poll concluded and the panel opinion was vacated on November 28, 2023. Dkt. 137. During this time, counsel for

¹ The County moved for a stay pending appeal on October 17, 2023. Dkt. 13 at 20-21 (asking to stay the trial court “from altering the Commissioners Court boundaries during the pendency of this appeal” and in the alternative for an “administrative stay” pending consideration of the motion). The Court granted a temporary administrative stay on October 18th and deferred the opposed motion for stay pending appeal to the oral argument panel. Dkt. 28. The case was expedited, set for argument on November 7th, and the temporary stay was extended through November 10th. Dkt. 40.

² The email attached to the Petteway Appellees’ letter to the Court was printed by Mark Gaber, who is in Washington, D.C., one hour ahead. Dkt. 153 at 3.

Petteway Appellees applied to Justice Alito to vacate the stay, and oddly renewed that argument before the U.S. Supreme Court on November 28th, after this Court vacated the panel opinion and granted en banc review.

On November 30th, after Appellees' filings about the clarity of whether a stay was in place, the Court entered an order stating that the temporary administrative stay expired on November 28th. Dkt. 145. That evening, the district court entered an order implementing a different districting map. Dkt. 152. On December 1st, the County (1) confirmed with the Clerk's Office that the original motion to stay was still pending before the Court, and (2) renewed that motion on an emergency basis. Dkt. 152. Appellees cite no case law that a motion to stay was required on November 10th after the Court extended its temporary administrative stay. *See* Dkts. 162 at 1, 163 at 23.

There are no unresolved, "alternative" claims. Appellees continue to argue intentional conduct (*see* Dkt. 161 at 15-16), when the district court clearly stated that it "declin[ed] to reach" any such finding (ROA.16034 ¶ 430), none of the Appellees appealed that decision, and all of the Appellees prayed only for affirmance on appeal. Under these circumstances, there are no unresolved or alternative claims pending. *See Amazing Spaces, Inc. v. Metro Mini Storage*, 608 F.3d 225, 250 (5th Cir. 2010) ("this circuit follows the general rule that, in the absence of a cross-appeal, an appellate court has no jurisdiction to modify a judgment so as to enlarge the rights

of the appellee or diminish the rights of the appellant”).³ Nor must Appellants contest intent findings *when none exist*, and which Appellees have not appealed; Appellants appealed from the final judgment, which did not include a finding of intent. *See* Dkt. 162 at 2.

***Purcell* favors Appellants, not Appellees.**

Purcell supports a stay, despite Appellants’ arguments to the contrary. *See* Dkt. 162 at 6-7. Map 2, the 2021 enacted Plan, has been in place for two years—including for seventeen days of the 30-day candidate filing period. If *Purcell* instructs courts to refrain from acting too close to an election, then it supports keeping in place the districting plan that has been in effect for the past two years. Appellees are wrong when they say the County’s counsel confirmed that Map 1 is being implemented pursuant to the district court’s order *without any issues*; the conversation with the district court was whether additional orders were needed from it to implement Map 1 (of course, subject to this Court’s ruling on Appellants’ motion for stay). Specific issues about implementing a map switch more than mid-way through the candidate filing period were not reviewed. It would cause confusion to change the enacted Plan now, and *Purcell* supports a stay.

³ Petteway Appellants describe the “contemporary political environment in Galveston County” as including “a local political figure referring to a Black Republican as a ‘typical nig.’” Dkt. 162 at 2-3. They omit that the text had nothing to do with any election or local politics (the text chain discussed personal loans), that it was made by Republican Yolanda Waters (who is Black and Latina), and that Waters defended herself against claims of racism in the text message when the text message was made public.

CONCLUSION AND PRAYER

Appellants ask that the Court enter an order staying the district court's final judgment, its November 30, 2023 Order, and any further action that would alter the Galveston County Commissioners Court boundaries during the pendency of this appeal. In the alternative, Appellants ask that the Court enter an administrative stay until it can consider this filing.

Respectfully Submitted,

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/s/ Angela Olalde
Counsel for Appellants

Dated: December 5, 2023

CERTIFICATE OF SERVICE

I certify that, on December 5, 2023, this document and its attachments were electronically served on all counsel of record in this case in accordance with the Federal Rules of Appellate Procedure.

/s/ Angela Olalde
Counsel for Appellants

APPENDIX 14

No. 23-40582

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Galveston County, Texas, the Galveston County Commissioners
Court, Galveston County Judge Mark Henry, and Galveston County
Clerk Dwight Sullivan,
Appellants

v.

Terry Petteway, Constable Derrick Rose, the Hon. Penny Pope,
Mainland Branch NAACP, Dickinson Bay Area Branch NAACP,
Galveston Branch NAACP, and Galveston LULAC Council 151, and
the United States of America,
Appellees

On appeal from the United States District Court
for the Southern District of Texas, Galveston Division
No. 3:22-CV-00057 (consolidated with Nos. 3:22-CV-00093 and 3:22-CV-00117)

**APPELLANTS' RENEWED EMERGENCY
MOTION TO STAY PENDING APPEAL**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Appellants

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- b. the Galveston County Commissioners Court
- c. Galveston County Judge Mark Henry
- d. Galveston County Clerk Dwight Sullivan

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- c. Angela Olalde
- d. Jordan Raschke Elton
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- f. Joseph M. Nixon
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- d. Shawn T. Sheehy
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 - b. Derrick Rose
 - c. Penny Pope
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 - b. Valencia Richardson
 - c. Simone Leeper
 - d. Alexandra Copper
 - e. Campaign Legal Center
 - f. Bernadette Samson Reyes
 - g. Sonni Watnin
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 - b. Mainland Branch NAACP
 - c. LULAC Counsel 151
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 - h. Molly Linda Zhu
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 - l. Joaquin Gonzalez
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 - n. Christina Beeler
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8. United States of America
9. Counsel for United States of America

- a. U.S. Department of Justice
- b. Robert S. Berman
- c. Catherine Meza
- d. Bruce I. Gear
- e. K'Shaani Smith
- f. Michael E. Stewart
- g. T. Christian Herren, Jr.
- h. Tharuni A. Jayaraman
- i. Zachary Newkirk
- j. Daniel David Hu

Appellants certify that, to the best of their knowledge, no publicly traded company or corporation has an interest in the outcome of this case or appeal.

By: /s/ Joseph Russo, Jr.
Counsel for Appellants

**APPELLANTS' RENEWED
EMERGENCY MOTION TO STAY PENDING APPEAL**

Pursuant to Federal Rule of Appellate Procedure 8, Appellants Galveston County, Texas, the Galveston County Commissioners Court, Galveston County Judge Mark Henry, and Galveston County Clerk Dwight Sullivan (collectively, the “County” or “Appellants”) file this renewed emergency request to stay the district court’s final judgment pending the outcome of this appeal, which is set for en banc review.

Yesterday evening (November 30, 2023), the district court entered the attached order implementing Map 1 and setting a status conference for Monday, December 4, 2023 at 1:00 p.m. “to discuss how the matter will proceed to ensure that the 2024 election will be conducted using Map 1.” Exhibit 1.

<p>Due to this latest development, Appellants ask that an <u>emergency stay issue today, December 1, 2023.</u></p>

The candidate filing period has been open since November 11, 2023 under the 2021 Galveston County Commissioners’ Court districting plan (“2021 Plan”). Under the district court’s latest order, candidates who have filed and qualified will no longer be able to run for County Commissioner.

Appellants believe action is needed today, December 1, 2023.

Appellees have reiterated their opposition to a stay, as recently as this morning, in response to Appellants’ letter filed in this Court yesterday.

INTRODUCTION AND NATURE OF THE EMERGENCY

This is an appeal of a Voting Rights Act (“VRA”) case brought by a minority coalition of Black and Latino voters challenging the 2021 Plan.

On November 30, 2023, the district court entered an order implementing Map 1, a map that was not adopted by the Galveston County Commissioners Court. The district court stated it was “no longer practicable” to allow the Commissioners Court any opportunity to consider or adopt an alternate map (Exhibit 1 at 2) and, without awaiting a response from Appellants, and following the misstatement from Petteway Appellees that there was no stay request pending before this Court, entered its order at 6:30 p.m., only 3.5 hours after the Petteway Appellees’ request was filed.

It is not disputed that the federal district court’s imposition of Map 1 will favor a Democratic candidate for County Commissioner Precinct 3 over a Republican, or that it greatly alters the boundaries of the 2021 Plan—**which has been in place for over two years now.**

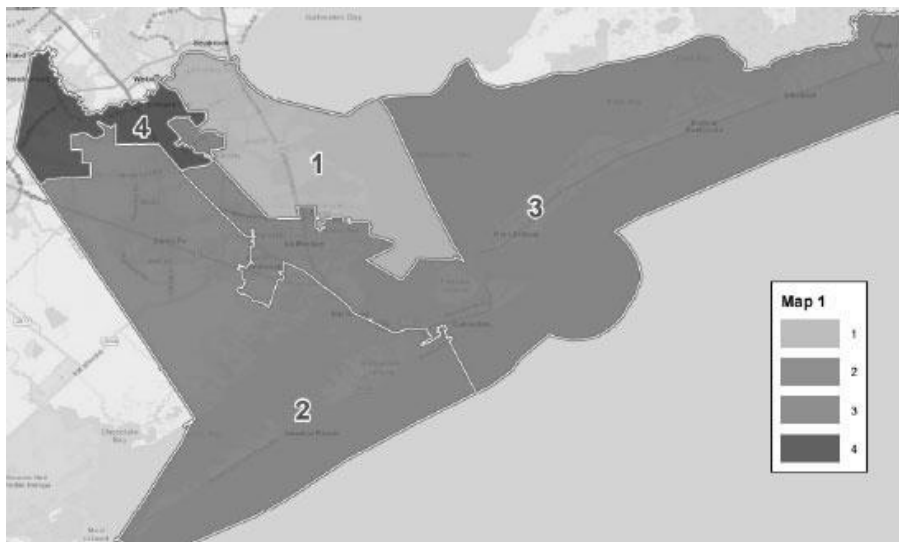
Considering the Court’s grant of en banc review, and the original panel’s strong denouncement of prior case law allowing minority coalition claims to proceed under the VRA, Appellants ask that the Court enter an order staying enforcement of the district court’s final judgment and any further order from the district court (including its November 30, 2023 Order) that prevents the use of the 2021 Plan for the 2024 election. As Appellants argued in response to the Petteway Appellees’

motion to vacate this Court’s temporary administrative stay, submitted to Justice Alito, the VRA is too important to be misused for political gain—which is precisely what a coalition claim does by joining plaintiffs under a political ideology, not by racial ties. And as *Allen v. Milligan* has recently instructed, reapportionment “is primarily the duty and responsibility of the State[s],” not the federal courts. *Allen v. Milligan*, 599 U.S. 1, 29 (2023). Section 2 limits judicial action to “instances of intensive racial politics where the excessive role of race in the electoral process denies minority voters equal opportunity to participate.” *Id.* (cleaned up). Appellants therefore renew their request for a stay pending appeal, and present this renewed request as an emergency to this Court.

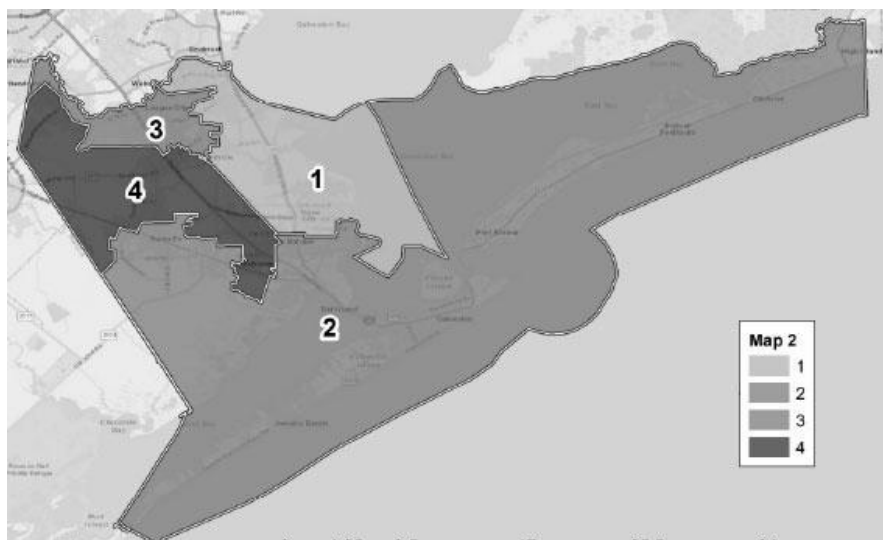
BRIEF FACTUAL BACKGROUND

The Court is likely familiar with the facts of this case, due to the parties' numerous filings thus far. Briefly, the Galveston County Commissioners Court considered two map proposals following the 2020 Census (Map 1 and Map 2), and adopted the "Map 2" proposal (2021 Plan):

The "Map 1" Proposal



The "Map 2" Proposal (2021 Plan)



ROA.24458-24459.

Both proposed plans kept all Commissioners within their precinct boundaries as required by the Texas Constitution (art. 16 §14) and equalized County population among the precincts. Under the 2021 Plan, the incumbent Democrat for Precinct 3 is less likely to be reelected, considering the political makeup of the County and of the new Precinct 3. *See* ROA.15935, 15937, 16008-16009 ¶¶144, 149, 370. But Map 1 favors a Democratic candidate over a Republican.

ARGUMENT

I. Standard of Review and Applicable Law

A stay is an extraordinary remedy founded in equity and committed to the Court's discretion. *Nken v. Holder*, 556 U.S. 418, 437 (2009). In deciding whether a stay should be granted during an appeal, courts consider the following factors:

1. whether there is a strong showing the appellants are likely to succeed on the merits;
2. whether appellants will be irreparably injured absent a stay;
3. whether a stay will substantially injure the other parties interested in the proceeding; and
4. where the public interest lies.

Id. at 426. These factors cannot be applied rigidly or mechanically. *Campaign for S. Equal. v. Bryant*, 773 F.3d 55, 57 (5th Cir. 2014). And “[t]he first two factors are usually the most important.” *Thomas v. Bryant*, 919 F.3d 298, 303 (5th Cir. 2019) (citing *Nken*, 556 U.S. at 434).

II. The Court’s recent grant of en banc review acknowledges that serious questions of law are presented in this appeal, for which Appellants believe they present a substantial case on the merits.

The Fifth Circuit has held that a request for stay need only be supported by “a **substantial** case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.” *U.S. v. Baylor Univ. Med. Cntr.*, 711 F.2d 38, 39 (5th Cir. 1983) (emphasis added, citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)). This case presents a serious legal question, “both to the litigants involved and the public at large.” *See Campaign for S. Equal.*, 773 F.3d at 57 (granting stay where substantial question was presented to Court for resolution on appeal involving same-sex marriage bans). That question is whether a minority coalition can raise a VRA challenge. As discussed below in the irreparable harm section, the balance of equities weighs heavily in favor of granting a stay.

Appellants can also make a strong showing they are likely to succeed on the merits, as discussed in more detail below. With an election “many months away,” such likelihood “may counsel in favor of a stay.” *Robinson v. Ardoin*, 37 F.4th 208, 228-29 (5th Cir. 2022). Additionally, while the district court criticized the procedure surrounding the adoption of the 2021 Plan, including the lack of a formally adopted timeline, redistricting criteria, competitive procurement for redistricting vendors, and inadequate public notice and comment (*see* ROA.15963-15977 ¶¶232-78), it at

the same time now orders the County to implement Map 1. This fails to account for the fact that Map 1 was drawn and considered under the same procedure the district court criticized with the 2021 Plan.

A. The VRA does not protect minority coalitions.

This case presents a question of national importance: whether a coalition of Black and Hispanic voters may bring a VRA claim together, when it is undisputed that neither Black nor Hispanic voters could, on their own, form a majority-minority precinct.¹

This Court has allowed minority coalition claims under the VRA.² But since that time, other circuit courts and the United States Supreme Court have held the VRA does not protect sub-majority claims under the VRA. *See Bartlett v. Strickland*, 556 U.S. 1, 14 (2009) (rejecting sub-majority VRA claim for crossover district); *Hall v. Virginia*, 385 F.3d 421, 431-32 (4th Cir. 2004) (same, also using language referencing coalition claims); *Nixon v. Kent County*, 76 F.3d 1381, 1392-93 (6th Cir. 1996) (specifically rejecting coalition claims under the VRA); *Frank v. Forest*

¹ In many voting rights cases, the division in question is a “district.” Texas counties are divided into “precincts.”

² *See League of Un. Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (en banc) (“*Clements*”); *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989); *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989); *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988); *LULAC Council No. 4386 v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1499 (5th Cir. 1987).

County, 336 F.3d 570, 575-76 (7th Cir. 2003) (acknowledging circuit split and observing the “problematic character” of coalition claims).

As the Fourth Circuit explained in *Hall*, permitting multiracial coalitions to bring VRA claims would transform the statute from a source of minority protection to an advantage for *political* coalitions, and a redistricting plan that prevents political coalitions among racial or ethnic groups “does not result in vote dilution ‘on account of race’ in violation of Section 2.” *Hall*, 385 F.3d at 431.

Though the United States Supreme Court has not yet ruled directly on this issue,³ it has indicated that sub-majority claims are not actionable under the VRA, and it has cited *Hall* favorably. In *Bartlett v. Strickland*, the Court held that crossover districts (where minority voters make up less than a majority but are aided by majority voters who cross over to vote for the minority group’s preferred candidate—arguably an “effective minority district[]”—contradict the VRA’s mandate. *See Bartlett*, 556 U.S. at 14 (discussing crossover district where “minority voters might be able to persuade some members of the majority to cross over and join with them”). That is because the VRA requires proof that minorities “have less opportunity than other members of the electorate to . . . elect representatives of their

³ *See, e.g., Grove v. Emison*, 507 U.S. 25, 41 (1993) (declining to rule on the validity of coalition claims writ large); *Bartlett*, 556 U.S. at 13-14 (declining to address “coalition-district claims in which two minority groups form a coalition to elect the candidate of the coalition’s choice”); *Perry v. Perez*, 565 U.S. 388, 398-99 (2012) (creating a coalition district is likely not necessary to comply with VRA Section 5).

choice.” *Id.* (quotation omitted). Where a minority group forms less than a majority, it “standing alone ha[s] no better or worse opportunity to elect a candidate than does any other group of voters with the same relative voting strength.” *Id.* The Court explained that a minority group could “join other voters—including other racial minorities, or whites, or both—to reach a majority and elect their preferred candidate.” *Id.* Where one minority group cannot elect a candidate on its own “without assistance from others,” the Court quoted *Hall* favorably, stating that such a “VRA claim would give minority voters ‘a right to preserve their strength for the purposes of forging an advantageous political alliance.’” *Id.* at 14-15 (quoting *Hall*, 385 F.3d at 431 and *Voinovich*, 507 U.S. at 154 (minorities in crossover districts “could not dictate electoral outcomes independently”).

Clearly, *Bartlett* rejects the argument that sub-majority groups have special protection under the VRA to form *political* coalitions. *Id.* at 15 (“[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground”) (quotation omitted). Therefore, even though a VRA analysis should not be mechanically applied, it “does not impose on those who draw election districts a duty to give minority voters the most potential, or the best potential, to elect a candidate by attracting crossover voters.” *Id.*

That is, the VRA cannot “place courts in the untenable position of predicting many political variables and tying them to race-based assumptions.” *Id.* at 17 (stating

courts “would be directed to make predictions or adopt premises that even experienced polling analysts and political experts could not assess with certainty, particularly over the long term”). That is precisely what Appellees asked of the district court in this case:

- How have Hispanic Galveston County voters turned out to support the same candidate as Black Galveston County voters in the past?
- How reliable a prediction could be determined for future elections?
- What candidates have Black and Latino voters supported together, and will those trends continue?
- Were past voting trends based on incumbency, and did that depend on race?
- What are the turnout rates among white and minority voters, and will that continue into the future?

See id. at 17-18. These questions invite speculation, and impermissibly force courts, ill equipped, into the decision making based on political judgments. *Id.* (cautioning that courts “must be most cautious before” requiring “courts to make inquiries based on racial classifications and race-based predictions”). To permit the type of crossover district urged in *Bartlett* “raise[d] serious constitutional questions.” *Id.*

The same problems with a crossover district are present with a coalition minority district, and more. There is no line as to how many minority groups could join to form a VRA claim—beyond a Black and Hispanic coalition, plaintiffs could raise any combination or number of minority voter groups. Such claims would almost certainly constitute *political*, rather than minority, coalitions.

Additionally, and importantly given the ramifications present, Congress made no reference to minority coalitions in the text of the VRA. As Judge Higginbotham stated in his dissent from the denial of rehearing in *Campos*, the question to be answered is whether “Congress intended to *protect* [] coalitions” rather than whether the VRA prohibits them. *Campos v. City of Baytown, Tex.*, 849 F.2d 943, 945 (5th Cir. 1988) (per curiam) (Higginbotham, J. dissenting on denial of rehearing, joined by five other circuit judges). No such Congressional intent can be deduced. *Id.* Furthermore, the notion “that a group composed of [different minorities] is itself a protected minority” “stretch[es] the concept of cohesiveness” beyond its natural bounds to include political alliances, undermining Section 2’s effectiveness. *See id.*

Had Congress intended to extend protection to coalition groups, it would have invoked protected “classes of citizens” instead of a (singular) protected “class of citizens” identified under the VRA. *Nixon*, 76 F.3d at 1386-87. Because Section 2 “reveals no word or phrase which reasonably supports combining separately protected minorities,” the Sixth Circuit concluded that coalition claims are not cognizable. *Id.* at 1387. It expressly disagreed with *Campos* as an “incomplete [and] incorrect analysis.” *Id.* at 1388, 1390-92 (noting the difficulties of drawing district lines for minority coalitions, and that permitting coalition claims would effectively eliminate the first *Gingles* precondition).

The question is ripe for Supreme Court review. Under the rationale in *Bartlett* and in other circuit court opinions, the VRA does not protect minority coalitions.

III. Defendants will be irreparably injured absent a stay.

Irreparable harm is established upon showing “the inability to enforce [] duly enacted plans.” *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018) (explaining, in the context of interlocutory jurisdiction, that where state was barred from conducting elections under an enacted statute, unless the statute is unconstitutional, such an order “would seriously and irreparably harm” the state). As in *Thomas v. Bryant*, another VRA case, irreparable harm exists where state government officials face a trial court order “preventing enforcement of a state law, including the drawing of legislative lines, and where there was a “meaningful possibility (but not certainty) that a full appeal cannot be decided in time to provide Defendants relief before” the election at issue. *Id.* (citing *Abbott*, 138 S.Ct. at 2324 n.17). This voting rights case, as discussed above, presents serious questions about a County’s ability to enforce its duly enacted plan. As Justice Kavanaugh stated in his concurring opinion in *Merrill*, **“[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.”** *See e.g., Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J. concurring) (emphasis added).

That harm alone is sufficient to show irreparable injury absent a stay, though as discussed herein, additional serious harm may occur if no stay is ordered, including the possibility of the County having no qualified (or eligible) Republican candidates for two of its Commissioners Court seats.

As discussed above, Article 16, Section 14 of the Texas Constitution requires candidates for the Commissioners Court to live in the precinct which he or she will represent. To allowing adequate time for ballot programming and logistics before the March 2024 primary (early voting for which begins on February 20, 2024), the primary candidate filing window closes on December 11, 2023.⁴ *See* Tex. Elections Code § 172.023(a). If the County's chosen 2021 Plan is overwritten by district court order to favor a Democrat, there will be no reversing course for the 2024 election to avoid this political result, triggering serious Constitutional implications.

For example, If the district court's injunction remains in place and the 2021 Plan is replaced with Map 1 during that candidate filing window, Republican primary candidates for Precinct 3 under the 2021 Plan would be irreversibly prevented from participating in the 2024 election, even if the 2021 Plan is ultimately vindicated on appeal, because the Republican areas of Precinct 3 in the 2021 Plan are excluded under Map 1's Precinct 3. The inverse is not true. Appellees and the

⁴ Texas Secretary of State, Important Election Dates 2024, available at <https://www.sos.state.tx.us/elections/voter/important-election-dates.shtml> (last visited October 17, 2023).

district court have concluded that Democrat Commissioner Stephen Holmes, the incumbent in Precinct 3, is the candidate of choice of coalition voters. *See* ROA.15953 ¶ 198 (stating Commissioner Holmes was consistently elected in Precinct 3). Holmes resides in both versions of Precinct 3 under the 2021 Plan and Map 1. Holmes will be eligible to run for re-election in Precinct 3 whether or not the injunction stands and no matter what the result is of this appeal. The same is not true for potential Republican primary candidates for both Map 1 and the 2021 Plan.

IV. The remaining elements of substantial injury and public interest both support a stay of the Order pending appeal.

In considering harm to other parties, the “maintenance of the status quo is important.” *Louisiana by & through Landry v. Biden*, No. 22-30087, 2022 WL 866282, at *3 (5th Cir. Mar. 16, 2022). A stay would preserve that status quo to permit this Court to address the difficult legal questions discussed herein, among others (such as whether temporal limits on Section 2 are appropriate, and the appropriate weight courts should give to primary elections, especially in a coalition claim). In these circumstances, the alleged harm of an election under the existing plan should not outweigh the numerous harms of an injunction.

Additionally, where there is a likelihood of success on the merits, the risk of injury to Appellees is diminished—because there are serious challenges to whether a VRA violation occurred. The public interest similarly supports the enforcement of properly enacted laws—including redistricting plans adopted by governmental

bodies within the State of Texas.

V. In the alternative, Appellants ask the Court to issue a temporary administrative stay while it considers this motion.

Appellants ask that the Court issue a stay pending appeal. In the alternative, Appellants ask that the Court enter a temporary administrative stay pending its review of this motion. *See In re Abbott*, 800 F. App'x 293, 296 (5th Cir. 2020) (per curiam) (granting temporary administrative stay until further order of the Fifth Circuit “to allow sufficient time to consider” pending emergency motion for stay and mandamus petition).

CONCLUSION AND PRAYER

This appeal presents a serious question of law for this Court’s consideration, of national importance. Appellants make a strong showing they are likely to succeed on the merits, and case law recognizes the irreparable harm that would flow to the County in this redistricting challenge. Should the district court be permitted to significantly alter Commissioners Court boundaries while this appeal is pending, candidates may qualify for an office they ultimately cannot hold, and candidates who *could* hold such office would be prohibited from timely qualifying for, or running for, that office. These harms cannot be avoided without a stay.

Appellants therefore ask the Court to enter an order—staying the district court’s final judgment and its November 30, 2023 Order, and from any further action altering the Galveston County Commissioners Court boundaries during the

pendency of this appeal. In the alternative, Appellants ask that the Court enter an administrative stay until it can consider this filing.

Appellants believe action is needed today, December 1, 2023 due to the district court's order yesterday evening that requires Map 1 govern the Commissioners Court election.

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
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1. This document complies with the word limit of FED. R. APP. P. 27(d)(2)(A) because this document contains **3,387** words which is within the 5,200 word-count limit, excluding the portions exempted by the Rules.

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/s/ Angela Olalde
Counsel for Appellants

Dated: December 1, 2023

CERTIFICATE OF SERVICE

I certify that, on December 1, 2023, this document and its attachments were electronically served on all counsel of record in this case in accordance with the Federal Rules of Appellate Procedure.

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/s/ Joseph Russo, Jr.

Counsel for Appellants

ENTERED

November 30, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

TERRY PETTEWAY, *et al.*,

Plaintiffs,

VS.

GALVESTON COUNTY, TEXAS,
et al.,

Defendants.

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3:22-CV-57

ORDER

On October 13, 2023, this court held that the 2021 commissioners-court precinct map the Galveston County Commissioners Court adopted on November 12, 2021—“the enacted plan”—violated § 2 of the Voting Rights Act. Dkt. 250. The court permanently enjoined the defendants from administering, enforcing, preparing for, or in any way permitting the nomination or election of county commissioners from the commissioners-court precinct map as portrayed in the enacted plan. Dkt. 251 at 1. That same day, it announced a remedial-proceedings schedule that allowed the defendants an opportunity to submit an alternative redistricting plan that complies with § 2 of the Voting Rights Act so that this court could order the adoption of a new redistricting plan before November 11, 2023—the statutory opening date for candidate filing. *Id.* at 2.

Soon after, the defendants appealed and moved this court to stay its injunction pending appeal. Dkts. 253, 254. After the court denied their motion, they moved the United States Court of Appeals for the Fifth Circuit for the same relief. *Petteway v. Galveston County*, No. 23-40582, ECF No. 13. The Fifth Circuit expedited the appeal and entered a temporary administrative stay until November 10. *Id.*, ECF Nos. 28-2 at 2; 40-1 at 2. On November 10, the Fifth Circuit affirmed the district court’s judgment, *Petteway v. Galveston County*, 86 F.4th 214 (5th Cir. 2023), but extended the administrative stay pending an en banc poll, *Petteway*, No. 23-40582, ECF No. 122-2. Following the Fifth Circuit en banc poll, the administrative stay terminated. *Id.*, ECF No. 145-2 at 2.

Given that the candidate-filing period for the 2024 election has already begun and that the defendants’ electoral map is enjoined, it is no longer practicable to permit the commissioners court the opportunity to cure its enjoined map’s infirmities. *See Veasey v. Abbott*, 830 F.3d 216, 240 (5th Cir. 2016). The court will proceed accordingly to carry out its “unwelcome obligation” to devise and impose a remedy for the 2024 election. *See id.* (quoting *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978)).

The Petteway and NAACP plaintiffs previously asked the court to implement “Map 1,” the alternative map that the commissioners court

considered on November 12, 2021, and that is pictured in this order's appendix. Dkts. 241 ¶ 8; 242 ¶ 8; *see also* Dkt. 258-9 at 27. And in their emergency motion for a remedial order, the plaintiffs again ask the court to enter an order that requires Map 1 to be the remedial plan. Dkt. 266 at 2. In its order on the initial motion to stay, the court agreed to implement Map 1 if the defendants failed to, or elected not to, submit a revised plan. Dkt. 255 at 3. Map 1 remedies the vote dilution present in the enacted plan, satisfies all constitutional and statutory requirements, and preserves with "least change" the boundaries of the electoral map adopted in 2011. Accordingly, the court grants the plaintiffs' emergency motion and adopts Map 1 as the remedial plan. Dkt. 266.

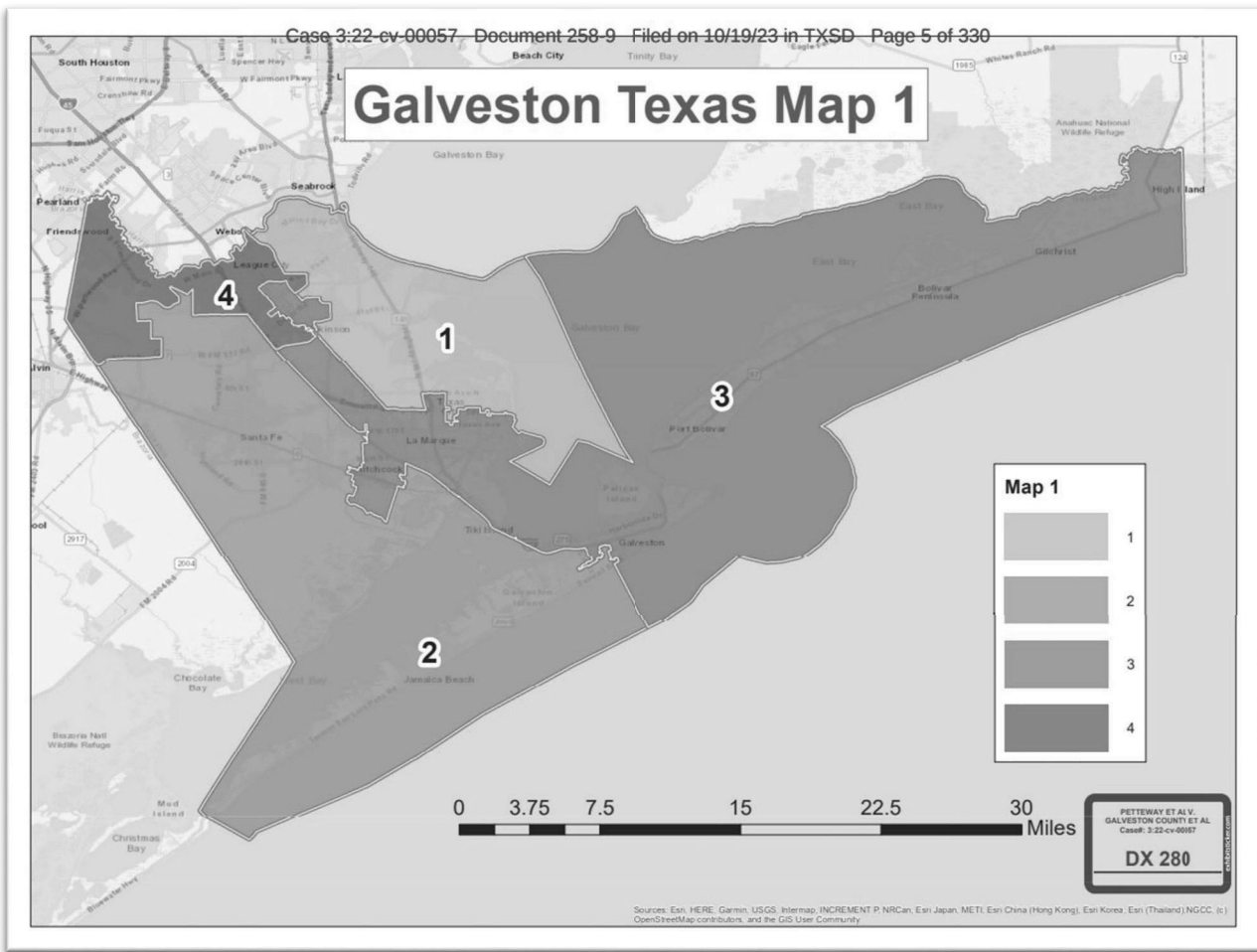
The court will hold a telephonic status conference for this case on **Monday, December 4, 2023, at 1 p.m.** to discuss how this matter will proceed to ensure that the 2024 election will be conducted using Map 1. Counsel for each party are ordered to participate in the conference.

Signed on Galveston Island this 30th day of November, 2023.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE

Appendix



APPENDIX 15

No. 23-40582

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Galveston County, Texas, the Galveston County Commissioners
Court, Galveston County Judge Mark Henry, and Galveston County
Clerk Dwight Sullivan,
Appellants

v.

Terry Petteway, Constable Derrick Rose, the Hon. Penny Pope,
Mainland Branch NAACP, Dickinson Bay Area Branch NAACP,
Galveston Branch NAACP, and Galveston LULAC Council 151, and
the United States of America,
Appellees

On appeal from the United States District Court
for the Southern District of Texas, Galveston Division
No. 3:22-CV-00057 (consolidated with Nos. 3:22-CV-00093 and 3:22-CV-00117)

**APPELLANTS' EMERGENCY MOTION FOR STAY PENDING
APPEAL AND FOR TEMPORARY ADMINISTRATIVE STAY**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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- b. the Galveston County Commissioners Court
- c. Galveston County Judge Mark Henry
- d. Galveston County Clerk Dwight Sullivan

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 - f. JoAnna Suriani
 - g. Michelle Anne Polizzano
 - h. Molly Linda Zhu
 - i. Richard Mancino
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- f. Michael E. Stewart
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- h. Tharuni A. Jayaraman
- i. Zachary Newkirk
- j. Daniel David Hu

Appellants certify that, to the best of their knowledge, no publicly traded company or corporation has an interest in the outcome of this case or appeal.

By: /s/ Joseph Russo, Jr.
Counsel for Appellants

**APPELLANTS' EMERGENCY MOTION FOR STAY PENDING APPEAL
AND FOR TEMPORARY ADMINISTRATIVE STAY**

Pursuant to Federal Rule of Appellate Procedure 8, Appellants Galveston County, Texas, the Galveston County Commissioners Court, Galveston County Judge Mark Henry, and Galveston County Clerk Dwight Sullivan (collectively, the “County” or “Appellants”) file this request, and ask the Court to stay the District Court from requiring the adoption of a revised districting until this appeal is concluded and, if necessary to allow the Court time to consider this request, to enter a temporary administrative stay until the Court has ruled on this Motion.

The County has complied with Rule 8: it has asked the District Court to stay its order (Fed. R. App. P. 8(a)(1)), the District Court denied that request, and the County has provided notice of this request to counsel for Appellees (Fed. R. App. P. 8(a)(2)(C)). **Appellants believe action is needed by October 24, 2023.**

Appellants have conferred with counsel for Appellees, and have been advised by all Appellees’ counsel that they oppose this motion and intend to file a response.

INTRODUCTION AND NATURE OF THE EMERGENCY

This is an appeal of a Voting Rights Act (“VRA”) case brought by a minority coalition of Black and Latino voters challenging the 2021 Galveston County Commissioners’ Court districting plan (“2021 Plan”).

On Friday, October 13, 2023, after a bench trial, the District Court issued Findings of Fact and Conclusions of Law (Appdx. A) and entered a mandatory injunction against the County (Appdx. B). On October 15, 2023, the Court modified the deadlines in that order. Appdx. C (Dkt. 255). The District Court is now requiring the County **to file (and therefore adopt) a new districting plan by October 27, 2023, along with supporting expert analysis**, or face the imposition of a map of the District Court’s choosing—one which will favor a Democratic candidate for County Commissioner Precinct 3 over a Republican, and which will greatly alter the boundaries of the 2021 Plan, which has been in place for two years.

The County requested a stay of the District Court’s order on October 14, 2023 arguing that, inter alia, insufficient time was provided to comply and the illustrative plan referenced by the trial court excluded one of the Commissioner’s homes from his precinct. Appdx. D (Dkt. 254). The trial court denied the request for stay on October 15, 2023, added seven days to its deadlines, and stated that, if Appellants “fail or prefer not to submit a revised plan, they are ordered to implement the Fairfax illustrative plan or Map 1 . . . by November 8, 2023.” Appdx. C at 3.

Appellants could adopt a plan referred to as “Map 1” to avoid a court order implementing a plan. Appdx. C (Dkt. 255). A hearing is set for November 8, 2023. *Id.*

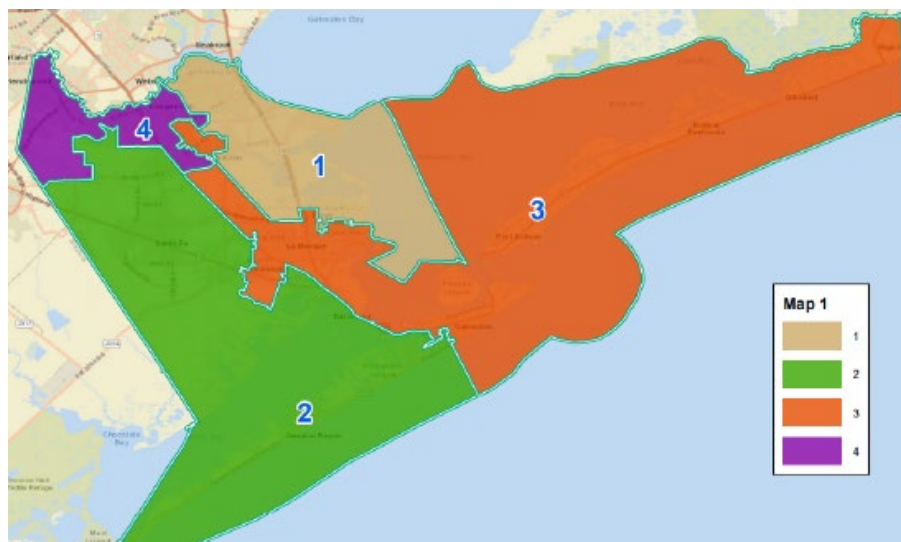
The Commissioner Court elections will occur in November 2024. Appdx. H. The District Court explained the urgency of its order, stating it wants a new plan adopted **“in time for the 2024 election, which means before November 11, 2023—the statutory opening date for candidate filing.”** Appdx. B (Dkt. 251 at 2); *see* Tex. Elections Code § 172.023(a). On October 15, 2023, the District Court also stated that it “maintains the position” that the County “must adopt a new plan before the 2024 election” (Appdx. C at 2), though the District Court maintained deadlines and a hearing date that would put a new districting plan in place by November 11, 2023. Appdx. C at 2-3. On October 16, 2023, Appellants provided notice to all parties of their intent to seek a stay in this Court. Appdx. E.

Considering the October 27, 2023 deadline for Appellants to hold a public hearing, consider the adoption of a revised districting plan, and submit such filing to the District Court with supporting expert analysis, **Appellants believe action is needed by October 24, 2023.**

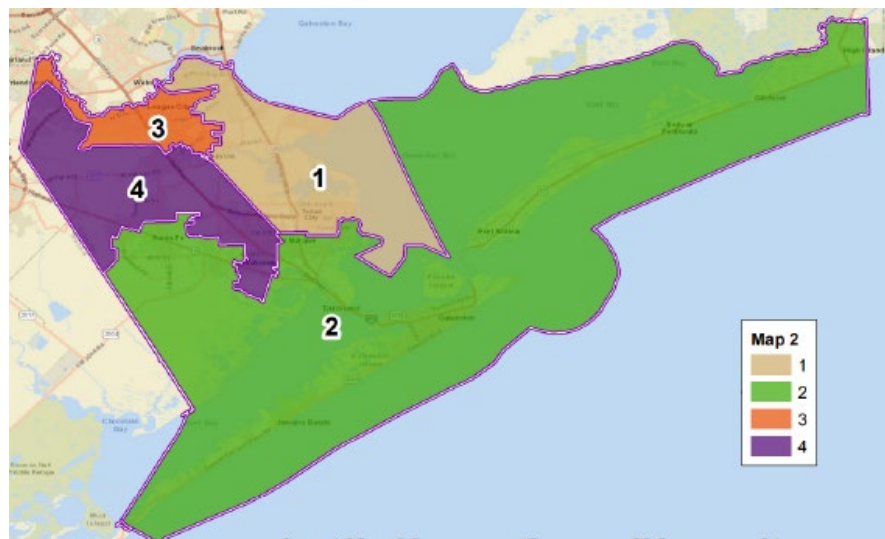
BRIEF FACTUAL BACKGROUND

The 2020 Census data revealed population deviations among Galveston County’s four commissioner precincts. The Commissioners Court considered two map proposals (Map 1 and Map 2) before it adopted the “Map 2” proposal (“2021 Plan”):

The “Map 1” Proposal



The “Map 2” Proposal (2021 Plan)

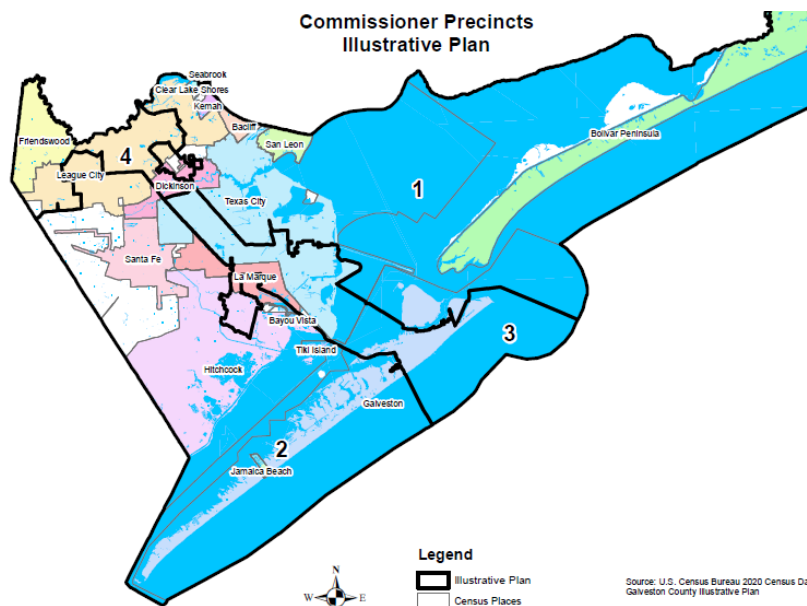


Appdx. F (Joint Trial Exhibit 29).

The 2021 Plan created a single coastal precinct. Both proposed plans kept all Commissioners within their precinct boundaries as required by the Texas Constitution (art. 16 §14), and equalized County population among the precincts. Under the 2021 Plan, the incumbent Democrat for Precinct 3 is less likely to be reelected, considering the political makeup of the County and of the new Precinct 3. See Appdx. A ¶¶ 144, 149, 370.

The District Court’s order mandates the adoption of a new plan with “supporting expert analysis.” Appdx. C at 2. If that does not occur, or if the District Court rejects such a plan, the District Court will require the County to implement either Map 1 or an illustrative map from one of the Appellees’ experts:

Plaintiffs’ Exhibit 339 – the Fairfax Plan



Plaintiff’s Exhibit 339 (Appendix G) (“Fairfax Plan”).

ARGUMENT

I. Standard of Review and Applicable Law

A stay is an extraordinary remedy founded in equity and committed to the Court’s discretion. *Nken v. Holder*, 556 U.S. 418, 437 (2009). In deciding whether a stay should be granted during an appeal, courts consider the following factors:

1. whether there is a strong showing the appellants are likely to succeed on the merits;
2. whether appellants will be irreparably injured absent a stay;
3. whether a stay will substantially injure the other parties interested in the proceeding; and
4. where the public interest lies.

Id. at 426. These factors cannot be applied rigidly or mechanically. *Campaign for S. Equal. v. Bryant*, 773 F.3d 55, 57 (5th Cir. 2014). And “[t]he first two factors are usually the most important.” *Thomas v. Bryant*, 919 F.3d 298, 303 (5th Cir. 2019) (citing *Nken*, 556 U.S. at 434).

II. Serious questions are presented in this appeal, and Appellants make a strong showing they are likely to succeed on the merits of those questions—even though they need only show a substantial case on the merits to obtain a stay here.

The Fifth Circuit has held that a request for stay need only be supported by “a **substantial** case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.” *U.S. v. Baylor Univ. Med. Cntr.*, 711 F.2d 38, 39 (5th Cir. 1983) (emphasis added, citing

Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir. 1981)). This case presents serious legal questions, “both to the litigants involved and the public at large.” *See Campaign for S. Equal.*, 773 F.3d at 57 (granting stay where substantial question was presented to Court for resolution on appeal involving same-sex marriage bans). Those questions include whether a minority coalition can raise a VRA challenge, whether a *Gingles* I analysis must consider whether an illustrative plan actually captures a community of interest, and whether VRA claims are temporally limited. As discussed below in the irreparable harm section, the balance of equities weighs heavily in favor of granting a stay.

Appellants can also make a strong showing they are likely to succeed on the merits, as discussed in more detail below. With an election “many months away,” such likelihood “may counsel in favor of a stay.” *Robinson v. Ardoin*, 37 F.4th 208, 228-29 (5th Cir. 2022). Additionally, while the District Court criticized the procedure surrounding the adoption of the 2021 Plan, including the lack of a formally adopted timeline, redistricting criteria, competitive procurement for redistricting vendors, and inadequate public notice and comment (*see* Appendix A at ¶¶232-78), the District Court at the same time stated it will order the County to implement Map 1 or the Fairfax plan if the County does not submit a revised plan by October 27, 2023. Appendix C at 3. These statements fail to account for the fact that Map 1 would have suffered from the same procedural deficiencies the District

Court criticized with the 2021 Plan, because Map 1 was a product of the same process which produced the 2021 Plan. It also fails to consider the short, 14-day timeline in which it has ordered the County to adopt and file a revised plan with supporting expert analysis, during which time it would not be possible to resolve *any* of the District Court’s procedural criticisms.

A. The VRA does not protect minority coalitions.

This case presents a question of national importance: whether a coalition of Black and Hispanic voters may bring a VRA claim together, when it is undisputed that neither Black nor Hispanic voters could, on their own, form a majority-minority precinct.¹

This Court has allowed minority coalition claims under the VRA.² But since that time, other circuit courts have held the VRA does not protect minority coalitions. *See Hall v. Virginia*, 385 F.3d 421, 431-32 (4th Cir. 2004); *Nixon v. Kent County*, 76 F.3d 1381, 1392-93 (6th Cir. 1996); *Frank v. Forest County*, 336 F.3d 570, 575-76 (7th Cir. 2003). As the Fourth Circuit explained in *Hall*, permitting multiracial coalitions to bring VRA claims would transform the statute from a source

¹ In many voting rights cases, the division in question is a “district.” Texas counties are divided into “precincts.”

² *See League of Un. Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (en banc) (“*Clements*”); *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989); *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989); *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988); *LULAC Council No. 4386 v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1499 (5th Cir. 1987).

of minority protection to an advantage for *political* coalitions, and a redistricting plan that prevents political coalitions among racial or ethnic groups “does not result in vote dilution ‘on account of race’ in violation of Section 2.” *Hall*, 385 F.3d at 431; *see also Frank*, 336 F.3d at 575 (acknowledging the circuit split, and observing the “problematic character” of coalition claims).

Though the United States Supreme Court has not yet ruled on this issue, it has cited *Hall* favorably. In *Bartlett v. Strickland*, the Court held that crossover districts (where minority voters make up less than a majority but are aided by majority voters who cross over to vote for the minority group’s preferred candidate—arguably an “effective minority district[]”—contradict the VRA’s mandate. *See Bartlett v. Strickland*, 556 U.S. 1, 14 (2009) (discussing crossover district where “minority voters might be able to persuade some members of the majority to cross over and join with them”). That is because the VRA requires proof that minorities “have less opportunity than other members of the electorate to . . . elect representatives of their choice.” *Id.* (quotation omitted). Where a minority group forms less than a majority, it “standing alone ha[s] no better or worse opportunity to elect a candidate than does any other group of voters with the same relative voting strength.” *Id.* The Court explained that a minority group could “join other voters—including other racial minorities, or whites, or both—to reach a majority and elect their preferred candidate.” *Id.* Where one minority group cannot elect a candidate on its own

“without assistance from others,” the Court quoted *Hall* favorably, stating that such a “VRA claim would give minority voters ‘a right to preserve their strength for the purposes of forging an advantageous political alliance.’” *Id.* at 14-15 (quoting *Hall*, 385 F.3d at 431 and *Voinovich*, 507 U.S. at 154 (minorities in crossover districts “could not dictate electoral outcomes independently”).

Clearly, *Bartlett* rejects the argument that minority groups have special protection under the VRA to form *political* coalitions. *Id.* at 15 (“[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground”) (quoting *De Grandy*, 512 U.S. at 1020). Therefore, even though a VRA analysis should not be mechanically applied, it “does not impose on those who draw election districts a duty to give minority voters the most potential, or the best potential, to elect a candidate by attracting crossover voters.” *Id.*

That is, the VRA cannot “place courts in the untenable position of predicting many political variables and tying them to race-based assumptions.” *Id.* at 17 (stating courts “would be directed to make predictions or adopt premises that even experienced polling analysts and political experts could not assess with certainty, particularly over the long term”). That is precisely what Appellees asked of the District Court in this case:

- How have Hispanic Galveston County voters turned out to support the same candidate as Black Galveston County voters in the past?
- How reliable a prediction could be determined for future elections?

- What candidates have Black and Latino voters supported together, and will those trends continue?
- Were past voting trends based on incumbency, and did that depend on race?
- What are the turnout rates among white and minority voters, and will that continue into the future?

See id. at 17-18. These questions invite speculation, and impermissibly force courts, ill equipped, into the decisionmaking based on political judgments. *Id.* (cautioning that courts “must be most cautious before” requiring “courts to make inquiries based on racial classifications and race-based predictions”). To permit the type of crossover district urged in *Bartlett* “raise[d] serious constitutional questions.” *Id.*

The same problems with a crossover district are present with a coalition minority district, and more. There is no line as to how many minority groups could join to form a VRA claim—beyond a Black and Hispanic coalition, plaintiffs could raise any combination or number of minority voter groups. Such claims would almost certainly constitute *political*, rather than minority, coalitions.

Additionally, and importantly given the ramifications present, Congress made no reference to minority coalitions in the text of the VRA. As Judge Higginbotham stated in his dissent from the denial of rehearing in *Campos*, the question to be answered is whether “Congress intended to *protect* [] coalitions” rather than whether the VRA prohibits them. *Campos v. City of Baytown, Tex.*, 849 F.2d 943, 945 (5th Cir. 1988) (per curiam) (Higginbotham, J. dissenting on denial of rehearing, joined

by five other circuit judges). No such Congressional intent can be deduced. *Id.* Furthermore, the notion “that a group composed of [different minorities] is itself a protected minority” “stretch[es] the concept of cohesiveness” beyond its natural bounds to include political alliances, undermining Section 2’s effectiveness. *See id.*

Had Congress intended to extend protection to coalition groups, it would have invoked protected “classes of citizens” instead of a (singular) protected “class of citizens” identified under the VRA. *Nixon*, 76 F.3d at 1386-87. Because Section 2 “reveals no word or phrase which reasonably supports combining separately protected minorities,” the Sixth Circuit concluded that coalition claims are not cognizable. *Id.* at 1387. It expressly disagreed with *Campos* as an “incomplete [and] incorrect analysis.” *Id.* at 1388, 1390-92 (noting the difficulties of drawing district lines for minority coalitions, and that permitting coalition claims would effectively eliminate the first *Gingles* precondition).

The Supreme Court has not ruled on this question. *See, e.g., Growe v. Emison*, 507 U.S. 25, 41 (1993) (declining to rule on the validity of coalition claims writ large); *Bartlett*, 556 U.S. at 13-14 (declining to address “coalition-district claims in which two minority groups form a coalition to elect the candidate of the coalition’s choice”); *Perry v. Perez*, 565 U.S. 388, 398-99 (2012) (creating a coalition district is likely not necessary to comply with VRA Section 5). The question is ripe for

Supreme Court review. Under the rationale in *Bartlett* and in other circuit court opinions, the VRA does not protect minority coalitions.

B. *Gingles* I³ compactness cannot exist if illustrative plans do not create districts around a community of interest.

As the County argued before the District Court, the Supreme Court’s recent opinion in *Allen v. Milligan* reinforces the rule that the VRA is not a tool to force proportional representation—because, “as residential segregation decreases—as it has “sharply” done since the 1970s—satisfying traditional districting criteria such as the compactness requirement “becomes more difficult.” *Allen v. Milligan*, 599 U.S. 1, 28-29 (2023). It is undisputed that the areas of the County in which Black and Hispanic populations live are scattered around the County, from the mainland to the Seawall on Galveston Island. Appellees failed in at least two fundamental respects when attempting to meet the *Gingles* I factor: their experts did not analyze data on the precinct level, and they failed to consider the traditional redistricting criterion of whether their illustrative districts were drawn around a community of interest.

³ VRA claims require proof of three threshold, “*Gingles*,” conditions: (1) a sufficiently large and geographically compact majority-minority district (2) that is politically cohesive, and that (3) Anglo residents vote as a bloc to usually defeat that majority-minority’s preferred candidate. *Harding v. Cty. of Dall.*, 948 F.3d 302, 308 (5th Cir. 2020) (citing *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986)).

Appellees did not meet their *Gingles* I compactness burden because their illustrative plans joined disparate Black and Hispanic populations from the northern to southernmost parts of the County, and Appellees never proved that these populations share sufficient interests to form a single community of interest, using evidence on a local level. Instead, their experts largely address a nationwide discussion of race and voting, rather than circumstances in Galveston County.

C. *Gingles* II cohesion was not met—and primary elections were erroneously discounted in a coalition case.

The District Court improperly discounted the relevance of primary elections to determining whether a coalition of minority groups votes cohesively. Whether primary elections are relevant in a cohesion analysis is a question for the Court, not witnesses. *LULAC v. Abbott*, 601 F. Supp. 3d 147, 165 (W.D. Tex. May 4, 2023) (“*Abbott* I”). What primary election results show on their face, particularly in a coalition case, is critical and clear: whether different minority groups select the same candidates. *See id.* at 169 n.10 (“shared voting preferences at the primary level would be powerful evidence of a working coalition” but is not needed to prove cohesion for a single minority group). In fact, in *Abbott* I, the court agreed with Dr. Alford’s view that primary elections “are relevant to analyzing divisions within political coalitions and that partisan affiliation is the main driver of voter behavior in general

elections.” *Id.* at 166.⁴ But the District Court discounted the importance of primary data in this case, and erred in holding that *Gingles* II cohesion was met.

D. When partisanship drives voting behavior in Galveston County, racially polarized voting under *Gingles* is not met.

As the District Court noted in its Findings, “partisanship undoubtedly motivates voting behaviors in Galveston County” Appdx. A ¶ 147. The District Court placed the burden on the County to prove that politics, rather than race, accounted for racially polarized voting. While the voting evidence, including primary election evidence considered inconsequential by the lower court, unmistakably shows partisanship explains voting results, this Court has not held this is a defense burden in a VRA case. Rather, a VRA *plaintiff* must establish all three *Gingles* preconditions, including racially polarized (not politically polarized) voting.

E. The district court erred in holding that the lack of a temporal limitation in Section 2 of the VRA is constitutional

The Supreme Court has, in recent years, steadily applied a requirement for temporal limits where the government treats people differently on the basis of race, as would be required to draw a Commissioners precinct primarily on the basis of voters’ races. *See Shelby County v. Holder*, 570 U.S. 529, 553 (2013); *Students for*

⁴ Here, Dr. Alford analyzed 24 primary elections and found in only 2 did Black and Latino voters support the same candidate with 75% or more of their vote. DX 305 at 14-19; Dkt. 245 ¶¶432, 436-439. Even using Dr. Trounstine’s lower standard of cohesion, Latino and Black voters support each other’s candidates in only 8 out of 24 primaries. *Id.* But a one-third cohesion rate is no cohesion at all. *Abbott I*, 601 F. Supp. 3d at 166.

Fair Admissions, Inc. v. President and Fellows of Harvard College, 143 S.Ct. 2141, 2172-74 (2023). Section 2 contains no termination date, mechanism, or spatial or temporal limit and the constitutionality of the law is not settled into the future. *See Allen*, 599 U.S. at 45 (Kavanaugh, J., concurring) (noting four-justice dissent’s concern that the “authority to conduct race-based redistricting cannot extend indefinitely into the future . . .” but that issue was not preserved). The absence of a temporal limit makes Section 2’s application unconstitutional here, where the District Court’s examples of discrimination draw from the “Antebellum era” while conceding that it is “easier to vote now than it has ever been in Galveston County.” Appdx. A at ¶¶160-164 (noting in paragraph 164 that “several witnesses acknowledged that it is easier to vote now than it has ever been in Galveston County”).

III. Defendants will be irreparably injured absent a stay.

Irreparable harm is established upon showing “the inability to enforce [] duly enacted plans.” *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018) (explaining, in the context of interlocutory jurisdiction, that where state was barred from conducting elections under an enacted statute, unless the statute is unconstitutional, such an order “would seriously and irreparably harm” the state). As in *Thomas*, another VRA case, irreparable harm exists where state government officials face a trial court order “preventing enforcement of a state law, including the drawing of legislative lines,

and where there was a “meaningful possibility (but not certainty) that a full appeal cannot be decided in time to provide Defendants relief before” the election at issue. *Id.* (citing *Abbott*, 138 S.Ct. at 2324 n.17). This voting rights case, as discussed above, presents serious questions about a County’s ability to enforce its duly enacted plan. As Justice Kavanaugh stated in his concurring opinion in *Merrill*, “[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *See e.g., Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J. concurring).

That harm alone is sufficient to show irreparable injury absent a stay, though as discussed herein, additional serious harm may occur if no stay is ordered, including the possibility of the County having no qualified (or qualifiable) candidates for two of its Commissioners Court seats.

As discussed above, Article 16, Section 14 of the Texas Constitution requires candidates for the Commissioners Court to live in the precinct which he or she will represent. Allowing time for ballot programming and logistics before the March 2024 primary (early voting for which begins on February 20, 2024), the primary candidate filing window opens November 11, 2023 and closes December 11, 2023.⁵ *See* Tex. Elections Code § 172.023(a). If the County’s chosen 2021 Plan is

⁵ Texas Secretary of State, Important Election Dates 2024, available at <https://www.sos.state.tx.us/elections/voter/important-election-dates.shtml> (last visited October 17, 2023).

overwritten by District Court order to favor a Democrat, there will be no reversing course for the 2024 election to avoid this political result, triggering serious Constitutional implications.

For example, If the District Court's injunction remains in place and the 2021 Plan is replaced with Map 1 during that candidate filing window, likely Republican primary candidates for Precinct 3 under the 2021 Plan would be irreversibly prevented from participating in the 2024 election, even if the 2021 Plan is ultimately vindicated on appeal, because the Republican areas of Precinct 3 in the 2021 Plan are excluded under Map 1's Precinct 3. The inverse is not true. Appellees and the District Court have concluded that Democrat Commissioner Stephen Holmes, the incumbent in Precinct 3, is the candidate of choice of coalition voters. *See* Appdx. A ¶ 198 (stating Commissioner Holmes was consistently elected in Precinct 3). Holmes resides in both versions of Precinct 3 under the 2021 Plan and Map 1. Holmes will be eligible to run for re-election in Precinct 3 whether or not the injunction stands and no matter what the result is of this appeal. The same is not true for potential Republican primary candidates for both Map 1 and the 2021 Plan.

Moreover, as discussed above, the District Court's injunction also threatens to order the adoption of Plaintiff's Exhibit 339, the Fairfax Plan (Appdx. G), which physically removes Precinct 1 Commissioner Apffel from the precinct he currently represents. Appdx. H (Declaration of Darrell Apffel); *see also* Appdx. C at 3 (Order

stating the District Court “did not intend to choose a map that draws incumbents out of their precincts”). The Precinct 1 Commissioner’s seat is up for election in the 2024 cycle. Appdx. H. This would render incumbent Commissioner Apffel ineligible to seek reelection. And the same uncertainties that may prevent candidates from running in Precinct 3 cast serious doubts that any eligible candidates would file for Precinct 1 and remain eligible if the 2021 Plan is vindicated on appeal between the filing window next month and the 2024 election.

IV. The remaining elements of substantial injury and public interest both support a stay of the Order pending appeal.

In considering harm to other parties, the “maintenance of the status quo is important.” *Louisiana by & through Landry v. Biden*, No. 22-30087, 2022 WL 866282, at *3 (5th Cir. Mar. 16, 2022). A stay would preserve that status quo to permit this Court to address the difficult legal questions discussed herein, among others (such as whether temporal limits on Section 2 are appropriate, and the appropriate weight courts should give to primary elections, especially in a coalition claim). In these circumstances, the alleged harm of an election under the existing plan should not outweigh the numerous harms of an injunction.

Additionally, where there is a likelihood of success on the merits, the risk of injury to Appellees is diminished—because there are serious challenges to whether a VRA violation occurred. The public interest similarly supports the enforcement of properly enacted laws—including redistricting plans adopted by governmental

bodies within the State of Texas.

V. In the alternative, Appellants ask the Court to issue a temporary administrative stay while it considers this motion.

Appellants ask that the Court issue a stay pending appeal. In the alternative, Appellants ask that the Court administratively stay the trial court’s October 15, 2023 order while it considers this request. *See In re Abbott*, 800 F. App’x 293, 296 (5th Cir. 2020) (per curiam) (granting temporary administrative stay until further order of the Fifth Circuit “to allow sufficient time to consider” pending emergency motion for stay and mandamus petition).

CONCLUSION AND PRAYER

This appeal presents serious questions of law for this Court’s consideration, that are of national importance. Appellants make a strong showing they are likely to succeed on the merits, and case law recognizes the irreparable harm that would flow to the County in this redistricting challenge. Should the District Court be permitted to significantly alter Commissioners Court boundaries while this appeal is pending, candidates may qualify for an office they ultimately cannot hold, an candidates who *could* hold such office would be prohibited from timely qualifying for, or running for, that office—potentially leaving two seats on the Commissioners Court half of the County’s governing body), vacant. These harms cannot be avoided without a stay.

Appellants therefore ask the Court to enter an order prohibiting the District

Court from altering the Commissioners Court boundaries during the pendency of this appeal. In the alternative, Appellants ask that the Court enter an administrative stay until it can consider this filing.

Appellants believe action is needed by October 24, 2023 due to the County's October 27, 2023 deadline to adopt a map and file it with supporting expert analysis before the District Court.

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

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/s/ Angela Olalde

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Dated: October 17 , 2023

CERTIFICATE OF SERVICE

I certify that, on October 17, 2023, this document and its attachments were electronically served on all counsel of record in this case in accordance with the Federal Rules of Appellate Procedure.

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No. 23-40582

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Galveston County, Texas, the Galveston County Commissioners
Court, Galveston County Judge Mark Henry, and Galveston County
Clerk Dwight Sullivan,
Appellants

v.

Terry Petteway, Constable Derrick Rose, the Hon. Penny Pope,
Mainland Branch NAACP, Dickinson Bay Area Branch NAACP,
Galveston Branch NAACP, and Galveston LULAC Council 151, and
the United States of America,
Appellees

On appeal from the United States District Court
for the Southern District of Texas, Galveston Division
No. 3:22-CV-00057 (consolidated with Nos. 3:22-CV-00093 and 3:22-CV-00117)

**APPENDIX TO APPELLANTS'
EMERGENCY MOTION FOR STAY PENDING APPEAL AND
FOR TEMPORARY ADMINISTRATIVE STAY**

- A. The District Court's Findings of Fact and Conclusions of Law (Dkt. 250), dated October 13, 2023
- B. The District Court's Order and mandatory injunction (Dkt. 251), dated October 13, 2023
- C. The District Court's denial of the County's motion for stay and modification of prior order (Dkt. 255), dated October 15, 2023
- D. The County's emergency motion to stay filed in the District Court (Dkt. 254), dated October 14, 2023

- E. The County's letter to Appellees' counsel advising of the intent to file a motion for stay before the United States Court of Appeal for the Fifth Circuit, dated October 16, 2023
- F. The parties' Joint Trial Exhibit 29
- G. Plaintiffs' Trial Exhibit 339 (Fairfax Plan)
- H. Declaration of Darrell Apffel

APPENDIX A

ENTERED

October 13, 2023

Nathan Ochsner, Clerk

**In the United States District Court
for the Southern District of Texas**

GALVESTON DIVISION

No. 3:22-cv-57

TERRY PETTEWAY, *ET AL.*, *PLAINTIFFS*,

v.

GALVESTON COUNTY, *ET AL.*, *DEFENDANTS*.

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

JEFFREY VINCENT BROWN

UNITED STATES DISTRICT JUDGE

United States Courthouse

601 Rosenberg Avenue

Galveston, Texas 77550

(409) 766-3737

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I. Introduction

This is a redistricting case brought under the Voting Rights Act and the Fourteenth and Fifteenth Amendments. It was tried to the bench from August 7–18.

On the third day of trial, William S. Cooper¹—one of the experts for the NAACP plaintiffs²—perfectly described the heart of this case, which challenges the commissioners-precinct plan that the Galveston County Commissioners Court adopted in November 2021 (“the enacted plan”) that dismantled Precinct 3—the only Black-and-Latino-dominant³ precinct in the county:

Q. What, if anything, do you observe about the differences between [the] benchmark and now the new 2021 enacted [plan]?

A. Well, if you look at the underlying census data, Precinct 3 went from being a Black plus Latino majority precinct to being a precinct with the lowest percentage of Blacks and Latinos in the

¹ As noted *infra*, Cooper has nearly four decades of experience drawing voting plans for about 750 United States jurisdictions. Dkt. 223 at 9–10. He has testified as an expert on redistricting and demographic analysis in federal court fifty-five times. *Id.* at 10; *see also* PX-341.

² The NAACP plaintiffs include Dickinson Bay Area Branch NAACP, Galveston Branch NAACP, Mainland Branch NAACP, Galveston LULAC Council 151, Edna Courville, Joe A. Compian, and Leon Phillips. *United States v. Galveston County*, No. 3:22-cv-97, ECF No. 38 (May 31, 2022).

³ Unless otherwise specified, the court uses the term “Black” to refer to individuals who identify as Black or African American. It also uses “Latino” to refer to individuals who identify as Latino or Hispanic and “Anglo” for those who identify as White/Caucasian.

county. . . . It's just a textbook example of a racial gerrymander.⁴ It's —it's egregious. I have never seen anything this bad. Because normally if a minority-majority district is in place, then you are not going to see a locality attempt to eliminate it unless [it] had no choice due to demographic changes.

Here there was absolutely no reason to make major changes to Precinct 3. It was just — it was mean-spirited. I've never — I mean, I'm just blown away by this. It's not fair, and . . . I am at a loss for words.

Dkt. 223 at 42–43.⁵ The court finds the defendants' actions to be fundamentally inconsistent with § 2 of the Voting Rights Act. Although Galveston County is no longer subject to preclearance, it still must comply with the edicts of § 2. They have not done so here. After careful review, the court has come to a grave and difficult conclusion: it must enjoin the defendants from using the enacted map in future elections.

* * *

On June 1, 2022, the court consolidated Civil Action Nos. 3:22-cv-93 and 3:22-cv-117 with Civil Action No. 3:22-cv-57, resulting in one action under Civil Action No. 3:22-cv-57. Dkt. 45. All three sets of plaintiffs—the

⁴ Although the Petteway plaintiffs challenged the enacted plan under the Constitution as a racial gerrymander, the court decided this matter under the Voting Rights Act. Accordingly, it does not reach the racial-gerrymandering claim.

⁵ Page citations refer to the PDF page number, not the document's internal pagination.

Petteway plaintiffs,⁶ NAACP plaintiffs, and the United States—challenge the enacted plan as violating § 2 of the Voting Rights Act. The Petteway and NAACP plaintiffs also challenge the enacted plan as (1) intentionally discriminatory against Galveston County’s Black and Latino voters in violation of the Fourteenth and Fifteenth Amendments and (2) racially gerrymandered in violation of the Fourteenth Amendment.

The court convened a bench trial on August 7, 2023, which lasted until August 18. After thoroughly reviewing the entire record, the court finds that the enacted plan illegally dilutes the voting power of Galveston County’s Black and Latino voters by dismantling Precinct 3, the county’s historic and sole majority-minority commissioners precinct. The enacted plan distributes the county’s Black and Latino voters, who comprise 38% of the county’s eligible voter population, among all four newly drawn commissioners precincts. As a result, those minority voters have been subsumed in majority-Anglo precincts in a county with legally significant racially polarized voting. Under the enacted plan, Anglo voters will likely continue to vote as a bloc to usually elect candidates who are not the Black and Latino voters’ candidates

⁶ The Petteway plaintiffs include the Honorable Terry Petteway, Constable Derrick Rose, and the Honorable Penny Pope. Dkt. 42. Michael Montez and Sonny James were previously a part of this group, but Sonny James voluntarily dismissed his claims, Dkt. 100, and the court dismissed Michael Montez’s claims after granting the defendants’ motion to dismiss, Dkt. 142.

of choice, preventing Black and Latino voters from participating equally in county government.

The court finds in favor of the plaintiffs and enjoins the use of the enacted plan.

II. Findings of Fact

1. Findings of fact and conclusions of law are required in all actions “tried on the facts without a jury.” Fed. R. Civ. P. 52(a)(1). A district court must “find the facts specially and state its conclusions of law separately.” *Id.* “Rule 52(a) does not require that the district court set out findings on all factual questions that arise in a case.” *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1054 (5th Cir. 1997); *see also Century Marine Inc. v. United States*, 153 F.3d 225, 231 (5th Cir. 1998) (quoting *Burma Navigation Corp. v. Reliant Seahorse M/V*, 99 F.3d 652, 656 (5th Cir. 1996)) (noting that Rule 52(a) “exacts neither punctilious detail nor slavish tracing of the claims issue by issue and witness by witness”). Instead, a court satisfies Rule 52 if it “afford[s] the reviewing court a clear understanding of the factual basis for [its] decision.” *Holman v. Life Ins. Co. of N. Am.*, 533 F. Supp. 3d 502, 506 (S.D. Tex. 2021) (quoting *Interfirst Bank of Abilene, N.A. v. Lull Mfg.*, 778 F.2d 228, 234 (5th Cir. 1985)). And if the court fails to make a specific finding on a particular issue, the reviewing court “may assume that the court

impliedly made a finding consistent with its general holding so long as the implied finding is supported by the evidence.” *Century Marine Inc.*, 153 F.3d at 231.

2. To the extent that any factual finding reflects or is better understood as a legal conclusion, it is also deemed a conclusion of law. Likewise, to the extent that any legal conclusion reflects or is better understood as a factual finding, it is also deemed a factual finding.

A. Procedural History

3. In February 2022, the Petteway plaintiffs challenged the enacted plan as discriminatory and in violation of § 2 of the Voting Rights Act, the Fourteenth Amendment, and the Fifteenth Amendment. Dkt. 1.

4. About one month later, the United States filed suit, alleging that the enacted plan violates § 2 of the Voting Rights Act. *See United States v. Galveston County*, No. 3:22-cv-93 (S.D. Tex. Mar. 24, 2022), Dkt. 1.

5. Three weeks later, the NAACP plaintiffs also filed suit challenging the enacted plan under the Fourteenth and Fifteenth Amendments and § 2 of the Voting Rights Act. *Dickinson Bay Area Branch NAACP v. Galveston County*, No. 3:22-cv-117 (S.D. Tex. Apr. 14, 2022), Dkt. 1.

6. In May 2022, the NAACP plaintiffs moved to consolidate these three cases. Dkt. 37. The court granted the motion and ordered the cases consolidated in June 2022. Dkt. 45.

7. Also in June 2022, the defendants filed separate motions to dismiss the three consolidated complaints, arguing that the court lacked jurisdiction and the plaintiffs had failed to state a claim for relief. Dkts. 46, 47, 48. The court partially granted the defendants' motion related to the Petteway plaintiffs' complaint, dismissing Michael Montez based on lack of standing. Dkt. 125 at 12–13. The court otherwise denied the motions. *Id.*; Dkts. 123, 124.

8. In May 2023, the defendants moved for summary judgment on two grounds: (1) the three preconditions required to establish the § 2 claims under *Thornburg v. Gingles*, 478 U.S. 30 (1986); and (2) the racial predomination in map-drawing needed for the Petteway and NAACP plaintiffs' racial-gerrymandering claims. Dkt. 176. The court denied the motion two months later. Dkt. 200.

9. The court held a ten-day bench trial beginning on August 7, 2023. It heard live testimony from several of the individual plaintiffs—Constable Derrick Rose, the Honorable Penny Pope, Edna Courville, Joe A. Compian (in his individual capacity and on behalf of LULAC Council 151), and Lucretia

Henderson-Lofton (on behalf of Dickinson Bay Area NAACP). Dkts. 221 at 55–104; 222 at 8–61, 211–79; 226 at 62–111, 188–215. The plaintiffs also presented live testimony from other county residents who are current and former elected officials: Lucille McGaskey, Robert Quintero, Sharon Lewis, Joe Jaworski, Pastor William Randall, Patrick Doyle, and Commissioner Stephen Holmes. Dkts. 221 at 105–79; 226 at 8–61, 112–87, 216–30; 228 at 11–64.

10. The court also heard expert testimony offered by the plaintiffs. William S. Cooper, Dr. Tye Rush, and Anthony E. Fairfax testified on the first *Gingles* precondition, illustrative map configurations, and redistricting principles. Dkts. 223 at 9–193; 224 at 9–162. Drs. Matthew A. Barreto, Jessica Trounstine, and Kassra A.R. Oskooii (“the quantitative experts”) testified on the second and third *Gingles* preconditions. Dkts. 223 at 194–329; 224 at 163–349. Finally, Drs. Traci Burch, Rene R. Rocha, and Max Krochmal testified on the totality of the circumstances and indicia of discriminatory intent. Dkts. 222 at 62–210; 225 at 10–283.

11. By agreement, the parties presented live testimony from Judge Mark Henry, Commissioner Joe Giusti, Commissioner Darrell Apffel, redistricting consultant Dale Oldham, and mapping consultant Thomas

Bryan. Dkts. 228 at 166–356; 231 at 8–308; 232 at 8–163, 289–379. After this testimony, the plaintiffs closed their case in chief.

12. The defendants presented live testimony from Commissioner Robin Armstrong and County Clerk Dwight Sullivan. Dkt. 230 at 191–219, 231–68. The court also heard expert testimony from Dr. Mark Owens, who addressed the first *Gingles* precondition, and Dr. John Alford, who addressed racially polarized voting. *Id.* at 10–190; Dkt. 232 at 164–288. Following this testimony, the defendants rested.

13. After resting, the defendants moved for judgment on partial findings under Fed. R. Civ. P. 52(c) on all claims, which the court denied. Dkt. 230 at 272–85.

14. About three weeks after trial, the parties filed post-trial closing-argument briefing, Dkts. 240, 241, 242, 244, along with proposed findings of fact and conclusions of law, Dkts. 239, 245. They then filed response briefing one week after that. Dkts. 246, 247, 248, 249. The court reviewed these materials when preparing these findings and conclusions.

B. Parties

1. Plaintiffs

15. The Honorable Terry Petteway is a Black resident of the city of Galveston. PX-607 ¶¶ 2–3. Under the election plan adopted as part of the 2011 redistricting cycle (“the benchmark plan”), Petteway’s home sat in

Precinct 3, and Commissioner Holmes represented him. *Id.* ¶ 6. But under the enacted plan, Petteway now resides in commissioners Precinct 2, which Commissioner Giusti represents. *Id.* ¶ 7. Petteway is a registered voter who has voted in commissioners-court elections and intends to vote in these elections in the future. *Id.* ¶¶ 4–5.

16. The Honorable Penny Pope is a Black resident of the city of Galveston. Dkt. 222 at 8–9. She is a former justice of the peace who represented Justice of the Peace/Constable (“JP/constable”) Precinct 3 for twenty-six years. *Id.* at 9, 12. Under the benchmark plan, Judge Pope’s home sat in commissioners Precinct 3. *Id.* at 21. But under the enacted plan, she now resides in Precinct 2. *Id.* She is a registered voter who regularly votes in Galveston County elections. *Id.* at 10.

17. Constable Derrick Rose is a Black resident of Texas City. Dkt. 221 at 55. Since 2005, he has served as the elected constable for JP/constable Precinct 3. *Id.* at 57–59. Under the benchmark plan, Constable Rose’s home sat in Precinct 3. *Id.* at 56, 60. But under the enacted plan, he now resides in commissioners Precinct 1, which Commissioner Apffel represents. *Id.* at 60. Constable Rose is a registered voter who regularly votes in Galveston County elections. *Id.* at 55–56.

18. Joe Compian is a Latino resident of La Marque. Dkt. 226 at 62. Under the benchmark plan, Compian’s home sat in Precinct 3. *Id.* But under the enacted plan, he now resides in Precinct 4 and is represented by Dr. Armstrong. *Id.* Compian is a member of LULAC Council 151 and is a registered voter who votes religiously. *Id.* at 63–66. He intends to vote in the future. *Id.* at 63–64.

19. Edna Courville is a Black resident of Texas City. Dkt. 222 at 211. She used to reside in Precinct 3 under the benchmark plan but now lives in Precinct 4 under the enacted plan. *Id.* at 218. Courville is registered to vote, votes regularly, and intends to vote in the future. *Id.* at 219. She is a member of the Mainland Branch of the NAACP. *Id.* at 215–16.

20. Leon Phillips is a Black resident of the city of Galveston. DX-310 at 7. He is a member of the Galveston Branch of the NAACP. *Id.* at 21. Under the benchmark plan, he lived in Precinct 3. *Id.* at 32. But under the enacted plan, he now resides in Precinct 2. DX-34 at Row 31383. He is a registered voter and intends to vote in future elections.

21. The Dickinson Bay Area Branch of the NAACP is a nonprofit, nonpartisan membership organization and is an affiliate branch of the Texas State Conference of the NAACP. Dkt. 204-6 ¶ 27. The Dickinson Branch serves Dickinson and League City and has at least fifty members, including

members who lived in benchmark Precinct 3. Dkt. 226 at 200–01. One such member includes Lucille McGaskey, who now lives in Precinct 4. Dkt. 221 at 106, 123; DX-34 at Row 95740; DX-115 at Row 133363. The Dickinson Branch’s mission, consistent with the national NAACP and all other local NAACP units, includes educating people on discrimination and voting and helping people register to vote. Dkt. 226 at 199–200.

22. The Galveston Branch of the NAACP is a nonprofit, nonpartisan membership organization and is an affiliate branch of the Texas State Conference of the NAACP. Dkt. 204-6 ¶ 27. The Galveston Branch has about sixty members, all living or working in Galveston County. PX-605 ¶¶ 4–5. After the 2021 redistricting cycle, at least one Galveston Branch member who was a resident of benchmark Precinct 3 has been redistricted into a different commissioners precinct. *Id.* ¶ 6. As a unit of the national NAACP, the Galveston Branch’s mission includes educating people on discrimination and voting, as well as helping people register to vote. *See* Dkt. 226 at 199–200.

23. The Galveston LULAC Council 151 is a civic organization in Galveston County and an independent unit of the League of United Latin American Citizens. Dkts. 204-6 ¶ 28; 226 at 65–66. LULAC’s goals include supporting and advocating for civil rights and improving Latinos’ participation in the political system. Dkt. 226 at 66. After the 2021

redistricting cycle, at least one LULAC member who was a resident of benchmark Precinct 3 has been redistricted into a different commissioners precinct.

24. The Mainland Branch of the NAACP is a nonprofit, nonpartisan membership organization and is an affiliate branch of the Texas State Conference of the NAACP. Dkt. 204-6 ¶ 27. The Mainland Branch has over fifty members who live or work in Texas City, La Marque, and Hitchcock. PX-606 ¶¶ 7–8. As a unit of the national NAACP, the Mainland Branch’s mission includes educating people on discrimination and voting, as well as helping people register to vote. *See* Dkt. 226 at 199–200; *see also* Dkt. 222 at 216. At least one Mainland Branch member in Galveston County was a resident of the benchmark Precinct 3 and has been redistricted into a different commissioners precinct. PX-606 ¶ 9.

25. The United States is represented by the Department of Justice. Congress has vested the Attorney General with the authority to enforce § 2 of the Voting Rights Act on the United States’ behalf. *See* 52 U.S.C. § 10308(d).

2. Defendants

26. Galveston County is a political and geographical subdivision in southeast Texas on the Gulf of Mexico. Dkt. 204-6 ¶ 1.

27. Galveston County Commissioners Court is the county's governing body. Tex. Const. art. V, §§ 15, 16, 18(a)–(b). The commissioners court consists of a county judge elected at-large as the presiding officer and four county commissioners elected from single-member precincts, all serving four-year, staggered terms. Dkt. 204-6 ¶ 2. The commissioners court that adopted the enacted plan consisted of Judge Henry, Commissioner Apffel (Precinct 1), Commissioner Giusti (Precinct 2), Commissioner Holmes (Precinct 3), and Commissioner Ken Clark (Precinct 4). *Id.* ¶ 25.

28. Judge Mark Henry has been the county judge since 2010. *Id.* ¶ 4. The plaintiffs sued Judge Henry in his official capacity as Galveston County's chief officer. *See, e.g.*, Dkt. 42 ¶ 33.

29. Defendant Dwight D. Sullivan is the incumbent county clerk for Galveston County. Dkt. 230 at 233. Sullivan's office oversees all county elections, which involves supervising poll workers, polling sites, ballot creation, and ballot tabulation. *Id.* at 233–34.

C. Expert Witnesses' Credibility⁷

1. *Gingles* Precondition One

30. The plaintiffs' experts William Cooper, Anthony Fairfax, and Dr. Tye Rush testified about the first *Gingles* precondition for § 2 vote-dilution claims—whether Black and Latino residents in Galveston County are sufficiently large and geographically compact to constitute a majority in a single-member district. Dkts. 223 at 9–190; 224 at 9–162.

31. Each expert testified to forming their opinions by using publicly available data from the Census Bureau and applying standard and reliable redistricting methods in conducting their analyses and forming their opinions. Dkts. 223 at 15–17, 17; 224 at 22–26, 85–86, 92–93, 97; PXs-337 at 10–13; 342.

32. Cooper has nearly four decades of experience drawing voting plans for about 750 United States jurisdictions. Dkt. 223 at 9–10. He has testified on redistricting and demographic analysis in federal court fifty-five times. *Id.* at 10; *see also* PX-341. Cooper submitted, and the court received

⁷ The court's findings on the expert witnesses' qualifications, reliability, and credibility are limited to this case. They are not informed in any way by any testimony that may have been presented to the court in other cases and do not apply to future matters before this court.

into evidence, principal and rebuttal reports addressing the first *Gingles* precondition. PXs-386, 438.

33. The court recognized Cooper as an expert on redistricting, demographic analysis, and the first *Gingles* precondition. Dkt. 223 at 11–12. After receiving Cooper’s testimony and reviewing his reports, the court finds his analyses, opinions, and testimony credible.

34. Fairfax has over thirty years of map-drawing, demography, and redistricting experience. Dkt. 224 at 74–75. He testified that he has developed or helped develop hundreds of redistricting plans. *Id.* at 75–77. Fairfax has testified as an expert in redistricting matters nine times. *Id.* at 80. He submitted, and the court admitted into evidence, both his initial and rebuttal reports addressing the first *Gingles* precondition. PXs-337, 454.

35. The court recognized Fairfax as an expert on map-drawing, demography, redistricting, and census data as it applies to the first *Gingles* precondition. Dkt. 224 at 81. After receiving Fairfax’s testimony and reviewing his reports, the court finds his analyses, opinions, and testimony credible.

36. Dr. Rush is the president’s postdoctoral fellow at the University of California, San Diego, and has expertise in mapping and political geography. *Id.* at 12–14; PX-486. He holds a Bachelor of Arts in political

science from the University of California, Riverside, and a Master of Arts and Ph.D. in political science from the University of California, Los Angeles. Dkt. 224 at 11–12. Dr. Rush previously was a senior policy fellow at the UCLA Voting Rights Project, where he led research projects, conducted mapping analyses, and taught mapping. *Id.* at 13. He also was a redistricting and voting fellow at Common Cause, where he taught mapping to lawyers and assisted with census research. *Id.* Dr. Rush has also taught mapping and political geography at the university level, and clients have hired him to perform political mapping. *Id.* at 13–14. He submitted, and the court admitted into evidence, both an initial and a rebuttal report as well as a supplemental declaration addressing the first *Gingles* precondition. PXs-485–487.

37. The court recognized Dr. Rush as an expert on political geography, mapping, and electoral behavior. Dkt. 224 at 14–15. After receiving Dr. Rush’s testimony and reviewing his reports, the court finds his analyses, opinions, and testimony credible.

38. The defendants offered testimony from Dr. Mark Owens on the first *Gingles* precondition. Dkt. 232 at 164–288. Dr. Owens holds a Bachelor of Arts in political science from the University of Florida, a Master of Arts in government from Johns Hopkins University, and a Ph.D. in political science

from the University of Georgia. *Id.* at 165–66; DX-290 at 27. While working on his Ph.D. dissertation, he was also a visiting doctoral student at the University of Oxford. Dkt. 232 at 166.

39. After completing his Ph.D., Dr. Owens was a visiting assistant professor of American politics at Bates College. *Id.* at 168–69. After that, he joined the University of Texas at Tyler’s faculty, where he taught classes and conducted research on American political institutions and elections. *Id.* at 169. At UT-Tyler, he developed expertise and published works on Texas politics and elections. *Id.* at 173. He recently accepted a position as a professor of political science at the Citadel, where he will continue his teaching and research. *Id.* at 175.

40. At trial, the court allowed Dr. Owens to proffer expert opinions on the first *Gingles* precondition and the population dispersion of minority groups in Galveston County. *Id.* at 198. But the court does not find his testimony on these topics credible. He neither describes himself as an expert nor even claims to focus any of his work on either redistricting or the first *Gingles* precondition. *Id.* at 189–90. Instead, he concentrates his work on the federal legislative process. *Id.* at 190. None of Dr. Owens’s coursework included training on the technical aspects of drawing a voting plan, *id.* at 193, and he has not published any peer-reviewed work on any of the issues he

opined on in his report, *id.* at 193–94. Dr. Owens has never taught a course on the technical aspects of drawing a voting plan. *Id.* at 196. Other than part of a single class on southern politics, he does not teach any specialized courses to graduate students on the *Gingles* standard. *Id.* at 197.

41. Before forming his opinions, Dr. Owens had reviewed fewer than ten voting plans for compactness—and only two of those professionally. *Id.* at 195. His only redistricting experience involved assisting a nonprofit by drawing statewide maps in Oklahoma that were neither considered by any court of law nor used in any election. *Id.* at 195–96. And his report revealed a fundamental misunderstanding of traditional redistricting principles. *See, e.g.*, DX-290 at 16 (providing a table with an average population deviation instead of the maximum deviation); *id.* at 252–54.

42. Given the widespread shortcomings in Dr. Owens’s testimony in this case, the court assigns little to no weight to Dr. Owens’s opinions on traditional redistricting principles, the geographic dispersion of minority populations, and the first *Gingles* precondition.

2. *Gingles* Preconditions Two and Three

43. The plaintiffs’ experts Drs. Matthew Barreto, Jessica Trounstone, and Kassra Oskooii testified about the second and third *Gingles* preconditions—whether (1) Black and Latino residents are politically

cohesive and (2) Anglo voters sufficiently bloc vote to enable them to usually defeat their preferred candidate, respectively. *See generally* Dkts. 223 at 194–265; 224 at 163–349.

44. Drs. Barreto, Trounstine, and Oskooii base their opinions on quantitative analyses of demographic data and election results. PXs-356 ¶¶ 20–37; 384 ¶¶ 16–29; 476 ¶¶ 25–40; 501 ¶¶ 1–10.

45. Dr. Barreto is a political-science and Chicano-studies professor at the University of California, Los Angeles. Dkt. 223 at 196–97; PX-384 ¶ 2. He is a co-founder and faculty director of the Latino Policy and Politics Initiative at UCLA and the UCLA Voting Rights Project. Dkt. 223 at 196–197; PX-384 ¶ 2. Dr. Barreto has testified dozens of times in federal court on racially polarized voting, demographic change, map-making, and public polling. Dkt. 223 at 206–07; PX-384 ¶ 2. The court recognized Dr. Barreto as an expert in mapping, racially polarized voting, demographic change, racial and ethnic politics, and *Gingles* preconditions two and three. Dkt. 223 at 209.

46. After receiving Dr. Barreto’s testimony and reviewing his reports, the court finds his analyses, opinions, and testimony credible.

47. Dr. Trounstine is a political-science professor at Vanderbilt University. PX-604 at 1. Before Vanderbilt, she was the Foundation Board of

Trustees Presidential Chair of Political Science at the University of California, Merced. *Id.* She also served as an assistant professor of politics and public affairs at Princeton University. *Id.* Dr. Trounstine holds a Ph.D. and a Master of Arts in political science from the University of California, San Diego, and a Bachelor of Arts in political science from the University of California, Berkeley. *Id.*

48. Dr. Trounstine has published several peer-reviewed publications, *id.* at 1–3, including two award-winning books published by university presses. *Id.* at 1. One of those books, *Political Monopolies*, “is about how local political coalitions get built,” “how those coalitions end up electing officials to office,” “how those officials keep themselves in power for multiple decades,” and “the consequences those political monopolies . . . have for . . . representation.” Dkt. 224 at 167.

49. As part of her academic work, Dr. Trounstine has analyzed “the building of political coalitions,” “racial group representation,” and “the political voting patterns of various racial, ethnic, and class groups, as well as other groups along gender lines.” *Id.* at 168–69. As part of her academic work, Dr. Trounstine has also “looked at the various ways that coalitions are built over time.” *Id.*

50. Dr. Trounstine is currently an Andrew Carnegie Fellow. PX-604 at 3. She was awarded the fellowship to “write a book on local political polarization in the United States.” Dkt. 224 at 168.

51. The court recognized Dr. Trounstine as an expert in political science, particularly statistical analysis of group voting patterns and the ability of groups to elect their candidates of choice. *Id.* at 170–71. Having received Dr. Trounstine’s testimony and reviewed her reports and declaration, the court credits her analyses, opinions, and testimony and grants them substantial weight.

52. Dr. Oskooii is a tenured associate professor of political science at the University of Delaware and is a faculty member at the university’s Data Science Institute. *Id.* at 273–76. He has published peer-reviewed works on racially polarized voting analyses and served as an expert in Voting Rights Act cases nationwide. *Id.* The court recognized Dr. Oskooii as an expert on racially polarized voting analysis. *Id.* at 278.

53. The defendants’ expert on the second and third *Gingles* preconditions, Dr. John Alford, testified that he greatly respects Dr. Oskooii as a methodologist. Dkt. 230 at 151. Dr. Alford agreed with the numerical accuracy of Dr. Barreto’s and Dr. Oskooii’s ecological-inference results and adopted their results for his analysis. *Id.* at 99–100. Having received Dr.

Oskooii's testimony and reviewed his reports and declaration, the court credits his analyses, opinions, and testimony and grants them substantial weight.

54. Dr. Alford has been a professor in Rice University's political-science department for thirty-five years. *Id.* at 12. He teaches courses on elections and voting behavior, and has served as a testifying expert for about 30 years. *Id.* No court has ever declined to recognize him as an expert on the second and third *Gingles* preconditions. *Id.*

55. At trial, the parties stipulated to Dr. Alford's expertise on the second and third *Gingles* preconditions. *Id.* at 12–13. After receiving Dr. Alford's testimony and reviewing his reports, the court finds his analyses, opinions, and testimony credible.

3. Senate Factors and Arlington Heights Factors

56. Dr. Traci Burch is an associate professor of political science at Northwestern University and a research professor at the American Bar Foundation. Dkt. 222 at 64; PX-414 at 3, 52. She is an expert in political behavior, political participation, barriers to participating in politics, barriers to voting, race and ethnic politics, and criminal justice. Dkt. 222 at 64–65. She has been an expert in federal and state court on barriers to voting and

felony disenfranchisement, as well as both the Senate and *Arlington Heights* factors. *Id.* at 66–67.

57. Dr. Burch testified about the racially discriminatory intent of the 2021 redistricting plan. *Id.* at 72–110. Dr. Burch also testified on the Senate factors. *Id.*

58. Reflecting a reliable application of Senate Factors 5 through 9 to the facts of this case, Dr. Burch based her opinions on a review of sources and methods that are standard for political scientists and social scientists, including the relevant political-science literature. *Id.* at 68–69. Dr. Burch also collected relevant data and analyzed publicly available information from websites, meeting records, newspaper articles, census data, and surveys. *Id.* at 69.

59. Reflecting a reliable application of the *Arlington Heights* factors, Dr. Burch’s opinions are based on her analysis of relevant demographic data and county-specific primary sources, including statements by Judge Henry, the commissioners, and the public. *See generally* PX-414. She also bases her opinions on peer-reviewed political-science and sociological studies, which is standard practice for political scientists and social scientists. Dr. Burch “cast a fairly wide net,” surveying public records and statements made by decision-makers and Galveston County residents. Dkt. 222 at 69–71.

60. The court qualified Dr. Burch as an expert in this case. *Id.* at 67. After receiving Dr. Burch’s testimony and reviewing her reports, the court finds her analyses, opinions, and testimony credible.

61. The United States’ expert, Dr. Rene Rocha, testified about the Senate factors. Dkt. 225 at 192–279. Dr. Rocha is the Herman J. and Eileen S. Schmidt Chair and Professor of Political Science and Latino Studies at the University of Iowa. *Id.* at 193; PX-336 at 1. He conducts research and teaches courses about race and ethnic politics, immigration policy, and voting rights. Dkt. 225 at 193. He has previously served as an expert in a § 2 case in federal court. *Id.* at 196–98.

62. Dr. Rocha’s opinions are based on relevant demographic data, county-specific primary sources, and peer-reviewed political-science and sociological studies. His research included reviewing census and American Community Survey data, federal- and state-government documents, court decisions, peer-reviewed academic work, websites, and newspaper articles. He gathered evidence of incidents and events in Galveston County that fell within Senate Factors 1, 2, 3, 5, and 6. PX-335; *id.* at 192–283.

63. The court qualified Dr. Rocha as an expert in this case. Dkt. 225 at 199. After receiving Dr. Rocha’s testimony and reviewing his reports, the court finds his analyses, opinions, and testimony credible.

64. Finally, the United States' last expert—Dr. Max Krochmal—is a history professor and the Czech Republic Endowed Professor and Director of Justice Studies at the University of New Orleans. *Id.* at 11; PX-317. Dr. Krochmal researches and teaches courses on the history of the American South, African American history, Latino/Latina history, and multiracial coalitions, focusing on Texas history during the twentieth century. Dkt. 225 at 11.

65. Dr. Krochmal testified about the racially discriminatory intent of the 2021 redistricting plan. *Id.* at 36, 74–95. His testimony cataloged discriminatory events undertaken by local and state entities against Black and Latino residents in Galveston County that affected the right to vote. *Id.* at 52–67. Based on his research, Dr. Krochmal concluded that there was sufficient evidence to find a history of official, voting-related discrimination in Galveston County. *Id.* at 34–35.

66. Reflecting a reliable application of the *Arlington Heights* factors and the events leading up to the enacted plan, Dr. Krochmal bases his opinion on the historical method. *Id.* at 36–52; PX-412 at 8–9. To reach his conclusions here, Dr. Krochmal analyzed more than 300 newspaper articles, years of commissioners-court agendas and minutes, video streams, primary sources in archives, oral-history interviews, and multiple days of fieldwork.

Dkt. 225 at 36–52. Dr. Krochmal examined Galveston County’s past redistricting cycles, the specific sequence of events leading up to the 2021 redistricting plan, and the history of discrimination against the county’s Black and Latino population. *See generally* PX-412.

67. The court recognized Dr. Krochmal as an expert. Dkt. 225 at 32–33. The court also noted Dr. Krochmal’s advocacy within his community and how, at times, he provided legal and political opinions favorable to the plaintiffs. After hearing and observing Dr. Krochmal’s testimony, reviewing his report, and considering the defendants’ arguments and evidence proffered to show his bias, the court still finds his testimony credible—although less than that of Drs. Burch and Rocha.

D. Galveston County Demographics and Voting Patterns

68. According to the 2020 Census, Galveston County has a total population of 350,682—54.6% Anglo, 25.3% Latino, and 13.3% Black. Dkt. 204-6 ¶ 6. The combined Black and Latino population represents about 38.6% of the countywide population. PX-386 ¶ 26.⁸

⁸ Cooper explained there are several possible definitions of “Black”—such as non-Latino and any-part Black, non-Latino and DOJ Black, and single-race Black—in a demographic analysis. Dkt. 223 at 20–23. For Galveston County’s population, the differences are “fairly insignificant” for overall population, and “de minimis” for citizen-voting-age population (“CVAP”) calculations, and thus do not alter the court’s analysis. *Id.*

69. Commissioners Precinct 3, which historically covered portions of Dickinson, La Marque, Texas City, and the city of Galveston, was the only majority-minority precinct in Galveston County from 1991 to 2021. *Id.* ¶ 38; PX-412 at 33–34.

70. The historic core of Precinct 3 was the product of advocacy by Black and Latino activists to create a majority-minority precinct in which they could elect a candidate of choice in the 1991 redistricting cycle. PX-412 at 32–37. This advocacy occurred shortly after the 1988 election of the first Black member of the commissioners court, Wayne Johnson, in a close campaign marked by racially polarized voting. *Id.* at 23–25; Dkt. 225 at 62–65.

71. Over time, Precinct 3 became an important political homebase for Black and Latino residents. “It was responsive. It was reflective of their priorities. And people took great pride and ownership in it.” Dkt. 225 at 71; *see also* Dkts. 226 at 190–91; 228 at 46 (discussing how “different groups of people” take pride “not only in the precinct itself and the cohesiveness in the precinct itself but even the pride they have in their elected official as the county commissioner”).

72. By 2020, benchmark Precinct 3’s CVAP was 58.31% Black and Latino. PX-386 ¶ 46. On the other hand, the enacted plan has no

commissioners precinct with a Black and Latino CVAP larger than 35%. *Id.* ¶ 58. Ironically, Precinct 3 now has the smallest such population at 28%. *Id.*

1. Sufficiently Large and Geographically Compact

73. The Black community in Galveston County primarily resides in the center of the county—Texas City, La Marque, Dickinson, Hitchcock, and the city of Galveston. Meanwhile, the Latino community is evenly dispersed throughout the county.

74. Both parties agree that there is not a sufficiently large, compact, and separate Latino or Black population to constitute a majority-Latino or majority-Black precinct in Galveston County. They also agree, however, that when treated as a coalition, the Black and Latino populations are sufficiently large and compact to support a majority-minority commissioners precinct. The court finds both propositions to be true.

75. During the 2021 redistricting process, the commissioners court considered a proposed map—Map 1—that featured a reasonably compact commissioners precinct with a majority Black and Latino population by CVAP. That precinct—Precinct 3—was 30.86% Black and 24.28% Latino by CVAP. PX-487 ¶ 65.

76. The commissioners court’s legal consultant for the redistricting process, Dale Oldham, testified that Map 1 was legally defensible. Dkt. 231

at 122–23. The plaintiffs’ experts also testified that Map 1 met the first *Gingles* precondition. See Dkt. 224 at 73; cf. PX-386 ¶¶ 70–80; Dkt. 223 at 51–55.

77. The illustrative plans that the plaintiffs presented at trial demonstrate that Galveston County’s Black and Latino population is sufficiently large to constitute a majority by CVAP in a single commissioners precinct. Cooper drafted four illustrative plans that all include a majority Black and Latino commissioners precinct by CVAP. See generally PXs-386 ¶¶ 81–96; 439 at 2. Cooper Plans 1, 2, 3, and 3A each include an illustrative commissioners precinct with 57.65%, 57.72%, 55.27%, and 54.52% Black and Latino CVAP, respectively, as calculated using the 5-Year 2017-2021 ACS Special Tabulation. PX-439.

78. Fairfax’s illustrative plan likewise includes a majority Black and Latino commissioners precinct. According to the 2020 Census redistricting dataset and the 2016-2020 ACS 5-Year ACS Data, Fairfax’s illustrative plan includes a commissioners precinct with 55.15% Black and Latino CVAP. Dkt. 224 at 109–11; PXs-337 ¶ 47; 551.

79. For his initial report, Dr. Rush created three illustrative plans containing Precinct 3 configurations wherein the Black and Latino communities together formed a majority by CVAP. PX-487 ¶¶ 34–54. The

CVAP in Dr. Rush's plans was calculated using the 2020 Census redistricting dataset and the 2016–2020 5-year ACS Data. *Id.* The Precinct 3 configurations in his three initial plans exhibit a Black and Latino CVAP of 56.6%, 61.2%, and 57.5%, respectively. *Id.* Dr. Rush also presented a fourth plan with a Black and Latino CVAP of 57.92%. PX-486 at 19.

80. Dr. Rush subsequently created four additional plans containing coastal precincts, each unifying the county's entire county coastline into one commissioners precinct without fragmenting the mainland minority population. *Id.*; *see also* PXs-415–418. Texas Legislative Council-generated reports confirm that three of the coastal precinct plans contain a Precinct 3 in which the combined Black and Latino CVAP is over 50%. PX-485 ¶ 8.

a. Traditional Redistricting Criteria

81. All the plaintiffs' experts on the first *Gingles* precondition credibly testified to applying traditional redistricting criteria in developing their illustrative maps.

82. Dr. Owens's criticisms of the plaintiffs' illustrative plans do not overcome their experts' testimony, leaving intact the plaintiffs' argument that each plan comports with traditional redistricting criteria.

83. NAACP Plaintiffs' Illustrative Plans (Cooper). Cooper developed Cooper Map 1 by shifting just two voting precincts from the benchmark plan,

a “least-change” approach he deemed acceptable for Galveston County based on the characteristics of its population changes over the past decade. Dkt. 223 at 56–57; PX-386 ¶¶ 81–86. This least-change plan demonstrates the minimum number of changes necessary to eliminate malapportionment and brings the commissioners precincts within an “almost perfect deviation.” Dkt. 223 at 58; PX-386 ¶ 31.

84. In Cooper Map 1, all commissioners precincts are contiguous, and Precinct 3 is reasonably compact given the county’s complex geography. Dkt. 223 at 58. This plan keeps eleven municipalities whole and has fifteen populated municipal splits. PX-349 at 5–6. It respects municipal and political-subdivision boundaries better than the enacted plan, which keeps nine municipalities whole but has sixteen populated municipal splits as well as four populated voting-district splits. PX-346 at 5–6. Racial considerations did not predominate in drawing Cooper Map 1. Dkt. 223 at 58. Cooper Map 1 adheres to traditional redistricting principles and is reasonably configured. *Id.* at 62; PX-386 ¶ 86.

85. Cooper also developed Cooper Map 2 using a least-change strategy for equalizing populations while also including an entirely coastal Precinct 2. Dkt. 223 at 62–63; PX-386 ¶¶ 87–90. At 0.57%, the total population deviation is “even closer” to zero than that of the enacted plan.

Dkt. 223 at 64; PX-350 at 3. All commissioners precincts are contiguous, and Cooper Map 2 keeps ten municipalities whole with fifteen populated splits. Dkt. 223 at 66; PX-350 at 4–5. Cooper Map 2 has nine populated voting-district splits, which Cooper explained were split to prioritize creating a coastal commissioners precinct that would be contiguous by driving. Dkt. 223 at 66; PX-350 at 6. Cooper testified that Precinct 3 in Cooper Map 2 is reasonably compact. Dkt. 223 at 67. Racial considerations did not predominate in drawing Cooper Map 2. *Id.* at 63. Cooper Map 2 adheres to traditional redistricting principles and is reasonably configured.

86. Cooper developed Cooper Maps 3 and 3A by attempting to unify all offshore islands in a single precinct. Dkt. 223 at 68; PXs-386 ¶¶ 92–96; 438 ¶¶ 35–38. The population deviations for both plans are below 5%. PXs-351 at 3; 443 at 3. Cooper included Cooper Map 3A as a slightly modified version of Cooper Map 3 to allow Precinct 1 to be contiguous by driving without requiring entry across the Moses Lake Floodgate. Dkt. 223 at 70–72; PX-438 ¶ 35.

87. Cooper Map 3 keeps nine municipalities whole and includes sixteen populated splits, while Cooper Map 3A keeps nine municipalities whole and includes fifteen populated splits. PXs-351 at 5; 443 at 5. Cooper Maps 3 and 3A have three voting-district splits, one less than the enacted

plan. PXs-351 at 6; 443 at 6. Both are reasonably compact. Dkt. 223 at 68–69, 75. Race did not predominate in the development of either map. *Id.* at 70, 75–76. Cooper Maps 3 and 3A adhere to traditional redistricting principles and are reasonably configured.

88. In sum, all the Cooper illustrative plans adhere to traditional redistricting criteria without pairing any incumbents or predominating race. Cooper Maps 2, 3, and 3A prove that achieving these metrics and maintaining a majority-Black and Latino precinct is possible, even with a unified coastal precinct.

89. United States’ Illustrative Plan (Fairfax). Fairfax developed an illustrative plan using the least-change approach to equalize the population among the commissioners precincts. Using this approach, he shifted only one voting district from Precinct 2 to Precinct 3 to bring the precinct’s population deviations within the accepted guideline range of 5% and the total deviation under 10%. Dkt. 224 at 97–102; PX-337 ¶¶ 38–41. All commissioners precincts are contiguous. Dkt. 224 at 106–07; PX-340 at 9. Fairfax testified that his illustrative plan is reasonably compact and more compact than the benchmark plan. Dkt. 224 at 115–17. The illustrative plan is also similarly compact as compared to the enacted plan. PXs-454 ¶ 4; 557.

90. Fairfax testified that his illustrative plan adhered to traditional redistricting criteria, including equal population, contiguity, and compactness. Dkt. 224 at 104, 107. Fairfax's illustrative plan also maintained the same municipality and voting-district splits as the benchmark plan. Racial considerations did not predominate in drawing Fairfax's illustrative plan. *Id.* at 103. Therefore, Fairfax's illustrative plan adheres to traditional redistricting principles and is reasonably configured.

91. Petteway Plaintiffs' Illustrative Plans (Rush). Each precinct in Dr. Rush's eight illustrative plans is contiguous. PXs-415–418, 485, 486, 487.

92. Dr. Rush's illustrative plans have an overall plan deviation under 10%, and seven of his eight plans are within the 5% guideline.

93. Precinct 3 in Dr. Rush's illustrative plans is reasonably compact, as are the other three commissioners-court precincts in each of those plans. Dkt. 224 at 22–23; PXs-486, 487. Each precinct in Dr. Rush's illustrative plans is also comparatively compact when measured against the districts in the enacted and the benchmark plans. PXs-486, 487.

94. Dr. Rush's illustrative plans respect political and precinct boundaries. For example, Dr. Rush's Demonstrative Plans 1, 2, and 2b do not split any voting districts. PX-487 ¶¶ 38, 44. In addition to respecting political

boundaries, Dr. Rush’s illustrative plans keep together communities of interest. *See* Dkt. 224 at 21–22; PX-486 at 5–6.

95. Finally, racial considerations did not predominate in drawing Dr. Rush’s illustrative plans, as he did not consider race or ethnicity while creating his maps. Dkt. 224 at 22, 27. Given this evidence, Dr. Rush’s illustrative plans adhere to traditional redistricting principles and are reasonably configured.

96. Defendants’ Assessment of Plaintiffs’ Illustrative Plans (Owens). Although the court gives Dr. Owens’s testimony almost no weight, Dr. Owens generally agreed that the plaintiffs’ plans were “about as reasonably compact as the enacted plan.” Dkt. 232 at 229, 276. He also agreed that it is common to use a least-change approach when rebalancing populations following a census. *Id.* at 259–60. Dr. Owens charged that the plaintiffs’ illustrative plans used race as a predominating factor, but failed to explain what made him believe that, other than his work “comparing the outcomes” of the maps. *Id.* at 258. Nor did he dispute that the plaintiffs’ experts used non-racial traditional redistricting criteria. *Id.* at 256–58.

97. Dr. Owens’s opinions do not change the court’s findings that the plaintiffs’ illustrative plans exemplify several ways to draw a reasonably

compact commissioners precinct featuring a majority Black and Latino CVAP and comporting with traditional redistricting principles.

98. Conclusions Regarding Traditional Redistricting Principles.

Overall, Cooper, Fairfax, and Dr. Rush’s illustrative plans confirm that the combined Black and Latino population is sufficiently large and geographically compact. In their maps, Blacks and Latinos would constitute a majority by CVAP in a single commissioners precinct that is reasonably configured and adheres to traditional redistricting principles.

99. The illustrative plans would preserve Precinct 3 as a majority-minority precinct. Indeed, there are a “multitude of potential plans adhering to traditional redistricting principles that would result in maps that maintain a majority [Black and Latino] CVAP [c]ommissioners [p]recinct.” PX-386 ¶ 97; *see also* Dkts. 223 at 52; 224 at 117–18; PX-337 ¶ 63.

100. The plaintiffs’ illustrative plans further show that the commissioners court could retain a majority-minority precinct even if it prioritizes creating a unified coastal precinct.

b. Geographically Compact

101. Dr. Owens opined that Galveston County’s minority population is neither geographically nor culturally compact. The court assigns no weight to these opinions.

102. Dr. Owens did not cite any academic literature to support his analysis. Dkt. 232 at 232. Concerning the Latino population, Dr. Owens based his conclusion on the distances between discrete concentrations of Latino residents, ranging from 305 people to 7,637. *Id.* at 237–40. He provided no authority or reference for the significance of those distances or even a definition for what would be considered “distant and disparate” in Galveston County. *See id.* at 237–40; DX-290.

103. When testifying that Blacks and Latinos are not “culturally compact,” Dr. Owens had no basis for disputing that Black and Latino residents throughout Galveston County fare worse than their Anglo counterparts across most socio-economic measures. Dkt. 232 at 247–49. He analyzed only three of the twenty potential socio-economic factors available *Id.* at 245–46. When presented with factors that did not favor his opinion, he admitted to inconsistently choosing which factors to examine. *Id.* at 246. Additionally, he did not analyze how these groups compared to their Anglo counterparts. *Id.* at 247.

104. The court also does not credit the defendants’ assertions that Blacks and Latinos are not culturally similar because minority residents in League City have higher standards of living than those in the rest of the county. Although League City is more affluent than other parts of the county,

“disparities between Black and Latino residents as compared to their Anglo counterparts persist even in League City, which indicates that they share the common socio-economic challenges of Black and Latino residents in Galveston.” PX-438 at 5; *see also* Dkt. 223 at 184. Blacks and Latinos are more affluent in League City than in the rest of the county, but that does not disprove the overwhelming evidence that they share similar socio-economic struggles countywide and in Precinct 3.

105. Although not nearly as probative as the quantitative socio-economic data, lay-witness testimony adduced at trial supports this conclusion. For example, Lucretia Henderson-Lofton is a former president of the Dickinson Bay Area NAACP and a Black resident of League City. Dkt. 226 at 188, 198–99. Born on Galveston Island and raised in Texas City, Henderson-Lofton moved to League City in 2016. *Id.* at 189. She testified to the racial discrimination her family and others have experienced in League City and the significant contacts that she maintains in Texas City. *Id.* at 189–90, 193–98, 204–07.

106. Given this evidence, the court finds that Galveston County’s Black and Latino population is sufficiently large and geographically compact to constitute a majority in a single commissioners precinct that is both reasonably configured and comports with traditional redistricting principles.

2. Politically Cohesive

107. Using ecological-inference methods, the plaintiffs’ quantitative experts demonstrated that Black and Latino voters in Galveston County are cohesive in that a large majority of these voters have consistently favored the same candidates across a series of elections. PXs-356, 384, 476; Dkts. 223 at 226; 224 at 184, 188–89, 199, 279–82. These results were consistent across several data sources and in hundreds of statistical models. PXs-356, 384, 465, 476; Dkts. 223 at 221–32; 224 at 175.

108. Racially polarized voting “describes an electorate in which [Anglo] voters favor and vote for certain candidates . . . and minority voters vote for other candidates.” *Rodriguez v. Harris County*, 964 F. Supp. 2d 686, 756 (S.D. Tex. 2013) (quoting *LULAC, Council No. 4434 v. Clements*, 986 F.2d 728, 744 (5th Cir. 1993)). The existence of racially polarized voting does not necessarily mean that voters are racist or harbor racial animus. *See id.* at 757 (noting that the correct question is “not whether [Anglo] voters demonstrate an unbending or unalterable hostility to whoever may be the minority group’s representative of choice, but whether, as a practical matter, such bloc voting is legally significant”).

109. Ecological inference is a reliable and standard method of measuring racially polarized voting. PXs-384 ¶¶ 18–21; 476 ¶ 25; Dkt. 223 at

216–17, 219. Two forms of ecological inference, King’s Ecological Inference (“King’s EI”) and RxC EI, use aggregate data to identify voting patterns through statistical analysis of candidate choice and racial demographics within a precinct. PXs-384 ¶¶ 18–21; 476 ¶ 25; Dkt. 223 at 216–17, 219.

110. RxC EI is appropriate for analyzing elections with more than two candidates or more than two racial or ethnic groups. PXs-384 ¶ 18; 476 ¶ 25; Dkt. 224 at 188. The plaintiffs’ quantitative experts produced estimates using both King’s EI and RxC EI.

111. In addition to CVAP and Spanish Surname Turnout data used in King’s EI and RxC EI, Dr. Barreto and his co-author, Dr. Michael Rios, conducted a Bayesian Improved Surname Geocoding (“BISG”) analysis of Galveston County elections to more precisely assess voting patterns by race and ethnicity. PX-465.

112. BISG analysis creates a probability that a given voter who participated in an election is of a particular racial or ethnic group based on his or her surname and the racial composition of the census block. *Id.* ¶¶ 30–34. Because Latinos vote at lower rates than Anglo and Black voters, BISG is particularly useful for narrowing in on the vote choices of Latino voters who participate in elections. Dkt. 223 at 242–44. Studies have validated the reliability of using BISG for analyzing racially polarized voting. *Id.* at 236.

113. Dr. Oskooii replicated and reproduced Dr. Barreto's BISG results and achieved highly consistent results. PX-505. Dr. Oskooii testified that BISG is a reliable method and is widely employed across various industries and applications. Dkt. 224 at 305–06. Dr. Alford agreed that BISG is reliable for estimating Latino voting patterns in Texas. Dkt. 230 at 160. The court finds that BISG is a reliable methodology for assessing racially polarized voting patterns.

114. The experts agree that there is no universal way to determine cohesion. Instead, they determine cohesion by analyzing elections that show a particular pattern within the relevant jurisdiction. Dkts. 224 at 301; 230 at 100–01; PX-476 ¶¶ 27–28, 30; DX-305 at 2.

115. The undisputed RxC EI analyses from Drs. Oskooii and Barreto show that, on average, over 85% of Black and Latino voters have voted for the same candidate countywide and within the illustrative Precinct 3 plans contained in those reports. PXs-356 at 14, 23; 465 ¶ 36; *see also* Dkt. 224 at 184, 188–89, 199.

116. The undisputed RxC EI analyses from Drs. Barreto and Oskooii show most Latinos and Blacks have separately voted for the same candidate in almost all general elections. PXs-372 at 2, 4; 384 ¶ 46. Drs. Barreto and Rios's BISG-based analysis shows even stronger cohesion among Latino

voters, with over 75% favoring the same candidates in most of the twenty-nine elections they assessed. PX-465 ¶ 39. Dr. Oskooii's BISG analysis confirmed these results. PX-505 ¶¶ 1–8. These analyses show that Latino voters consistently supported the Black-preferred candidate and that Black voters consistently supported the Latino-preferred candidate. PX-465 ¶ 39. Dr. Alford did not dispute Drs. Barreto and Rios's BISG results. Dkt. 230 at 161.

117. Dr. Barreto agreed that the wider confidence interval for Latino voter cohesion stems from standard error. Dkt. 223 at 283. He observed that a lower standard error generates a tighter confidence interval, while a higher standard error generates a broader confidence interval for the exact point estimate. *Id.* at 288. Despite wider confidence intervals for Latino voters, Dr. Barreto had “equal faith” in the point estimates he reported in the BISG analysis. *Id.* at 289–92. Dr. Oskooii's estimates also had broad confidence intervals for Latino voters. Recognizing Dr. Alford's concerns about the reliability of the wide confidence intervals, the court still finds it to be probative evidence of Latino voter cohesion and attributable to the smaller sample sizes of Latino voters.

118. Dr. Alford considered the voting patterns of Anglos, Blacks, and Latinos separately, and testified that it would be hard to find “a more classic pattern of what polarization looks like in an election.” Dkt. 230 at 17–18.

119. Here, the most probative election results demonstrate cohesion between Black and Latino voters in Galveston County. All experts agreed that recent elections are more probative and can more reliably confirm cohesion and polarization than more distant elections. PX-356 ¶ 22; Dkts. 223 at 247–48; 224 at 139, 176. Due to the limited number of contested endogenous⁹ elections, it was necessary to analyze exogenous elections. PXs-384 at 17–40 (analyzing twenty-eight exogenous elections across five election cycles); 476 at 33; Dkt. 224 at 281.

120. Exogenous elections encompassing Galveston County, such as those for Attorney General and Governor, are more probative than elections covering only portions of the county, such as municipal elections. Dkts. 224 at 181–82, 280; 230 at 144–45. The exogenous elections that cover the entire county show consistently high levels of cohesion. PXs-384 at 17–40; 356 at 14; 476 at 46–47.

⁹ Endogenous elections are “contests within the jurisdiction and for the particular office that is at issue.” *Rodriguez*, 964 F. Supp. 2d at 759. Exogenous elections are “elections in a district for positions that are not exclusively representative of that district.” *Id.*

121. All experts agreed that general elections are more probative than primary elections in this case; this includes determining inter-group cohesion, *i.e.*, cohesion between Black and Latino voters in Galveston County. Dkt. 223 at 246–47; 224 at 181–87, 262–63; 230 at 145–46, 149; PXs-465 ¶ 27; 476 ¶ 34.

122. Primary elections have limited probative value in determining inter-group cohesion for several reasons. First, in the context of “racial[-] and ethnic[-]coalition building[,] . . . coalitions get built in the general election,” not the primary election. Dkt. 224 at 181–87. Second, because primary elections generally have low turnouts, the resulting estimates are less robust and do not present a good picture of most voters for any demographic group. *Id.* at 292–93; PX-356 ¶ 24. Third, candidate preferences are not as likely to be as strong for any candidate given that candidates’ ideological positions in the same party are likely closer than those in different parties in a general election. Dkt. 224 at 292–93; PX-356 ¶ 24.

123. Primary elections for the commissioners court are rarely contested, with lower levels of voter participation among all racial and ethnic groups—but especially Black and Latino voters. PXs-356 ¶ 24; 465 ¶ 27; Dkt. 224 at 292–93.

124. Considering their limited probative value, the primary elections that Dr. Oskooii analyzed show a steady presence of inter-group cohesion between Black and Latino voters. In nine out of the ten primary elections he studied, Black and Latino voters voted cohesively. PX-356 ¶¶ 64–65.

125. Between Drs. Oskooii and Alford, the analyzed results show that Blacks and Latinos usually support the same top-choice candidate in primary contests. *Id.* ¶ 64; DX-305 at 18–19; Dkt. 224 at 302–03.

126. The 2012 primary election for Precinct 3 provides very probative evidence because it is the most recent endogenous contest for Precinct 3. Dkt. 230 at 140–42. That election featured a highly cohesive Black and Latino electorate. *Id.* at 140.

127. Dr. Alford observed that several of the examined Democratic primary elections did not feature racially polarized voting because Anglo, Black, and Latino voters supported the same candidates. *Id.* at 30–31, 37–39, 47–48, 70. But on cross-examination, Dr. Alford admitted that this observation is irrelevant when determining racial cohesion between Black and Latino voters. *Id.* at 125–28, 130–31. And Dr. Alford acknowledged that when considering the third *Gingles* precondition, in general elections (in which voters can elect—rather than just nominate—a candidate of their choice), Anglo voting behavior is especially relevant. *Id.* at 131–32. The court

thus does not credit Dr. Alford's observation about Anglo voting behavior in Democratic primaries for purposes of the second or third *Gingles* preconditions.

128. Two data limitations restrict the probative value of the local nonpartisan elections analyzed in this case. First, the local nonpartisan elections cover smaller geographic areas than any individual county-commissioners precincts. Dkt. 224 at 182. They often encompass very few election precincts, *see, e.g.*, DX-287, thereby limiting the demographic information available to produce estimates, Dkts. 224 at 283–84; 230 at 67–68. Second, in many local nonpartisan elections there were multiple candidates and low voter turnout—two features that contribute to instability in ecological-inference estimates. Dkt. 224 at 294, 325–26. The local nonpartisan races also have less probative value than partisan general elections because commissioners-court races are partisan contests. PX-465 ¶ 25. The court therefore assigns little weight to the analyses of local nonpartisan elections.

129. Even so, local nonpartisan elections show cohesion between Black and Latino voters in Galveston County. PX-476 ¶ 56. Further, successful minority candidates in nonpartisan elections are primarily elected

from majority-minority districts, *see, e.g.*, Dkt. 230 at 265, which is consistent with racially polarized voting patterns, *id.* at 165.

130. Based on their analyses, the plaintiffs' quantitative experts concluded that Black and Latino voters in Galveston County are cohesive. PXs-356 ¶ 6; 384 ¶¶ 23–24; 476 ¶¶ 6, 34; Dkt. 224 at 184.

131. Although less probative than the quantitative evidence, lay testimony also shows political cohesion between Blacks and Latinos in Galveston County. Community leaders testified that Black and Latino voters in Galveston County vote cohesively. *See, e.g.*, Dkts. 221 at 133–34; 226 at 15, 130. Several witnesses testified that the Black and Latino communities in Galveston County share interests and policy preferences, including those addressing education, housing, healthcare, and employment. Dkts. 221 at 65, 109–10, 133–34; 222 at 32–36; 226 at 67–68, 128–30, 156–57, 197–98, 204, 207–08. Galveston County's local LULAC and NAACP branches often collaborate, sharing services and resources. Dkt. 226 at 86, 117, 120–21, 204. Several witnesses are members of both organizations. Dkts. 222 at 217; 226 at 14, 65, 201–02, 204.

132. Thus, the court finds that Blacks and Latinos vote cohesively in Galveston County.

3. Cannot Elect Candidate of Choice

133. The evidence adduced at trial shows that Anglo voters in Galveston County engage in bloc voting such that a large majority of the county's Anglo voters favor their own candidates in both countywide and precinct-only elections. The high level of Anglo bloc voting usually prevents Black and Latino voters in Galveston County from electing their candidates of choice.

134. An electoral-performance/reconstituted-election analysis is a technique used to examine how candidates would have fared under different maps or precinct boundaries. PXs-356 ¶ 68; 476 ¶¶ 38–40; *see also* PX-384 ¶ 46. The plaintiffs' quantitative experts used this method to analyze elections encompassing the entirety of Galveston County for the enacted plan and the plaintiffs' illustrative maps. PXs-356 ¶¶ 67–75; 384 ¶¶ 44–48; 476 ¶¶ 38–40, 58.

135. Under the enacted plan, Anglo bloc voting defeated the candidate of choice of Black and Latino voters in every election in every commissioners precinct. PXs-356 ¶¶ 71–72; 384 ¶¶ 44–46; 476 ¶ 58; Dkt. 224 at 205, 288–89.

136. All three electoral-performance/reconstituted-election analyses from Drs. Barreto and Rios, Dr. Oskooii, and Dr. Trounstine establish that

the candidate of choice of Black and Latino voters won in Precinct 3 in every election under the plaintiffs' illustrative maps. PXs-356 ¶¶ 72–75; 384 ¶¶ 44–46; 476 ¶ 58.

137. Dr. Alford also analyzed whether Anglo bloc voting is sufficient to defeat minority-preferred candidates in the enacted plan. Dkt. 230 at 123. He did not dispute the plaintiffs' quantitative experts' electoral-performance/reconstituted-election analyses. *Id.*; see generally DX-305.

138. A direct relationship exists between a precinct's demographic composition and a specific candidate's likelihood of success in any given election. As the minority percentage moves up or down, the performance of minority-preferred candidates moves in direct proportion. Dkt. 224 at 289–90. This relationship supports a finding of racially polarized voting and complements the ecological-inference estimates the quantitative experts performed in this case. *Id.*; PX-356 ¶¶ 74–75.

139. In most of the recent general elections, over 85% of Anglos across Galveston County voted for candidates running against the minority-preferred candidates. PXs-356 ¶ 40; 384 ¶¶ 22–24. Similarly high levels of bloc voting are present at the individual-precinct level in the enacted commissioners precincts. PX-356 at 19.

140. The plaintiffs' quantitative experts concluded that these patterns at the county level also exist at the commissioner-precinct level. Dr. Oskooii found that there is Anglo bloc voting in the enacted plan's precincts and that there is cohesive minority voting in Cooper's illustrative maps. *Id.* ¶¶ 56–62. Dr. Barreto found that Anglo and non-Anglo voters are sharply polarized in their voting patterns in each of the four enacted precincts. PX-465 ¶¶ 44–46. Similarly, Dr. Trounstine found the same polarized voting pattern in Precinct 3 in Fairfax's illustrative map. PX-501 ¶ 2; *see also* Dkt. 224 at 198–99. The court credits the quantitative experts and agrees with their conclusions.

141. All experts agree that Anglo bloc voting usually defeats the Black and Latino candidate of choice in Galveston County elections in every precinct analyzed in the enacted plan.

142. The court finds that voting in Galveston County is racially polarized such that Anglo voters usually vote as a bloc to defeat the candidate of choice of Black and Latino voters.

4. On Account of Race

143. The defendants contend that partisanship alone explains the racially divergent voting patterns in Galveston County. To the extent that partisanship explains the voting patterns in the county, it still does not change the fact that the data unerringly points to racially polarized voting.

144. The parties agree that Anglo bloc voting exists in Galveston County such that Blacks and Latinos could not elect candidates of their choice. They also agree that Anglos in Galveston County, who comprise a supermajority, are mostly Republican and that Blacks and Latinos are mostly Democrats. The plaintiffs argue that race and politics are “inextricably intertwined,” Dkt. 247 at 6 n.3, while the defendants and Dr. Alford contend that partisan affiliation is the “main driver of voter behavior,” Dkt. 244 at 54–58.

145. Dr. Alford did not analyze whether any factors other than race or party identification explain the divergent racial voting patterns in partisan elections in Galveston County. Dkt. 230 at 107–08. He admits that assessing “partisan polarization” in addition to racial polarization is not standard practice among redistricting experts. *Id.* at 88. Characterizing the typical redistricting expert as being, unlike himself, an “advocate[] for a particular position,” Dr. Alford defended his focus on the difference between racial and partisan polarization. *Id.* at 88–89.

146. Dr. Alford testified that political-issue attitudes are distinct from party identification and that party identification, unlike issue attitudes, is primarily the result of socialization. *Id.* at 77–79. Tellingly, he based his conclusions regarding the role of partisanship versus race primarily on one

election: the 2018 Senate race between Senator Ted Cruz and Beto O'Rourke. *Id.* at 53, 166.

147. Although partisanship undoubtedly motivates voting behaviors in Galveston County, the defendants failed to show that a race-neutral explanation explains the racially divergent voting patterns. Dr. Oskooii testified that Black and Latino voters were cohesive behind their preferred candidate in about 93% of racially contested elections, while Anglo voters were cohesive behind the Anglo-preferred candidate. Dkt. 224 at 298–300; PX-452 ¶ 7.

148. The racial composition of political parties in Galveston County, measured through participation in each party's primaries, further suggests that the county's electorate is racially polarized. All experts agree that relatively few Anglo voters in Galveston County participate in Democratic Party primaries. PX-465 ¶¶ 13–17; Dkt. 224 at 293; 300; *see also* PX-476 at A-12; Dkt. 230 at 109–10. Conversely, relatively few Black and Latino voters in Galveston County participate in the county's Republican primaries. PX-465 ¶¶ 17–19; Dkt. 224 at 183, 300; PX-476 ¶ 21. No Black or Latino Republican has ever won a primary election to be the Republican Party's nominee for county judge or a county commissioner. PX-465 ¶ 17. Commissioner Armstrong, who is Black, was appointed and did not

participate in a Republican primary election. Dkt. 230 at 197. He ran uncontested in the general election. Dkt. 224 at 298–99.

149. In general elections in Galveston County, Anglos overwhelmingly vote for Republican candidates. PX-452 ¶ 8. Meanwhile, Blacks overwhelmingly vote for Democrat candidates, and Latinos very often support the same candidates. *See* PX-476 at 33.

150. Although it is not very probative, national scholarship on political trends helps to further explain the link between race and partisanship in Galveston County. *See* PX-384 ¶¶ 30–43. “The fact that Black and Latino voters tend to support candidates from one party is a reflection of their cohesion, not an alternative explanation for it.” PX-476 ¶ 35. The history of discrimination resulting in ongoing socio-economic disparities and barriers to voting along racial lines also contributes to a finding that race, not partisanship alone, drives the voting patterns seen in Galveston County.

151. Moreover, Galveston County voters provided testimony of racially polarized voting based on their lengthy residences in the county, their elections to public office, or both. *See* Dkts. 221 at 128–29, 133–34; 222 at 17; 226 at 130. Although anecdotal and isolated, this evidence further supports that race provides a plausible explanation for voting patterns in Galveston County.

152. The court therefore finds that a partisan explanation for voting patterns in Galveston County does not overcome the weighty evidence of racially polarized voting on account of race.

E. Discriminatory Impact of the Enacted Plan

153. The enacted plan converted the benchmark Precinct 3 from the precinct with the highest percentage of Black and Latino residents to the one with the lowest. Dkt. 223 at 42–43. According to 2016–2020 ACS Special Tabulation data from the census, benchmark Precinct 3 is about 58% Black and Latino by CVAP. PX-386 ¶ 46. But after the 2021 redistricting, Precinct 3 now includes the lowest Black and Latino CVAP proportion of any precinct—about 28%—and the Black and Latino population is evenly distributed throughout the remaining precincts—with each one containing a range of 32% to 35% Black and Latino CVAP. *Id.* ¶ 58.

154. Accordingly, Black and Latino residents fail to comprise a majority in any new commissioners precinct—despite comprising about 38% of the overall population and 32% of the CVAP. *Id.* ¶ 31.

155. The plaintiffs’ quantitative experts established that Black and Latino voters will usually fail to elect a candidate of their choice in any commissioners precinct within the enacted plan. PXs-356 ¶¶ 70–74; 384 ¶¶ 44–46; Dkt. 224 at 288–89.

156. Anglo voters comprise 64.1% of the county’s voting age population but now control 100% of the electoral outcomes for Galveston County commissioners court. *See* PX-487 ¶ 14.

157. The county’s redistricting counsel, Oldham, likewise acknowledged that the benchmark plan included a performing precinct for minority voters while the enacted plan no longer does. Dkt. 231 at 178. The enacted plan creates an evident and foreseeable impact on racial minorities in Galveston County by eliminating the sole majority-minority precinct. *See* Dkt. 222 at 110.¹⁰

158. The court finds that the enacted plan disproportionately affects Galveston County’s minority voters by depriving them of the only commissioners precinct where minority voters could elect a candidate of their choice. Likewise, the court finds that the commissioners court was aware of that fact when it adopted the enacted plan.

F. Galveston County Voting and Redistricting

159. For § 2 vote-dilution claims, a plaintiff must show under the “totality of circumstances” that the “challenged political process is not ‘equally open’ to minority voters.” *Allen v. Milligan*, 599 U.S. 1, 18 (2023).

¹⁰ Several witnesses testified that it was obvious on the face of the map that the enacted plan would fracture minority communities. Dkts. 221 at 62–63; 222 at 248–49; 226 at 21–22, 69, 77.

District courts use the Senate Judiciary Committee’s Report accompanying the 1982 amendment to the Voting Rights Act to inform this determination, which provides several non-exhaustive factors to consider. S. Rep. No. 97-417, at 40 (1982) [hereinafter S. Rep.]. For intentional-discrimination claims, the Fifth Circuit follows the framework in *Village of Arlington Heights v. Metropolitan Housing Development Corp.* to determine whether a legislative body passed a redistricting plan with discriminatory purpose. 429 U.S. 252 (1977). The court will identify the factual findings that pertain to each framework as it presents those findings.

1. History of Discrimination in Voting Practices

160. The first Senate factor is the history of official voting-related discrimination in the political division. Similarly, the first *Arlington Heights* factor is the historical background of the decision.

161. Galveston County was a center for buying and selling enslaved Black people during the Antebellum era. Dkt. 225 at 52–53. After the Civil War, race relations in the county reflected those seen across much of the South, including segregation and Jim Crow laws. *Id.* 53–54; PX-412 at 13–14. At the same time, “state-supported practices and laws in a variety of different areas of life” came together to segregate Latinos in Galveston County, a system termed Juan Crow. Dkt. 225 at 57–58; PX-412 at 10–12.

162. The discrimination against Black and Latino residents in Galveston County extended to voting. Dkt. 225 at 58. For instance, the Texas legislature passed a poll tax in 1903, which required payment each January. PX-412 at 13; *id.* at 54–55. This affected many Black and Latino voters because many were agricultural laborers, and few had cash on hand in January due to the timing of the agricultural cycles. *See* Dkt. 225 at 54–55. During much of the twentieth century, the Texas Democratic Party allowed only Anglos to vote in its primary, preventing Black and Latino voters from participating in the “elections and caucuses that really mattered.” PX-412 at 13–15.

163. Restrictions on voting for minorities remained present in Texas even after the Voting Rights Act in 1965 and its 1975 extension. Before 2013, § 5 of the Voting Rights Act “required States to obtain federal permission before enacting any law related to voting.” *Shelby County v. Holder*, 570 U.S. 529, 534 (2013). Section 4(b) provided the coverage formula that defined the “covered jurisdiction” that must follow this preclearance process. *Id.* at 538–39. From 1975 to 2013, Galveston County was subject to § 5 preclearance. PX-412 at 15; Dkt. 225 at 58, 75. Preclearance subjected Galveston County to multiple objection letters from the Attorney General. PX-335 ¶¶ 19–23.

164. Nevertheless, several witnesses acknowledged that it is easier to vote now than it has ever been in Galveston County. Dkts. 221 at 157; 222 at 58; 230 at 245. The county adopted countywide voting centers, which allow voters to “vote anywhere on election day or early voting.” Dkt. 230 at 238. It is also relatively easy to register to vote in the county. *See, e.g.*, Dkts. 221 at 82; 222 at 258–59; 230 at 202, 245. Early voting lasts two weeks in Galveston County. Dkt. 221 at 155–57.

165. Sullivan testified that if a mail-in ballot required postage and the voter failed to affix it, the clerk’s office would pay for the postage because it “want[s] every vote to count.” Dkt. 230 at 245–46.

166. The county provides election materials in English and Spanish for all elections. Dkt. 226 at 82.

167. Judge Henry has not heard any complaint in the last ten years that the county prevented someone from being able to vote. Dkt. 228 at 248.

168. The county collaborates with LULAC and allows them to use county property for its Cinco de Mayo event. Dkt. 230 at 236. The event is a blend of a cultural festival and a get-out-the-vote effort. *Id.* at 235–36.

2. Attorney General's Objections

169. Since 1976, Galveston County and its political subdivisions have been the subject of six objection letters from the Attorney General. PX-335 ¶ 19.

170. In 1976, the Attorney General objected to Texas City's proposal to adopt a numbered-post system for city-council elections. PXs-1; 335 ¶ 20; Dkt. 225 at 202-03. After examining the history of governmental discrimination, racial-bloc voting, and the city's responsiveness to minority concerns, the Attorney General could not conclude that the city's proposal would not have a racially discriminatory effect. PX-1.

171. In 1992, the Attorney General objected to Galveston County's redistricting plans for JP/constable districts. PXs-2; 335 ¶ 26; Dkt. 225 at 203. The Attorney General's letter noted that Black and Latino residents were not a majority in any of the eight districts despite comprising 31.4% of the county's population. PX-2 at 1. County officials had "rebuffed" multiple requests from minorities to create a district where they would have an equal opportunity to elect candidates of their choice. *Id.* Ultimately, the county entered a consent decree concerning the 1992 JP/constable redistricting plan. PX-563.

172. Also in 1992, the Attorney General objected to the city of Galveston's proposal to modify how city-council members are elected—from six at-large districts to four single-member districts, with two members elected at large to numbered posts. PXs-3; 335 ¶ 21; Dkt. 225 at 203–04. After noting that several minority candidates unsuccessfully ran for city council because of racially polarized voting, the Attorney General did not preclear this change. PX-3. Ultimately, the city entered a consent decree to elect all city-council members from single-member districts. PX-335 ¶ 21.

173. In 1998, the city of Galveston again sought to change the method of electing its city council from six single-member districts to four single-member districts and two at-large posts—the same scheme to which the Attorney General filed an objection in 1992. PXs-4; 335 ¶ 22; Dkt. 225 at 204. Noting that two of the six single-member districts had elected minority officials, the Attorney General concluded that reverting to two at-large districts would retrogress minority voting strength. PX-4 at 2–3.

174. In 2001, the city of Galveston asked the Attorney General to reconsider the objection to four single-member and two at-large districts. But in 2002, he declined to withdraw the objection. PX-335 ¶ 22.

175. In 2011, the city of Galveston again sought to change the method of electing its city council from six single-member districts to four single-

member districts, with two members elected at large to numbered posts. PXs-47; 335 ¶ 23; Dkt. 225 at 205. The Attorney General objected to this change, noting that racial-bloc voting played a significant role in city elections and that minority candidates could elect candidates of choice from three of the six single-member districts. PXs-47 at 3–4; 335 ¶ 23.

176. In 2012, the Attorney General objected to Galveston County’s 2011 redistricting plans for the commissioners and JP/constable precincts. JX-6; PX-335 ¶ 26; Dkt. 225 at 205–06. The JP/constable-precinct plan proposed reducing the number of justices of the peace from nine to five and the number of constables from eight to five. JX-6 at 1–2. The Attorney General’s letter noted that minority voters could elect candidates of choice in Precincts 2, 3, and 5. *Id.* at 4. For Precincts 2 and 3, this ability resulted from a court order in *Hoskins v. Hannah*, No. G-92-12 (S.D. Tex. Aug. 19, 1992), that created these precincts. *Id.* Under the proposed plan, minority voters’ ability to elect a candidate of choice would be reduced to one precinct. *Id.*

177. In 2012, the Attorney General also concluded that the county had not met its burden of showing that the commissioners court did not adopt its proposed plan with a discriminatory purpose. JX-6. The Attorney General found that the county had failed to adopt, as it had in previous redistricting cycles, a set of criteria by which it would be guided in the redistricting

process. *Id.* at 2. The Attorney General’s letter noted that: (1) this procedural deviation was a deliberate decision by the county to avoid being held to a procedural or substantive standard of conduct; (2) the process may have been characterized by the deliberate exclusion from meaningful involvement of Commissioner Holmes; and (3) the proposed changes would reduce the overall minority electorate in Precinct 3 and lead to the loss of the ability of minority voters to elect a candidate of their choice. *Id.*

178. These efforts to reduce majority-minority districts are significant because research has shown that Blacks and Latinos are more likely to vote if they live in majority-minority districts. PX-335 ¶ 25. Former Justice of the Peace Penny Pope also observed that the results of the 2011, 2013, and 2021 redistricting processes created additional voting barriers for minority residents who felt less motivated to vote and participate politically. Dkt. 222 at 27–28.

179. On June 25, 2013, the Supreme Court held that § 4(b) of the Voting Rights Act is unconstitutional and that the coverage formula “can no longer be used as a basis for subjecting jurisdictions to preclearance.” *Shelby County*, 570 U.S. at 557. Yet the Court’s ruling “in no way affect[ed] the permanent, nationwide ban on racial discrimination in voting found in § 2.” *Id.*

180. Galveston County adopted an electoral map for JP/constable precincts two months later. *Petteway v. Galveston County*, No. 3:13-cv-308, at 1 (S.D. Tex. Aug. 31, 2022). Before the change, the county had eight precincts, two of which were majority-minority precincts. *Id.* After the 2013 plan, the county had four precincts, one of which was majority-minority. *Id.* Six plaintiffs sued the county, alleging § 2 vote dilution and intentional discrimination under the Fourteenth Amendment. *Id.* Following a three-day bench trial, the court concluded that the plaintiffs failed to show vote dilution, as the 2013 plan “increased the percentage of Galveston County residents living in a majority-minority district” and therefore did not diminish the voting power of minority voters. *Id.* The court also ruled in the defendants’ favor on the intentional-discrimination claim. *Id.* at 2–3.

3. Public Input and Transparency in Prior Redistricting

181. During the 1981 redistricting cycle, County Judge Ray Holbrook appointed a committee of about thirty citizens to make recommendations for redrawing the county’s voting precincts. PX-412 at 24–25. This recommendation would be a basis for “remapping” the commissioners-court precincts. *Id.* at 24. The commissioners court ratified the public committee’s work and adopted new commissioners-court precincts. *Id.* at 25. The 1981 commissioners precinct map reflected “minimal” change that only “[s]lightly

increas[ed] the combined voting strength of the county’s Black and Latin[o] residents,” “stopping short of creating a precinct [within] which the ‘total minority’ vote would constitute a majority.” *Id.* at 26; *see also* Dkt. 225 at 76. The Attorney General did not object to the county’s 1981 redistricting plan. Dkt. 225 at 76.

182. During the 1991 redistricting cycle, the commissioners court adopted a set of criteria and a timeline before it held three public hearings where numerous members of the public, including minorities, participated in the process. *Id.* at 76–77; PX-412 at 32–34, 37, 67. The redistricting plan reflected input from local NAACP and LULAC chapters and created a majority-Black-and-Latino Precinct 3. PX-412 at 34; Dkt. 225 at 78. The Attorney General did not file any objection to the county’s 1991 redistricting plan. Dkt. 225 at 187.

183. During the 2001 redistricting cycle, the commissioners court adopted redistricting criteria, created a schedule of public hearings, and held four public meetings across Galveston County. *Id.* at 78; PX-412 at 38–39, 67. Among the redistricting criteria the commissioners court adopted was that “[c]ommunities of interest should be maintained in a single district” and that the plan “should not fragment a geographically compact minority community or pack minority voters in the presence of polarized voting so as

to create liability under section 2 of the Voting Rights Act.” PX-539. The Attorney General did not file any objection to the county’s 2001 redistricting plan. Dkt. 204-6 ¶ 17.

184. During the 2011 redistricting cycle, after consideration of several proposals for redistricting counsel, the defendants hired James E. “Trey” Trainor, III, Dale Oldham, and Joe Nixon of the law firm Beirne, Maynard & Parsons, L.L.P., to serve as redistricting consultants. JX-45.

185. The commissioners court did not adopt redistricting criteria in the 2011 redistricting cycle. *See* PX-23. Judge Henry later became aware that the Attorney General had objected to the 2011 commissioners map in part because the commissioners court failed to adopt criteria. Dkt. 228 at 274.

186. During the 2011 redistricting cycle, the commissioners court adopted a redistricting timeline that accounted for the preclearance process and the candidate-filing period. PX-412 at 44. This timeline included (1) an initial hearing to present draft maps and explain the census results in Galveston County and (2) five public hearings on redistricting in the evenings throughout the county. *See* PXs-45 at 9; 531–535.

187. The commissioners court adopted a redistricting plan in 2011 and submitted it to the Attorney General on October 14, 2011. JX-45. The Attorney General filed an objection. JX-6. In his letter, the Attorney General

highlighted: (1) the county’s decision not to adopt a set of criteria “to avoid being held to a procedural or substantive standard of conduct”; (2) “the deliberate exclusion from meaningful involvement in key deliberations of the only member of the commissioners court elected from a minority ability-to-elect precinct”; and (3) the retrogressive impact that the relocation of the Bolivar Peninsula from Precinct 1 had on Precinct 3. *Id.*

188. The plan after the 2011 redistricting process contained a Precinct 3 in which Black and Latino residents constituted a majority of the CVAP. This Precinct 3 was a continuation of a district that the commissioners court created in the 1991 redistricting cycle that allowed Black and Latino voters to elect a candidate of choice and which was maintained in the 2001 redistricting cycle. Over its decades of existence, this Precinct 3 has become “a political home of historical significance” to Galveston County’s Black and Latino communities. PX-412 at 64.

G. The 2021 Redistricting Process

189. The second *Arlington Heights* factor is the specific sequence of events leading up to the challenged decision. Relatedly, the third and fourth *Arlington Heights* factors address procedural and substantive departures from the normal procedural sequence. This information also informs the court’s totality-of-circumstances analysis for § 2 claims.

1. Sequence of Events

a. April 2021—Engaging Redistricting Counsel

190. Judge Henry had the county’s general counsel contact Oldham in November 2020 to retain him as redistricting counsel. JX-11 at 2. Henry understood that the commissioners court would have to complete the process by sometime in November 2021 and specifically wanted Oldham because of his prior redistricting experience in the county. Dkt. 228 at 181, 280–81, 283–84. Now a solo practitioner, Oldham required a law firm to assist him in his work, and the commissioners court retained Holtzman Vogel Baran Torchinsky & Josefiak PLLC for that purpose in April 2021. Dkt. 231 at 28; PX-138.

191. The commissioners court voted 4-1, with only Commissioner Holmes voting against, to hire Oldham and Holtzman Vogel as redistricting counsel. *See generally* PXs-140; 585 at 8. The commissioners court did not publicly consider any other counsel. The commissioners court provided neither information on the April 2021 meeting agenda nor accompanying backup materials about whom the commissioners court was considering hiring. *See* Dkt. 228 at 288.

192. Shortly after engaging Oldham, Judge Henry and the county’s general counsel, Paul Ready, contacted Oldham to ask whether the county “had to draw a majority[-]minority district.” PX-144 at 1. Oldham responded

that it “may or may not need to draw a majority[-]minority district depending on census data.” *Id.*

b. August 2021—Census Data Released

193. The release of the 2020 Census data necessary for redistricting was delayed due to the COVID-19 pandemic. The Census Bureau ultimately released the data in the “legacy format” in August 2021 followed by a more user-friendly format the following month. Dkt. 231 at 36; DX-175.

194. In the spring or summer of 2021, Judge Henry became aware of the census data’s expected release date and of its actual release in August. Dkt. 228 at 290; *see also* PXs-568–569, 586.

195. At the time of the census data’s initial release, Oldham lacked the technical ability to parse through it, and the defendants had not yet hired a demographer for the project. So Oldham contacted Adam Kincaid of the National Republican Redistricting Trust to interpret the census data about Galveston County. Dkt. 231 at 36–37, 68; PX-173 at 1.

196. On September 14, Kincaid emailed Oldham a chart reflecting each commissioners precinct’s racial demographic changes from 2010 to 2020. PX-173 at 1, 3. Oldham then removed the logo of the National Republican Redistricting Trust from the document and sent it to Ready to distribute to the commissioners. Dkt. 231 at 51, 52.

197. Oldham reviewed the racial data Kincaid had sent and concluded that Galveston County’s Black population had remained concentrated in Precinct 3; the Latino population, on the other hand, had grown throughout the county. *Id.* at 131–34.

198. Oldham was “pretty familiar” with “the population and demographic location of that population in Galveston County.” *Id.* at 131. He knew that the Black population was centered in Precinct 3 in the 2011 plan. *Id.* at 133–34. Oldham reviewed racial-shading maps of Galveston County after the census-data release to identify where Black populations were concentrated. *Id.* at 134–36. Oldham’s understanding was generally consistent with Judge Henry and Commissioners Appfel and Giusti’s understanding that Galveston County’s Black and Latino population was centered around Precinct 3, which had consistently elected Commissioner Holmes. *See, e.g.*, Dkts. 228 at 271–73; 232 at 148–49, 370.

199. Oldham held a series of meetings in mid-September 2021 with the commissioners and Judge Henry to determine their priorities for redistricting. The first meeting on September 8 included both Judge Henry and Commissioner Appfel, followed by individual sessions with Commissioners Giusti and Clark, and ending with a meeting with Commissioner Holmes on September 20. Dkt. 231 at 38, 42–43, 45, 48.

200. In his meeting with Oldham and Commissioner Apffel, Judge Henry told Oldham that he wanted a map like the one he conceived in 2011—the configuration that ultimately became Map 2. *Id.* at 39–40, 150–52.

201. Commissioner Apffel requested that a specific area be brought into his precinct so that it included a new home he and his wife had bought. Dkt. 228 at 189.

202. Commissioner Giusti asked Oldham to “level out” the commissioners precincts in population, “clean up” the lines, and keep his parents’ home in his precinct. Giusti did not dispute Oldham’s recollection that Giusti additionally requested his precinct lines not change more than necessary. Dkt. 232 at 124–26.

203. When Oldham first met with Commissioner Holmes on September 20, he was frustrated that Commissioner Holmes could not list his mapping priorities. Dkt. 231 at 49–51, 53. In the follow-up call on September 23, Commissioner Holmes provided detailed instructions on which areas he wanted to add to Precinct 3 to resolve population imbalances and increase the district’s compactness. *See* Dkt. 228 at 68–72; JX-23 at 4.

c. October 14—Hiring a Demographer

204. Despite Oldham completing the meetings with the commissioners and Judge Henry by September 23, no one contacted a

demographer until October 14, when Holtzman Vogel asked Thomas Bryan to start drafting maps. Dkt. 231 at 225. Bryan owns Bryan GeoDemo, a company that provides redistricting map-drawing services. *Id.* at 216, 219–20.

205. On an October 15 call between Bryan and Phil Gordon of Holtzman Vogel, Gordon instructed Bryan to create two plans: (1) a least-change plan and (2) a plan that created four Republican precincts, later titled a “Four R plan.” *Id.* at 227–28, 233, 289–90; *see also* PX-188.

206. The purported motivation of Judge Henry—creating a “coastal precinct”—never arose during the hour-long phone call between Gordon and Bryan, and Bryan’s initial draft plans included no coastal precinct. Dkt. 231 at 290–91; PX-516.

207. After that initial call, Bryan immediately understood that Oldham, not Gordon, was the lead person from whom he should take instructions about configuring plans. Dkt. 231 at 290. Bryan and Oldham spoke by phone for the first time on October 17. *Id.* at 68–69; PX-196.

208. The Four R plan was not the foundation upon which Bryan built Map 2. Dkt. 231 at 291. Oldham never told Bryan that Judge Henry wanted to create four Republican precincts, and Oldham denied any such partisan objective. *Id.* at 153–54.

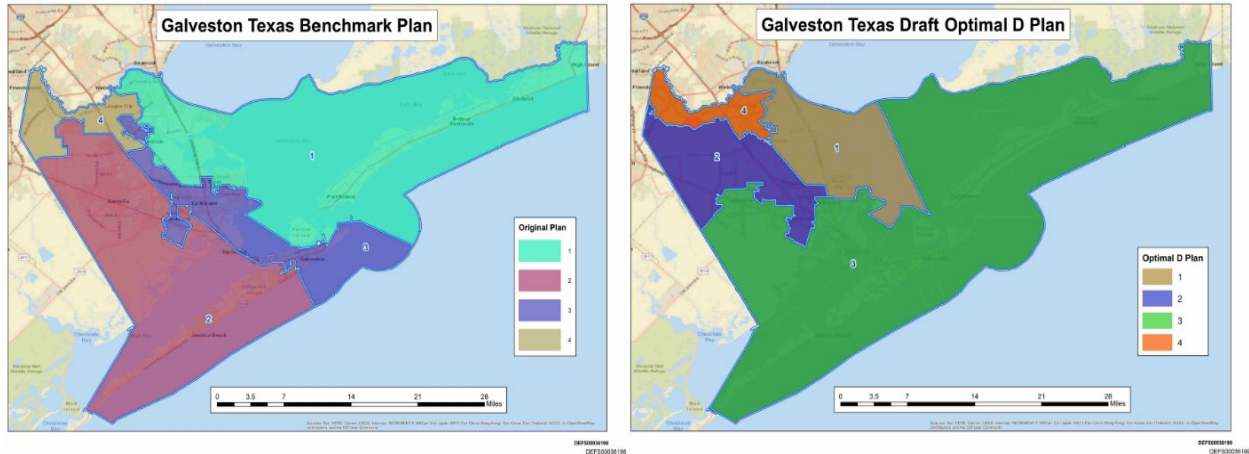
d. October 17—Bryan Creates Map 2

209. On October 17, Bryan drafted two map proposals that he shared via email with Oldham: (1) a “minimum change” plan that became Map 1, and (2) an “optimal” plan with an entirely coastal precinct and three mainland precincts—all of which fractured Precinct 3—that became Map 2. *See* PX-197; Dkt. 231 at 145–50. Map 2 was “the visualization of the instructions” Judge Henry had provided Oldham. Dkt. 231 at 181.

210. Bryan did not exercise discretion in drawing Maps 1 or 2; Oldham told him where to place the lines. *Id.* at 296. Oldham gave Bryan “very specific instructions about how he wanted Map 2 to look,” and Bryan did not know for what reason Oldham “was asking [him] to put [any] particular territory in each of the commissioner[s] precincts in Map 2.” *Id.* at 291–93. Bryan could not speak to what motivated the drawing of Map 2. Dkt. 232 at 29.

211. Bryan testified credibly that he did not display or consult racial data while working on the Galveston County maps. *Id.* at 33. But he also credibly testified that he was “given no instruction one way or the other on racial and ethnic information.” *Id.* at 19. The court credits Bryan—an eminently believable witness—and not Oldham in this regard.

212. The first draft of Map 2 represents a dramatic change in the commissioners-precinct lines, both on the coast and the mainland, in a way that distributes the population of benchmark Precinct 3 among all four new precincts and shifts Commissioner Holmes’s precinct north:



PX-197.

213. Oldham admitted that it was possible to retain a majority-minority precinct while also creating a coastal precinct without dismantling benchmark Precinct 3. Dkt. 231 at 164, 167–68, 171.

214. The court finds that a desire to create a coastal precinct cannot and does not explain or justify why Map 2, the “optimal” plan, was drawn the way it was—and especially does not explain its obliteration of benchmark Precinct 3.¹¹

¹¹ The plaintiffs’ experts presented at least five illustrative plans that included both a coastal precinct and a majority-minority Precinct 3. *See* PXs-386 ¶¶ 87–90; 415–418.

e. Late October—Finalizing and Announcing the Maps

215. After Bryan drew these maps, Oldham traveled to Galveston County to meet with Judge Henry and the commissioners. *Id.* at 79–80. Oldham met with Judge Henry on October 18, and Judge Henry told Oldham he preferred Map 2 because it was “essentially his criteria.” *Id.* at 82–84; PX-199.

216. Commissioners Appfel, Giusti, and Clark initially told Oldham that they preferred Map 1. Dkt. 231 at 190.

217. Oldham knew Commissioner Holmes would be dissatisfied with Map 2 because it dramatically reduced the minority population in Precinct 3, resulting in Precinct 3 having the lowest minority population percentage of all four precincts. *Id.* at 177–78. Commissioner Holmes opposed Map 2 and insisted that Oldham inform the commissioners court that § 2 of the Voting Rights Act required a majority-minority precinct. *Id.* at 101–02.

218. Bryan also produced a spreadsheet for Maps 1 and 2. *Id.* at 268–69. The spreadsheet included racial data about the plans. The first tab included CVAP and voting-age population data by racial group for each census block within Galveston County. PX-528. The second tab, titled “Pop Pivot,” provided the Black and Latino voting-age population percentages for each commissioners precinct in the benchmark plan, Map 1, and Map 2, as

well as the two categories combined to identify the total majority-minority percentage share for each precinct. *Id.*

219. The court finds that the commissioners never expressly considered this spreadsheet information.

220. After Oldham's initial meeting with Judge Henry, Oldham met with the commissioners. Dkt. 228 at 202–03. He first met with Henry and Commissioner Apffel to review the map proposals. *Id.* at 301; Dkt. 231 at 194. Later, Henry also contacted Commissioner Giusti to ensure he was comfortable with his new coastal precinct because it was a dramatic change from his current precinct. Dkt. 228 at 305–06. Henry chose not to call Holmes to do the same—to inquire whether he was comfortable with his new precinct. *Id.* at 306.

221. Ready set up a series of Zoom meetings between Oldham and Bryan on the one hand, and Commissioners Giusti, Clark, and Apffel on the other, to endeavor to accommodate the commissioners' wishes. Dkt. 231 at 191–92. Oldham met with Commissioners Giusti and Clark simultaneously to request and implement anything they wanted to see in Map 2. *Id.* at 191–92. Judge Henry also recalled meeting with Commissioner Apffel that same day. Dkt. 228 at 301; *see also id.* at 194–97.

222. Commissioner Holmes received a call from Constable Rose on October 21. Rose relayed a conversation he had with Commissioner Apffel, in which Apffel said, “There are a couple of maps floating out there, and it is not looking good for Holmes.” Dkt. 228 at 81.

223. On October 28, Judge Henry’s chief of staff, Tyler Drummond, emailed Oldham asking about the status of the “final maps” and stating the county “originally wanted to have a special meeting tomorrow to discuss and possibly adopt” them. JX-27 at 1. The commissioners court was “awaiting the final maps with split precincts so we can finalize everything and get a special meeting together for next week.” *Id.*

224. Bryan finalized the maps and provided them to the commissioners court on October 29. Dkt. 231 at 118. The county publicly posted the two proposals, Map 1 and Map 2, on the county’s website on October 29. *See* JX-29.

225. The web page provided an opportunity for public comment, but there were no instructions on when those comments had to be submitted for consideration. *Id.*; Dkt. 228 at 330.

226. The only evidence of the commissioners court announcing the creation of the redistricting web page or the release of proposed maps is a

post on Judge Henry's campaign Facebook page encouraging the public to support Map 2, PX-588, which Commissioner Giusti reposted. PX-247.

227. Based on Oldham's assessment, Judge Henry believed that Maps 1 and 2 were both legally compliant. Dkt. 228 at 332.

228. Commissioner Apffel testified that he never witnessed anyone instruct Oldham to use or consider racial data when designing potential maps. Dkt. 232 at 310. Apffel also did not recall seeing, reviewing, evaluating, or using racial demographics when considering maps. *Id.* at 311.

f. November 12—The Enacted Plan

229. On November 1, the Texas Secretary of State issued an election advisory confirming that the state's commissioners courts had to revise their commissioners precincts by November 13. JX-34 at 2. Judge Henry had mistakenly believed he had until December to complete the redistricting process. Dkt. 228 at 281, 283. He provided no credible explanation for this mistake.

230. Commissioner Apffel called Commissioner Holmes a few days before the November 12 special meeting. *Id.* at 86; JX-23 at 8. Apffel had known Holmes since 1989 and considered him a friend. Dkt. 232 at 318–19. Commissioner Holmes and Commissioner Apffel differ on their recollections of how this conversation proceeded. Dkts. 228 at 82–86; 232 at 326–32. The

court credits Commissioner Holmes’s recollection more than Commissioner Apffel’s and finds that Apffel informed Holmes that the commissioners court would be adopting Map 2. Holmes also told Apffel that Map 2 was discriminatory and ran afoul of § 2. Dkt. 228 at 82. Apffel explained that Oldham told him Map 2 was a “legal map” and that he had concerns about what Harris County was doing to the Republican members of its commissioners court through redistricting. *Id.* at 82–83. Holmes responded that “it was not about . . . Republican or Democrat but about the protections guaranteed to the minority groups in the Voting Rights Act.” *Id.* at 83. Apffel ultimately told Holmes that Judge Henry planned to make a motion to adopt Map 2, that he would second the motion, and that the commissioners court would vote for Map 2. *Id.* at 86.

231. The commissioners court held a special meeting on November 12 to consider and vote for a new commissioners-court map. PX-591. Thirty-six members of the public spoke at the meeting—a fraction of those who actually attended—criticizing the redistricting process and the two map proposals. JX-41 at 2–3. Commissioner Holmes then spoke, noting the procedural irregularities in the 2021 redistricting cycle and opposing both map proposals. He offered two alternative maps that preserved Precinct 3 as a majority-minority precinct. The other commissioners refused to consider or

vote on Commissioner Holmes's proposals. On a 3-1 vote,¹² with only Commissioner Holmes voting against, the commissioners court adopted Map 2, or the "enacted plan." *Id.* at 3.

2. Deviations from Prior Redistricting Cycles

232. Drs. Burch and Krochmal surveyed the 2021 redistricting process and found several procedural anomalies as compared to previous redistricting cycles. These procedural departures included the: (1) failure to adopt a timeline, (2) failure to adopt any publicly available redistricting criteria to guide the process, (3) lack of transparency in engaging redistricting counsel, (4) lack of public notice and availability for comment, (5) conduct surrounding the November 12 special meeting, (6) disregard for minority input, and (7) exclusion of Commissioner Holmes from the process. The court credits these findings as evidence of departures from the typical procedural sequence. The record evidence and lay testimony adduced at trial substantiate these procedural deviations.

233. The Attorney General's 2012 objection letter noted several procedural deficiencies in the 2011 redistricting process that raised concerns of intentional discrimination. JX-6 at 2. These deficiencies included the

¹² Commissioner Ken Clark did not attend the meeting due to health issues. He passed away in 2022 and was succeeded on the commissioners court by Commissioner Robin Armstrong.

failure to adopt redistricting criteria and the deliberate exclusion of Commissioner Holmes. *Id.* The 2012 objection letter put Judge Henry on notice of procedural defects that could raise concerns about the exclusion of minority stakeholders and lack of transparency—lapses that could be viewed as evidence of intentional discrimination.

234. During the 2021 redistricting process directed by Judge Henry, the county repeated these same procedural lapses. *See generally* Dkt. 222 at 122–24; PX-414 at 11, 18–19. The only alternative plan offered by Oldham during the 2021 redistricting cycle, Map 1, closely resembled the 2011 map, to which the Attorney General had objected. *Compare* JX-45 at 22, *with* JX-29. Oldham testified that the elimination of preclearance facilitated the dismantling of the majority-minority precinct. Dkt. 231 at 59–60.

a. No Redistricting Timeline

235. In contrast to past redistricting cycles, there is no evidence of any redistricting timeline established by the commissioners court in 2021.

236. The defendants have failed to provide any credible explanation for the lack of a redistricting timeline. Judge Henry, who was principally responsible for the redistricting process, testified that he was always aware Galveston County would need to redraw the commissioners precincts and that he was aware this would need to be completed by the candidate-filing

date. Dkt. 228 at 280–81. But Henry had no explanation for the commissioners court’s failure to set a timeline publicly, or even privately, for redistricting. *See id.* at 295–97.

b. No Redistricting Criteria

237. Unlike in prior years, the commissioners court failed to adopt any public redistricting criteria in 2021. Dr. Burch testified that the absence of public redistricting criteria is notable because “redistricting criteria tend to guide the process and give people a sense of what the priorities are, and the [c]ounty saw fit to adopt them in previous years.” Dkt. 222 at 192–93.

238. Judge Henry knew that the commissioners court’s failure to adopt criteria in 2011 provided a basis for the Attorney General’s objection to the 2011 map. Dkt. 228 at 274. He admitted that there was no way for anyone to know the commissioners court’s preferences and propose alternative maps that would meet them. *Id.* at 310–11. The defendants have failed to provide any explanation for deciding not to publicly adopt redistricting criteria in 2021.

239. Overall, the commissioners court’s failure to adopt redistricting criteria in 2021 is a deviation because the commissioners court had adopted criteria in prior years and other counties across the state have regularly adopted redistricting criteria. Dkt. 222 at 137–38.

c. Lack of Transparency in Engaging Counsel

240. The commissioners court deviated from past practice in engaging redistricting counsel. In prior cycles, the court publicly entertained bids from several prospective counsel. PXs-412 at 43; 414 at 17.

241. Judge Henry sought Oldham due to his “success” for the county the prior cycle. Dkt. 228 at 283–84. No other law firms besides Oldham’s personal choice, Holtzman Vogel, were publicly considered during the process. *Id.* at 286.

242. During the April 2021 commissioners court meeting in which they voted to hire Oldham and Holtzman Vogel, the commissioners court failed to provide any advance notice in the meeting agenda that they would be hiring counsel. PXs-570 at 239–41; 585 at 2. The defendants have not offered any explanation for this lack of transparency.

d. Lack of Public Notice and Comment

243. Failure to disclose the data underlying the commissioners court’s decision-making. At no point in the process did the commissioners court publicly disclose any quantitative data about the benchmark plan or proposed commissioners-court maps.

244. In 2011, before adopting a map, the commissioners court held public meetings after the census data came out. Dkt. 231 at 34–35; PX-414 at 17.

245. Judge Henry acknowledged that the commissioners court could have publicly announced the census results for Galveston County, Dkt. 228 at 291, as it had at a meeting in August 2011 in which “the [c]ounty’s redistricting consultants presented a preliminary demographic report showing the results of the 2010 Census as they related to the existing commissioner[s] precincts,” JX-45 at 9. Indeed, Judge Henry admitted to receiving a similar report from Oldham in September, including detailed information about why the commissioners-court lines needed to change. Dkt. 228 at 293–94.

246. When the commissioners court posted proposed Maps 1 and 2 on October 29, it provided no quantitative data by which the public could assess the maps. *See generally* JX-29.

247. The failure to make quantitative data available “speaks to the lack of transparency,” as “the public wasn’t able to see underlying population and demographic data to fully understand exactly how these maps were changing.” Dkt. 222 at 138.

248. Rushed redistricting process that prevented meaningful public comment. The commissioners court rushed the redistricting process in 2021 and failed to include any meaningful participation from the public and Commissioner Holmes. *Id.* at 126–27; PX-414 at 17–21; Dkt. 225 at 92–94.

249. The COVID-19 pandemic caused delays in the release of the data required to redistrict. Dkt. 222 at 127–28; PX-414 at 13–14; DX-175 at 2–3. Still, this delay does not account for the failure to include meaningful public participation or the rushed process.

250. Demographers for the parties agree that it was feasible to create timely redistricting plans despite the COVID-19 delay. Cooper testified that he had the 2020 Census data available “within a couple of days” of its release and thus had a “nationwide dataset breaking out the block-level census data for the whole country” around August 15. Dkt. 223 at 16. According to Cooper, this timing would be typical for anyone using standard demographic software such as Maptitude. *Id.* at 17. Fairfax likewise testified that “anybody with GIS skills” could access and use the 2020 Census data in the format provided by the Census Bureau on August 12. Dkt. 224 at 78–79. Fairfax also testified that the Census Bureau provided a database that could have been used to review the 2020 Census data released in August 2021. *Id.* at 79.

251. Bryan testified that he would have been able to download the Census Bureau’s redistricting data immediately once it was released. Dkt. 231 at 297–99. Had the defendants retained him earlier, he could have prepared draft maps by the end of August. *Id.* at 298–99. The defendants

offer no credible explanation for why the commissioners court did not begin drawing proposed maps until mid-October 2021.

252. Bryan testified to a rushed process in which he was made to draw maps on a flight back from a vacation in Hawaii and given only a few days to complete the project. *Id.* at 236, 298; Dkt. 232 at 36. It is Bryan’s practice to visit a jurisdiction and study it before drawing a map for it. Dkt. 232 at 35. Bryan testified that his inability to research or visit Galveston County and the tight timeline he was given was unusual for his work. *Id.* at 35–36.

253. The commissioners court was aware that redistricting likely needed to occur no later than November 2021 due to the timing of the candidate-filing period. Judge Henry testified that he fully expected the county to need to redraw commissioners precincts even before the redistricting data came out, and that this redistricting would have to be completed before the candidate-filing period opened. Dkt. 228 at 280–81.

254. Commissioner Giusti also testified that he “was pretty sure” the candidate-filing period would be from November to mid-December in 2021 because there “was a lot of resistance to [the state] moving the election dates.” Dkt. 232 at 106.

255. The commissioners court held several public meetings between retaining redistricting counsel and the November 12 special meeting

adopting the enacted map. PX-129. However, none discussed redistricting. *Id.*

256. Decision to Hold Special Meeting on November 12. In past redistricting cycles, the commissioners court held several hearings at various locations around the county to solicit public input on map proposals, including seven public hearings during the 2011 redistricting cycle. In 2021, Oldham advised the commissioners court to hold as many public meetings as possible and allow for supplementation of feedback after the meetings. Dkt. 231 at 201.

257. Judge Henry agreed the county had received initial map “proposals” by October 19 but did not want anything publicly disclosed until they were a “final product.” Dkt. 228 at 310.

258. Even factoring in the COVID-19 pandemic, Dr. Burch opined that the dearth of public meetings in 2021 was unusual. Dkt. 222 at 191, 196. In both 2011 and 2021, there were two weeks between when the commissioners court first disclosed its proposed maps and when it actually enacted a map. *Id.* at 191. In the two weeks before it adopted the benchmark plan in 2011, the commissioners court held five meetings across the county. *Id.* In the same amount of time in 2021, it only held one. *Id.*

259. The only opportunities for public input in 2021 were an online public comment portal and the November 12 special meeting. JX-42.

260. Commissioner Holmes testified that he expressed concerns to Drummond that the online comment portal was inadequate to provide residents the opportunity to be heard because of the number of residents who lacked access to either the internet or a computer. Dkt. 228 at 135; JX-23 at 5; *see also* Dkt. 222 at 194 (noting the racial disparities in internet access).

e. The November 12 Special Meeting

261. The November 12 special meeting was unusual not only for its singularity during the redistricting cycle but also for its lack of accessibility for many of Galveston County’s Black and Latino residents.

262. In past redistricting cycles, residents could choose among multiple meeting locations so that they could attend the most geographically accessible site. PX-412 at 60; Dkt. 225 at 75–82. Compounded with last-minute notice for the only meeting held about the maps, this factor “denied the public the opportunity to provide meaningful feedback on the maps.” PX-414 at 19; *see also* Dkt. 226 at 211–12.

263. The commissioners court held the November 12 special meeting at the League City Annex on Calder Road. PX-412 at 55–60. League City is

twenty-seven miles from the city of Galveston, the county seat and where the commissioners court holds its regular meetings.

264. The first meeting of the commissioners court at the League City Annex was in 2013. Dkt. 225 at 89–90. The custom of sometimes meeting away from the county courthouse, at locations termed “auxiliary courts,” was initially conceived to occur only “in the event the County of Galveston becomes precluded from conducting business or judicial functions within the county seat due to meteorological or catastrophic events.” PX-412 at 56. But meeting away from the county courthouse soon became more common. Even so, meetings at the League City Annex generally pertained to non-controversial routine business, such as payroll approvals. *Id.* at 56–57. Serious, non-run-of-the-mill county business continued to be conducted at the county courthouse in the county seat.

265. But in recent years, it became more common for topics involving race to be taken up at the League City Annex. Examples include: (1) an August 24, 2020 meeting on the removal of a Confederate statue; (2) a July 2, 2021 meeting when the commissioners court extended an immigration–related disaster declaration; and (3) the November 12 meeting on redistricting. *Id.* at 55–56.

266. The League City Annex is not spacious and will not accommodate as many people as the county courthouse. Lay testimony and video evidence of the November 12 special meeting indicate that by holding the meeting at the League City Annex, the commissioners court failed to provide the adequate space needed to accommodate the number of persons who sought to attend.

267. The small size of the League City Annex and the foreseeably large crowd caused congestion and overcrowding. Constable Rose testified that the League City Annex “was under construction The parking was terrible. It’s just not the place that you want to hold a meeting of that magnitude.” Dkt. 221 at 75. Additionally, Constable Rose observed that “people were standing all along the walls in the hallways You have got people [in] wheelchairs, walkers, everything there, and the accommodation was very poor.” *Id.*; see also Dkts. 221 at 134–41; 226 at 132–35, 226–27.

268. The defendants have not provided any credible explanation for their failure to hold the special meeting in a space that would accommodate the foreseeably sizable crowd. Judge Henry was responsible for scheduling the time and place of the November 12 meeting. Dkt. 228 at 257. Henry testified that after posting the draft maps on October 29, the commissioners court received “more comments . . . than [on] anything else we have ever

posted” and “received more comments and feedback than [on] any other thing we had done.” *Id.* at 213, 220–21. The commissioners court was well aware of how sensitive the issue was, and how interested the public was in how it would be dealt with.

f. Disregard for Public Input from Minority Residents

269. Conduct by Judge Henry and the county commissioners indicated a disregard for public input from the minority communities and those critical of the enacted plan’s discriminatory effect.

270. Judge Henry admitted that he reviewed fewer than a dozen of the public comments. Dkt. 228 at 221, 330. Instead, he had his staff provide a breakdown of comments, which he then announced during the November 12 special meeting before making the motion to adopt Map 2:

Of the 440 [comments] that came in, 168 did not discuss a particular map, they just called me names mostly. Of the people who did choose a map preference, Map 1 – received 64 responses. Map 2 received 208 responses. So of those responding to a particular map, 76.4[%], Map 2. 23.5[%], Map 1. With that, I’m going to make the motion to approve Map 2.

PX-591 at 62.

271. A detailed look at the public comments, JX-42, indicates that Henry’s summary during the November 12 meeting disregards public commentary expressing concern over the discriminatory impact of redistricting on Galveston County’s minority community. Dr. Burch analyzed

all 446 public comments that were submitted. Dkt. 222 at 145–46; PX-414 at 23. She found that Judge Henry “dismissed as devoid of meaningful content nearly every comment that did not support the maps and that expressed concerns about racial discrimination and minority[-]vote dilution.” PX-414 at 23.

272. The county residents who appeared at the meeting on November 12 were predominantly Black and Latino and included many older residents. PX-412 at 60; PX-129.

273. When attendees informed the commissioners court that they could not hear the proceedings, Judge Henry reacted by threatening to have constables remove attendees:

I’m going to speak at this tone. That’s all I can do. I’m not going to scream. I don’t have a microphone. . . . I will clear you out. If you make a noise, I will clear you out of here. I’ve got constables here.

PX-591 at 3.

274. Witnesses testified that Judge Henry was “real ugly about clearing the room.” Dkt. 221 at 77, 138–40. Commissioner Giusti believed his conduct was “aggressive.” Dkt. 232 at 150–51.

275. Thirty-five of the thirty-six members of the public who spoke at that meeting opposed Map 2. *See generally* PX-591 at 4–57. The remaining comments noted the inconvenience of the meeting and the lack of public

transparency in the process. *See id.* Commissioner Giusti acknowledged that only Commissioner Holmes attempted to respond to the audience's concerns. Dkt. 232 at 148–49.

276. The commissioners court adopted the enacted plan without addressing any public comments received at the meeting. They did not publicly debate the map proposals beyond Judge Henry's discussion of the online public commentary and Commissioner Holmes's remarks. PX-591 at 61–81.

g. Excluding Commissioner Holmes

277. The court finds that the 2021 redistricting process exhibited an exclusion of Commissioner Holmes. He was the only minority commissioner at the time. His district—Precinct 3—was dramatically reshaped under the enacted plan, and there was otherwise a lack of opportunity for minority voters to participate. Commissioner Holmes testified to this exclusion: he was not notified when the maps were finalized, was not told why additional public meetings were not held, and was never sent the data underlying the map proposals as he requested. Dkt. 228 at 103, 111–12.

278. Because of his experience in the 2011 redistricting cycle, Commissioner Holmes took contemporaneous notes of his conversations concerning the 2021 redistricting. *Id.* at 61–62; JX-23. Commissioner

Holmes requested specific changes to balance Precinct 3's population and to make the precinct lines more understandable to voters. *Id.* at 68–72; JX-23 at 3. Some of those changes were not reflected in any map proposal, including Map 1. *Compare* Dkt. 231 at 75–77 (Oldham testifying the “minimum change” map proposal was drafted to accommodate Commissioner Holmes but also to include predominantly Anglo Bolivar Peninsula in Precinct 3), *with* JX-23 at 3 (list of changes requested by Commissioner Holmes, including the addition of voting Precinct 142 to Precinct 3), *and* Dkt. 223 at 52–53 (confirming no portion of voting Precinct 142 was added to Precinct 3 in Map 1 even though it is roughly equal in population to the Bolivar Peninsula voting precincts that were added and would have been possible according to one-person, one-vote standards).

3. Purported and Actual Redistricting Criteria

279. One of the additional factors noted in the Senate Judiciary Report is whether the policy underlying the political subdivision's conduct was tenuous.

280. The defendants have disclaimed any consideration of race. They instead assert that they used seven factors in drafting and adopting the enacted plan, as described in their interrogatory responses:

- (1) compliance with federal law,
- (2) the creation of a coastal precinct,

- (3) geographic compactness,
- (4) minimizing voting precinct splits,
- (5) incumbency protection,
- (6) partisanship, and
- (7) “adopt[ing] a map that would be clear and easy to understand by the public.”

PX-593 at 6–8. The rationales stated by members of the commissioners court in public, in deposition testimony, and at trial are inconsistent with these purported criteria.

281. No witness testified at trial to applying the criteria described in the defendants’ interrogatory responses in either drawing or adopting the enacted plan. *See generally* Dkts. 228 at 312–25; 232 at 88 (Giusti testifying he considered the inclusion of his and his parents’ residence in his precinct, population equalization, and that lines were “drawn in a way the people understood” during the 2021 redistricting process), 304–05, 307–08 (Apffel testifying that he had no requests other than “equalized population” and keeping his new home in his precinct). Judge Henry admitted that he did not know of or apply the criteria the commissioners court claimed in its interrogatory responses to have used in the redistricting process. Dkt. 228 at 323–24.

282. Notably, unlike the criteria used in the 2001 redistricting cycle, the criteria the county revealed in its interrogatory responses do not include such objectives as maintaining communities of interest, preventing the unnecessary fragmentation of minority populations, or adhering to historic boundaries. *See* PX-539. From 1981 until 2021, the commissioners court had at least one precinct that performed to elect the candidate of choice for Black and Latino voters; the criteria the county purports to have used in 2021 would have done little to preserve that longstanding, and long-performing, majority-minority precinct.

283. The plaintiffs have provided several illustrative map configurations that perform as well or better than the enacted plan under the disclosed criteria.

284. Cooper reviewed the criteria provided by the defendants and evaluated whether the enacted plan adhered to them. In his opinion, it did not. PX-386 at 23–26. As to the first factor—compliance with the Constitution and the Voting Rights Act—Oldham disclaimed any requirement to draw a precinct that conformed with § 2 of the Voting Rights Act. Dkt. 231 at 61–62. Commissioner Apffel knew of Commissioner Holmes’s concerns about the potential Voting Rights Act violation. Dkt. 232 at 329–30.

285. Dr. Rush presented alternative maps that comply with federal law and maintain Precinct 3 as a majority-minority precinct. PX-487 at 9–17. Cooper explained that there “are many, many different ways to draw a majority Black plus Latino precinct. You can make [a] few changes. You can make lots of changes. It can look a lot of different ways.” Dkt. 223 at 47. Similarly, Fairfax testified that “there are possibilities of different configurations [of illustrative maps that] still continue to create a majority Black and Latino district that satisfied the first precondition of *Gingles* and followed traditional redistricting criteria.” Dkt. 224 at 117.

286. As to the second and third criteria—creating a coastal precinct and geographical compactness—the plaintiffs have provided multiple illustrative maps that would create a compact coastal precinct while maintaining a majority-minority Precinct 3. Creating a coastal precinct is not mutually exclusive with preserving Precinct 3 as a majority-minority district that allows Black and Latino voters to elect a candidate of choice. Dkt. 222 at 131.

287. Nor does the evidence support the need or any popular support for a single coastal precinct. Before the map’s passage, “there weren’t a bunch of people clamoring for a coastal precinct.” *Id.* at 105–06; Dkt. 225 at 85. The documents that Dr. Krochmal examined had just one mention in a news

article from the early 2010s. Dkt. 225 at 84–85. The commissioners did not engage the public on the need for a coastal precinct. *See, e.g.*, Dkts. 228 at 315, 317; 232 at 142–43. Some even advocated against a single-coastal precinct. Dkts. 228 at 315–17; 232 at 350–52.

288. As to the fourth and fifth criteria—to minimize the splitting of voting precincts before including incumbent residences—the defendants generally followed these criteria when drafting the enacted plan. But the alternative maps created by Dr. Rush protect the incumbency of the current commissioners while also preserving a majority-minority precinct. *See, e.g.*, Dkt. 232 at 157–58.

289. The sixth criterion—partisanship—did not require the enacted plan’s configuration, as all members of the commissioners court who voted for the enacted plan disclaimed partisanship as a predominating consideration. *See* Dkts. 228 at 197, 304; 232 at 98, 355–56. Consistent with this, Oldham testified that he never told Bryan that Judge Henry’s purpose for Map 2 was to create four Republican districts, and Oldham denied there was any such partisan motivation. Dkt. 231 at 153–54.

290. As for the final criterion, that the map be “clear and easy to understand by the public,” Cooper observed that the dramatic changes in the enacted plan do the opposite. “[B]ecause entire [voting] precincts are going

to be shifted around into different districts,” the likelihood of voter confusion—such as voters not knowing in which commissioner’s precinct they reside—is high. Dkt. 223 at 85–88.

291. Any contention that the defendants adopted the enacted plan to achieve near-equal population deviation is unsupported by the record. *See, e.g.*, PX-191. Indeed, there is no requirement to achieve a zero deviation for the commissioners-court map. Dkt. 223 at 186.

292. Judge Henry admitted he viewed benchmark Precinct 3 as a racial gerrymander and that any majority-minority Precinct 3 would have to look that way. Dkt. 228 at 319. Commissioner Apffel similarly testified that he believed and “ha[d] been told” that Precinct 3 had been “racially gerrymandered in favor of minorities.” Dkt. 232 at 356. Judge Henry further admitted he “would not have asked for” a coastal precinct map that kept the core of benchmark Precinct 3. Dkt. 228 at 305.

H. Ongoing Discrimination Touching on Participation in Voting

293. Three critical Senate factors in this case are: (1) the extent to which minority-group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; (2) the use of overt or subtle

racial appeals in political campaigns; and (3) the extent to which members of the minority group have been elected to public office in the jurisdiction.

294. The 2021 redistricting process for commissioners precincts occurred within a climate of ongoing discrimination affecting Black and Latino voting participation. This climate has led to limited Black and Latino electoral success in Galveston County. Notably, the limited success of Black and Latino candidates for office is largely attributable to majority-minority districts like the one dismantled by the enacted plan.

295. Dr. Burch's and Dr. Rocha's qualitative and quantitative analyses show that Black and Latino residents of Galveston County bear the effects of discrimination in income, poverty, education, and health, all of which combine to increase the costs of voting and decrease political participation. PXs-335 ¶¶ 66–71; 414 at 23–32. The defendants did not call any fact witnesses to rebut these disparities between the minority and Anglo populations in Galveston County.

296. Historical disparities contribute to the contemporary inequalities that persist, not least because there are Galveston County voters alive today who lived through the Jim Crow era. Dkt. 222 at 74. For example, Pope testified to living through desegregation in education and public accommodations and the difficulties the county faced during that time. *Id.* at

28–31. Similarly, Reverend Randall described “racial fights” that occurred “in the junior high and high school [that] spilled over into the community” as he grew up during school desegregation. Dkt. 226 at 218.

297. Testimony from Black and Latino residents confirms that the county’s Black and Latino voters still suffer similarly from discrimination in income, poverty, education, and health as compared to Anglo residents. Dkts. 221 at 65, 133; 226 at 14.

298. Discrimination against minorities in Galveston County harms their ability to participate equally in the electoral process. PX-335 ¶¶ 9, 18, 27. Racial and ethnic disparities in education, income, housing, and public health are partly the result of past and present discrimination. Peer-reviewed academic research confirms that such disparities hinder Latinos and Blacks from participating in the political process. *Id.* ¶¶ 18, 27, 66–67.

299. Black and Latino voters, as measured by their consistently lower turnout rate than Anglo voters in Galveston County elections, have a depressed level of political participation. Dkt. 230 at 157.

1. Contemporary Voting Barriers

300. Residents testified how voter-identification requirements and voter-roll purging weigh more heavily on Black and Latino voters and

constitute barriers to voting. Dkts. 222 at 226–28; 226 at 18; *see also* PX-414 at 11 (describing Texas passing stricter voter ID laws after *Shelby County*).

301. Closure of polling places has also made it more difficult for the county’s Black and Latino residents to vote. The number of polling places in predominantly minority neighborhoods has decreased in recent decades. Dkt. 221 at 86–87.

302. The decline in polling places is partially attributable to the adoption of voting centers—locations where any voter can vote, regardless of the voter precinct in which he or she resides. But the convenience these centers provide is undercut by the fact that Galveston County has not established the mandatory minimum number of vote centers required under Texas law. Before the November 2022 general election, civil-rights organizations sent a letter to the Galveston County clerk and commissioners court informing them that the county had opened only twenty-eight voting centers, rather than the minimum required forty-one. PX-315. The letter described the disproportionate impact reduced polling places would have on minority residents with less access to transportation. *Id.* The county had also been warned in 2019 of this issue. *Id.*

303. Black and Latino residents have reported greater difficulty getting to polling places due to difficulties obtaining transportation.

Dkts. 226 at 58, 209; 228 at 43–44. Studies have shown that polling-place distance affects voter turnout, and those effects are related to transportation availability. PX-414 at 28.

304. The county has recently closed or attempted to close specific polling places in predominantly Black and Latino neighborhoods. The historic Carver Park polling place was considered by many to be the “hub” of the benchmark Precinct 3. Dkt. 221 at 61–62. It was closed in 2020, leaving some people unable to vote because of a lack of transportation. Dkt. 222 at 278. Similarly, another polling place closed during the 2020 election, the Dickinson Senior Center, which was also predominantly used by Black and Latino voters. Dkt. 228 at 44. The county also attempted to eliminate the Alamo Elementary polling location, which is located in a heavily Latino neighborhood. Dkt. 226 at 69.

305. Primary elections for commissioners court seats have a majority-vote requirement. Tex. Elec. Code § 172.003.

306. In recent years, candidates running for office in Galveston County have made implicit racial appeals in their campaigns. PX-335 ¶¶ 72–81; Dkt. 222 at 89. Racial appeals can “make racial attitudes and concerns more salient in the minds of voters, even without explicitly mentioning or

referring to a particular race or group.” PX-414 at 33; *see also* PX-335 ¶¶ 76–77; Dkt. 225 at 237–38.

307. For example, in the 2020 Republican primary for Galveston County tax assessor-collector, candidate Jackie Peden sent a mailer of a “Latino man covered in tattoos that indicates association with a violent gang (in this case, MS-13).” PXs-335 ¶ 78; 561; Dkts. 222 at 90–91; 225 at 240–41; Dkt. 226 at 17. Referring to her incumbent opponent, Peden’s mailer stated, “Texans can thank Cheryl Johnson for having illegal immigrants vote in this November’s Election!” PX-561. The mailer “use[d] text to associate her opposing candidate . . . with ‘illegal immigrants’ and appeals to race-based biases and fears regarding Latinos.” PX-335 ¶ 78. The image of the tattooed man featured is not a Galveston County resident but an El Salvadoran man whose image has been featured in other political campaigns. *Id.* ¶ 79; PX-562; Dkt. 225 at 241. Other candidates in Galveston County have used anti-immigrant imagery and “invasion” language as an anti-minority appeal. PX-414 at 34.

308. In 2022, Julie Pickren, a candidate for District 7 of the Texas State Board of Education, shared a video showing Black students at a local high school vandalizing the school cafeteria. PX-335 ¶ 80. The video was accompanied by text stating, “Discipline in schools must be restored.” *Id.* As

an implicit racial appeal, the video contains images of Black youth engaged in a stereotype-confirming behavior: violent destruction of property. *Id.*

309. Other racial incidents surrounding campaigns have occurred in recent years. In 2019, the chairwoman of the Galveston County Republican Party referred to a particular Black Republican as a “typical nig.” Dkt. 222 at 89–90; PX-414 at 34. Residents also heard racially derogatory language used toward Barack Obama during his presidential campaigns. Dkt. 226 at 17.

2. Lack of Electoral Success

310. Minorities have been underrepresented in electoral success relative to their share of Galveston County’s population. PX-414 at 34. Until the 1992 consent decree that increased minority representation in the JP/constable precincts, few minorities were elected to county office. Dkt. 222 at 15–16.

311. There have been three Black members of the commissioners court: Wayne Johnson, Stephen Holmes, and Robin Armstrong. Dkt. 204-6 ¶¶ 14–16. Wayne Johnson was the first Black member of the commissioners court and was elected in 1988. *Id.* ¶ 15. Stephen Holmes was appointed in 1999 after Wayne Johnson’s passing and has served continuously since then. *Id.* ¶ 16. Robin Armstrong was initially appointed in 2022 and ran unopposed in a majority-Anglo precinct in the November 2022 general

election. Dkt. 230 at 195, 198, 211. There has been just one Latino member of the commissioners court, Frank Carmona, who served from 1971 to 1990. PX-335 ¶ 7.

312. The court heard testimony that Commissioner Armstrong holds “several [political] views that are outside the mainstream of Black Americans.” PX-414 at 34–35. NAACP, LULAC, and other minority groups did not endorse him. *Id.* at 35. Commissioner Armstrong acknowledged he does not have a basis to believe he is a candidate of choice for Black or Latino voters. Dkt. 230 at 210.

313. Commissioners Giusti and Apffel could not identify any minority candidates who successfully ran in a countywide Republican primary. Dkts. 232 at 153, 367. Latino candidates with Spanish surnames have had minimal success in the county’s Republican primaries. Dkt. 226 at 15–17.

314. The limited number of successful Black and Latino elected officials within the county have tended to be members of city councils elected from majority-minority districts in cities with larger minority populations, such as Texas City and La Marque, or—in the case of the city of Galveston—elected from single-member districts created by court order to be majority-minority. *See, e.g.*, Dkts. 222 at 16; 230 at 255–56; 232 at 151.

3. Responsiveness

315. In § 2 vote-dilution claims, courts must consider “whether there is a significant lack of responsiveness by elected officials to the minority group members’ particularized needs.” *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 715–16 (S.D. Tex. 2017). Lack of responsiveness to public policies important to minorities serves to create and maintain racial disparities. PX-414 at 35.

316. Anglo commissioners are evidently not actively engaged in specific outreach to Galveston County’s minority residents. Dkt. 222 at 98–99; PX-414 at 35–36. Commissioner Apffel could not identify any wants, needs, or desires that African American and Latino constituents have. Dkt. 232 at 369. Judge Henry testified that he has never received an endorsement from leaders in the Black or Latino communities. Dkt. 228 at 254–55.

317. Minority residents have indicated that the commissioners court has become less responsive to the needs of minority constituents since the enacted plan went into effect. One resident testified that the lack of responsiveness makes minorities “not want to participate” in the political life of the county. Dkt. 222 at 28.

318. Recent votes by the commissioners court have been seen as unresponsive to the Black and Latino communities. Numerous witnesses cited the commissioners court's vote to allow \$1.8 million to help pay for a U.S.–Mexico border wall and to send constables to the border as racially discriminatory and diverting much-needed resources from local Black and Latino residents. *Id.* at 103; Dkt. 226 at 19–20. In addition, Anglo commissioners opposed removing the Confederate statue in front of the county courthouse. PX-412 at 50.

319. The commissioners court's handling of the November 12 special meeting also portrayed a lack of responsiveness. Witnesses who attended the special meeting were taken aback by some of Judge Henry's comments. Dkts. 221 at 77; 226 at 137. They testified that his disinterested demeanor to public comments also suggested a lack of responsiveness. Dkts. 222 at 246; 226 at 133–34. Galveston City Councilwoman Lewis described it as “almost like a back-in-the-'60s environment.” Dkt. 226 at 134.

320. Many residents reported that only Commissioner Holmes is responsive to Black and Latino residents' needs. *See, e.g.*, Dkts. 221 at 93; 222 at 26–27, 235–36; 226 at 73–74, 192, 221 (“I don't know any important event that Stephen wasn't there and giving us what we needed.”).

321. Commissioner Holmes was instrumental in reopening the Wayne Johnson Senior Center after Hurricane Ike. Dkt. 226 at 221 (“Even as far as Ike, Harvey, even Katrina. He led most of those efforts with housing and getting us back on our feet during tough times . . .”).

322. During the COVID-19 pandemic, Commissioner Holmes participated in weekly calls with the community. He “would get doctors, the health district, epidemiologists” and arrange testing opportunities. *Id.* at 221–22. He helped set up a phone line for people without internet access to sign up for COVID-19 vaccines. Dkt. 221 at 118–19.

323. Commissioner Holmes also helped arrange transportation for senior citizens and students around the county. Dkt. 222 at 237–38.

324. Residents of benchmark Precinct 3 who now live in Commissioner Armstrong’s precinct do not believe he would be responsive to his constituents from their neighborhoods due to his lack of involvement in minority community organizations and his absence from the Black and Latino community. *Id.* at 240–42; Dkt. 226 at 228. Commissioner Armstrong admitted that he has no basis to believe he is the candidate of choice among minority voters. Dkt. 230 at 210.

4. Education

325. Educational level is a dependable predictor of political participation. The higher one's education has advanced, the more likely he or she is to be politically active. PXs-335 ¶ 68; 414 at 22; Dkt. 225 at 233–34.

326. Minorities in Galveston County continue to bear the effects of discrimination in education. Dkts. 222 at 73; 225 at 220. Black and Latino residents are much less likely to have high-school diplomas than Anglo residents. PX-414 at 25–26; Dkt. 222 at 76–77. About 87.7% of Blacks and 75.9% of Latinos over twenty-five years old have completed high school—compared to 94.8% of Anglos. PXs-335 ¶ 14; 414 at 26. On the other hand, about 22.1% of Blacks and 17.5% of Latinos over twenty-five years old have earned a bachelor's degree or higher, while the Anglo rate is 37.5%. PX-335 ¶ 14.

327. Schools in Galveston County were under a court desegregation order from 1961 to 2009. *Id.* ¶ 28. During that time, the Galveston Independent School District struggled to achieve racially balanced enrollments in its elementary schools. *Id.*; Dkt. 225 at 209–10.

328. Racial inequality in K-12 educational achievement persists in Galveston County. PX-335 ¶¶ 28–39. Disproportionate numbers of Black

and Latino students are not proficient in reading and math across all school districts in Galveston County. PX-414 at 24; Dkt. 222 at 75–76.

329. There is clear evidence in Galveston County of “practices that limit the integration of schools and deny minority students access to education.” PX-335 ¶ 29. Minorities are less likely than Anglos to benefit from positive programs, such as Advanced Placement classes or gifted and talented programs, and are more likely to suffer disciplinary action, such as in-school and out-of-school suspension. *Id.* ¶¶ 29–39; PX-559; Dkts. 225 at 211–16; 226 at 118–19, 207–08.

330. These educational disparities have contributed to the lower likelihood that minorities in Galveston County will participate in the political process.

5. Employment and Poverty

331. Employment disparities are important to understanding the cost of voting; voters with lower-wage jobs are much more likely to be hindered from accessing the ballot box. PX-414 at 26. Research also shows that the workplace is an important site for recruitment into political participation. *Id.* at 27; *see also* PX-335 ¶ 67. So higher rates of employment and higher-wage jobs mean an increase in electoral participation.

332. Racial disparities in earnings are present in several employment sectors within Galveston County. PXs-335 ¶¶ 40–45; 414 at 26–28. In Galveston County, earnings for Blacks and Latinos are also lower in general than those for Anglo employees, partly because they are clustered in jobs that earn less. PXs-335 ¶¶ 40–45; 414 at 26–27; 559; Dkt. 225 at 222–23. Even when they hold the same types of jobs, Blacks and Latinos earn less than Anglo employees. PXs-335 ¶¶ 40–45; 559.

333. Black Galveston County households have a median income of \$45,831, and Latino households have a median income of \$60,297—markedly lower than Anglo households’ median income of \$86,165. PX-414 at 26; *see also* PX-386 ¶ 40.

334. Likewise, the unemployment rate in Galveston County is disproportionately higher for Black and Latino residents than for Anglo residents. The unemployment rates for Blacks and Latinos are 9.1% and 7.0%, respectively; the unemployment rate for Anglos is 4.8%. PXs-335 ¶ 15; 414 at 28; Dkt. 222 at 79; *see also* PX-386 ¶ 40.

335. About 29.2% of Black households and 15.1% of Latino households rely on the Supplemental Nutrition Assistance Program, whereas only 6.7% of Anglo households do. PX-386 ¶ 40.

336. Additionally, the child-poverty rate in Galveston County is disproportionately higher for Black children—nearly 25%—and Latino children—over 20%—than for Anglo children—under 10%. PX-414 at 27; Dkt. 222 at 78–79; *see also id.* ¶ 40.

337. Black and Latino residents in Galveston County have lower rates of car ownership than do Anglo residents. PX-414 at 28; Dkt. 222 at 79. Black households are four times less likely to have access to a car than Anglo households; Latinos are also less likely to have access to a vehicle. PX-414 at 28.

338. Together, these economic disparities hinder the ability of Galveston County’s Black and Latino communities to participate effectively in the political process.

6. Housing

339. Renters move more frequently than do homeowners and so are less likely to vote, because changing residences frequently increases the administrative burden of maintaining voter registration. *Id.* at 30. Homeowners are also more likely to be mobilized by political campaigns, increasing their likelihood of voting. PX-335 ¶ 69.

340. In 1997, the Department of Housing and Urban Development found that the Galveston Housing Authority, the agency in charge of public-

housing assistance and the management of Section 8 vouchers, had used public housing to reinforce patterns of segregation, in violation of Title VI of the Civil Rights Act of 1964. *Id.* ¶ 48.

341. Disparities in homeownership for Blacks and Latinos as compared to Anglos persist in Galveston County today and have not meaningfully decreased in recent years. *Id.* ¶ 49; PX-559; Dkt. 225 at 230–31. Black and Latino residents are less likely to live in owner-occupied housing than are Anglo residents. Dkt. 222 at 82; PX-414 at 31. About 47.5% of Blacks reside in owner-occupied housing units. PX-335 ¶ 16. Slightly more Latinos, 60.6%, reside in owner-occupied housing. *Id.* Anglo rates, though, are at 73.3%. *Id.*

342. In the aftermath of Hurricane Ike in 2008, disparities in housing grew even more pronounced. PXs-335 ¶¶ 50–59; 412 at 40–42; 414 at 31; Dkts. 221 at 111–13; 222 at 33–34.

343. The city of Galveston lost 16.5% of its overall population between 2000 and 2010, including an 11.4% loss in the Anglo population compared to a 36.7% loss in the Black population. PX-335 ¶ 51. Many of the predominantly minority Galveston Island residents displaced by Hurricane Ike moved to the mainland and have been unable to return due to the lack of affordable housing. Dkt. 222 at 232–33. Rebuilding public housing after Ike

also had a racialized component; predominantly Anglo residents and politicians opposed rebuilding efforts. PX-412 at 40–42.

344. These housing disparities hinder the ability of Galveston County’s Black and Latino communities to participate effectively in the political process.

7. Public Health

345. Healthy individuals are more likely to be civically engaged. Poor health can reduce the odds of voting by 12%. PXs-335 ¶ 70; 414 at 31.

346. Black and Latino residents in Galveston County disproportionately suffer from public-health issues compared to Anglo residents and continue to bear the effects of discrimination in public health. PX-335 ¶ 58; Dkts. 222 at 83; 225 at 232.

347. Discrimination increases incidents of psychological distress, major depression, generalized anxiety disorder, and early initiation of substance abuse. These general patterns have been documented among minority residents in Galveston County. PX-335 ¶ 59. A study of 1,238 Latinos living in Texas City, published in the *Journal of Social Science & Medicine* in 2013, found a significant relationship between experiences with discrimination and poor mental-health outcomes. *Id.*

348. Significant disparities in infant health and life expectancy exist between Blacks and Anglos in Galveston County. *Id.* ¶¶ 60–61; Dkt. 225 at 232–33. Black infants are more than twice as likely to have low birth weight and have nearly double the infant mortality rate as Anglo infants. PX-335 ¶ 60.

349. In Galveston County, Blacks and Latinos suffer disparities in insurance coverage that also affect access to preventative health care. *Id.* ¶ 61. Latinos between the ages of nineteen and sixty-four are more than twice as likely as Anglos to be uninsured. *Id.* ¶ 17. About 12.5% of Blacks between the same ages do not have health insurance. *Id.*

350. Disparities in health outcomes for Blacks and Latinos in Galveston County decrease their level of political participation.

8. Criminal Justice

351. Black and Latino also residents face disparities in the criminal-justice system in Galveston County. Dkt. 222 at 84–85; PX-414 at 32–33. Criminal-justice interactions affect political behavior because higher arrest and incarceration rates can hinder one’s ability to vote. Dkt. 222 at 85–86; PX-414 at 32.

352. Black residents in Galveston County are more likely to be arrested, and Black and Latino residents comprise a disproportionate

percentage of jail and prison inmates compared to their share of the population. Dkt. 222 at 36, 85. Black and Latino residents also testified to over-policing and disparities in treatment by the criminal-justice system. *See, e.g.*, Dkts. 221 at 67–70 (Constable Rose describing instances of being pulled over and treated aggressively); 226 at 13–14 (Quintero describing a complaint LULAC received after police severely damaged a Latino family’s house), 194–95 (Henderson-Lofton describing being pulled over by police in League City).

353. A highly publicized 2019 incident in which police on horseback led a mentally disabled Black man, Donald Neely, by a rope led to widespread criticism, including by the police chief, who stated that the officers “exercised poor judgment.” Dkt. 221 at 73; *see also* Dkt. 222 at 86–87.

III. Conclusions of Law

354. The Fifteenth Amendment was ratified in 1870 “amidst the struggles of Reconstruction to fully guarantee voting rights to newly freed slaves.” *Johnson v. Waller County*, 593 F. Supp. 3d 540, 592 (S.D. Tex. 2022). Section 1 protects citizens’ right to vote from being “denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” U.S. Const. amend. XV, § 1. Section 2 grants

Congress “the power to enforce this article by appropriate legislation.” *Id.* amend. XV, § 2.

355. The first ninety-five years of congressional enforcement of the Fifteenth Amendment “can only be regarded as a failure,” *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 197 (2009), marred by “Jim Crow laws like literacy tests, poll taxes, and ‘good-morals’ requirements,” *Milligan*, 599 U.S. at 9. Motivated by the Civil Rights movement, Congress passed the Voting Rights Act in 1965. *Id.* at 10. The original text of § 2 of the Voting Rights Act “closely tracked the language” of the Fifteenth Amendment and was “‘little-used’ for more than a decade after its passage.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2331 (2021). And in 1980 in *City of Mobile v. Bolden*, the Supreme Court held that § 2 prohibited only the discriminatory *intent* to dilute the voting strength of a minority group—not conduct that has the discriminatory *effect* of diluting its voting strength. 446 U.S. 55, 61–66 (1980) (plurality opinion). As a result, § 2 was greatly weakened in its ability to protect minorities from voting practices producing discriminatory results.

356. *Bolden* “produced an avalanche of criticism.” *Milligan*, 599 U.S. at 11 (quoting Thomas M. Boyd & Stephen J. Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History*, 40 Wash. &

Lee L. Rev. 1347, 1355 (1983)). After vigorous debate, Congress amended the Voting Rights Act in 1982, revising § 2 “to make clear that a violation could be proved by showing discriminatory effect alone.” *Gingles*, 478 U.S. at 35.

A. Section 2 of the Voting Rights Act

357. After its amendment, § 2 specifically prohibits any “voting qualification or prerequisite to voting or standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a). Such a denial or abridgement occurs when “the totality of circumstances” shows that a state’s “political processes . . . are not equally open to participation by” members of a minority group “in that [they] have less opportunity . . . to participate in the political process and to elect representatives of their choice.” *Id.* § 10301(b).

358. Such claims are often called *Gingles* claims because *Thornburg v. Gingles* provides the “framework” for evaluating § 2 vote-dilution claims. *Wis. Legislature v. Wis. Elections Comm’n*, 595 U.S. 398, 402 (2022) (per curiam).¹³ In *Gingles*, the Supreme Court construed § 2 to prohibit the

¹³ *Gingles* itself involved § 2 challenges to multimember districts, 478 U.S. at 46, but the Supreme Court later extended the analysis to apply to § 2 challenges to single-member districts like the ones at issue here. *See Grove v. Emison*, 507 U.S. 25, 40–41 (1993).

“dispersal of [a minority group’s members] into districts in which they constitute an ineffective minority of voters.” *Cooper v. Harris*, 581 U.S. 285, 292 (2017) (quoting *Gingles*, 478 U.S. at 46 n.11). When “minority and majority voters consistently prefer different candidates” in such districts, “the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters,” thus depriving minorities of an equal opportunity to elect representatives of their choice. *Gingles*, 478 U.S. at 48. Today, § 2 still prohibits vote dilution in redistricting plans that “minimize or cancel out the voting strength of racial [minorities in] the voting population.” *Id.* at 47 (alteration in original) (internal citations omitted) (quoting *Burns v. Richardson*, 384 U.S. 73, 88 (1966)); see also *Milligan*, 599 U.S. at 25.

359. In *Gingles*, the Supreme Court “established a two-step analysis for vote-dilution claims.” *Patino*, 230 F. Supp. 3d at 675 (citing *Gingles*, 478 U.S. at 50–51). Plaintiffs must first establish three preconditions: “(1) [t]he minority group must be sufficiently large and compact to constitute a majority in a reasonably configured district, (2) the minority group must be politically cohesive, and (3) a majority group must vote sufficiently as a bloc to enable it to usually defeat the minority group’s preferred candidate.” *Wis. Legislature*, 595 U.S. at 402. If plaintiffs establish the preconditions, they

must then show that, under the “totality of circumstances,” the “political process is [not] equally open to minority voters” without the proposed district. *Id.* (quoting *Gingles*, 478 U.S. at 79). When a § 2 claim is successful, a court will require the creation of a majority-minority election district in which minority voters have an equal opportunity to elect their preferred candidates. *See Bartlett v. Strickland*, 556 U.S. 1, 13 (2009).

360. Plaintiffs must prove § 2 claims by a preponderance of the evidence. *LULAC v. Roscoe Indep. Sch. Dist.*, 123 F.3d 843, 846 (5th Cir. 1997).

361. In *Allen v. Milligan*, decided earlier this year, the Supreme Court upheld the *Gingles* framework. 599 U.S. 1.

1. Step One—Preconditions

362. The first precondition is that the minority group “is sufficiently large and geographically compact to constitute a majority in a single-member district.” *Gingles*, 478 U.S. at 50; *see also id.* at 18. This precondition is “needed to establish that the minority has the potential to elect a representative of its own choice.” *Milligan*, 599 U.S. at 18 (quoting *Grove*, 507 U.S. at 40). Accordingly, the minority group must be able to constitute a majority by CVAP in the proposed district. *Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 853 (5th Cir. 1999); *see also LULAC*

v. Perry, 548 U.S. 399, 428–29 (2006) (analyzing CVAP and noting that “only eligible voters affect a group’s opportunity to elect candidates”). A plaintiff must also allege that its proposed majority-minority district “is consistent with ‘traditional districting principles such as maintaining communities of interest and traditional boundaries.’” *Robinson v. Ardoin*, 37 F.4th 208, 218 (5th Cir. 2022) (per curiam) (quoting *LULAC*, 548 U.S. at 433).

363. The Supreme Court has explained that a “district will be reasonably configured . . . if it comports with traditional districting criteria, such as being contiguous and reasonably compact.” *Milligan*, 599 U.S. at 18; *see also Miller v. Johnson*, 515 U.S. 900, 916 (1995) (identifying traditional districting criteria such as “compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests”). Courts may also consider other traditional redistricting criteria, including equal population, respect for political boundaries, and keeping together communities of interest. *See, e.g., Milligan*, 599 U.S. at 19–20; *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 259 (2015); *Shaw v. Reno*, 509 U.S. 630, 651–52 (1993).

364. Courts often discuss the second and third preconditions together. The second requires the minority group to be “politically cohesive.”

Gingles, 478 U.S. at 51. Cohesiveness concerns whether “a representative of [a minority group’s] choice would in fact be elected.” *Milligan*, 599 U.S. at 18 (quoting *Grove*, 507 U.S. at 40). Relatedly, the third precondition is that “the [Anglo] majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Gingles*, 478 U.S. at 51 (citation omitted). The last precondition “establish[es] that the challenged districting thwarts a distinctive minority vote’ at least plausibly on account of race.” *Milligan*, 599 U.S. at 19 (quoting *Grove*, 507 U.S. at 40). Unless both preconditions are met, “the challenged districting [does not] thwart[] a distinctive minority vote by submerging it in a larger [Anglo] voting population.” *Grove*, 507 U.S. at 40.

365. Plaintiffs usually demonstrate minority political cohesion by showing that “a significant number of minority group members usually vote for the same candidates.” *Gingles*, 478 U.S. at 56; *see also Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988). That is described as “bloc voting”¹⁴ and typically means that a large majority of the group favors the same candidates. When minorities and Anglos vote in opposing blocs, courts

¹⁴ *E.g.*, *Strickland*, 556 U.S. at 19 (plurality opinion); *Fusilier v. Landry*, 963 F.3d 447, 458 (5th Cir. 2020).

conclude that voting is “racially polarized” and typically hold that a plaintiff has established the second and third preconditions.

366. The second and third preconditions view the redistricting process from different vantages. A plaintiff must show the second precondition for the minority population in its *proposed* district. *See Harris*, 581 U.S. at 302; *LULAC*, 548 U.S. at 427; *Grove*, 507 U.S. at 40. The third precondition must be established for the *challenged* district. *See Harris*, 581 U.S. at 302; *LULAC*, 548 U.S. at 427; *Grove*, 507 U.S. at 40. And each of these preconditions must be shown on a district-by-district basis. *See Wis. Legislature*, 599 U.S. at 404–05; *Abbott v. Perez*, 138 S. Ct. 2305, 2332 (2018); *LULAC*, 548 U.S. at 437.

a. Sufficiently Large and Geographically Compact

367. The defendants do not dispute that Galveston County’s Black and Latino communities, when considered as a coalition, are sufficiently large to satisfy the first *Gingles* precondition. Instead, they contend that coalition claims are *per se* unlawful and that the plaintiffs’ illustrative plans are not reasonably configured. The court rejects these arguments.

368. Coalition districts are “districts in which minorities are together a CVAP majority, but no individual minority group is.” *LULAC v. Abbott*, 604 F. Supp. 3d 463, 500 (W.D. Tex. 2022). The Fifth Circuit permits coalition

claims under § 2. See *LULAC, Council No. 4434 v. Clements*, 999 F.2d 831, 863–64 (5th Cir. 1993) (en banc); *Campos*, 840 F.2d at 1244. The cohesiveness of minority coalitions is “treated as a question of fact, allowing aggregation of different minority groups where the evidence suggests that they are politically cohesive.” *Clements*, 999 F.2d at 864. In the Fifth Circuit, “[t]here is nothing in the law that prevents . . . plaintiffs from identifying the protected aggrieved minority to include both Blacks and [Latinos].” *Campos*, 840 F.2d at 1244.

369. “Precedent in the Fifth Circuit is governed by a strict rule of orderliness, such that later panels of that court, and much less district courts within the circuit, cannot overturn decisions of prior panels.” *Abbott*, 604 F. Supp. 3d at 493. The court will follow well-established Fifth Circuit precedent and recognize that Blacks and Latinos together form to a coalition that satisfies the first *Gingles* precondition.

370. Additionally, the plaintiffs’ illustrative plans—and Map 1—demonstrate that Galveston County’s Black and Latino population is geographically compact enough to form a majority of eligible voters within a reasonably configured commissioners-court precinct. Cooper, Fairfax, and Dr. Rush have provided several illustrative plans that contain one majority Black and Latino commissioners-court precinct and adhere to traditional

redistricting criteria, including equal population, contiguity, and compactness. These illustrative maps are but a few examples of a multitude of potential districts that are reasonably configured and that contain a majority Black and Latino population by CVAP.

371. Additionally, the plaintiffs do not need to consider specific communities of interest when drawing illustrative maps to satisfy the first *Gingles* precondition. *Kumar v. Frisco Indep. Sch. Dist.*, 476 F. Supp. 3d 439, 499 (E.D. Tex. 2020). The plaintiffs’ illustrative maps still sufficiently preserve communities of interest—namely the Black and Latino communities in benchmark Precinct 3. As the Supreme Court recently affirmed in *Milligan*, a party satisfies the first *Gingles* precondition by showing that a majority-minority precinct “comports with traditional districting criteria, such as being contiguous and reasonably compact.” 599 U.S. at 18. The plaintiffs have done so here.

372. Furthermore, “cultural compactness” is neither an element of a § 2 claim nor a component of the first *Gingles* precondition. In *LULAC v. Perry*, the Supreme Court held that one of six Latino opportunity districts was not “reasonably compact.” 548 U.S. at 430. The district contained “a 300-mile gap between the Latino communities . . . and a similarly large gap between the needs and interests of the two groups.” *Id.* at 432, 434 (noting

that “the different characteristics, needs, and interests of the Latino community near the Mexican border and the one in and around Austin are well supported and uncontested”). The Court noted that “in some cases members of a racial group in different areas—for example, rural and urban communities—could share similar interests and therefore form a compact district if the areas are in reasonably close proximity.” *Id.* at 435. The Court concluded its discussion with this critical caveat: “We emphasize it is the enormous geographical distance separating the [two] communities, coupled with the disparate needs and interests of these populations—not either factor alone—that renders [the district] noncompact for § 2 purposes.” *Id.*

373. The Black and Latino areas joined in the plaintiffs’ illustrative maps are marked by neither “enormous geographical distance” nor “disparate needs and interests.” *See id.* To the contrary, there is substantial quantitative evidence, supported by lay-witness testimony, that the needs and interests of communities included in the plaintiffs’ illustrative plans are similar, including issues of ongoing discrimination. Galveston County’s Black and Latino community, therefore, is reasonably compact.

374. The plaintiffs’ illustrative plans satisfy the traditional redistricting principle of geographic compactness. Cooper, Fairfax, Dr. Rush, and Dr. Owens testified that the plaintiffs’ illustrative maps are

geographically compact. Indeed, their illustrative plans have compactness scores comparable to—and, in some cases, better than—the enacted plan. Even Dr. Owens agreed that the illustrative plans are as compact as the enacted plan. Dkt. 232 at 229, 276.

375. While district shape is relevant to determining whether a district satisfies the compactness inquiry, the first *Gingles* precondition “does not require some aesthetic ideal of compactness”; instead, it simply mandates “that the [minority] population be sufficiently compact to constitute a majority in a single-member district.” *Houston v. Lafayette County*, 56 F.3d 606, 611 (5th Cir. 1995) (quoting *Clark v. Calhoun County (Clark I)*, 21 F.3d 92, 95 (5th Cir. 1994)). Here, the plaintiffs’ illustrative plans are reasonably compact, and the court does not need to weigh them against the enacted plan in a “beauty contest.” *Milligan*, 599 U.S. at 21.

376. All other traditional redistricting principles are satisfied in the plaintiffs’ illustrative plans. They are all contiguous and satisfy the equal-population criterion. The Supreme Court has recognized that a redistricting plan for local jurisdictions with a maximum overall population deviation under 10% is consistent with the one-person, one-vote principle. *See Evenwel v. Abbott*, 578 U.S. 54, 60 (2016). Cooper, Fairfax, and Dr. Rush applied this deviation measure appropriately when assessing their

illustrative plans. The population deviation in the plaintiffs' illustrative plans is often lower than or like that of the enacted plan.

377. The plaintiffs' illustrative plans maintain "traditional boundaries" by minimizing municipal and voting-district splits. *LULAC*, 548 U.S. at 433 (quotation omitted). The illustrative plans perform better than or similar to the enacted plan in maintaining traditional boundaries.

378. To the extent that the enacted plan had higher compactness scores or lower population deviation than some of the plaintiffs' illustrative plans, such evidence is insufficient to defeat a § 2 claim. *See Milligan*, 599 U.S. at 19–22 (finding that the plaintiffs' illustrative plans were reasonably configured, even where the challenged plan arguably performed better on certain traditional redistricting criteria than the illustrative plans); *Chen v. City of Houston*, 206 F.3d 502, 519 (5th Cir. 2000). It is sufficient that Cooper, Fairfax, and Dr. Rush reliably testified that the illustrative plans comport with traditional redistricting principles such that they are reasonably configured.

379. Finally, the plaintiffs have demonstrated that race did not predominate in drawing the illustrative maps. Cooper, Fairfax, and Dr. Rush credibly testified that neither race nor any single criterion predominated when they drew their illustrative plans. The illustrative plans' compliance

with neutral redistricting criteria confirms this, and the defendants have failed to provide any reliable evidence to the contrary.

380. Moreover, the Supreme Court has recently clarified that “there is a difference between being aware of racial considerations and being motivated by them. The former is permissible; the latter is usually not. That is because redistricting legislatures will almost always be aware of racial demographics, but such race consciousness does not lead inevitably to impermissible race discrimination.” *Milligan*, 599 U.S. at 30 (cleaned up). Indeed, § 2 “demands consideration of race” because “[t]he question whether additional majority-*minority* districts can be drawn . . . involves a ‘quintessentially race-conscious calculus.’” *Id.* at 31 (quoting *Abbott*, 138 S. Ct. at 2315, *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994)). Consideration is not the same as predominance, and none of the defendants’ arguments or expert analyses provide any compelling evidence that race predominated in the plaintiffs’ illustrative plans.

381. The court concludes that the Black and Latino population in Galveston County is sufficiently large and geographically compact to constitute a majority in a commissioners-court precinct, satisfying the first *Gingles* precondition.

b. Political Cohesion

382. “[T]here is no simple doctrinal test for the existence of legally significant racial bloc voting,” *Gingles*, 478 U.S. at 58. But “the most persuasive evidence of inter-minority political cohesion for Section 2 purposes is to be found in *voting patterns*.” *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989) (discussing *Campos*, 840 F.2d at 1244–45). A 51% majority is “far short of the large majority typically required to show political cohesion.” *Abbott*, 604 F. Supp. 3d at 499. Yet unless the evidence indicates that two groups vote for opposing candidates, the court assesses the cohesion of Black and Latino voters “as a whole”—*i.e.*, as one “minority group” under *Gingles*—to determine “whether the minority group *together* votes in a cohesive manner.” *Campos*, 840 F.2d at 1245 (emphasis added).

383. “[L]ay[-]witness testimony concerning cooperation between the minority groups and statistical evidence can be used to prove cohesion.” *Perez v. Abbott*, 274 F. Supp. 3d 624, 669 (W.D. Tex. 2017). A court must undertake “a diligent inquiry into the political dynamics of the particular community” before treating multiple minority groups as a coalition, but “the determinative question is whether [B]lack-supported candidates receive a majority of the [Hispanic] vote [and] whether Hispanic-supported candidates receive a majority of the [Black] vote.” *Brewer*, 876 F.2d at 453.

384. All experts have agreed that general elections are the most probative elections to consider for this case. They also agree that RxC ecological inference is an appropriate method for analyzing the voting patterns of different demographic groups in Galveston County. Using RxC ecological-inference analysis, the undisputed results show that Black and Latino voters frequently prefer the same candidates. When the voter file is used to refine analysis using the BISG method, the results show that even higher estimated percentages of the two groups vote together. The general-election results strongly support a conclusion that a supermajority of Black voters vote for Latino-preferred candidates and vice-versa.

385. Primary elections are relevant but “less probative than general elections for detecting racially polarized voting in an at-large district because general elections present the same candidate pool to every voter, while primary elections limit voters to one party’s candidates.” *Patino*, 230 F. Supp. 3d at 694. The court assigns significantly less weight to the statistical analysis of primary elections. Still, the combined results of Drs. Oskooii’s and Alford’s Democratic-primary analyses show that Black and Latino voters shared a top-choice candidate in most Democratic primaries.

386. The plaintiffs produced significant evidence of non-statistical cohesion between the Black and Latino communities in Galveston County.

This leads the court to conclude that there are distinctive minority interests that tie the two communities together.

387. The statistical analyses from general elections, statistical analyses from primary elections, and non-statistical evidence of cohesion all support the conclusion that Black and Latino voters in Galveston County act as a coalition for purposes of the second *Gingles* precondition because “[B]lack-supported candidates receive a majority of the [Hispanic] vote [and] Hispanic-supported candidates receive a majority of the [Black] vote.” *Brewer*, 876 F.2d at 453.

388. The undisputed evidence shows that the combined Black and Latino coalition is highly cohesive. The undisputed RxC ecological-inference analysis shows that over 75% of Black and Latino voters have voted for the same candidates in numerous elections. This satisfies the *Gingles* standard that “a significant number of minority group members usually vote for the same candidates.” *Gingles*, 478 U.S. at 56.

389. Due to the limited usable data available for local non-partisan elections, the court affords very little weight to them.

390. The plaintiffs’ experts’ electoral-performance/reconstituted-election analyses show that if this cohesive group constitutes a majority of

eligible voters in a county-commissioner precinct, it can elect a candidate of their choice.

391. The court concludes that the county's Black and Latino populations act as a coalition and are politically cohesive.

c. Cannot Elect Candidate of Choice

392. Generally, an Anglo "bloc vote that normally will defeat the combined strength of minority support . . . rises to the level of legally significant [Anglo] bloc voting." *Rodriguez*, 964 F. Supp. 2d at 757.

393. The defendants do not dispute the statistical evidence of Drs. Barreto and Oskooii showing that more than 85% of Anglos vote cohesively for candidates running in opposition to those supported by more than 85% of Black and Latino voters. They also do not dispute the plaintiffs' electoral-performance/reconstituted-election analyses, which show that the degree of Anglo bloc voting is sufficient to defeat a minority-preferred candidate in each commissioner precinct in the enacted plan.

394. The undisputed evidence shows that Anglo voters in Galveston County vote cohesively and for candidates opposing those supported by a majority of Black and Latino voters. Anglo voters do so at a rate sufficient to defeat the minority-preferred candidate consistently in each of the enacted commissioners-court precincts.

395. The plaintiffs must also show “that the challenged districting thwarts a distinctive minority vote at least plausibly on account of race.” *Milligan*, 599 U.S. at 19 (quoting *Grove*, 507 U.S. at 40). After plaintiffs present statistical evidence showing a racially divergent voting pattern, the burden shifts to defendants to show that there is a race-neutral explanation for the racially divergent voting pattern. *Teague v. Attala County*, 92 F.3d 283, 290 (5th Cir. 1996); see *Gingles*, 478 U.S. at 63; *Rodriguez*, 964 F. Supp. 2d at 760. Whether the Anglo-preferred elected officials are responsive to minority communities “is intimately related” to the legal significance of bloc voting because bloc voting “allows those elected to ignore [minority] interests without fear of political consequences.” *Clements*, 999 F.2d at 857 (quoting *Gingles*, 478 U.S. at 48 n.14).

396. Contrary to the defendants’ contentions, the plaintiffs do not need to initially show that partisan affiliation does *not* cause divergent voting patterns. See *Rodriguez*, 964 F. Supp. 2d at 760; *Lopez v. Abbott*, 339 F. Supp. 3d 589, 603 (S.D. Tex. 2018).

397. By establishing the second and third *Gingles* preconditions through acceptable statistical evidence and lay testimony, the plaintiffs have shown that racially polarized voting patterns exist in Galveston County elections.

398. The defendants have failed to present reliable or methodologically sound evidence sufficient to dispute that Anglo bloc voting “thwarts” the Black and Latino voting coalition in Galveston County for reasons wholly unconnected to race. The preponderance of the evidence supports the conclusion that the challenged plan “‘thwarts a distinctive minority vote’ at least plausibly on account of race.” *Milligan*, 599 U.S. at 19 (quoting *Grove*, 507 U.S. at 40).

399. In reaching this conclusion, the court gives considerable weight to the facts that:

- there is a lack of successful minority candidates emerging from Republican primaries,
- there is an extreme degree of Anglo bloc voting for candidates running against minority-preferred candidates,
- minority candidates tend to only be elected from majority-minority areas,
- there are continued racial appeals in Galveston County politics,
- lay witnesses recounted instances of discrimination in Galveston County,
- there are persistent racial disparities across a wide range of measures in Galveston County, and
- Anglo voters in Galveston County overwhelmingly participate in Republican primaries, while Black and Latino voters in Galveston County overwhelmingly participate in Democratic primaries.

400. In sum, the court concludes that the plaintiffs have satisfied all three *Gingles* preconditions.

2. Step Two—Totality of the Circumstances

401. After examining the *Gingles* preconditions, courts must “adhere to the Supreme Court’s instruction to examine challenged laws and practices in an intensely fact-based and local totality-of-the-circumstances analysis.” *Veasey v. Abbott*, 830 F.3d 216, 261 (5th Cir. 2016) (citing *Gingles*, 478 U.S. at 36–38). The totality-of-the-circumstances determination is “flexible” and “guided by factors drawn from the Senate Judiciary Committee report on the 1982 amendments to the Voting Rights Act.” *Teague*, 92 F.3d at 292. These factors include:

- (1) the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of a minority group to register, to vote, or otherwise to participate in the democratic process;
- (2) the extent to which voting in the elections of the state or political subdivision is racially polarized;
- (3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
- (4) if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
- (5) the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in

such areas as education, employment[,] and health, which hinder their ability to participate effectively in the political process;

(6) whether political campaigns have been characterized by overt or subtle racial appeals; [and]

(7) the extent to which members of the minority group have been elected to public office in the jurisdiction.

S. Rep. at 28–29. Other factors include whether “there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group” and whether “the policy underlying the state or political subdivision’s use of such . . . standard, practice, or procedure is tenuous.” *Id.*

402. Ultimately, § 2 violations require “an intensely local appraisal of the electoral mechanism at issue, as well as a searching practical evaluation of the past and present reality.” *Milligan*, 599 U.S. at 19. Importantly, there is “no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” S. Rep. at 29. The court may instead use its “overall judgment, based on the totality of circumstances and guided by those relevant factors in the particular case,” to decide “whether the voting strength of minority voters is . . . ‘minimized or canceled out.’” *Id.* at 29 n.118. “In short, these factors simply suggest a framework for evidence to be presented at trial which is likely to aid a court’s later consideration towards legal conclusions.” *Johnson*, 593 F. Supp. 3d at 600.

403. “[I]t 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.” *Clark I*, 21 F.3d at 97 (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993)).

404. Here, most of the Senate factors support § 2 liability. *See generally* PXs-335; 414. Substantial socio-economic differences between Black and Latino residents and Anglo residents in Galveston County create barriers to voting. The presence of racial appeals in recent local political campaigns, relative lack of Black and Latino electoral success, and lack of responsiveness on the part of Galveston County’s officials to the needs of the Black and Latino communities further support this finding. Finally, the 2021 redistricting plan’s justifications are tenuous and will prevent Galveston County’s Black and Latino communities from electing a candidate of their choice.

405. Senate Factor 2: Racially Polarized Voting. The plaintiffs have shown extensive evidence of racially polarized voting in Galveston County. Racial-bloc voting “allows those elected to ignore [minority] interests without fear of political consequences.” *Rogers v. Lodge*, 458 U.S. 613, 623

(1982). Racial-bloc voting continues to be a reality in Galveston County elections.

406. Senate Factor 3: Voting Practices Enhancing the Opportunity for Discrimination. The plaintiffs have also shown that voting practices exist that may “enhance the possibility that the [c]ounty’s map has a dilutive effect.” *Rodriguez*, 964 F. Supp. 2d at 785. Practices deemed to satisfy this factor exist in Galveston County, including voter purges and racially disparate access to polling places. *Id.* at 780–84. The majority-vote requirement for primaries provides further support. *See Jamison v. Tupelo*, 471 F. Supp. 2d 706, 714 (N.D. Miss. 2007) (“Majority[-]vote primaries reduce the chance that a minority candidate will advance to a general election.”). The court finds that this factor weighs slightly in the plaintiffs’ favor.

407. Senate Factor 5: Effects of Discrimination Hindering Political Participation. The plaintiffs have demonstrated pervasive socio-economic disparities between Galveston County’s Black and Latino communities on the one hand, and the Anglo population on the other. The defendants do not contest this evidence. *See* Dkt. 230 at 280.

408. In addition, Black and Latino voters participate in Galveston County elections at a lower rate than do Anglo voters. Because “courts have

recognized that disproportionate educational[,] employment, income levels[,] and living conditions arising from past discrimination tend to depress minority political participation” plaintiffs “need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation.” S. Rep. at 29 n.114 (citing *White v. Regester*, 412 U.S. 755, 768 (1973), *Kirksey v. Bd. of Supervisors*, 528 F.2d 139, 145 (5th Cir. 1977)); see also *Clements*, 999 F.2d at 867 (noting that the Senate Report does not “insist[] upon a causal nexus between socioeconomic status and depressed participation”).

409. Nevertheless, the plaintiffs’ experts have shown that the effects of the education, economic, housing, health, and other racially linked disparities in Galveston County negatively affect voter behavior.

410. Senate Factor 6: Racial Appeals. Evidence of racial appeals in political campaigns, even while “neither frequent nor routine,” can “contribute” to a finding that minority voters lack equal opportunities to participate politically. See *Patino*, 230 F. Supp. 3d at 715. Here, the plaintiffs have demonstrated this factor by showing un rebutted evidence of racial appeals in recent political campaigns. These racial appeals contribute—albeit much less than other factors—to the court’s finding that Black and Latino voters do not have equal opportunities for political participation.

411. Senate Factor 7: Minority Election to Public Office. Black and Latino candidates' success in elections "has been slow, slight, and disproportionately lower than" their population share in Galveston County. *See Patino*, 230 F. Supp. 3d at 715. In analyzing whether "minority voices are heard in a meaningful way during pertinent political decisions, versus being shut out of the process altogether," the court concludes that the enacted plan's elimination of Precinct 3 falls squarely within the latter category. *Johnson*, 593 F. Supp. 3d at 608; *see also Clark v. Calhoun County*, 88 F.3d 1393, 1397 (5th Cir. 1996) (*Clark II*) (holding that lack of minority electoral success in a relevant district has a significant effect on the evaluation of vote-dilution claims). The defendants' reliance on exogenous elections "not involving the particular office at issue" is "less probative than elections involving the specific office." *Clark II*, 88 F.3d at 1397. This factor strongly supports that Blacks and Latinos do not have an equal opportunity to participate in the political process.

412. Additional Senate Factor: Lack of Responsiveness. Beyond the Senate factors, the totality-of-the-circumstances inquiry "requires a court to ask whether there is a significant lack of responsiveness by elected officials to the minority group members' particularized needs." *Patino*, 230 F. Supp. 3d at 715–16. This factor weighs in the plaintiffs' favor. Numerous witnesses

testified to the lack of responsiveness by the commissioners court in public housing—particularly after Hurricane Ike—as well as in education and criminal justice. Additionally, the process by which the commissioners court adopted the 2021 redistricting plan demonstrates the county’s pattern of “[i]gnoring clear and supported objections about the racially disparate impact of a proposed law,” which is probative of a lack of responsiveness to minority concerns. *Id.* at 717 (citing *Veasey*, 830 F.3d at 262).

413. Additional Senate Factor: Tenuousness of Policy. Moreover, “[a]long with elected officials’ lack of responsiveness to minority needs, a tenuous fit between the expressed policy and the provisions of the law bolsters the conclusion that minorities are not able to equally participate in the political process.” *Veasey*, 830 F.3d at 262–63. Although a jurisdiction “is entitled to make policy choices about when and how it will address various priorities,” a policy’s rationales are tenuous when the enacted law “fail[s] to correspond in any meaningful way to the legitimate interests [it] claims to have been advancing.” *Id.* at 263.

414. Here, very few members of the public advocated for creating a single coastal precinct. This criterion is further undermined by the existence of several maps that both create a single coastal precinct and maintain a

majority-minority precinct. *Id.* Drawing a coastal precinct neither requires nor justifies cracking the county’s minority population.

415. Additional Relevant Factor: Proportionality. Finally, “proportionality is ‘a relevant fact in the totality of circumstances.’” *LULAC*, 548 U.S. at 436 (quoting *De Grandy*, 512 U.S. at 1000); *see also De Grandy*, 512 U.S. at 1025 (O’Connor, J., concurring) (“Lack of proportionality is probative evidence of vote dilution.”). In a vote-dilution claim, “it is the status of the candidate as the *chosen representative of a particular racial group*, not the race of the candidate, that is important.” *Citizens for a Better Gretna v. City of Gretna*, 834 F.2d 496, 503 (5th Cir. 1987) (quoting *Gingles*, 478 U.S. at 69).

416. For that reason, it is irrelevant that Commissioner Armstrong is Black. His precinct is predominantly Anglo, and several witnesses—including Commissioner Armstrong himself—testified that he would not be the candidate of choice of Black and Latino voters.

417. The county’s plan precludes Black and Latino voters from electing a candidate of choice in any commissioners precinct. It does so even though these two groups comprise 38% of the total population in Galveston County. Moreover, it eliminated an existing commissioners precinct where such an opportunity had existed for decades.

418. “Shut Out of the Process Altogether.” Another judge in this district recently noted in another Voting Rights Act case that “an underlying concern” in such cases “is whether minority voices are heard in a meaningful way” or are “shut out of the process altogether.” *Johnson*, 593 F. Supp. 3d at 608 (Eskridge, J.). Looking—as this court must—at the totality of the circumstances, it is stunning how completely the county extinguished the Black and Latino communities’ voice on its commissioners court during 2021’s redistricting.

419. Galveston County was created in 1838. From its founding, it would be 133 years before a Latino, Frank Carmona, was elected to commissioners court. And it would be 150 years before a Black, Wayne Johnson, won a seat. Commissioner Johnson’s district, old Precinct 3, would continue to elect the minority community’s candidate of choice right up until 2021, when Precinct 3 was summarily carved up and wiped off the map. Blacks’ and Latinos’ commissioner of choice was always a lonely voice on the court, but that commissioner’s presence—whether it was Wayne Johnson or Stephen Holmes—meant that “minority voices [were] heard in a meaningful way.” *Id.* The result of 2021’s redistricting, however, has amounted to Black and Latino voters, as a coalition of like-minded citizens with shared concerns, “being shut out of the process altogether.” *Id.*

420. This is not a typical redistricting case. What happened here was stark and jarring. The commissioners court transformed Precinct 3 from the precinct with the highest percentage of Black and Latino residents to that with the lowest percentage. Dkt. 223 at 42. The circumstances and effect of the enacted plan were “mean-spirited” and “egregious” given that “there was absolutely no reason to make major changes to Precinct 3.” *Id.* at 42–43. Looking at the totality of the circumstances, it was a clear violation of § 2 of the Voting Rights Act. And it must be overturned.

421. The plaintiffs have demonstrated that the totality of the circumstances shows that Black and Latino voters in Galveston County have “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Gingles*, 478 U.S. at 63.

3. Strict Scrutiny

422. Finally, the defendants argue in their post-trial briefing that § 2 is “no longer constitutional” because it is “too temporally distant from the wrongs it was built to remedy.” Dkt. 244 at 66. According to them, “the lack of a temporal limit or termination mechanism” in § 2 “no longer satisfies strict scrutiny.” *Id.* at 65. They rely on the Supreme Court’s recent decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard*

College, which reasoned that race-based admissions programs must have reasonable durational limits. *Id.* at 65 (citing 600 U.S. 181, 223–28 (2023)). Additionally, they cite *obiter dictum* from *Shelby County*, where the Court noted that the Voting Rights Act’s coverage formula for preclearance used “decades-old data relevant to decades-old problems, rather than current data reflecting current needs.” *Id.* (citing *Shelby County*, 570 U.S. at 553). Finally, the defendants highlight Justice Kavanaugh’s concurrence in *Milligan*, in which he expressly noted that he did not consider this temporal-limit argument. *Id.* (citing *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring)). From Kavanaugh’s concurrence, the defendants surmise that “a [five-]justice majority might have reached a different result” if the parties preserved such an issue for appeal. Dkt. 244 at 66.

423. In *Milligan*, Justice Kavanaugh briefly discussed this temporal argument:

Justice [Thomas] notes, however, that even if Congress in 1982 could constitutionally authorize race-based redistricting under § 2, for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future. But Alabama did not raise that temporal argument in this Court, and therefore I would not consider it at this time.

599 U.S. at 45 (internal citation omitted). Although the two dissenting opinions “raised arguments about the constitutionality of the *Gingles* framework, neither of them stated that Section 2 of the Voting Rights Act

should be deemed unconstitutional.” *Alpha Phi Alpha Fraternity, Inc. v. Raffensperger*, 2023 WL 5674599, at *20 (N.D. Ga. July 17, 2023) (citing *Milligan*, 599 U.S. at 45–94 (Thomas, J., dissenting), *id.* at 95–109 (Alito, J., dissenting)). As affirmed by a five-justice majority in *Milligan*, the *Gingles* framework remains controlling precedent.

424. The court is unconvinced by this temporal-limit argument. The “mere fact that race [is] given some consideration in the districting process, and even the fact that minority-majority districts were intentionally created, does not alone suffice in all circumstances to trigger strict scrutiny.” *Chen*, 206 F.3d at 506 (citing *Shaw v. Hunt*, 517 U.S. 899, 904–05 (1996)). The Supreme Court has assumed that compliance with § 2 can be narrowly tailored to serve a compelling interest. *Bush v. Vera*, 517 U.S. 952, 977 (1996). And the Fifth Circuit has expressly held that compliance with § 2 “constitutes a compelling government interest” that may narrowly tailor the use of race in restricting plans “at the expense of traditional political concerns no more than is reasonably necessary to remedy the wrong.” *Clark II*, 88 F.3d at 1405–06.

425. Although the defendants speculate that the Voting Rights Act has outlived its usefulness, they have not shown that § 2 does not narrowly remedy the current discriminatory effects in Galveston County’s

commissioners-court elections. Accordingly, § 2's lack of a temporal limit survives strict scrutiny.

B. Remaining Constitutional Claims

426. In the 1982 amendments to § 2 of the Voting Rights Act, Congress “repudiated” a requirement that plaintiffs prove intentional discrimination to succeed on a claim that a challenged action violates the Voting Rights Act.” *Patino*, 230 F. Supp. 3d at 718 (quoting *Gingles*, 478 U.S. at 44). The amended § 2 “was designed to restore the ‘results test’—the legal standard that governed voting discrimination cases” before the Supreme Court’s decision in *Bolden*. *Gingles*, 478 U.S. at 44 n.8. Thus, the “right” question following the amendment and *Gingles* is not whether the challenged mechanism “was adopted or maintained with the intent to discriminate against minority voters” but instead whether it left the plaintiffs without “an equal opportunity to participate in the political process and to elect candidates of their choice.” *Id.* at 44 (quoting S. Rep. at 28).

427. This court does not need to make findings on intentional discrimination or racial gerrymandering in this case. When plaintiffs succeed on their *Gingles* claims, the court need not determine the outcome of the intentional-discrimination or racial-gerrymandering claims unless “the remedy to which [the plaintiffs] would be entitled for a discriminatory intent

violation is potentially broader than the remedy the district court may fashion for the discriminatory impact violation.” *Id.* at 230 n.11 (citing *City of Richmond v. United States*, 422 U.S. 358, 378 (1975)).

428. Here, the relief the plaintiffs seek is not broader than that which they are entitled to under § 2. They all seek: (1) declaratory judgments that the enacted plan violates the law; (2) preliminary and permanent injunctions preventing the defendants from calling, holding, supervising, or certifying any elections under the enacted plan; (3) procedures for the commissioners court to adopt a valid redistricting plan; and (4) attorneys’ fees and costs. Dkt. 42 at 32–34; *Galveston County*, No. 3:22-cv-97, ECF No. 38 at 25–26 (May 31, 2022); *Dickinson Bay Area Branch NAACP*, No. 3:22-cv-117, ECF No. 38 at 38–39 (S.D. Tex. May 25, 2022); *see also* Dkts. 241, 242-1, 243-1. The requested relief is neither exclusive to intentional-discrimination or racial-gerrymandering claims nor broader than the relief allowed under § 2.

429. The court acknowledges that in their post-trial briefing the NAACP plaintiffs have asked the court “to determine the appropriateness of retaining jurisdiction under Section 3(c) of the Voting Rights Act”—*i.e.*, instituting a preclearance requirement on Galveston County. Dkt. 242 at 30. Section 3 permits this remedy if the court finds “that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred

within the territory of” the defendant state or political division. 52 U.S.C. § 10302(c). Under § 2 alone, the court could not order § 3(c) preclearance. But the court sees this requested relief as akin to “special damages”—“those which, although resulting from the commission of [a] wrong, are neither such a necessary result that they will be implied by law nor will be deemed within the contemplation of the parties.” *Hycel, Inc. v. Am. Airlines, Inc.*, 328 F. Supp. 190, 193 (S.D. Tex. 1971). None of the plaintiffs pleaded for relief under § 3(c)—let alone with particularity—as required by Fed. R. Civ. P. 9(g). Because the plaintiffs never sought this relief with any specificity before or during trial, the court will not entertain such relief now.

430. Therefore, the court declines to reach the plaintiffs’ remaining intentional-discrimination and racial-gerrymandering claims.

IV. Relief

431. “When devising a remedy to a § 2 violation, the district court’s ‘first and foremost obligation . . . is to correct the [§ 2] violation.’” *United States v. Brown*, 561 F.3d 420, 435 (5th Cir. 2009) (quoting *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1022 (8th Cir. 2006)). Any remedy “should be sufficiently tailored to the circumstances giving rise to the § 2 violation.” *Veasey*, 830 F.3d at 269 (quoting *Brown*, 561 F.3d at 435). When possible, courts “should respect a legislature’s policy objectives when crafting a

remedy,” even “when some aspect of the underlying law is unenforceable.”
Id.

432. The court recognizes that its review of the commissioners court’s redistricting process “represents a serious intrusion on the most vital of local functions.” *Miller*, 515 U.S. at 915. “There are times when a court might give a . . . legislature an opportunity to cure the infirmities . . . before permitting the district court to fashion a remedy.” *Veasey*, 830 F.3d at 269. Generally, courts should “offer governing bodies the first pass at devising” § 2 remedies. *Id.* (quoting *Brown*, 561 F.3d at 435); see also *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (“[R]edistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to preempt.”). But “when it is *not* practicable to permit a legislative body this opportunity because of an impending election, it becomes the unwelcome obligation of the federal court to devise and impose a remedy pending later legislative action.” *Veasey*, 830 F.3d at 270 (cleaned up) (quoting *Wise*, 437 U.S. at 540).

433. Galveston County’s 2024 elections are imminent. The commissioners court must have an election map in place before the statutory opening date for candidate filing on November 11, 2023. See Tex. Elec. Code

§ 172.023(b). As established, the enacted plan violates § 2 of the Voting Rights Act, and so the county cannot use this map for future elections.

434. To balance the commissioners court's control over the redistricting process against the need for a plan that conforms with § 2 for the 2024 election, the court will allow the defendants until **October 20, 2023**, to file a redistricting plan with supporting expert analysis establishing that it adheres to § 2 and has at least one majority-minority precinct. The plaintiffs may file consolidated objections to the defendants' plan with proposed alternative plans and supporting expert analysis by **October 27, 2023**. The court will conduct an in-person hearing on **November 1, 2023, at 2 p.m.** to decide which plan to order into effect.


435. If the defendants fail or prefer not to submit a map and plan, they are ordered to implement the illustrative plan presented by Anthony Fairfax on August 10, 2023 (PX-339), on or before **November 1, 2023**, and use that plan for all future elections until the commissioners court adopts a different plan.

V. Conclusion

The court finds that the 2021 commissioners-court precinct map adopted by the Galveston County Commissioners Court on November 12, 2021, violates § 2 of the Voting Rights Act. Regardless of the intent or

motivation of the commissioners court, the enacted plan denies Black and Latino voters an equal opportunity to participate in the political process and to elect a candidate of their choice. The court will enter a separate order conforming to these findings and conclusions.

Signed on Galveston Island this 13th day of October, 2023.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE

APPENDIX B

ENTERED

October 13, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

TERRY PETTEWAY, *et al.*,

Plaintiffs,

VS.

GALVESTON COUNTY, TEXAS,
et al.,

Defendants.

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3:22-CV-57

ORDER


In its findings of fact and conclusions of law issued today, the court held that the 2021 commissioners-court precinct map adopted by the Galveston County Commissioners Court on November 12, 2021, violates § 2 of the Voting Rights Act. Dkt. 250. The enacted map denies Black and Latino voters the equal opportunity to participate in the political process and the opportunity to elect a representative of their choice to the commissioners court. Accordingly, the court permanently enjoins the defendants from administering, enforcing, preparing for, or in any way permitting the nomination or election of county commissioners from the commissioners-court precinct map as currently configured. The plaintiffs are the prevailing parties and judgment is hereby entered in their favor.

Having failed to comply with § 2 of the Voting Rights Act, the commissioners court must adopt another plan in time for the 2024 election, which means before November 11, 2023—the statutory opening date for candidate filing. So the court orders the following remedial proceedings:

1. By **October 20, 2023**, the defendants shall file with the court a revised redistricting plan with sufficient supporting expert analysis establishing that it complies with § 2 of the Voting Rights Act. Along with these materials, the defendants may include a memorandum of law of no more than 10 pages.
2. By **October 27, 2023**, the plaintiffs may file objections to the defendants' revised plan and, if desired, proposed alternative plans with supporting expert analysis. The plaintiffs' *consolidated* objections shall be no more than 10 pages.
3. The court will conduct an in-person remedial hearing on **November 1, 2023, at 2 p.m.** to decide which redistricting plan will be ordered into effect.
4. If the defendants fail or prefer not to submit a revised plan, they are ordered to implement the illustrative plan presented by Anthony Fairfax on August 10, 2023 (PX-339), on or before **November 1, 2023**, and use that plan for all future elections until the commissioners court adopts a different plan.

The court refrains from deciding attorneys' fees until the plaintiffs seek such relief under Fed. R. Civ. P. 54(d).

Signed on Galveston Island this 13th day of October, 2023.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE

APPENDIX C

ENTERED

October 15, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

TERRY PETTEWAY, *et al.*,

Plaintiffs,

VS.

GALVESTON COUNTY, TEXAS,
et al.,

Defendants.

§
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3:22-CV-57

ORDER

Before the court is the defendants’ emergency motion to stay injunction pending appeal. Dkt. 254.

A district court considers four factors in deciding motions to stay pending appeal:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested . . . ; and (4) where the public interest lies.

SEC v. Barton, 79 F.4th 573, 581 (5th Cir. 2023) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). Because the defendants have established none of these factors, the court denies their motion.

The defendants also contend that the seven-day deadline the court has imposed for submitting a revised map is “too short,” and the “more

reasonable option is to allow the enacted plan to remain in force pending the outcome of [the] appeal.” Dkt. 254 at 6. But the court’s deadline is entirely appropriate, especially considering that the defendants required Thomas Bryan to draw both Map 1 and Map 2, the enacted plan adopted during the 2021 redistricting cycle, in just eight days. *See* Dkt. 231 at 111–13, 225. Their contention that the court’s deadline is too short lacks credibility.

Further, the defendants argue that if a plan is “found to be unlawful very close to the election date, the only reasonable option may be to use the plan one last time.” Dkt. 254 at 6 (quoting *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018)). But the court is not persuaded. While the candidate-filing period opens in just three weeks, the 2024 primary election is still several months away, and the general election will not occur for another year. The court maintains the position it took in its findings and conclusions: the defendants must adopt a new plan before the 2024 election. Dkt. 250 ¶¶ 431–435.

That said, the court will adjust its remedial schedule to provide additional time. The defendants will have seven more days—until **October 27, 2023**—to file a redistricting plan and supporting expert analysis. The plaintiffs may file objections and, if desired, proposed alternative plans by **November 3, 2023**. The court reschedules its in-person remedial hearing

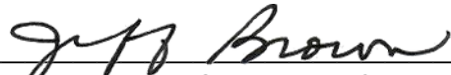
to **November 8, 2023, at 3:00 p.m.** If the defendants fail or prefer not to submit a revised plan, they are ordered to implement the Fairfax illustrative plan or Map 1, *see infra*, by **November 8, 2023**. The court will not allow further extensions to its remedial schedule.

Finally, the defendants argue that requiring them to potentially adopt the Fairfax plan is improper because “Commissioner Apffel’s house is not within Fairfax’s proposed Precinct 1, which would prevent Apffel from running for re-election.” Dkt. 254 at 2–3. The defendants can avoid this by filing a proposed plan by October 27 that ensures that the current commissioners reside in their new precincts. That said, the court did not intend to choose a map that draws incumbents out of their precincts. Accordingly, to alleviate the court’s oversight, the defendants may adopt Map 1—as considered during the commissioners court’s special meeting on November 12, 2021—instead of the Fairfax map should they fail or prefer not to submit a revised plan. Otherwise, the court will address these concerns at the November 8 hearing.

* * *

The defendants’ emergency motion to stay injunction pending appeal is denied. Dkt. 254. The remedial proceedings outlined in the court’s order of October 13, 2023, are amended as described above.

Signed on Galveston Island this 15th day of October, 2023.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE

APPENDIX D

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

TERRY PETTEWAY, et al. Plaintiffs, v. GALVESTON COUNTY, TEXAS, et al. Defendants.	§ § § § § § § § §	Civil Action No. 3:22-CV-00057 (consolidated)
UNITED STATES OF AMERICA, Plaintiffs, v. GALVESTON COUNTY, TEXAS, et al. Defendants.	§ § § § § § § § §	Civil Action No. 3:22-CV-00093
DICKINSON BAY AREA BRANCH NAACP, et al. Plaintiffs, v. GALVESTON COUNTY, TEXAS, et al. Defendants.	§ § § § § § § § §	Civil Action No. 3:22-CV-00117

**DEFENDANTS' EMERGENCY MOTION TO STAY
INJUNCTION PENDING APPEAL**

**DEFENDANTS’ EMERGENCY MOTION TO STAY
INJUNCTION PENDING APPEAL**

Defendants Galveston County, Texas, the Galveston County Commissioners Court, County Judge Mark Henry, and County Clerk Dwight Sullivan file this emergency motion asking that the Court stay its October 13, 2023 Order (Dkt. 251) rejecting Galveston County’s adopted redistricting plan, pending the outcome of Defendants’ appeal.

INTRODUCTION

On October 13, 2023, the Court entered an order providing mandatory injunctive relief to Plaintiffs and requiring Defendants to file a revised redistricting plan by October 20, 2023. Dkt. 251 at 2. The Court also set a hearing on November 1st to consider such a plan. In the alternative to submitting a new plan within seven days, the Court has ordered that Defendants must implement the illustrative plan presented by Anthony Fairfax in Plaintiffs’ Exhibit 339 (attached as Appendix A). The Court provides in its Order that a new plan must be adopted “in time for the 2024 election, which means before November 11, 2023—the statutory opening date for candidate filing.” Dkt. 251 at 2.

The Court’s imposition of a 7-day timeline in which to adopt and file with the Court a “revised redistricting plan with sufficient supporting expert analysis establishing that it complies with § 2” of the VRA is simply not enough time. Dkt. 251 at 2 ¶ 1. Moreover, the Court’s decision to put in place the Fairfax map if Defendants do not meet this deadline is, respectfully, improper. The Fairfax map, among other things, cannot be enacted without irreparable harm because its boundaries do not keep each of the Commissioners within their precincts—Commissioner Apffel’s house is not within Fairfax’s proposed Precinct 1,

which would prevent Apffel from running for re-election. *See* Tex. Const. Art. 16 sec. 14 (Commissioners must reside in precinct); Art. 5 sec. 18(d) (when boundaries change, Commissioners serve out the term in the precinct to which they were elected). Defendants have filed a notice of appeal with this request, and ask for an emergency stay of this order, pending the outcome of the appeal.

STANDARD OF REVIEW

Courts consider four factors when determining whether a stay should be granted during the pendency of an appeal:

1. whether the applicants have made a strong showing that they are likely to succeed on the merits;
2. whether the applicants will be irreparably injured absent a stay;
3. whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
4. where the public interest lies.

Nken v. Holder, 556 U.S. 418, 426 (2009). The first two factors are “the most critical.” *Id.* at 434. These factors are not to be applied “in a rigid or mechanical fashion.” *Campaign for S. Equal. v. Bryant*, 773 F.3d 55, 57 (5th Cir. 2014) (alterations accepted). A movant “need only present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.” *U.S. v. Baylor Univ. Med. Ctr.*, 711 F.2d 38, 39 (5th Cir. 1983) (citation omitted).

ARGUMENT

I. Defendants have made a strong showing that they are likely to succeed on the merits, on appeal.

The County believes it is likely to succeed on the merits of the specific claims in

this case. In addition, the Court should have “little difficulty concluding that the legal questions presented by this case are serious, both to the litigants involved and the public at large, and that a substantial question is presented for [the Fifth Circuit] to resolve.” *Campaign for S. Equal.*, 773 F.3d at 57. Defendants’ arguments are more thoroughly set forth in their post-trial briefing and responses, Doc. 244 and Doc. 249, and their findings of fact and conclusions of law, Doc. 245. Defendants have preserved all of these arguments and incorporate them here by reference. Defendants summarize several critical points here.

On appeal, Defendants will present arguments that there is no violation of the Voting Rights Act (“VRA”). As discussed in prior filings, the VRA does not provide a remedy for coalition claims, or entitlement to proportional representation. *See* Dkt. 176 at 20-22, Dkt. 244 at 33-35. While this Court understandably acknowledges prior cases in the Fifth Circuit, the Fifth Circuit can and does clarify, and if necessary overrule, itself. The Fifth Circuit should consider this fundamental issue in light of the conflicting decisions from other appellate courts. Also, Plaintiffs did not meet their *Gingles* I compactness burden (*see* Dkt 176 at 22-38, Dkt. 244 at 35-39, Dkt. 245 at 16-20 & 100-107). Plaintiffs’ evidence falls shockingly short of the requisite local analysis. Dkt. 245 at ¶¶ 426-27, 454-55. Rather, Plaintiffs’ experts largely address a nation-wide discussion of race and voting, rather than circumstances in Galveston County.

And while the Court discusses testimony relating to the significance of primary elections, whether primary elections are relevant in a cohesion analysis is a question for the Court, not witnesses. *LULAC v. Abbott*, 601 F. Supp. 3d 147, 165 (W.D. Tex. May 4, 2023) (“*Abbott I*”). What primary election results show on their face, particularly in a

coalition case, is critical and clear: whether different minority groups select the same candidates. *See id.* at 169 n.10 (“shared voting preferences at the primary level would be powerful evidence of a working coalition” but is not needed to prove cohesion for a single minority group). In fact, in *Abbott I*, the court agreed with Dr. Alford’s view that primary elections “are relevant to analyzing divisions within political coalitions and that partisan affiliation is the main driver of voter behavior in general elections.” *Id.* at 166.¹

Plaintiffs’ experts also failed to analyze data on the precinct level. Mr. Cooper, for example, relied on socioeconomic and other data that was based on municipalities, not precincts—municipalities that are cut into various sections by Plaintiffs’ own proposed precincts. For example, Mr. Fairfax’s proposed map has League City divided among all four precincts. Dr. Rush testified, contrary to Mr. Cooper, that populations from Texas City and League City can be included in one majority-minority precinct, even though he never analyzed whether or why such populations should be paired. Such evidence is no evidence at all. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593-94 (1993); *Curtis v. MS Petroleum*, 174 F.3d 661, 668 (5th Cir. 1999) (the issue of expert reliability includes whether they properly apply their methodology to the facts).

The Court placed the burden on Defendants to prove that politics, rather than race, accounted for racially polarized voting in the County under a *Gingles* analysis. While the voting evidence, including primary evidence considered inconsequential by this Court,

¹ Here, Dr. Alford analyzed 24 primary elections and found in only 2 did Black and Latino voters support the same candidate with 75% or more of their vote. DX 305 at 14-19; Dkt. 245 ¶¶432, 436-439. Even using Dr. Trounstine’s lower standard of cohesion, Latino and Black voters support each other’s candidates in only 8 out of 24 primaries. *Id.* But a one-third cohesion rate is no cohesion at all.

unmistakably shows partisanship explains voting results, the Fifth Circuit has not concluded that such a showing is Defendants' burden. Rather, Plaintiffs must establish all three *Gingles* preconditions. They did not meet their burden. Rather, polarized voting and polarization are present today—but in politics. Plaintiffs have failed to show that race that drives Galveston voters' decisions.

As discussed in Defendants' Closing Brief, the totality of the circumstances do not support a finding of vote dilution under the VRA. *See* Dkt 244 at 52-59. Nor should Plaintiffs' VRA claim prevail, as VRA effects claims are temporally limited to a very different time in this Country, a time long ago expired. *See* Dkt. 244 at 59-60.

II. Defendants will be irreparably injured absent a stay.

With respect to irreparable harm, “the inability to enforce its duly enacted plans clearly inflicts irreparable harm” on the County. *Abbott*, 138 S.Ct. at 2324 n.17 (explaining, in the context of interlocutory jurisdiction, that where state was barred from conducting elections under an enacted statute, unless the statute is unconstitutional, such an order “would seriously and irreparably harm” the state).

The Supreme Court has directed that, if a plan is “found to be unlawful very close to the election date, the only reasonable option may be to use the plan one last time.” *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). Here, the Court's Order references the candidate filing period as the impetus for a 7-day timeline to adopt and file a revised plan. Under *Abbott*, that timeline is too short, and the more reasonable option is to allow the enacted plan to remain in force pending the outcome of an appeal.

As Judge Costa wrote in *Thomas v. Bryant*, the defendants in that case (Mississippi

state officials) “can establish irreparable harm” where there was a trial court order “preventing enforcement of a state law, including the drawing of legislative lines, and where there was a “meaningful possibility (but not certainty) that a full appeal cannot be decided in time to provide Defendants relief before” the election at issue. 919 F.3d 298, 303 (5th Cir. 2019) (citing *Abbott*, 138 S.Ct. at 2324 n.17). The court acknowledged the plaintiffs faced “the same risk that the appellate ruling would prove futile” if the Fifth Circuit granted a stay. *Id.*

Understanding these parameters, the court explained that its decision teetered on whether the defendants in *Thomas* have a strong likelihood of success. As discussed above, Defendants have established a strong likelihood of success on the merits.

III. The remaining elements of substantial injury and public interest both support a stay of the Order pending appeal.

In considering harm to other parties, the “maintenance of the status quo is important.” *Louisiana by & through Landry v. Biden*, No. 22-30087, 2022 WL 866282, at *3 (5th Cir. Mar. 16, 2022). A stay would preserve that status quo to permit the Fifth Circuit to address the difficult legal questions such as whether coalition districts are permissible, whether temporal limits on Section 2 are appropriate, the appropriate weight of primary elections in coalition actions. In these circumstances, the alleged harm of an election under the existing plan should not outweigh the numerous harms of an injunction.

As Defendants discuss above, there is a likelihood of success on the merits. Therefore, there is no substantial injury to Plaintiffs because there has been no established violation of the VRA, and no dilutive plan enacted by the County. The public interest

similarly supports the enforcement of properly enacted laws—including redistricting plans adopted by governmental bodies within the State of Texas.

Again, the Court’s order provides a remedial redistricting schedule that is unworkable; consequently it is unlikely to withstand appellate scrutiny. A court that invalidates redistricting legislation must “afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure.” *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). Requiring the County to review and enact redistricting legislation, complete with expert analysis, within seven days of its order will not provide the County necessary time to consider critical County legislation. Therefore, a stay is appropriate, pending appeal.

CONCLUSION AND PRAYER

Defendants ask that the Court enter an order staying its October 13, 2023 Order imposing mandatory injunctive relief pending the outcome of an appeal of this matter.

If the Court is inclined to deny the County any form of relief requested, the County respectfully requests the Court issue a ruling on this request by October 16, 2023, which would enable timely consideration of that denial in an emergency stay motion on appeal.

Respectfully Submitted,

GREER, HERZ & ADAMS, L.L.P.

By: /s/ Joseph Russo

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**admitted pro hac vice*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served to all counsel of record via the ECF e-filing system on October 14, 2023.

/s/ Angie Olalde

APPENDIX E

October 16, 2023

Via Email

Valencia Richardson
Campaign Legal Center
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catherine.meza@usdoj.gov

Sarah Xiyi Chen
Texas Civil Rights Project
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Austin, TX 78741
schen@texascivilrightsproject.org

RE: Case No. 3:22-cv-00057; *Petteway et al, v. Galveston County, et al.*; letter notification to Counsel of Emergency Motion to Stay.

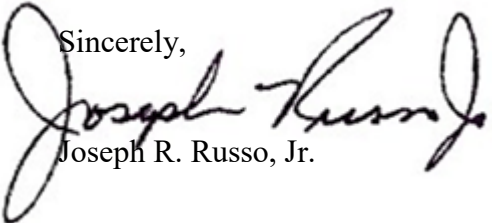
Counsel,

As you are aware, the District Court denied Defendants' request to stay enforcement of its October 13, 2023 Order enjoining Defendants and to implement a remedial plan, and with that denial, changed its deadlines by one week and included Map 1 as an option for a potential court-ordered plan.

Defendants intend to request an emergency stay from the United States Court of Appeals for the Fifth Circuit to stay the enforcement of the District Court's action.

If there are any questions about the information herein, please let me know.

Sincerely,



Joseph R. Russo, Jr.

cc: All counsel for plaintiff groups (*via email*)

JRR/jmj

APPENDIX F

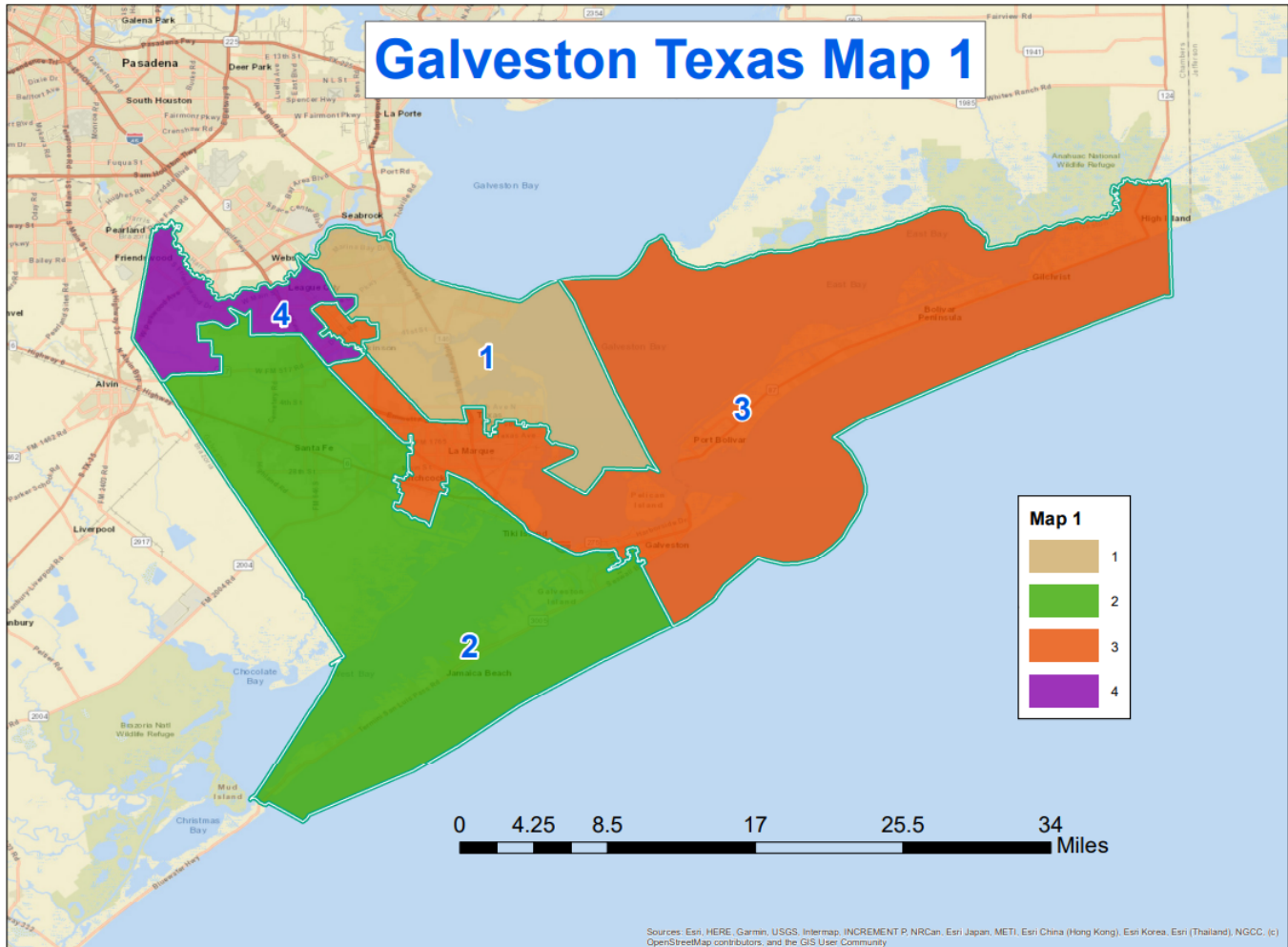
Redistricting

Galveston County Commissioners Proposed Precincts

The Galveston County Commissioners Court will be discussing and voting to redistrict county commissioner's precincts in the next few weeks. Below are the two proposed maps that will be considered. Public comment is now open for county residents via the form on this page.

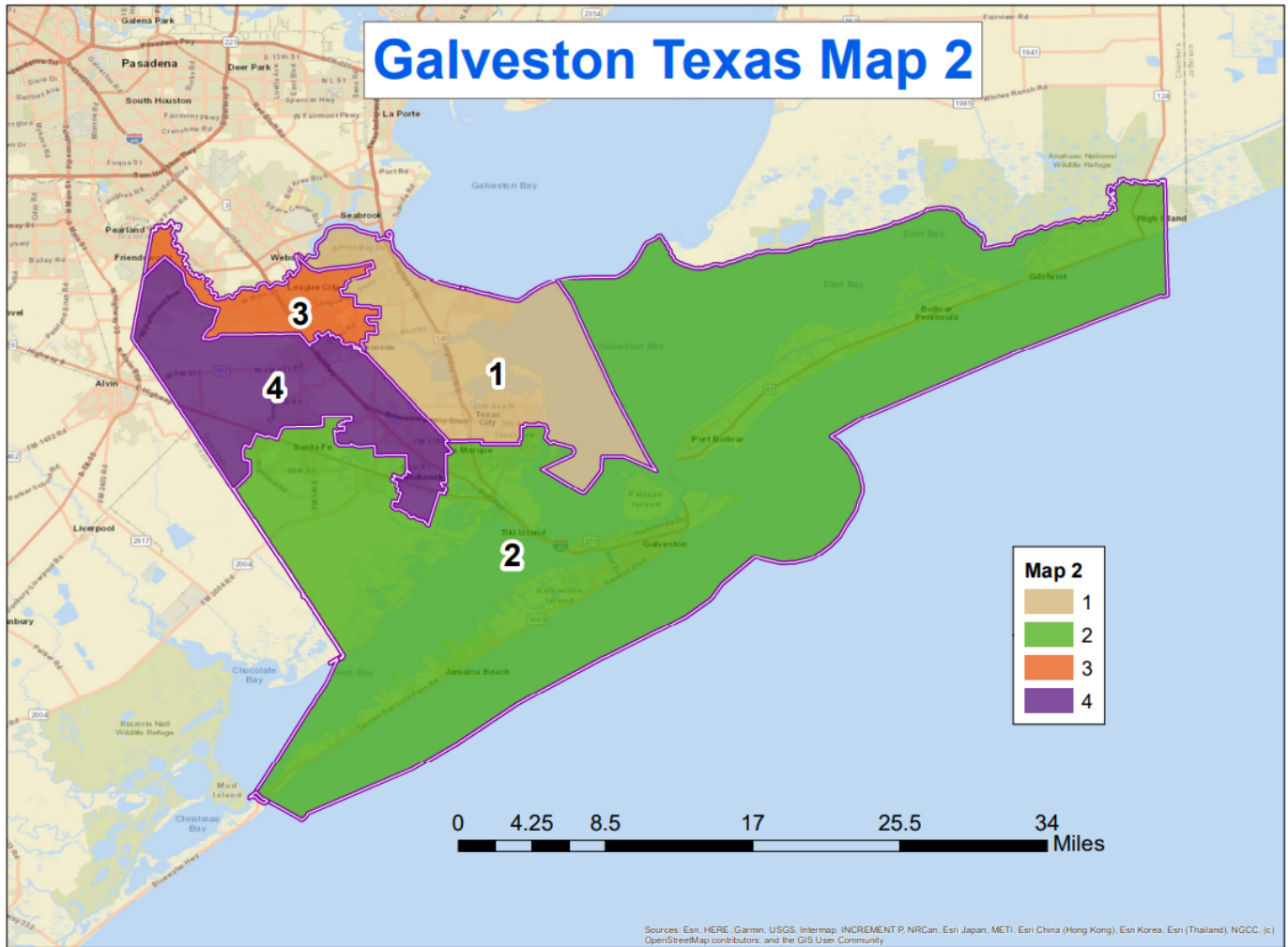
Interactive Redistricting Maps

You may click on the map to access an interactive version.



Proposed Redistricting Map 2

You may click on the map to access an interactive version.



Public Comment

Full Address

Street Number and Name

Unit Number

City

State/Province/Region

Postal/ZIP Code

Full Name

First Name

Last Name

Comment

500 Character limit

500 characters

To receive a copy of your submission, please fill out your email address below and submit.

Email Address

I'm not a robot

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Privacy - Terms

[Review](#)

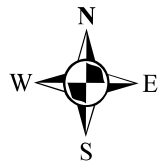
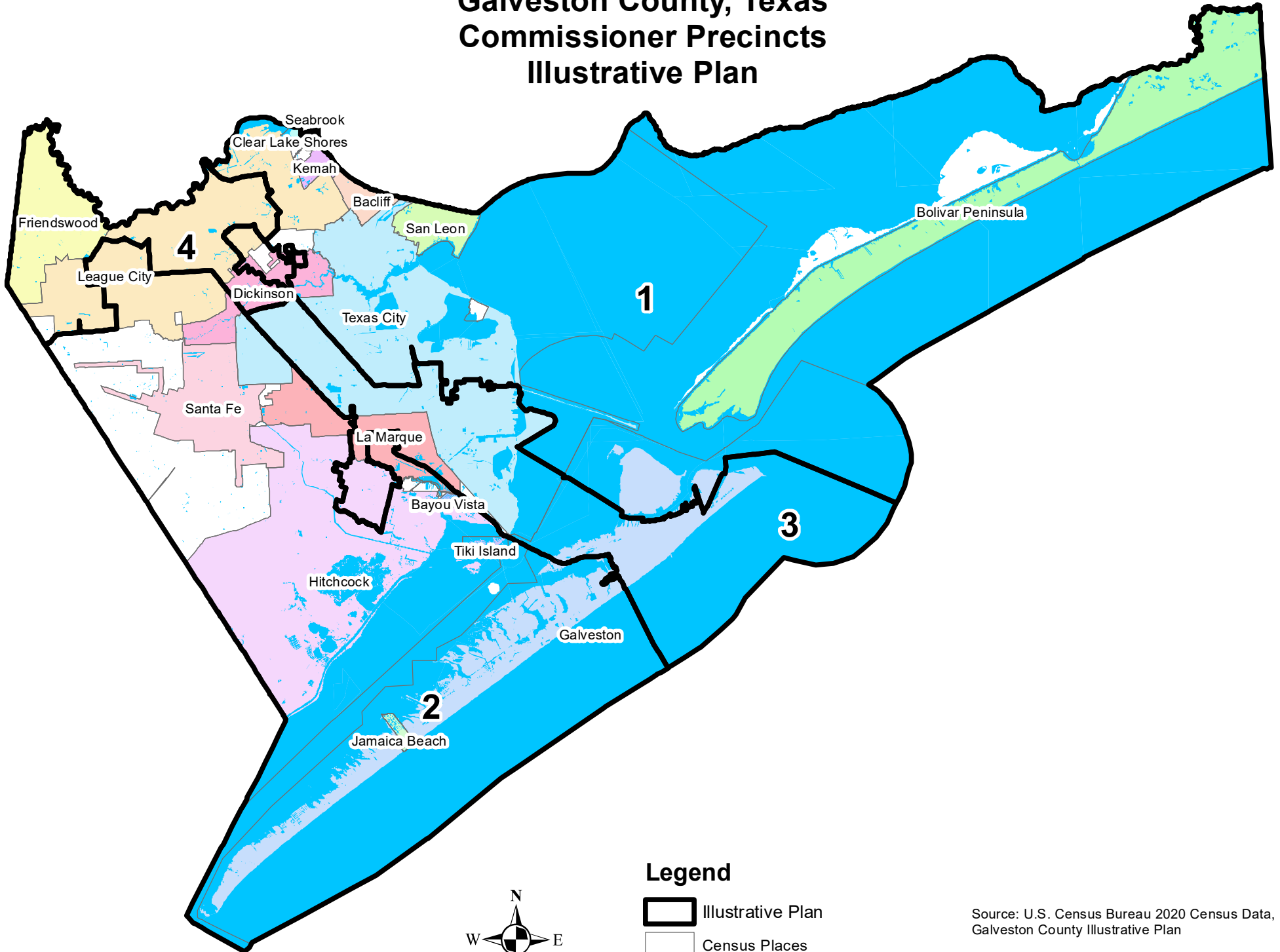
Submit

APPENDIX G




Appendix B
Maps of the Illustrative and
2012-2021 Commissioner Plans



Galveston County, Texas Commissioner Precincts Illustrative Plan



Legend

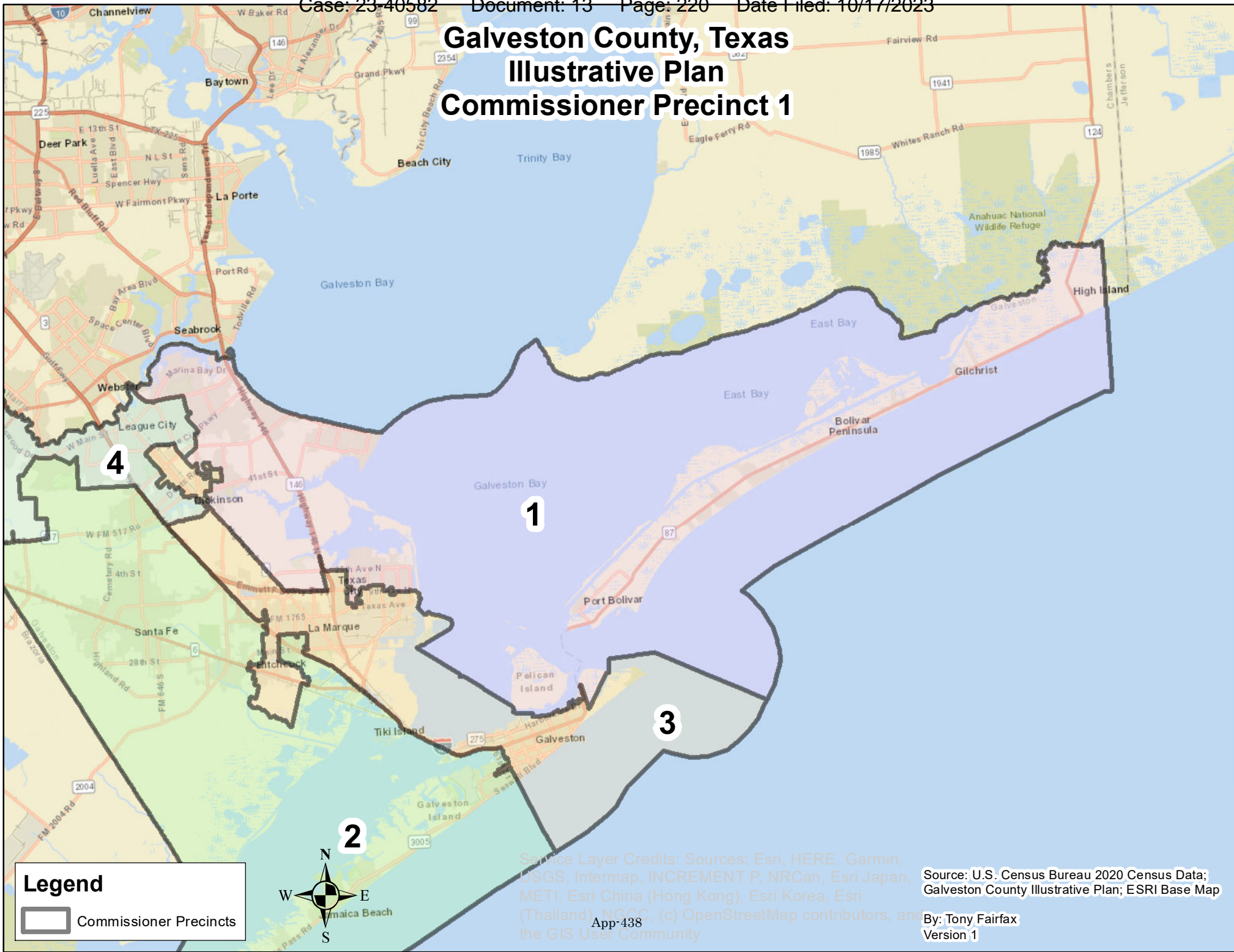
-  Illustrative Plan
-  Census Places
-  Water

App 437


Source: U.S. Census Bureau 2020 Census Data,
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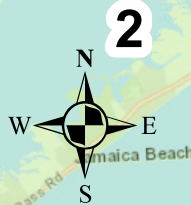
By: Tony Fairfax
Version 1

Galveston County, Texas Illustrative Plan Commissioner Precinct 1



Legend

 Commissioner Precincts

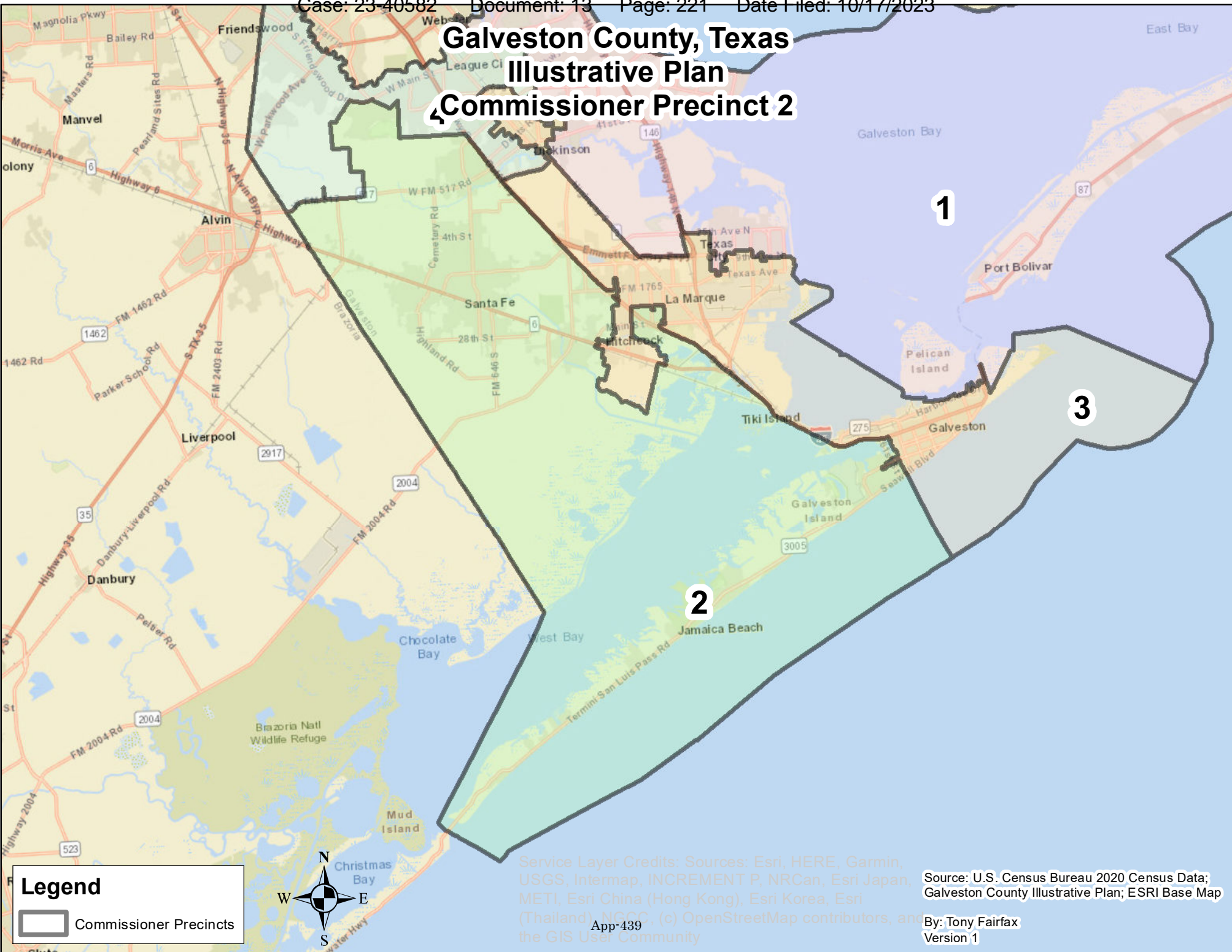


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Source: U.S. Census Bureau 2020 Census Data; Galveston County Illustrative Plan; ESRI Base Map

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Version 1

Galveston County, Texas Illustrative Plan Commissioner Precinct 2



Legend

 Commissioner Precincts



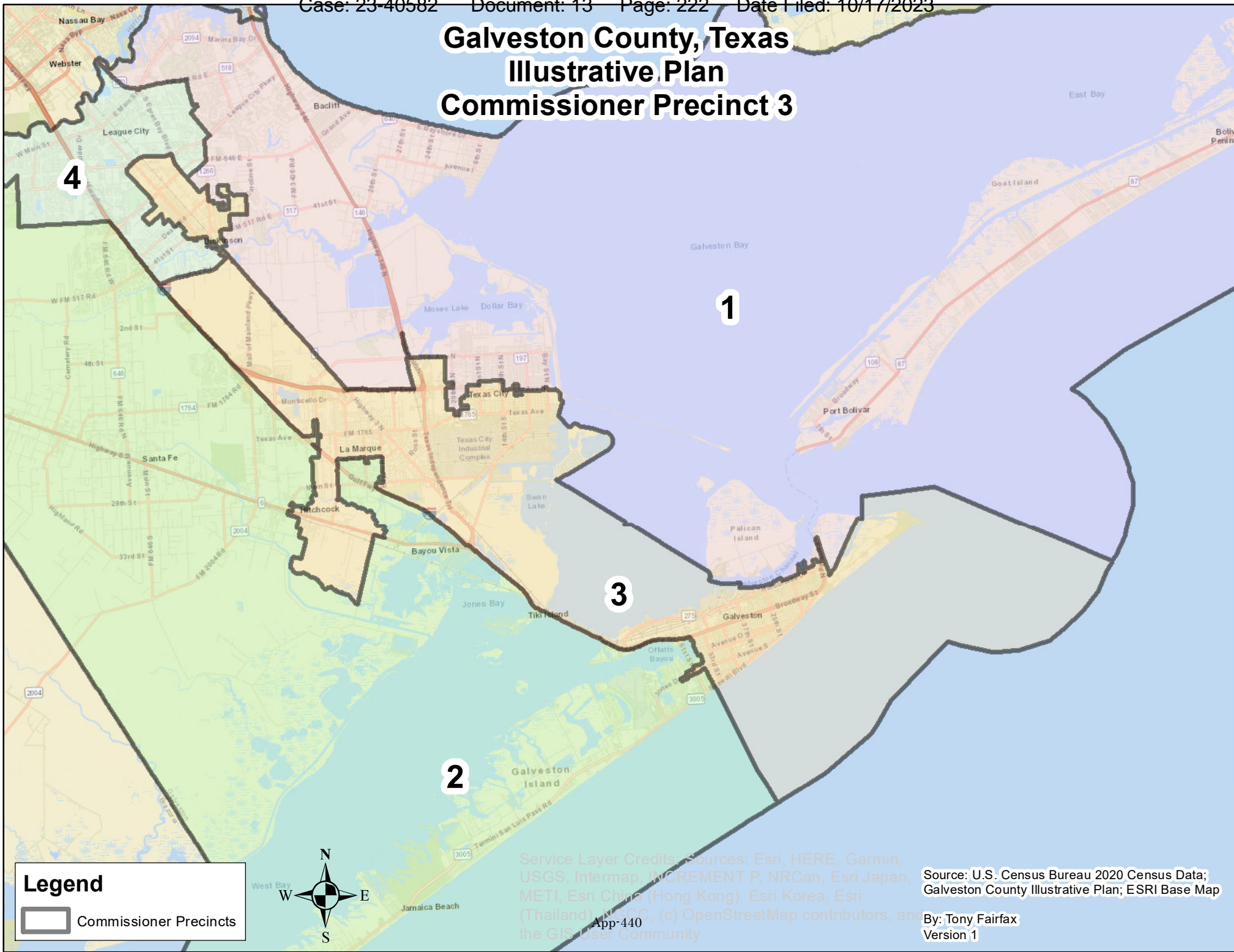
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Source: U.S. Census Bureau 2020 Census Data; Galveston County Illustrative Plan; ESRI Base Map


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App-439

Galveston County, Texas Illustrative Plan Commissioner Precinct 3



Legend

 Commissioner Precincts



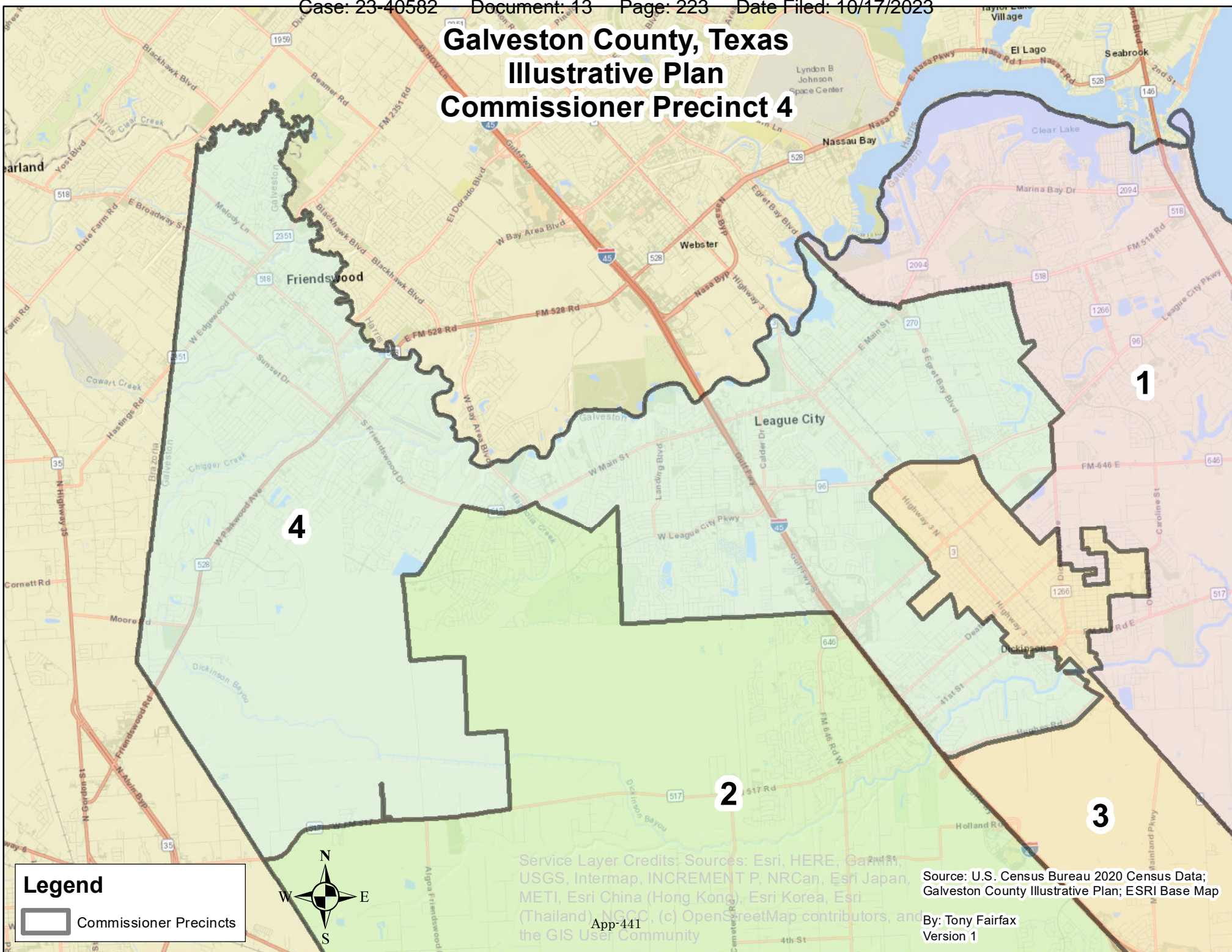
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Source: U.S. Census Bureau 2020 Census Data; Galveston County Illustrative Plan; ESRI Base Map


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Version 1

App-440

Galveston County, Texas Illustrative Plan Commissioner Precinct 4



Legend

 Commissioner Precincts



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App-441

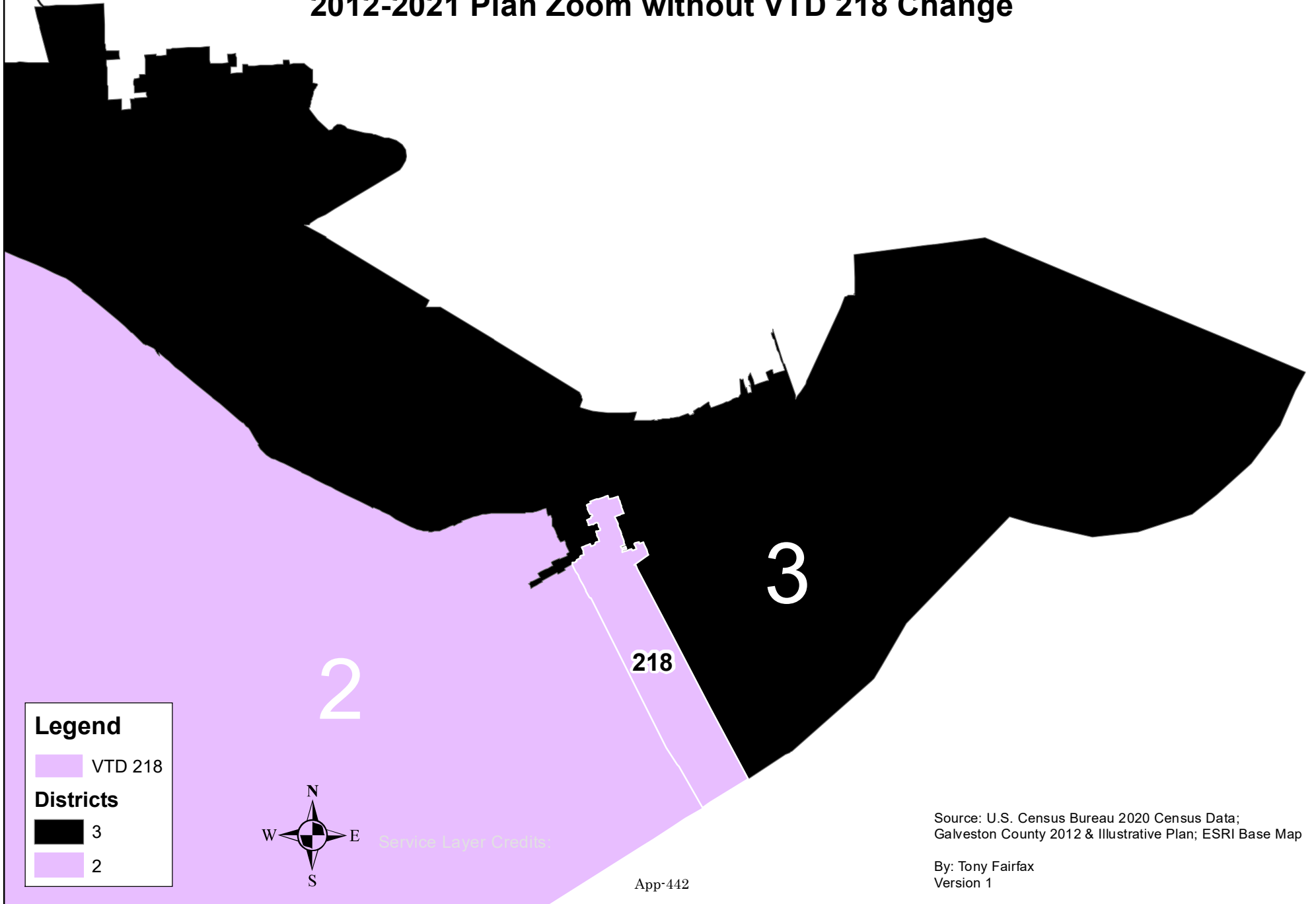
Source: U.S. Census Bureau 2020 Census Data; Galveston County Illustrative Plan; ESRI Base Map

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Version 1

Galveston County, Texas

Commissioner Precincts 2 & 3

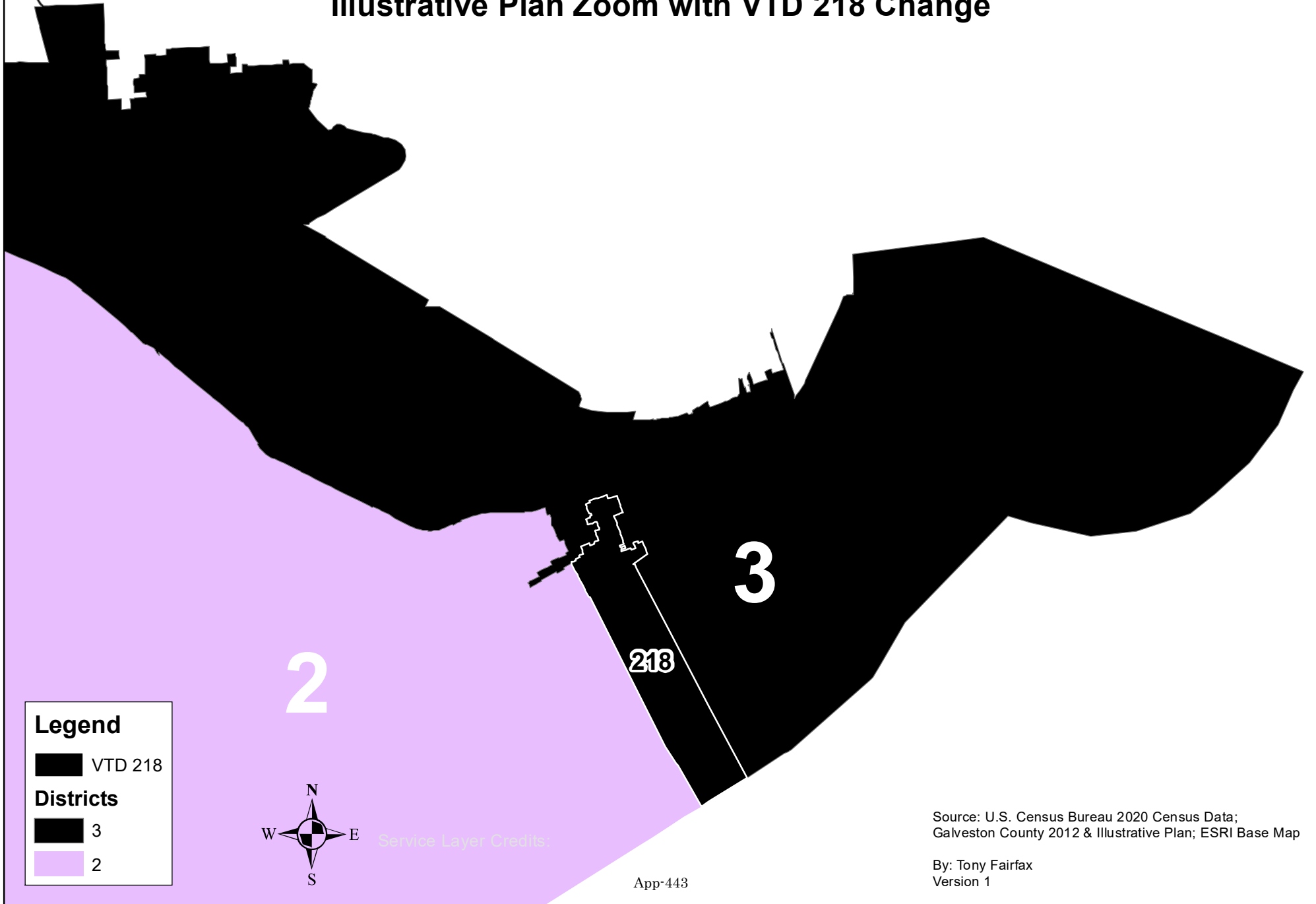
2012-2021 Plan Zoom without VTD 218 Change



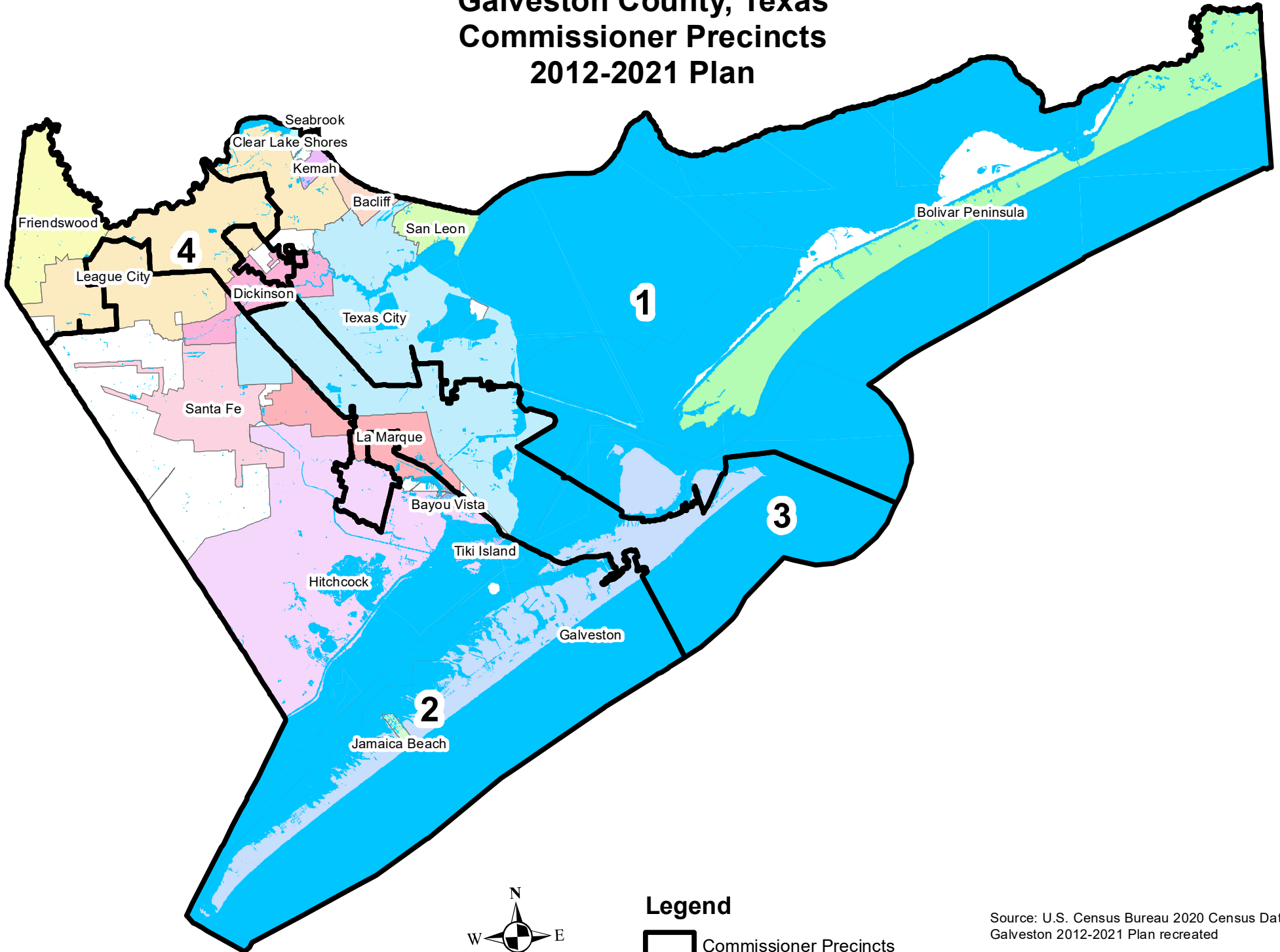
Galveston County, Texas

Commissioner Precincts 2 & 3

Illustrative Plan Zoom with VTD 218 Change



Galveston County, Texas Commissioner Precincts 2012-2021 Plan



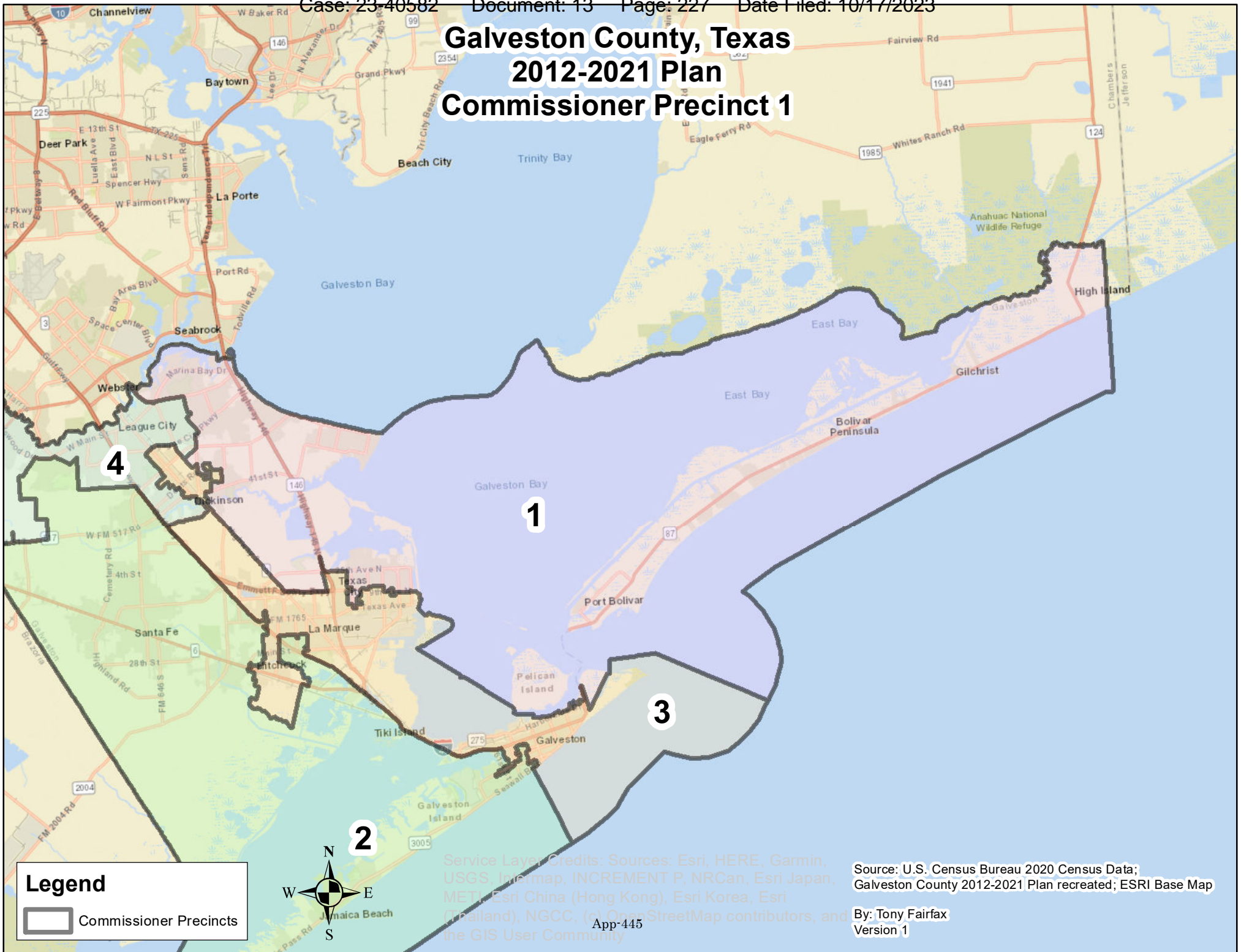
Legend

- Commissioner Precincts
- Water

Source: U.S. Census Bureau 2020 Census Data,
Galveston 2012-2021 Plan recreated

By: Tony Fairfax
Version 1

Galveston County, Texas 2012-2021 Plan Commissioner Precinct 1



Legend

 Commissioner Precincts

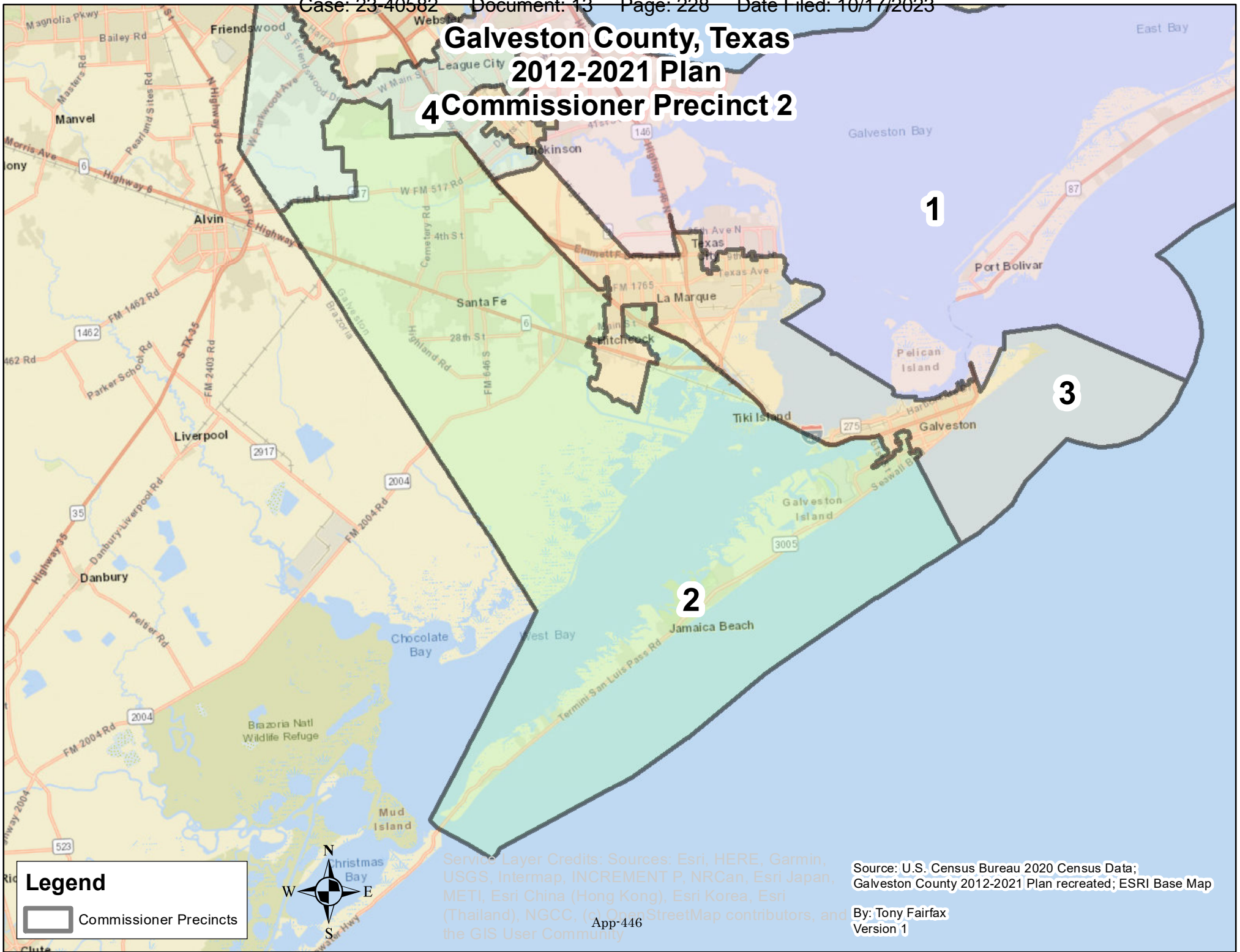


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Source: U.S. Census Bureau 2020 Census Data; Galveston County 2012-2021 Plan recreated; ESRI Base Map

By: Tony Fairfax
Version 1

Galveston County, Texas 2012-2021 Plan 4 Commissioner Precinct 2



Legend

 Commissioner Precincts

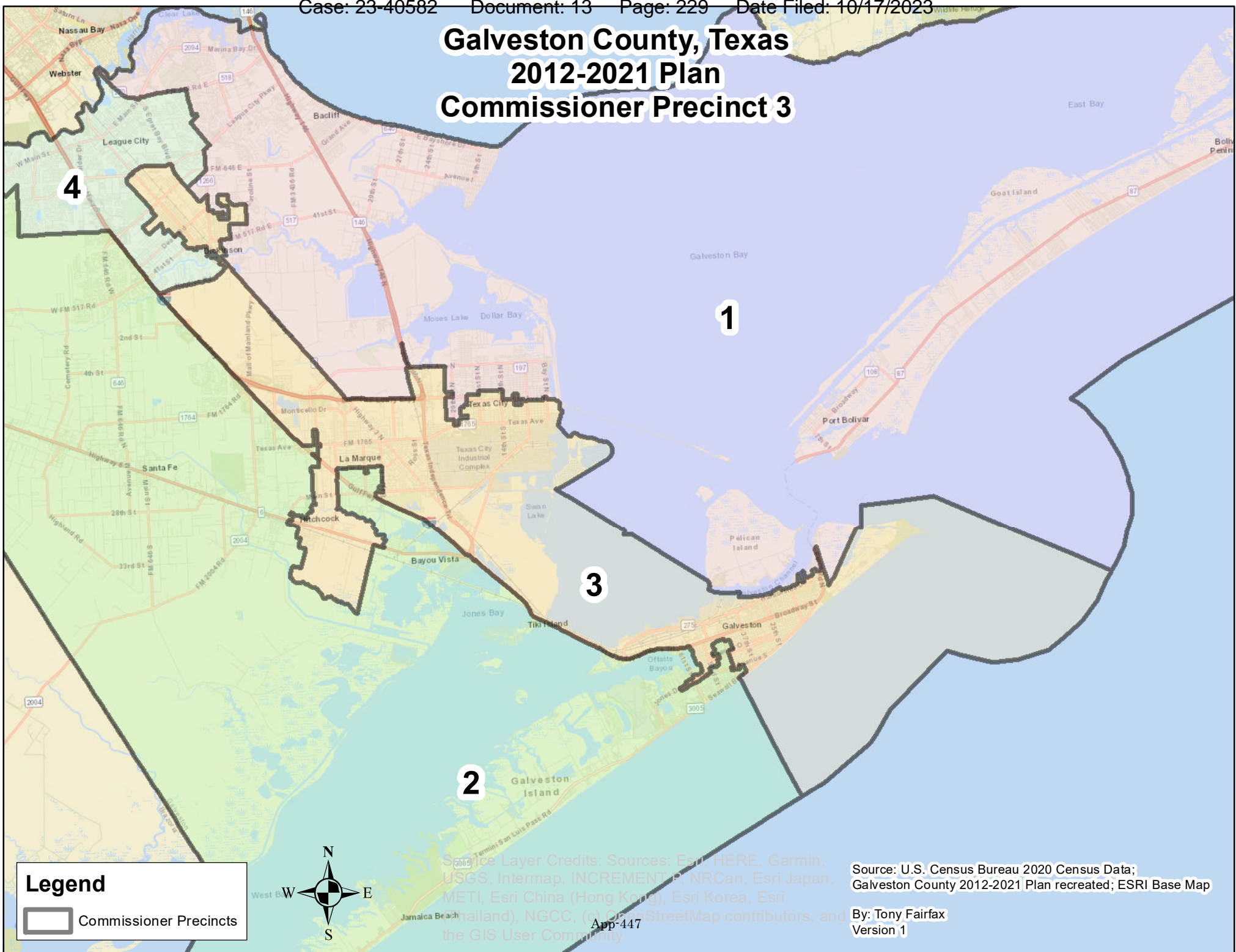


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Source: U.S. Census Bureau 2020 Census Data; Galveston County 2012-2021 Plan recreated; ESRI Base Map

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Version 1

Galveston County, Texas 2012-2021 Plan Commissioner Precinct 3



Legend

 Commissioner Precincts

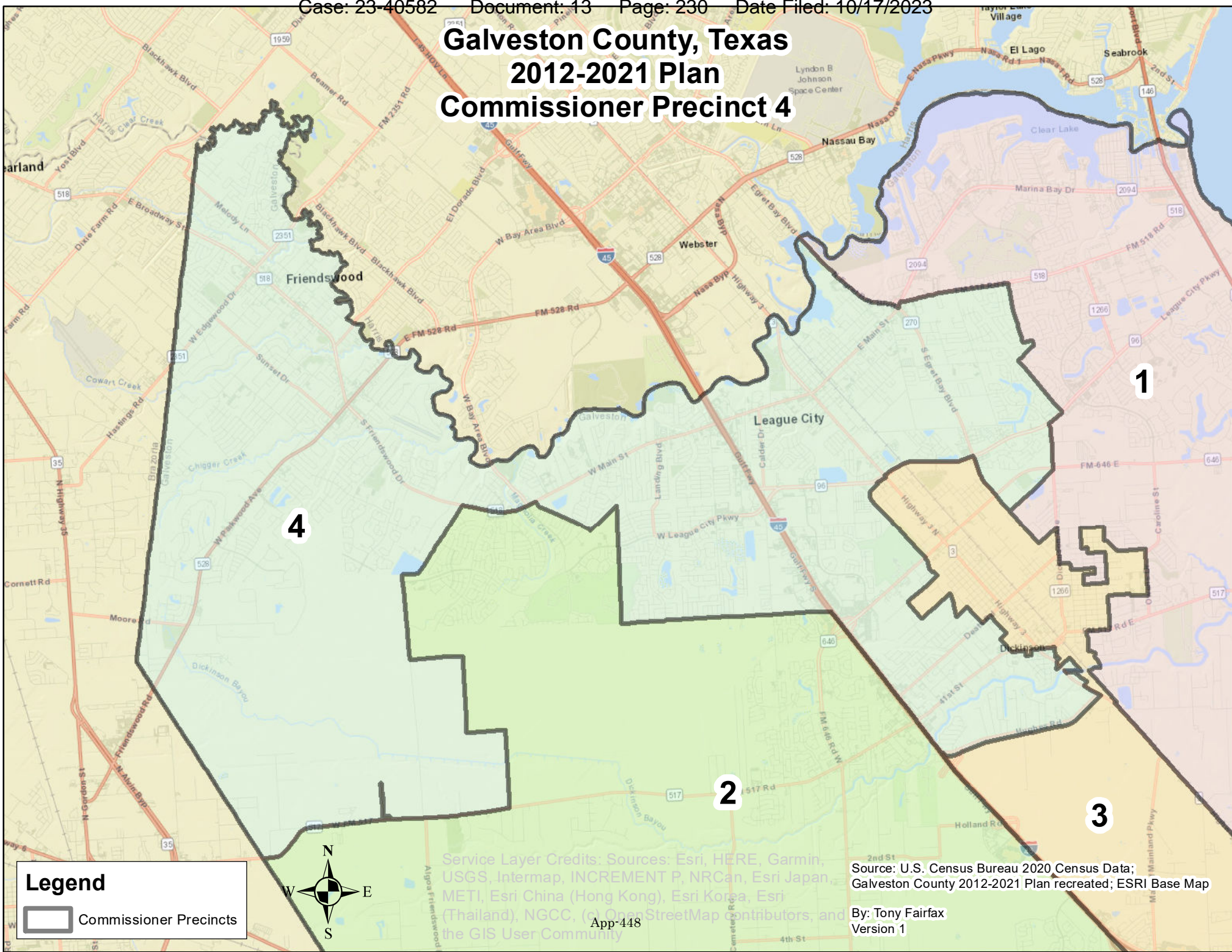


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Source: U.S. Census Bureau 2020 Census Data; Galveston County 2012-2021 Plan recreated; ESRI Base Map

By: Tony Fairfax
Version 1

Galveston County, Texas 2012-2021 Plan Commissioner Precinct 4



Legend

 Commissioner Precincts



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App-448

Source: U.S. Census Bureau 2020 Census Data; Galveston County 2012-2021 Plan recreated; ESRI Base Map

By: Tony Fairfax
Version 1

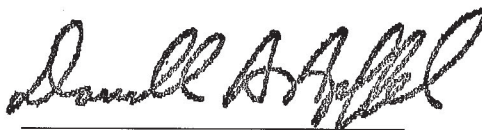
APPENDIX H

Declaration of Darrell Apffel

Darrell Apffel, pursuant to 28 U.S.C. §1746, hereby certifies as follows:

1. My name is Darrell Apffel. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.
2. I currently serve as the elected County Commissioner for Galveston County Commissioner Precinct 1.
3. I was first elected to this position in 2016, and have been re-elected for every four-year term thereafter. My current term is expiring and I will be running for reelection in the November 2024 election.
4. I have reviewed Plaintiffs' Exhibit 339, the Fairfax illustrative map, and my residence is not included in Precinct 1 in that exhibit.
5. There are two County Commissioner positions that will be on the November 2024 ballot—Precinct 1, and Precinct 3.
6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 17, 2023.



Darrell Apffel

APPENDIX 16

No. 23-40582

**United States Court of Appeals
for the Fifth Circuit**

Honorable Terry Petteway; Honorable Derrick Rose; Honorable Penny Pope,
Plaintiffs-Appellees

v.

Galveston County, Texas; Galveston County Commissioners Court; Mark Henry, *in his
official capacity as Galveston County Judge*
Defendants-Appellants

United States of America,

Plaintiff-Appellee

v.

Galveston County, Texas; Galveston County Commissioners Court; Mark Henry, *in his
official capacity as Galveston County Judge*
Defendants-Appellants

Dickinson Bay Area Branch NAACP; Galveston Branch NAACP; Mainland Branch
NAACP; Galveston LULAC Council 151; Edna Courville; Joe A. Compian; Leon
Phillips,

Plaintiffs-Appellees

v.

Galveston County, Texas; Mark Henry, *in his official capacity as Galveston County
Judge*; Dwight D. Sullivan, *in his official capacity as Galveston County Clerk*,
Defendants-Appellants

On appeal from the United States District Court
for the Southern District of Texas
USDC Nos. 3:22-CV-00057, 3:22-CV-00093, 3:22-CV-00117

**PETTEWAY APPELLEES’ RESPONSE IN OPPOSITION TO APPELLANTS’
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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of 5th Cir. Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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Galveston County Commissioners Court
The Honorable Mark Henry
Galveston County Clerk Dwight Sullivan

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INTRODUCTION

The Supreme Court has warned that “[c]ourt orders affecting elections, *especially conflicting orders*,” result in voter and candidate confusion and are inappropriate as election deadlines near. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (emphasis added). This Court allowed the administrative stay previously in effect to terminate last Tuesday, November 28. It confirmed the termination of the stay in an order issued Thursday, November 30. The electoral map for the 2024 Galveston County election is set: Map 1 is governing the election pursuant to the district court’s injunction and candidates are filing to run for county commissioner under that map in reliance on this Court’s November 30 order. The filing deadline is just one week from today, December 11.

The County invites this Court to contradict its order—issued just last *Thursday*—and change the election map with just *one week* left in the candidate filing period. That would directly contravene the Supreme Court’s *Purcell* instructions—something this Court cannot do. The time to seek a stay has come and gone. The County failed to move for a stay with the en banc Court on November 10, notwithstanding the fact that it advised the parties that it would do so, *see* Doc. 153 at 3, and then failed again to do so when the administrative stay terminated on November 28. Instead, it waited three more days until Friday, December 1 to file its “emergency” motion—and boldly demanded that a stay issue *that same day* because

the County viewed it as the last possible day to obtain effective relief. By the County's own admission, time is up.

But even if the County had not delayed and even if issuing a stay would not cause conflicting orders from this Court, a stay is inappropriate. The County seeks to *change* existing law with en banc review in this case. That is not an appropriate circumstance in which to grant a stay—particularly on the eve of an election deadline. This is especially so here, where the County has left unchallenged the district court's factual findings related to intentional discrimination and racial gerrymandering, claims upon which Plaintiffs will quite evidently prevail on remand even if this Court overturns its *Clements* and *Campos* precedent. In findings uncontested by the County, the district court found the circumstance of this case to be “[a]typical,” “stark,” “jarring,” “mean-spirited,” “egregious,” and “stunning.” ROA.16029. The County's redistricting attorney consulted racial shading maps showing concentrations of Black voters and then instructed the mapdrawer with precise instructions that fragmented that population into four pieces. ROA.15953, 15956. His testimony about the use of race in the redistricting process was directly contradicted by the County's own witness. ROA.15956. The district court rejected every non-racial explanation for the map's purpose as false, *post hoc* pretext. ROA.15977-15982. The contemporary political environment in Galveston County includes a local political figure referring to a Black Republican as a “typical nig.”

ROA.15988. Given the facts and circumstances of this case, a stay is wholly unwarranted.

BACKGROUND

I. Factual Background

During the 2021 redistricting process, the Commissioners Court proposed two redistricting maps to the public. ROA.15960. The first proposal, Map 1, largely maintained the same lines as the plan in place for the past decade but added the Bolivar Peninsular to Commissioner Precinct 3. Map 1 retained Precinct 3 as a majority-minority precinct, as it had been for 30 years. ROA.15911, 15988. The second proposal, Map 2, was ultimately adopted. Map 2 “has no commissioners precinct with a Black and Latino CVAP larger than 35%,” and “Precinct 3 now has the smallest such population at 28%.” ROA.15911-15912.

The district court carefully catalogued the events leading up to the adoption of the challenged map under the *Arlington Heights* framework for assessing intentional discrimination claims. ROA.15940-15982. In doing so, the district court rejected as false and pretextual every non-racial justification the County proffered to explain why it “summarily carved up and wiped off the map” the majority-minority precinct. ROA.15977-15982, 16028. The court credited alternative maps illustrating that the County’s proffered justifications were false. ROA.15980-15981. The County Judge and commissioners who voted in favor of the enacted map *disclaimed* any

partisan motivation for the dismantling of the majority-minority precinct. ROA.15981. The County's redistricting lawyer and its demographer offered contradictory testimony about the instructions regarding the use of racial data in the process. ROA.18562-18563; 18872-18873. The redistricting lawyer, whom the district court did not credit in resolving that disputed testimony, was found by the court to have examined racial shading maps of Black population before dictating to the demographer the precise placement of lines that splintered that population among all four precincts and converted the majority-minority Precinct 3 into having the lowest minority share of any precinct. ROA.15953, 15956. The County Judge and commissioners who voted in favor of Map 2 all knew where the minority populations were concentrated and that Map 2 fragmented them, ROA.15953, and Map 2 was the "visualization of the instructions" the County Judge provided the mapdrawers, ROA.15956.

The commissioners who formed the majority in support of Map 2 testified they were fine with Map 1. *See* ROA.15958. The County has conceded that Map 1 is a compact,¹ legally compliant map that was drawn without regard to race. ROA.15912-15913.

¹ The County's counsel conceded at oral argument that Precinct 3 under Map 1 is compact. Fifth Circuit Oral Argument at 10:10-10:40.

II. Procedural Background

On November 10, 2023, a panel of this Court affirmed the district court's injunction, holding that "[t]he district court appropriately applied precedent when it permitted the black and Hispanic populations of Galveston County to be aggregated for purposes of assessing compliance with Section 2." Doc. 118-1 at 5-6. Nevertheless, the panel requested a poll on whether to rehear the case en banc to revisit this Court's precedent holding that there is no single-race threshold requirement for vote dilution claims under Section 2 of the Voting Rights Act. The panel also extended the administrative stay that had been in effect "pending en banc poll." Doc. 122-1.

On November 28, 2023, this Court ordered rehearing en banc, with oral argument to take place in May 2024. The administrative stay previously imposed expired on that day, a fact of which the County was aware. *See* Response to Emergency Application to Vacate Stay at 12, *Petteway, et al. v. Galveston County, et al.*, No. 23A449 (U.S. Nov. 28, 2023). On November 30, 2023, this Court issued an order confirming that the stay had terminated on November 28. The next day, the district court issued an order confirming that Map 1 would be imposed for the 2024 election and scheduling a status conference for today, Monday December 4. That status conference occurred this morning and the County's counsel confirmed that Map 1 is being implemented pursuant to the district court's order without any issues

or need for further court action and the County did not request an extension of the candidate filing period from the district court. On Friday, December 1, the County filed its “emergency” motion requesting that a stay be issued that very day. This came three days after the administrative stay had terminated and three weeks after its prior motion for a stay was rendered moot by the panel’s decision affirming the injunction.

ARGUMENT

I. The *Purcell* principle forecloses a stay.

Purcell considerations make a stay inappropriate in this case. The Supreme Court has held that lower courts must not issue “conflicting orders” on the eve of election deadlines. *Purcell*, 549 U.S. 4-5. The previous administrative stay in this case ended last Tuesday—a fact this Court confirmed in an order issued on Thursday. A contradictory order reimposing a stay now—just one week before the candidate filing deadline—would directly contravene the Supreme Court’s admonition not to issue conflicting court orders in the midst of an election. Candidates are filing for office pursuant to the district court’s injunction and imposition of Map 1, and in reliance on this Court’s order confirming the termination of the stay. The County itself argued that Friday, December 1 was the final day it could obtain effective relief in its emergency stay motion. That date has passed. A decision to reverse course and

change the map at this eleventh hour would directly contravene the Supreme Court's *Purcell* jurisprudence.

Even in the absence of the prospect of late-breaking conflicting orders, *Purcell* would counsel against a stay. The district court adhered to both Supreme Court precedent in *Grove* as well as three decades of this Court's precedent. In such circumstances, a stay is inappropriate. *See Merrill v. Milligan*, 142 S. Ct. 879, 883 (2022) (Mem.) (Roberts, C.J., dissenting) ("I would not grant a stay. As noted, the analysis below seems correct as *Gingles* is presently applied, and in my view the District Court's analysis should therefore control the upcoming election."). Moreover, unlike when the Supreme Court ordered a stay in *Milligan*, the decision in this case is the product of a full trial on the merits, a final judgment, and an affirmance on appeal²—not merely a preliminary injunction. *See id.* at 881 (Kavanaugh, J., concurring) (noting case was at "preliminary juncture" and the merits were not "clearcut"). The map enjoined by the district court *upended*—rather than preserved—"the same basic districting framework that the [County] has maintained for several decades." *Id.* at 879 (Kavanaugh, J., concurring).

Under the unique circumstances of this case, *Purcell* counsels against a stay. The district court's factual findings—"to which the Court of Appeals owes deference"—reveal a starkly discriminatory redistricting process and map infused

² The panel's decision has been vacated in light of the of en banc rehearing.

with racial motivations. *Purcell*, 549 U.S. at 5. The County has not challenged any of the *Arlington Heights* or racial gerrymandering factual findings on appeal. Any further stay would create confusion among the public and potential candidates in light of awareness of the district court's more recent order.³ Any further stay, imposed *at a minimum* almost a week after the prior stay terminated, risks interfering with the orderly conduct of the election.

Under *Purcell*, an eleventh-hour effort to upend decades of existing law should not be permitted to disrupt the electoral process. Yet that is exactly what the County seeks to do. And it has not acted with haste in its effort to do so. On November 10, 2023, the County's counsel indicated that they would file a motion for a stay pending en banc review, but they never did. Doc. 153 at 3 (November 10, 2023 Email). The County then claimed to have immediately known that the administrative stay expired on November 28, yet still it did nothing. *See* Response to Emergency Application to Vacate Stay at 12, *Petteway, et al. v. Galveston County, et al.*, No. 23A449 (U.S. Nov. 28, 2023). Only after plaintiffs filed a motion with the district court regarding remedial issues did the County think to move the en banc

³ *See, e.g.*, B, Scott McLendon, *Judge order Galveston County to use map that largely preserves Pct. 3 for 2024 elections*, The Daily News (Dec. 1, 2023), https://www.galvnews.com/news/judge-orders-galveston-county-to-use-map-that-largely-preserves-pct-3-for-2024-elections/article_31e8e37f-2fa4-545b-97af-b5ebe558124c.html

Court for a stay.⁴ Although the County claimed to urgently need relief by December 1, it sat on its hands before requesting that relief. A party who delays seeking relief in an election case cannot claim it suffers irreparable harm from the injunction. The County's self-identified deadline of December 1 for effective relief has come and gone. It is too late for a new stay.

II. The County is not likely to succeed on the merits.⁵

A. The district court's factual findings evidencing intentional discrimination and racial gerrymandering make a stay unwarranted.

The district court issued 42 pages of factual findings cataloguing a redistricting process in Galveston County marked by intentional racial discrimination and racial gerrymandering and rejecting as false pretext all proffered non-racial justifications for the decimation of a 30-year-old majority-minority precinct. ROA.15940-15982. The evidence of intentional discrimination and racial gerrymandering makes a stay unjust in this case. Although the district court did not need to issue a legal conclusion on intent and racial gerrymandering considering its

⁴ Even this delayed request was procedurally defective as the County failed to file a renewed request for a stay with the district court prior to requesting it of this Court. *See* Fed. R. App. P. 8.

⁵ The County contends that it need only show that it has a "substantial case on the merits when a serious legal question is involved" in order to obtain a stay. Mot. at 6 (quoting *U.S. v. Baylor Univ. Med. Ctr.*, 711 F.2d 38, 39 (5th Cir. 1983)). But the validity of *Baylor* is doubtful following the Supreme Court's decision in *Nken v. Holder*, 556 U.S. 418 (2009).

Section 2 results ruling, the unmistakable conclusion from its factual findings is that the county's enacted plan "bears the mark of intentional discrimination," *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440 (2006) ("*LULAC*"). In *LULAC*, the Supreme Court reached that conclusion based upon the tinkering around the edges of Texas's 23rd congressional district to prevent its burgeoning Latino majority from electing their candidate of choice. *Id.* Here, a thirty-year performing majority-minority precinct was "summarily carved up and wiped off the map." ROA.16028. The district court characterized the process as "[a]typical," "mean-spirited," "egregious," "stark," "jarring," and "stunning." ROA.16028-16029. The district court found that County Judge Henry and the commissioners knew that they were dismantling the sole majority-minority precinct, ROA.15939, and that every single non-racial justification the county offered to justify that deliberate action was false and pretextual. ROA.15977-15982. Normally, courts confront the difficulty of disentangling race from partisanship in these cases. *See, e.g., Abbott v. Perez*, 585 U.S. ___, 138 S. Ct., 2305, 2330 n.25; (2018), *cf. Cooper v. Harris*, 581 U.S. 285, 308 (2017). Not here—the commissioners who voted in favor of the plan, Judge Henry, and the County's redistricting attorney, Mr. Oldham, all expressly denied a partisan motivation. ROA.15981. And the district court credited alternative maps that disproved the *post hoc* litigation explanation that a desire for a "coastal precinct" explained the dismantling of Precinct 3. ROA.15980-15981; *see Cooper*, 581 U.S.

at 317 (such alternative maps “can serve as key evidence” in “undermining a claim that an action was based on a permissible, rather than prohibited, ground”). These facts alone suffice to denial of a stay.

No authority permits the decimation of an existing majority-minority district absent some race-neutral justification (e.g., minority population decline). Indeed, the intentional destruction of a majority-minority district obviates the requirement to satisfy the first Gingles precondition by aggregating Black and Latino voters. *See, e.g., Bartlett v. Strickland*, 556 U.S. 1, 20 (2009) (plurality) (“Our holding does not apply to cases in which there is intentional discrimination against a racial minority”); *id.* at 24 (“[I]f there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments”); *Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 771 (9th Cir. 1990) (holding that first Gingles precondition relaxed in cases of intentional discrimination); *Perez v. Abbott*, 253 F. Supp. 3d 864, 944 (W.D. Tex. 2017) (rejecting argument that statutory VRA intentional discrimination claims required satisfying first Gingles prong); *Comm. for a Fair & Balanced Map v. Ill. Bd. of Elections*, No. 1:11-CV-5065, 2011 WL 5185567, at *4 (N.D. Ill. Nov. 1, 2011) (“[T]he first Gingles factor is appropriately relaxed when intentional discrimination is shown . . .”). The County has offered no truthful nonracial explanation—rational, compelling, or otherwise—nor did the

district court find one, to justify the intentional destruction of Precinct 3 as an effective majority-minority precinct. Even if this Court ultimately interprets Section 2 not to authorize discriminatory results-only claims by multi-racial plaintiff groups, no one contends that intentional discrimination or racial gerrymandering is permissible. The district court’s factual findings related to the “egregious” dismantling of this existing majority-minority precinct thus make a stay of the district court’s order pending further appellate review improper.

Plaintiffs cannot be made to suffer an intentionally discriminatory, racially gerrymandered map simply because the district court simultaneously adhered to this Court’s settled Section 2 precedent authorizing Section 2 claims on behalf of Black and Latino voters—and also adhered to principles of constitutional avoidance to decline to issue legal conclusions to accompany its discriminatory intent and racial gerrymandering factfinding. *See Shelby County v. Holder*, 570 U.S. 529, 557 (2013) (noting that “injunctive relief is available in appropriate cases to block voting laws from going into effect” and observing that “any racial discrimination in voting is too much”). Plaintiffs are likely to ultimately prevail, even if on their constitutional claims on remand, making a stay of the injunction inappropriate.

B. The County’s single-race argument is unlikely to prevail.

A stay is also inappropriate on the merits of the Section 2 claim. The Supreme Court has assumed that Section 2 prohibits vote dilution on account of race

regardless of whether the class of injured persons constitutes a monolithic racial group. In *Grove v. Emison*, the Court “[a]ssum[ed]” that “it was permissible for the District Court to combine distinct ethnic and language minority groups for purposes of assessing compliance with § 2” and held that, in such cases, “proof of minority political cohesion is all the more essential.” 507 U.S. 25, 41 (1993); *see also Bartlett*, 556 U.S. at 13-16 (applying holding to white crossover voter districts and not minority “coalition” districts). Here, the district court found that “the combined Black and Latino coalition is highly cohesive,” ROA.16016, and a merits panel of this Court affirmed that conclusion. *See* Panel Opinion at 5-6, Doc. 118-1. That inquiry is consistent with *Grove* and the majority rule of the circuits. *See Pope v. Cnty. of Albany*, 687 F.3d 565, 574 n.5 (2d Cir. 2012); *Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm’rs*, 906 F.2d 524, 526 (11th Cir. 1990).

This accords with Section 2’s text. “Congress enacted the Voting Rights Act of 1965 for the broad remedial purpose of rid[ding] the country of racial discrimination in voting” and the Supreme Court has held that “the Act should be interpreted in a manner that provides the broadest possible scope in combatting racial discrimination.” *Chisom v. Roemer*, 501 U.S. 380, 403 (1991) (internal quotation marks and citations omitted) (alteration in original). The plain text of Section 2 authorizes vote dilution claims without imposing a “single race” threshold barrier to relief. Section 2(a) of the VRA prohibits any voting standard or practice that “results

in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,” or language-minority status. 52 U.S.C. §§ 10301(a), 10303(f). Section 2(b) sets forth how a violation of Section 2(a) is established, and notes that it applies to “a class of citizens protected by subsection (a).” *Id.* § 10301(b). The “class of citizens” to which Section 2(b) refers is not a singular minority group, but rather those “protected by subsection (a)”—i.e., “any citizen” subject to a denial or abridgment of voting rights “on account of race or color,” or language-minority status. *Id.* § 10301(a), (b). Nothing in the text of Section 2 requires every member of the “class of citizens” to share the same race, as opposed to the same experience of being politically excluded “on account of race,” whatever their race is. *Id.* This is the common legal usage of “class”—a reference to those suffering the same injury caused by the defendant. *See, e.g.,* Fed. R. Civ. P. 23. And reading “class of citizens” to include a combination of protected minority citizens accords with the last antecedent grammatical rule. *See Barnhart v. Thomas*, 540 U.S. 20, 26 (2003).

The County contends that because Section 2 refers to a “class of citizens” rather than to “classes of citizens,” it imposes a single-race threshold for Section 2 claims. Mot. at 11. But Congress rejected this method of statutory interpretation in the Dictionary Act. “In determining the meaning of any Act of Congress, unless the context indicates otherwise—words importing the singular include and apply to

several persons, parties, or things.” 1 U.S.C. § 1. Section 2(b)’s use of “class” therefore includes “classes.”

The exception to this rule—*i.e.*, when “context indicates otherwise”—is not to be readily deployed. Only where the Dictionary Act’s rule would “forc[e] a square peg into a round hole” and create an “awkward” result does the general rule give way. *Rowland v. Cal. Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 200 (1993). In making that determination, Congress’s purpose in enacting the statute guides the analysis. *Id.* at 209-10. For example, in *Wilson v. Omaha Tribe*, the Supreme Court held that the general rule in the Dictionary Act that “person” includes artificial entities like corporations applied to a statute that placed the burden of proof on a “white person” litigating a property claim against an Indian. 442 U.S. 653, 658 (1979) (interpreting 25 U.S.C. § 194). The Court reasoned that the “protective purposes of the Acts in which § 194 . . . [was] a part” would be frustrated if it did not apply to artificial entities, and thus rejected the argument that “context indicate[d] otherwise” to make the Dictionary Act’s rule inapplicable. *Id.* at 666.

If “white person” is insufficiently specific to refer to white humans as opposed to limited liability corporations, then there is no plausible argument that Congress meant to limit “members of a class of citizens” in Section 2(b) to a single racial group, when it specified no racial group at all. This is especially so considering Congress’s “broad remedial purpose of rid[ding] the country of racial discrimination

in voting” through passage of the Voting Rights Act and the judiciary’s obligation to interpret Section 2 “in a manner that provides the broadest possible scope in combatting racial discrimination.” *Chisom*, 501 U.S. at 403 (internal quotation marks and citations omitted) (alteration in original). Interpreting Section 2 to authorize discriminatory vote dilution by a white majority against a cohesive population of Black and Latino voters self-evidently would frustrate Congress’s desire to “rid[] the country of racial discrimination in voting.” *Id.* One need only read the district court’s factual findings in this case to see that.

Moreover, it is the contrary reading that would “forc[e] a square peg into a round hole.” *Rowland*, 506 U.S. at 200. The County’s interpretation assumes that every Section 2 plaintiff can—or must—be of a single race. What of a plaintiff who is half Black and half Latino? Under the “single race” theory advanced by the County, such a plaintiff would seemingly be required to satisfy the *Gingles* preconditions for a class of exclusively half Black, half Latino citizens. Or perhaps she would be forced to choose in her complaint—she can plead herself to be Black or Latina but not both—even though she is both and the totality of circumstances proves both Black and Latino voters in the jurisdiction suffer an unequal opportunity to participate in the political process on account of their race. *See* 52 U.S.C. § 10301(a). As Judge Keith explained in his dissent from the Sixth Circuit’s *Nixon* decision, that circuit’s reading of Section 2 is “most disturbing” in that it “requires

the adoption of some sort of racial purity test. . . . Must a community that would be considered racially both Black and Hispanic be segregated from other Black who are not Hispanic?” *Nixon v. Kent County*, 76 F.3d 1381, 1401 (6th Cir. 1996) (Keith, J., dissenting).

There is also little risk that proportionality will take hold if Section 2 is not limited to single-race plaintiff groups. First, as the Supreme Court explained last Term in *Milligan*, the first *Gingles* precondition and this Court’s case law ward against proportionality. 599 U.S. at 1, 26-27. Second, this case illustrates that the perceived threat of proportionality is misplaced—Black and Latino voters account for 38% of Galveston County’s population but the district court’s injunction merely returns them to having an equal opportunity to elect their candidates of choice in 25% (rather than 0%) of the precincts—the configuration that has existed for three decades.

The County discusses at length how the failure to impose a single-race threshold requirement would merely sanction partisan political alliances untethered to racial discrimination. Mot. at 7-11. For this point, the County relies on *LULAC* and *Bartlett*, in which the Supreme Court held that Section 2 does not extend to claims in which *white voters* are aggregated with minority voters. But the County’s appeal to influence and crossover districts is misplaced. In influence and crossover districts, the white voters necessary for the *Gingles* prong one numerosity

requirement have not suffered “a denial or abridgement of the right . . . to vote on account of race or color.” 52 U.S.C. § 10301(a). They simply share the same *candidate choice* as minority voters who *have* suffered such a denial or abridgment. They are thus definitionally not among the “class of citizens protected by subsection (a)” and do not have “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b). That is nothing like the Galveston County Black and Latino voters whom the district court found—based upon a searching, local appraisal—have an unequal opportunity to vote on account of race.

The County reads Section 2 of the Voting Rights Act to contain a glaring loophole in jurisdictions that have non-monolithic minority populations. Even where those minority voters have suffered a shared history of official discrimination that continues to burden their ability to participate in the political process, vote cohesively, and see their preferred candidates defeated by the strength of overwhelming white bloc voting, the County would have the Court exempt those minority voters from the protections of the Voting Rights Act. The basis for this discrimination exemption? Congress’s use of the word “class” instead of “classes.” Never mind that nowhere did Congress specify that “class” refers to a single racial group, and never mind that Congress codified its rejection of precisely this sort of plural/singular nitpicking of congressional intent on the opening page of the U.S.

Code. *See* 1 U.S.C. § 1. Congress did not sanction racial discrimination in voting by omitting the letters “-es” in Section 2.

II. The County fails to show that it will be irreparably injured absent a stay

The County faces no irreparable injury, or any injury, if this Court denies a stay. The district court’s injunction merely returns the status quo *ex ante* districting plan that governed County elections for decades and puts in place a map that the County drew and has conceded is lawful. The County’s main defense at trial was that it *would have adopted Map 1* if only Commissioner Holmes—then the only Black Commissioner—had pleaded more vociferously for it. *See, e.g.*, ROA.16149-16150, 18317, 18579-18580, 18581, 18597, 18681, 18950-18951, 19578. The County cannot claim that a map it drew, says is lawful, and contends would have been adopted possibly causes it irreparable harm.

The County contends that the imposition of Map 1 harms potential Republican candidates who live in Map 2’s iteration of Precinct 3 but not Map 1’s iteration of Precinct 3. Mot. at 13-14. But the same is true of potential Democratic candidates who live in Map 2’s iteration of Precinct 3 but not Map 1’s. In any event, the County does not explain how *it* is irreparably harmed by Map 1. Potential candidates do not have any right to a particular election map—least of all one that dilutes minority voting strength. Moreover, the district court made a factual finding—one that has not been challenged on appeal—that partisanship did not motivate the selection of

Map 2. ROA.15955. The effort by the County’s litigation counsel to make partisanship the *post hoc* rationale for the plan fails.

III. Plaintiffs, not the County, will be substantially injured by a stay.

Plaintiffs will be seriously and irreparably injured by a stay. Irreparable harm occurs where it “would be difficult—if not impossible—to reverse the harm,” *Hollingsworth, v. Perry*, 558 U.S. 183, 195 (2010), or where a party cannot “be afforded effective relief” even if she eventually prevails on the merits, *Nken*, 556 U.S. at 435. Vote dilution, no less than vote denial, causes irreparable harm because of the “strong interest” in the right to vote, *Purcell*, 549 U.S. at 4, and to do so free of discrimination. “[O]nce [an] election occurs, there can be no do-over[s] and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin [a discriminatory] law.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

If the discriminatory map enjoined by the district court is permitted to stay in effect for the 2024 election, Galveston County’s minority voters—including Appellees—will for the first time in thirty years be fragmented across four precincts and have no opportunity to elect a commissioner of their choice. Because the office is for a four-year term, Appellees would not see redress until 2028—nearly the end of this decennial redistricting cycle. Commissioners—unlike members of Congress or state legislators—do not primarily spend their time voting on partisan policies.

They are the face of government for their constituents—providing direct and critical services on the front lines of their communities, including responding to hurricanes, local emergencies, and constituent needs. The County—in a “mean-spirited” and racially motivated scheme sought to “extinguish the Black and Latino communities’ voice on its commissioners court.” ROA.16029. The harm from this sordid affair is irreparable if the enacted map is permitted to take effect.

IV. Public Interest does not support a Stay pending appeal

The public interest does not support a stay because the public interest favors elections conducted under lawful, nondiscriminatory election maps. The County contends that “public interest similarly supports the enforcement of properly enacted laws—including redistricting plans adopted by governmental bodies within the State of Texas.” Mot. at 14-15. But Map 2 was not “properly enacted.” As detailed in the district court’s 157-page opinion, this case was not a close call. The district court described the County’s redistricting process as “[a]typical,” “stark,” “jarring,” “mean-spirited,” “egregious,” and “stunning.” ROA.16029. The Court should not permit the November 2024 election to take place under a map that silences the voices of 38% of the county’s population.

CONCLUSION

For the foregoing reasons, the County’s renewed motion for a stay pending appeal should be denied.

December 4, 2023

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