

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

TERRY PETTEWAY, <i>et al.</i> ,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. 3:22-cv-57
	§	
GALVESTON, TEXAS, <i>et al.</i> ,	§	
	§	
<i>Defendants.</i>	§	
	§	

***PETTEWAY* PLAINTIFFS' CLOSING STATEMENT**

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I. Introduction

For over 30 years, Black and Latino residents of the Galveston County commissioners court's historic Precinct 3 have had pride in their precinct—a majority-minority precinct which has provided them with the opportunity to elect their candidate of choice to have a seat at the County table. FOF ¶¶ 66–67; *see also, e.g.*, Trial Tr. vol. 2, 19:20–20:6 (Pope). More than just a point of pride, the Precinct 3 commissioner has provided Galveston's minority community with true representation. Through the years, that commissioner has been indispensable to the community in times of great trial, such as Commissioner Stephen Holmes' leadership and presence in the aftermath of devastating hurricanes and throughout the COVID-19 pandemic, *see, e.g.*, Trial Tr. vol. 6, 221:9–222:20 (Randall), as well as in times of everyday governance impacting the most fundamental parts of residents' lives, such as Commissioner Wayne Johnson's advocacy to ensure that Parks and Recreation services be extended to the whole community, *id.* at 220:3–221:4.

But, in the 2021 redistricting process, the Galveston County commissioners court voted to eliminate that essential seat at the table. The Court enacted a plan (“the Enacted Plan” or “Map 2”) which razed historic Precinct 3, undeniably fracturing Black and Latino voters across all four commissioners court precincts and thereby denying them the equal opportunity to elect their candidate of choice, in violation of Section 2 of the Voting Rights Act (“VRA”). This effect was far from accidental or inevitable. Rather, the evidence demonstrates that the commissioners who voted for the Enacted Plan did so via a deeply defective process which obscured transparency and public participation, with full

knowledge of the effect the Enacted Plan would have on minority voters, with no colorable justification apart from unlawful racial intent, and with the express intent to dismantle that one majority-minority district which the community held so dear.

II. The 2021 Galveston County Commissioners Court Map Has a Discriminatory Impact on Black and Latino Voters

Plaintiffs have demonstrated that the Enacted Plan dilutes the voting power of Galveston’s Black and Latino voters in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, by cracking the County’s minority population across all four commissioners court precincts. Plaintiffs have satisfied each *Gingles* precondition and proven that, under the totality of the circumstances, “the political process is not ‘equally open’” to Black and Latino voters in Galveston County. *Allen v. Milligan*, 143 S. Ct. 1487, 1503 (2023) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 45–46 (1986)).

A. Plaintiffs Satisfy the *Gingles* Preconditions

Plaintiffs have met each of the *Gingles* preconditions, including that: (1) the Black and Latino population in Galveston County is “sufficiently large and geographically compact to constitute a majority in a reasonably configured district”; (2) Black and Latino voters in Galveston are “politically cohesive”; and (3) the white voting majority in the County votes “sufficiently as a bloc to enable it...to defeat” Black and Latino-preferred candidates. *Id.* (internal quotation marks and citations omitted).

First, there is no genuine dispute that the Black and Latino population in Galveston County is sufficiently large and geographically compact as to constitute a majority in a commissioners court precinct. Indeed, the commissioners court itself proposed one such

map, Map 1, *see* FOF ¶¶ 69–70, and Plaintiffs’ experts have produced numerous alternative commissioners court plans which likewise contain majority Black and Hispanic precinct while complying with traditional redistricting principles, *see* FOF ¶¶ 71–98.

Second, extensive quantitative expert testimony demonstrates that Black and Latino voters in Galveston County are cohesive and that “a significant number of minority group members usually vote for the same candidates.” *Gingles*, 478 U.S. at 56; *see* FOF ¶ 108. This testimony was based upon analysis using several different data sources, over hundreds of statistical models, and multiple different methods of statistical analysis including King’s Ecological Inference (“King’s EI”) and RxC EI, which utilize Citizen Voting Age Population (“CVAP”) and Spanish Surname Turnout data. *See* FOF ¶¶ 109–111. Dr. Barreto and Mr. Rios, as well as Dr. Oskooii, conducted undisputed RxC EI analyses that show, on average, over 85% of Black and Latino voters vote for the same candidate countywide and within the illustrative Precinct 3 plans contained in those experts’ reports. *See* FOF ¶ 117.

Dr. Barreto and Mr. Rios also conducted, and Dr. Oskooii replicated and reproduced, Bayesian Improved Surname Geocoding (“BISG”) analysis of Galveston County elections which more precisely assesses voting patterns by race and ethnicity. *See* FOF ¶¶ 111–115; *see also* Pls.’ Ex. 465 at 8–24 (Barreto/Rios Rebuttal Report); Pls.’ Ex. 505 at Figures 4 & 8 (Oskooii Supplemental Report). The unrebutted results from that analysis further demonstrate that Black voters consistently support the Latino-preferred candidate and Latino voters consistently support the Black-preferred candidate, with over 75% of Latino voters favoring the same candidates in the bulk of the 29 elections assessed (with most elections featuring over 80% Latino support for a given candidate). *See* FOF ¶ 118; Pls.’

Ex. 465 at 17–19. And Defendants’ expert, Dr. Alford, agreed that the single most probative primary election (the 2012 endogenous primary election for Precinct 3) featured a “highly cohesive” Black and Latino electorate. Trial Tr. vol. 10, 140:9-20 (Alford); *see also* FOF ¶ 134. Accordingly, Plaintiffs have satisfied *Gingles* II.

Third, expert testimony confirms that “the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances . . . — usually to defeat the minority’s preferred candidate.” *Gingles*, 478 U.S. at 51. To assess this factor, Plaintiffs’ experts conducted electoral performance/reconstituted election analyses on elections that encompassed the entirety of Galveston County. *See generally* FOF ¶¶ 148–162. Those analyses show that, on average, over 85% of Anglo voters across Galveston County vote for candidates running in opposition to the minority-preferred candidates of choice. FOF ¶ 160; *see also* Pls.’ Ex. 384 ¶¶ 22–24 (Barreto/Rios Expert Report). Plaintiffs’ expert analyses regarding this precondition are wholly un rebutted as Dr. Alford did not conduct any analyses as to whether Anglo bloc voting is sufficient to defeat minority-preferred candidates in the Enacted Plan, and did not dispute Plaintiffs’ experts’ analyses. FOF ¶ 158; *see also* Trial Tr. vol. 10, 123:4–17 (Alford). Indeed, all the experts agreed that the Anglo bloc voting usually defeats the Latino and Black candidate of choice in Galveston County elections in every precinct analyzed in the Enacted Plan. FOF ¶ 162. Plaintiffs have, therefore, satisfied *Gingles* III.¹

¹ Partisanship does not explain the consistent pattern of racially polarized voting in Galveston County. The factors identified by the Fifth Circuit in *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 860–61 (5th Cir. 1993), here

B. Under the Totality of the Circumstances, Galveston’s Political Processes Are Not Equally Open to Minority Participation

Plaintiffs have proven with both expert and lay testimony that, under the totality of the circumstances, “the political process is not ‘equally open’” to Black and Latino voters in Galveston County. *Milligan*, 143 S. Ct. at 1503. Nearly all of the Senate Factors used to assess the totality of the circumstances weigh heavily in favor of the Plaintiffs. Galveston County has a lengthy history of official and *de facto* discrimination related to voting, a long history of racially polarized voting, presence of dilutive voting practices, substantial socio-economic differences between Black and Latino residents and Anglo residents in Galveston County that create barriers to voting, a presence of racial appeals in recent local political campaigns, a relative lack of Black and Latino electoral success, and a lack of responsiveness on the part of Galveston County’s officials to the needs of the Black and Latino communities. *See generally* COL ¶¶ 72–93; FOF ¶¶ 196–210, 396–500. Furthermore, the purported justifications for the 2021 redistricting plan are tenuous. *See infra* at III.B.iii; *see also* COL ¶ 157–162; FOF ¶¶ 364–395. In this context and given the County’s “past and present reality, political and otherwise,” the Enacted Plan operates to “minimize[] or cancel[] out [Black and Latino] voting strength” in Galveston County. *Milligan*, 143 S. Ct. at 1507 (internal quotation marks and citations omitted). The Enacted Plan therefore denies the County’s Black and Latino voters an equal opportunity “to

weigh in favor of a finding that partisan affiliation in fact serves as proxy for illegitimate racial considerations. COL ¶ 66.

participate in the political process and to elect representatives of their choice” in violation of Section 2. 52 U.S.C. § 10301.

III. The 2021 Galveston County Commissioners Court Map Was Passed with Discriminatory Intent

The manner in which the County devised and adopted the Enacted Plan, and the discriminatory effect it had on Black and Latino residents of Galveston County are so obvious as to permit no other conclusion but that the County was motivated by racially discriminatory intent. The 2021 redistricting process, which occurred within the historical context of repeated efforts by Galveston County to retrogress minority voting rights, was marked by procedural deviations from prior redistricting cycles in nearly every manner, obscuring transparency and public participation. And the racially discriminatory effect of the Enacted Plan that arose from that process is so “inevitable” as to be “tantamount for all practical purposes to a mathematical demonstration.” *Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960). Defendants split apart Black and Latino communities in the core of historic Precinct 3 across all four precincts in the Enacted Plan, knowing full well the effect their actions would have on minority voters. Such a result was neither justified by nor the natural consequence of the County’s purported redistricting goals. Instead, the evidence shows that Defendants adopted the Enacted Plan with the express and predominant purpose of dismantling Galveston County’s sole majority-minority commissioners precinct.

A. This Court Should Reach Plaintiffs’ Intent Claims

This Court—which is closest in both time and proximity to the evidence, testimony, and witness demeanor relevant to the determination of Defendants’ intent—*should* reach

the question of intent in this matter. Defendants have expressly stated their objective to seek the reversal of the Fifth Circuit's precedent finding coalition claims viable for purposes of Section 2, noting the contrary precedent from the Sixth Circuit. *See, e.g.*, Dkt. 176 at 17–19 (Defs.' Mot. for Summ. J.). But because Plaintiffs have proven both discriminatory results *and* intent, Defendants' objection to the viability of coalition claims—if ultimately successful—cannot extinguish all of Plaintiffs' claims.

In the assessment of Plaintiffs' intent claims, Defendants' actions would run afoul of the law regardless of whether their discriminatory action targets Black and Latino voters alike, or individually. *See* COL ¶ 116 (*citing Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (Kennedy, J., Roberts, C.J., Alito, J., lead op.); *Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 769 (9th Cir. 1990); *Perez v. Abbott*, 253 F. Supp. 3d 864, 944 (W.D. Tex. 2017); *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)). In other words, the first *Gingles* precondition is irrelevant to any intent analysis and Plaintiffs likewise need not show that Black and Latino voters vote cohesively for this Court to determine that Defendants engaged in unlawful intentional discrimination. *Id.* But delaying any such determination may result in the deterioration of the evidence relevant to its consideration. Thus, even if this Court elects to avoid deciding Plaintiffs' constitutional claims, it ought to use its unique position to reach the merits of their statutory claims of intentional discrimination.

B. Plaintiffs Have Satisfied Their Burden to Show that the 2021 Commissioners Court Map Was Passed with Racially Discriminatory Intent

Plaintiffs have more than satisfied their burden to show that the 2021 commissioners court map was adopted with racially discriminatory intent. Indeed, there is overwhelming evidence that intentional discrimination was the driving motivation for Defendants' passage of the Enacted Plan.

To prove intentional discrimination under the Fourteenth and Fifteenth Amendments, plaintiffs must show that race was “*part of [the defendants’] redistricting calculus.*” *LULAC v. Abbott*, 601 F. Supp. 3d 147, 161 (W.D. Tex. 2022) (emphasis in original) (*LULAC II*); *see also Veasey v. Abbott*, 830 F.3d 216, 230 (5th Cir. 2016) (en banc) (“racial discrimination need only be one purpose, and not even a primary purpose” of the challenged plan) (quoting *United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009)). Similarly, plaintiffs may prove a VRA Section 2 claim of intentional discrimination by showing that racial discrimination was one purpose of the challenged government action. *Brown*, 561 F.3d at 433. And plaintiffs may prove racial gerrymandering in violation of the Fourteenth Amendment by showing “either through circumstantial evidence of a district’s shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Miller v. Johnson*, 515 U.S. 900, 916 (1995); *see also Cooper v. Harris*, 581 U.S. 285, 291 (2017); *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187 (2017).

“Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence on intent as may be available.” *Vill. of Arlington Heights v. Metro Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Courts consider “five nonexhaustive factors to determine whether a particular decision was made with a discriminatory purpose”: (1) “the historical background of the decision,” (2) “the specific sequence of events leading up to the decision,” (3) “departures from the normal procedural sequence,” (4) “substantive departures,” and (5) “legislative history.” *Veasey*, 830 F.3d at 231 (citation and internal quotation marks omitted); *see also Perez*, 253 F. Supp. 3d at 948 (evidence of “race-based hatred or outright racism, or that any particular legislator harbored racial animosity or ill-will toward minorities because of their race” is not required).

While discriminatory purpose “implies more than intent as volition or intent as awareness of consequences,” there is a “strong inference” that adverse effects were desired when they were an inevitable, but otherwise avoidable result of a government’s chosen action. *Pers. Adm’r of Mass v. Feeney*, 442 U.S. 256, 279 n.25 (1979); *see also Brown*, 561 F.3d at 433 (“the normal inferences to be drawn from the foreseeability of [the legislature’s] actions may be considered”). Indeed, where “a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face,” the “evidentiary inquiry is then relatively easy.” *Arlington Heights*, 429 U.S. at 266. An action designed with the “essential inevitable effect” of discriminating on the basis of race is unconstitutional on its face. *Gomillion*, 364 U.S. at 341. And in redistricting, intentionally fragmenting minority populations when such

a result is not otherwise required violates Section 2 of the Voting Rights Act, as well as the Fourteenth and Fifteenth Amendments. *See* COL ¶ 98; *see also Perez*, 253 F. Supp. 3d at 932 (finding intentional discrimination where the legislature enacted “a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities”) (internal quotation marks omitted); *Bartlett*, 556 U.S. at 24 (Kennedy, J., Roberts, C.J., Alito, J., lead op.). Such unlawful intentional fragmentation is precisely what the Galveston commissioners court pursued and accomplished in its 2021 redistricting process.

i. Defendants Designed and Undertook a Deeply Deficient Redistricting Process That Departed from Past Procedures

Galveston County’s 2021 redistricting cycle was marked by numerous procedural deficiencies, including the: (1) failure to adopt a timeline and subsequent last-minute timing of redistricting, (2) failure to adopt publicly available redistricting criteria, (3) lack of transparency in engaging redistricting counsel; (4) lack of notice and availability for public comment; (5) time, place, and manner of the November 12, 2021 special meeting, and (6) general exclusion of the sole minority commissioner, Commissioner Holmes, from the redistricting process. *See* FOF ¶¶ 275–363; COL ¶¶ 125–148 *see also* FOF ¶¶ 196–221 & COL ¶¶ 119–124 (explaining that these procedural departures occurred within the historical context of repeated efforts by Galveston County to retrogress minority voting rights); Pls.’ Ex. 414 at 8–21 (Burch Expert Report), Pls.’ Ex. 412 at 14–60 (Krochmal Expert Report); Trial Tr. vol. 2, 146:24–147:13 (Burch); Trial Tr. vol. 5, 36:6–19, 75:1–15 (Krochmal). The evidence thus shows that Defendants intentionally designed the 2021

redistricting process to minimize transparency, as well as public opposition to the obvious discriminatory impact of the Enacted Plan, because, as Commissioner Holmes testified at trial, “the fix was already in”; the passage of Map 2 was a foregone conclusion. Trial Tr. vol. 7, 160:20–161:8 (Holmes); *see also* Trial Tr. vol. 7, 86:6–13 (Holmes); Trial Tr. vol. 9, 328:5–19 (Apffel) (testifying that he understood, by at least November 9, 2021, that Judge Henry would be supporting Map 2 and that Commissioner Apffel was also inclined to support Map 2); Joint Ex. 23 at Holmes000188 (Holmes’ Notes); Pls.’ Ex. 588 (Oct. 29, 2021 Mark Henry Facebook Post) (encouraging the public to support Map 2); Pls.’ Ex. 247 (Oct. 29, 2021 Giusti Facebook Post) (reposting Judge Henry’s Facebook Post encouraging the public to support Map 2); Trial Tr. vol. 2, 145:8–24 (Burch); Pls.’ Ex. 414 at 20–21 (Burch Expert Report).

ii. Defendants Were Aware of the Impact that the Enacted Plan Would Have on Galveston’s Minority Community

From the outset of the 2021 redistricting process, Defendants understood that dismantling the Benchmark Plan and its long-standing, performing majority-minority district—in favor of the Enacted Plan’s more radical redistricting—would eliminate minority voters’ ability to elect a candidate of their choice to the commissioners court. *See generally* FOF ¶¶ 193, 230; COL ¶¶ 105–118; Pls.’ Ex. 414 at 4–8 (Burch Expert Report). Defendants’ knowledge about the foreseeable impact of the Enacted Plan on Galveston County’s minority community alone provides a “strong inference” of discriminatory intent. *Pers. Adm’r of Mass*, 442 U.S. at 279 n.25; *see also Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 728 (S.D. Tex. 2017) (“the disparate and discriminatory dilutive impact” of

a proposed plan, “and the knowledge that it would occur . . . provide objective evidence that, combined with other evidence, provide ample support for finding discriminatory intent”); *Perez*, 253 F. Supp. 3d at 954 (enjoining redistricting plan as intentionally discriminatory where “the map looked as though mapdrawers started out with the district they wanted to avoid”—a “minority coalition district”—“and then carved it up into pieces”); *Texas v. United States*, 887 F. Supp. 2d 133, 163 (D.D.C. 2012), *vacated on other grounds*, 570 U.S. 928 (2013) (finding discriminatory intent where “there is little question that dismantling” a performing precinct has “a disparate impact on racial minority groups”). Indeed, the weight of the evidence adduced at trial proves that race was the predominant factor in Galveston County’s 2021 redistricting process: the commissioners and their redistricting counsel understood the geographic distribution of minority voters in the County, including their concentration in historic Precinct 3, understood that dismantling historic Precinct 3 would fragment the County’s minority population across all four precincts, and explicitly considered detailed racial data in creating the Enacted Plan.

After the Census data was released in August 2021, Defendants’ redistricting counsel, Dale Oldham, requested and received from the National Republican Redistricting Trust a chart showing racial demographic changes for each commissioners precinct from 2010 to 2020. Pls.’ Ex. 173 (Sept. 14, 2021 Email from A. Kincaid to D. Oldham); Trial Tr. vol. 8, 37:2–20 (Oldham). Mr. Oldham removed the header of this chart—including the logo of the National Republican Redistricting Trust—and sent the chart to the County’s General Counsel Paul Ready “[t]o be distributed to the commissioners.” Trial Tr. vol. 8, 51:5–10, 52:1–14 (Oldham). Mr. Oldham himself reviewed this chart of racial data, as well

racial shading maps of Galveston County, to see where Galveston's Black population was concentrated. Trial Tr. vol. 8, 134:9–135:2, 136:7–16 (Oldham).

Mr. Oldham was already “pretty familiar” with and had a “rough idea” about the location of Galveston County's minority population, based on his 2011 redistricting work for the County. *See infra* at III.B.iv; *see also* Trial Tr. vol. 8, 131:7–23, 134:2–8 (Oldham). He understood that Galveston's minority population was “certainly concentrated” in historic Precinct 3, in the areas of Dickinson and La Marque, parts of Texas City and Hitchcock, and on Galveston Island. Trial Tr. vol. 8, 133:14–134:1 (Oldham). Mr. Oldham's review of racial data in 2021 confirmed that Galveston's Black population remained concentrated in historic Precinct 3 and that the Latino population had grown throughout the County. Trial Tr. vol. 8, 133:1–13, 134:2–135:2, 135:12–136:6 (Oldham). Mr. Oldham's understanding of the County's demographics was consistent with the commissioners' knowledge that Galveston's minority population was concentrated in historic Precinct 3, which had for decades elected a minority candidate of choice. *See* Trial Tr. vol. 7, 271:18–273:10 (Henry); Trial Tr. vol. 9, 149:15–24 (Giusti); Trial Tr. vol. 2, 111:19–23 (Burch); Pls.' Ex. 414 at 5 (Burch Expert Report).

Once drafting of proposed maps finally got underway—not until October 14, 2021, *see* FOF ¶ 236—the county's hired demographer, Thomas Bryan, produced an analytic spreadsheet for both Maps 1 and 2 that was then shown to members of the commissioners court, along with the draft plans. Pls' Ex. 528 (Maps 1 and 2 Analytics Spreadsheet); Trial Tr. vol. 8, 171:25–173:5 (Oldham); 268:13–269:4 (Bryan). Mr. Bryan's spreadsheet included a substantial amount of granular and summary racial data about the proposed

plans. The first tab included CVAP and voting age population (“VAP”) data by racial group down to the census block level within Galveston County, along with the precinct to which each block was assigned in Maps 1 and 2; this data could be filtered and sorted. Trial Tr. vol. 9, 10:21–11:21, 12:7–13 (Bryan); Pls’ Ex. 528 (Maps 1 and 2 Analytics Spreadsheet). The second tab of Mr. Bryan’s spreadsheet, titled “Pop Pivot,” provided the Black and Latino VAP percentages for each commissioner’s precinct in the Benchmark Plan, Map 1, and Map 2, as well as the combined Black and Latino VAP for each precinct to identify the total majority-minority percentage shares. Trial Tr. vol. 9, 12:14–13:11 (Bryan); Pls’ Ex. 528 (Maps 1 and 2 Analytics Spreadsheet). The combined Black and Latino VAP is not provided by the Census Bureau; Mr. Bryan added formulas to Excel to calculate that information. Trial Tr. vol. 9, 14:16–15:4 (Bryan). Mr. Bryan also added color-coded conditional formatting to shade the racial data on a scale of red to green, to highlight variation among the racial compositions of each precinct. Trial Tr. vol. 9, 15:5–16:16, 17:10–13 (Bryan); *see also* Trial Tr. vol. 8, 173:5–13 (Oldham). This section of the Pop Pivot tab is shown below:

	1519	2020	2020	2020	2020			
Original	CVAP Total	PL Total	PL VAP Total	PL VAP BNH	PL VAP HISP	% BNH VAP	% HISP VAP	% Min VAP
Row Label	Sum of acs_cv	Sum of PL_Totl	Sum of PL_T118	Sum of PL_T18_B	Sum of PL_T18_H			
1	60,382	85,433	85,769	4,324	14,944	7%	23%	29%
2	62,872	95,596	73,729	5,748	14,534	6%	20%	28%
3	53,445	79,906	43,257	12,558	18,731	30%	38%	48%
4	57,047	88,747	66,517	3,661	11,850	5%	15%	23%
Grand Total	234,346	350,682	267,382	32,289	60,159	12%	22%	35%
Low	-8.8%	-8.5%	-8.4%					
Average	58,586	87,671	66,846					
High	7.3%	9.0%	10.3%					
Map 1	CVAP Total	PL Total	PL VAP Total	PL VAP BNH	PL VAP HISP	% BNH VAP	% HISP VAP	% Min VAP
Row Label	Sum of acs_cv	Sum of PL_Totl	Sum of PL_T118	Sum of PL_T18_B	Sum of PL_T18_H			
1	61,610	87,659	65,265	4,899	15,107	7%	23%	29%
2	57,445	86,431	67,003	5,018	13,159	7%	20%	27%
3	59,945	88,833	68,547	19,225	20,371	28%	30%	58%
4	59,345	87,959	65,207	3,447	11,910	6%	15%	23%
Grand Total	234,346	350,682	267,382	32,289	60,159	12%	22%	35%
Low	-5.5%	-1.4%	-2.5%					
Average	58,586	87,671	66,846					
High	5.2%	1.1%	2.5%					
Map 2	CVAP Total	PL Total	PL VAP Total	PL VAP BNH	PL VAP HISP	% BNH VAP	% HISP VAP	% Min VAP
Row Label	Sum of acs_cv	Sum of PL_Totl	Sum of PL_T118	Sum of PL_T18_B	Sum of PL_T18_H			
1	61,215	87,689	65,641	6,332	15,404	10%	28%	34%
2	63,746	87,388	71,169	9,104	16,395	12%	23%	32%
3	55,319	88,111	64,704	4,776	14,308	7%	22%	30%
4	54,057	87,514	64,858	12,137	12,452	15%	15%	36%
Grand Total	234,346	350,682	267,382	32,289	60,159	10%	22%	35%
Low	-7.7%	-0.3%	-3.2%					
Average	58,586	87,671	66,846					
High	8.6%	0.5%	6.5%					

Pls’ Ex. 528 (Maps 1 and 2 Analytics Spreadsheet).

Mr. Bryan’s testimony at trial that he was “given no instruction one way or the other on racial and ethnic information,” Trial Tr. vol. 9, 19:12–19, 21:4–10, 22:15–20 (Bryan), directly contradicts Mr. Oldham’s testimony that he gave Mr. Bryan “incredibly clear” instructions not to display or consult racial data while drawing the map, Trial Tr. vol. 8, 71:18–25 (Oldham); *see also* Trial Tr. vol. 8, 190:2–15 (Oldham) (admitting having “over-testified” as to certain matters). Mr. Bryan testified that he was confident he remembers Mr. Oldham’s instructions and that he would have remembered any instruction not to display or use racial data had it been provided, especially if this instruction had been “incredibly clear” as Mr. Oldham asserted. Trial Tr. vol. 9, 57:11–20 (Bryan).² Mr. Oldham’s manufactured testimony *on the issue of race* vitiates any presumption of good faith Defendants might have enjoyed. *See LULAC II*, 601 F. Supp. 3d at 181.

Mr. Bryan likewise testified that Mr. Oldham never instructed him to remove racial data from the analytics spreadsheet to prevent the commissioners from making decisions based on that data. Trial Tr. vol. 9, 17:20–18:10 (Bryan). And indeed, the commissioners were all provided with Mr. Bryan’s data and analysis, which showed clearly that Map 2—the subsequently Enacted Plan—would not maintain a majority-minority precinct. Trial Tr. vol. 8, 171:25–172:3, 200:5–16 (Oldham); *see also* Trial Tr. vol. 9, 358:6–359:15 (Apffel) (admitting reviewing racial data during the 2021 redistricting process, prior to approval of the Enacted Plan); Pls.’ Ex. 414 at 5 (Burch Expert Report). This case stands in stark

² Mr. Bryan also testified that he was never asked to consider the compactness of draft precincts, to respect communities of interest within Galveston County, or to keep the Houston suburbs unified in a single precinct. Trial Tr. vol. 8, 303:21–304:8 (Bryan).

contrast to the *LULAC* court’s assessment of senate district 10, where the court credited the mapdrawer’s claim to have “blinded [her]self” to race. *LULAC II*, 601 F. Supp. 3d at 172. Racial considerations abounded in this mapdrawing process. That Mr. Oldham contrived testimony on the witness stand—immediately undercut by Defendant’s own witness Mr. Bryan—about racial considerations only underscores the ulterior racial motivations at play.

Mr. Bryan testified that he did not display or consult racial data while working on the Galveston maps, Trial Tr. vol. 8, 249:16–19 (Bryan); Trial Tr. vol. 9, 19:4–8 (Bryan); but Mr. Bryan electing not to review racial data while drafting is itself immaterial. Mr. Bryan testified that he did not exercise any discretion of his own in drawing the Enacted Plan. Rather, Mr. Oldham told him where to place the lines in Map 2 based on specific, detailed instructions from Judge Henry. Trial Tr. vol. 8, 290:2–7, 291:25–293:6, 293:13–18, 296:9–25 (Bryan) (explaining that Oldham gave him “very specific instructions about how he wanted Map 2 to look” because “Dale knows what the client wants,” and Bryan did not know “why [Mr. Oldham] was asking [him] to put [any] particular territory in each of the commissioner precincts in Map 2”); Trial Tr. vol. 8, 145:13–150:22 (Oldham) (describing Bryan as “implementing instructions I had basically received from Judge Henry . . . on how to draw Map 2”). Indeed, as Mr. Oldham testified, Map 2—the Enacted Plan—was “the visualization” of Judge Henry’s instructions. Trial Tr. vol. 8, 181:2–16 (Oldham) (“Map 2 was something [Judge Henry] had been visualizing for a decade”), *see also* Trial Tr. vol. 8, 82:1–83:7 (Oldham) (explaining that Judge Henry preferred Map 2 because “it’s essentially his criteria,” the embodiment of “the instructions to [Mr. Bryan] when drawing this map”). Unlike Mr. Bryan, Mr. Oldham began this process studying racial shading maps

to confirm his prior understanding of Black population concentrations, and Judge Henry knew his decade-long desired configuration had been thwarted *because* it reduced Black voting strength. Trial Tr. vol. 8, 152:15–20 (Oldham).

In giving such instructions, Judge Henry—and other commissioners—knew that Galveston County’s minority communities were concentrated in historic Precinct 3, which had consistently elected a minority candidate of choice—currently Commissioner Holmes—for decades. *See* Trial Tr. vol. 7, 272:4–273:10 (Henry); *see also* Trial Tr. vol. 9, 149:15–24 (Giusti); Trial Tr. vol. 2, 111:1–23 (Burch). And 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. Trial Tr. vol. 7, 302:23–303:15, 347:3–11 (Henry) (testifying that the Enacted Plan involved “a dramatic shift” in historic Precinct 3 and that he was “sure I had an idea” what impact the Enacted Plan would have on Commissioner Holmes’ electability); Trial Tr. vol. 9, 131:3–8, 148:5–8, 149:15–24 (Giusti) (admitting that he knew prior to voting for the Enacted Plan that “if adopted, it would eliminate the majority-minority Black and Hispanic voting age population in precinct 3”); Trial Tr. vol. 9, 329:24–330:14, 358:6–359:15, 372:15–25 (Apffel) (testifying to (1) speaking with Commissioner Holmes about the proposed maps violating the Voting Rights Act, but averring that “[t]here was never a solution offered”; (2) reviewing racial data prior to approval of the Enacted Plan; and (3) the fact that “you can look at the picture [of Map 2] and tell” that it disadvantages Commissioner Holmes); Joint Ex. 23 at Holmes000183

(Commissioner Holmes' notes) (recording conversation wherein Commissioner Apffel specifically noted that Map 2 spread the minority population across all four precincts); *see also* Pls.' Ex. 414 at 5 (Burch Expert Report). Indeed, two of the three yes-voting commissioners testified that they believed eliminating Galveston County's sole majority-minority commissioners precinct was actively required, because they viewed the benchmark precinct as a racial gerrymander, even though Mr. Oldham advised them that Map 1's retention of Precinct 3 was lawful. *See* Trial Tr. vol. 7, 302:9–18 (Henry); Trial Tr. vol. 9, 356:11–14 (Apffel); Trial Tr. vol. 8, 181:20–182:4 (Oldham).

The impact of the Enacted Plan on Galveston's minority community was even more patently obvious by the time of its adoption because the County had received hundreds of public comments—submitted through the online portal and made in person at the November 12, 2021 special meeting—expressing concern that the proposed maps fractured historic Precinct 3 and diluted minority voting strength. *See* FOF ¶¶ 345–356; Pls.' Ex. 129 (video of November 12, 2021 special meeting); Pls.' Ex. 414 at 5–6 (Burch Expert Report); Pls.' Ex. 412 at 56–57 (Krochmal Expert Report); *see also* Trial Tr. vol. 9, 148:15–19 (Giusti) (admitting that he knew members of the public were concerned that the Enacted Plan would dilute minority voting strength). At the November 12, 2021 special meeting, Commissioner Holmes likewise presented evidence that the Enacted Plan would dismantle Galveston's sole majority-minority precinct, including providing the other commissioners with a racially polarized voting analysis and presenting alternative maps that would achieve required population targets without destroying the core of historic Precinct 3. Pls.' Ex. 129 (video of November 12, 2021 special meeting); FOF ¶ 274; Trial Tr. vol. 7, 95:4–96:11

(Holmes); Defs.’ Ex. 144 at 26–28; Pls.’ Ex. 414 at 5–6 (Burch Expert Report). But the commissioners did not discuss or consider Commissioner Holmes’ comments or incorporate any public feedback into the design of the Enacted Plan. FOF ¶¶ 348–356.

In sum, the foreseeably discriminatory effect the Enacted Plan had on Black and Latino residents of Galveston County permits no other conclusion but that the County was motivated by racially discriminatory intent. Defendants considered detailed racial data before splitting apart Black and Latino communities in the core of historic Precinct 3 across all four precincts in the Enacted Plan, knowing full well the effect their actions would have on minority voters and the sole minority candidate of choice on the commissioners court. This result was neither justified nor the natural consequence of the County’s purported redistricting goals, *see infra* at III.B.iii; instead, “the disparate and discriminatory dilutive impact” of the Enacted Plan “and the knowledge that it would occur . . . provide ample support for finding discriminatory intent.” *Patino*, 230 F. Supp. 3d at 728.

iii. Defendants Have Provided No Credible Alternative Purpose Underlying the Passage of the 2021 Commissioners Court Map

Defendants’ purported justifications for dispersing historic Precinct 3’s Black and Latino residents across all four new commissioners precincts and dramatically shifting Precinct 3 to include predominantly Anglo parts of the county are nothing more than pretext. And, after eliminating Defendants’ pretextual justifications, the intentional dismantling of the majority-minority precinct is the only feasible remaining explanation for the formulation of the Enacted Plan.

Evidence and testimony presented at trial entirely undermine Defendants’ chief purported justification for the Enacted Plan: the creation of a coastal precinct. The undeniable reality is that it is possible to create a commissioners court plan including a unified coastal precinct that nonetheless maintains a majority-minority precinct. Plaintiffs have presented the court with *five* illustrative plans doing just that. *See* FOF ¶¶ 75, 79; Pls.’ Exs. 415 (Rush Alternative Map 1), 416 (Rush Alternative Map 2), 417 (Rush Alternative Map 3), 418 (Rush Alternative Map 4); Pls.’ Ex. 386 at 32–34 (Cooper Expert Report) (Cooper Map 2); Pls.’ Ex. 486 at 6–9 (Rush Rebuttal Report) (providing analyses for Rush Alternative Maps 1-4); *see also Cooper*, 581 U.S. at 317 (“We have no doubt that an alternative districting plan. . . can serve as key evidence in a race-versus-politics dispute,” as a “highly persuasive way” to disprove other justifications by showing that the governing entity “had the capacity to accomplish all its partisan goals without moving so many members of a minority group . . .”). Nor was the elimination of a majority minority precinct required to get even the *precise* configuration of a coastal precinct desired by Judge Henry. Indeed, when shown alternative commissioners court maps from Plaintiffs’ expert Dr. Rush at trial, Mr. Oldham agreed that the illustrative maps in fact created coastal precincts that were “almost exactly like what was in Map 2” *without* cracking apart the minority populations on the Mainland. Trial Tr. vol. 8, 167:18–168:1, 171:14–21 (Oldham); *see also* FOF ¶ 247. One such map, containing a coastal precinct “almost exactly like what was in Map 2” is included below:

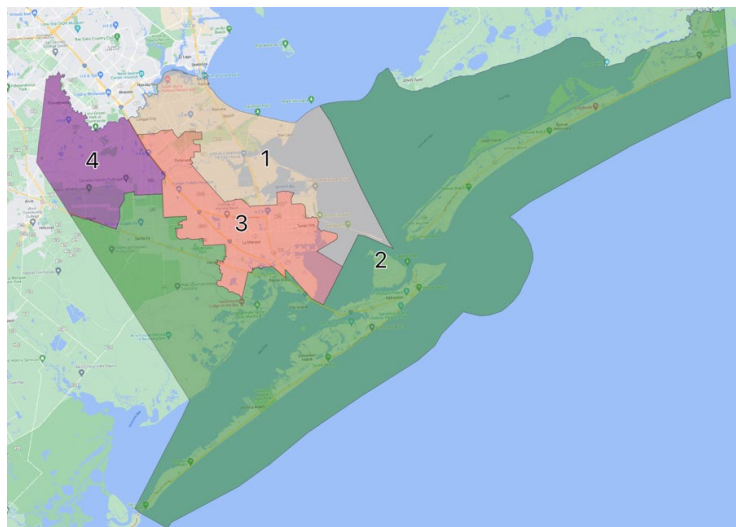


Image from Pls.' Ex. 417 (Burch Report – Rush Alternative Map 3).

The evidence and testimony presented at trial therefore demonstrate that the creation of a coastal precinct is not at odds with the preservation of a minority opportunity district in Galveston County. Even Mr. Oldham agreed that the creation of a coastal precinct cannot explain the fragmentation of the Black and Latino population on the mainland of Galveston County. Trial Tr. vol. 8, 160:7–13, 164:13–17 (Oldham) (testifying that it was possible to retain a majority-minority precinct while also creating a coastal precinct and agreeing that putting Galveston, Pelican, and Bolivar in Precinct 2 does not require that the portions of historic Precinct 3 on the mainland be dismantled).

Also unexplainable is the placement of Commissioner Holmes in a Precinct 3 that did not just lose its majority-minority population, but that has the *lowest* minority population of *any* commissioners precinct in the plan. Mr. Oldham claimed at trial that Commissioner Holmes' placement in the precinct with the lowest minority population was due to the location of his residence, Trial Tr. vol. 8, 175:20–22 (Oldham), but the Commission's mapdrawer, Mr. Bryan, disputed that testimony, asserting that he did not

know where Commissioner Holmes lived and that his residence had no bearing on his placement in Precinct 3, Trial Tr. vol. 8, 306:6–19 (Bryan); *see also* FOF ¶ 252; COL ¶ 174.

Finally, all the commissioners who voted for the Enacted Plan recalled providing input disclaiming partisanship as a predominating consideration in the geographic configuration of districts. *See* FOF ¶ 387; COL ¶ 170. And Mr. Oldham testified that he likewise never told Mr. Bryan that Judge Henry’s purpose for Map 2 was to create four Republican districts, and Mr. Oldham denied there was any such partisan motivation. *See* FOF ¶ 387; COL ¶ 170; Trial Tr. vol. 8, 153:10–154:4 (Oldham). Accordingly, partisanship cannot provide an alternative justification for the configuration of the Enacted Plan.

iv. Defendants’ Express Purpose Was to Eliminate the Majority-Minority Commissioners Court Precinct

Defendants’ express purpose during the 2021 redistricting cycle was to eliminate the sole performing majority-minority commissioners court precinct—a precinct that had survived relatively unchanged as a haven for minority representation on the commissioners court for almost 30 years. *See* Pls. Ex. 563 (*Hoskins v. Hannah* order on consent decree).

This intentional dismantling began when Defendants hired Dale Oldham as redistricting counsel—through a process devoid of public transparency, *see* FOF ¶¶ 223, 294; Pls. Ex. 414 at 15 (Burch Expert Report)—in hopes of a “repeat performance” of the 2011 redistricting cycle, Trial Tr. vol. 8, 8:10–13, 29:22–30:1 (Oldham). In 2011, the County, with Mr. Oldham’s assistance, attempted to retrogress minority voting strength in Precinct 3 but was prevented from doing so by virtue of federal preclearance; the U.S.

Attorney General objected to the proposed plan, noting procedural deficiencies in the redistricting process that raised concerns of intentional discrimination. *See* FOF ¶¶ 276–77; Pls.’ Ex. 414 at 5, 8–9 (Burch Expert Report); *see generally* FOF ¶¶ 278–363 (detailing even greater procedural deficiencies during the 2021 redistricting process); COL ¶¶ 120–122 (explaining how the “proximity and comparability” of a map to which a Section 5 objection was made “weighs in favor of an inference of discriminatory intent”) (quoting *LULAC II*, 601 F. Supp. 3d at 171). Defendants—including Judge Henry and Commissioner Clark, who were on the court in 2011—nevertheless rehired Mr. Oldham in 2021 precisely *because of* his prior redistricting experience in Galveston. *See, e.g.*, Trial Tr. vol. 7, 283:21–284:1 (Henry); Pls. Ex. 414 at 9–10 (Burch Expert Report) (“Oldham has already got the familiarity with Galveston County having done it 10 years ago and so it should be a shorter more efficient path for him to adjust his prior work as opposed to somebody recreate it.”) (quoting Paul Ready at April 5, 2021 commissioners court meeting). This time though, as the County’s General Counsel Paul Ready noted when hiring Mr. Oldham, “there’s no more preclearance so . . . it’s a little bit cleaner.” Pls. Ex. 414 at 10 (Burch Expert Report) (quoting Paul Ready at April 5, 2021 meeting).

Shortly after hiring Mr. Oldham, Judge Henry and Mr. Ready emailed Mr. Oldham to ask explicitly whether the County “had to draw a majority minority district if we could,” explaining that Judge Henry did not believe the County was required to do so. Pls. Ex. 144 (Apr. 20, 2021 Email from P. Ready to D. Oldham, CCing M. Henry). Judge Henry thus communicated to Mr. Oldham, virtually from the outset of the representation, an awareness of and readiness to eliminate Galveston’s sole majority-minority commissioners precinct.

Rather than deny this fact whole cloth, two of the three commissioners who voted for the Enacted Plan, including Judge Henry, have justified their desire to dismantle the Benchmark Plan and its majority-minority precinct by insisting that historic Precinct 3 itself constituted a racial gerrymander violative of the Fourteenth Amendment, and thus needed to be dismantled. *See* Trial Tr. vol. 7, 302:9–18 (Henry); Trial Tr. vol. 9, 356:11-14 (Apffel). This justification, however, is unmoored from other evidence. All three yes-voting commissioners testified that they relied on their counsel’s advice about the legality of the proposed plans and that Mr. Oldham advised the commissioners that proposed Map 1—a “minimum change” from the Benchmark Plan that left historic Precinct 3 more or less intact—was legally defensible. *See* Trial Tr. vol. 8, 122:14–123:2 (Oldham) (“I wouldn’t have presented a map to the commission that I didn't think was a legally defensible map.”); Trial Tr. vol. 7, 332:20–25 (Henry) (testifying that he understood that both proposed maps were legally compliant: “[t]hey had better been, yes”); Trial Tr. vol. 9, 336:18–337:1 (Apffel) (“I had to trust the process because we hired Dale Oldham to provide us legally defensible maps. . . . And so, yes, I believe they were both legally defensible maps.”); Trial Tr. vol. 9, 89:3–11 (Giusti) (noting his reliance on Mr. Oldham to “give us a legal map that fit everything that it needed to fit”).³ Any argument that Defendants believed a least-change map would violate the Fourteenth Amendment is further belied by their willingness to publicly propose Map 1, and their argument at trial that litigation could have been avoided

³ Plaintiffs’ experts also testified that Map 1 met the *Gingles* I standard. *See* Trial Tr. vol. 4, 73:2–5 (Rush); *cf.* Pls.’ Ex. 386 at 26–29 (Cooper Expert Report) (concluding that Map 1 has characteristics of a majority-minority CVAP precinct and is reasonably compact); Trial Tr. vol. 3, 51:2–55:12 (Cooper).

had Commissioner Holmes simply pushed for the adoption of Map 1. *See, e.g.*, Trial Tr. vol. 1, 35:20–36:10 (Defs.’ Opening Statement).

Defendants’ desire to fragment Precinct 3’s minority population into all four precincts therefore cannot be excused as a good faith attempt to correct a perceived unconstitutional racial gerrymander. *See generally* COL ¶¶ 112–115. Instead, this justification merely confirms that the commissioners court viewed the 2021 redistricting process and its effect on Precinct 3 in particular through the lens of race, and intentionally reduced the minority population in Precinct 3 in order to dismantle the benchmark configuration that had been in place for decades.

In sum, there is substantial evidence that Defendants acted with both knowledge of the impact of their actions on Galveston’s minority community *and* express intent to eliminate Galveston’s sole majority-minority precinct, thereby eliminating the one opportunity minority voters in the County had to elect their candidate of choice to the commissioners court.

IV. Conclusion

Petteway Plaintiffs urge the Court to restore the single seat at the County table to which Galveston’s Black and Latino community can elect their candidate of choice, thus ensuring that those residents, who make up more than 38% of the countywide population, FOF ¶ 63, will retain the representation they are owed under the VRA—which Defendants have intentionally denied in violation of the VRA and the Fourteenth and Fifteenth Amendments—and which has proven so essential to the community.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 11, 2023, the foregoing document was filed electronically and served on all parties of record via CM/ECF, and that the document complies with the page limitations set out by the Court.

/s/Valencia Richardson
Valencia Richardson