IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL.	§	
vs.	§	CIVIL ACTION NO. 2:03-CV-354
RICK PERRY, ET AL.	§	Consolidated

REMEDIAL BRIEF OF THE JACKSON PLAINTIFFS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

OTHER

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Pursuant to the Court's June 29, 2006 Order, the Jackson Plaintiffs[1] hereby file their remedial proposal (the "Jackson Plan" or "Plan 1406C"), along with maps, statistical packages, and briefing in support of their proposal.

I. The Current Posture of This Case

The Supreme Court's Holding. On June 28, 2006, the Supreme Court held that District 23 in Texas's 2003 congressional redistricting map (the "2003 Plan" or "Plan 1374C") violated Section 2 of the Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U.S.C. § 1973. *See LULAC v. Perry*, Nos. 05-204, 05-254, 05-276 & 05-439, slip op. at 3, 36, 41 (U.S. June 28, 2006) (majority opinion). The Supreme Court reversed this Court's June 9, 2005 judgment as to the plaintiffs' Voting Rights Act claims against District 23 and also vacated the judgment as to the plaintiffs' constitutional claims against both District 23 and District 25. *See id.* District 23 is the west Texas district stretching from San Antonio west to El Paso and south to Laredo,

[1] The term "Jackson Plaintiffs" encompasses all plaintiffs included in the Amended Complaint filed on November 7, 2003 on behalf of the existing Jackson, Mayfield, and Manley plaintiffs and some additional plaintiffs included there for the first time, as well as the "Democratic Congressional Intervenors" who were plaintiff-intervenors in the *Balderas* litigation in 2001.

encompassing most of the State's border with Mexico. *See id.* at 17. District 25 is the long, stringy district connecting McAllen in the Rio Grande Valley to the Hispanic neighborhoods of Austin, 300 miles to the north. *See id.* at 18.

District 23. In reversing part of this Court's judgment, the Supreme Court identified two flaws in the construction of District 23 under the 2003 Plan. *First*, the Plan illegally removed nearly 100,000 Hispanic residents of eastern Webb County (and eastern Laredo) from District 23, just as they and more than 300,000 other Hispanics were taking effective electoral control of the district. *Id.* at 17. *Second*, the 2003 Plan added to District 23 a similar number of residents from three heavily Anglo counties in the "Hill Country" — Kerr, Kendall, and Bandera Counties. *Id.* at 17. In combination, these two flaws decreased the Hispanic percentage of District 23's adult citizen population from 57.5% to 46.1% (as of the 2000 census) and decreased the percentage of District 23's registered voters with Spanish surnames from 55.3% to 44.0% (as of the 2002 general election), thus destroying the growing opportunity of the district's Hispanic citizens to elect their preferred candidate to Congress. *See id.* at 17-18.

As the Court explained, the State took away that electoral opportunity precisely because the district's Hispanic voters "were about to exercise it." *Id.* at 34. The Republican incumbent, Henry Bonilla, had never been the candidate of choice for Hispanics and had lost Hispanic support with each successive election since 1996. *Id.* at 17. In November 2002, he captured only 8% of the Hispanic vote and just 51.5% of the overall vote. *Id.* With Hispanic voter registration and political cohesion on the rise, it was only a matter of time until a Hispanic Democratic challenger, with the overwhelming support of District 23's Hispanic citizens, would have defeated Congressman Bonilla. *See id.* at 22. "The State chose to break apart a Latino opportunity district to protect the incumbent congressman from the growing dissatisfaction of the

cohesive and politically active Latino community in the district." *Id.* at 35. The "resulting vote dilution of a group that was beginning to achieve § 2's goal of overcoming prior electoral discrimination," the Court held, "cannot be sustained." *Id.* at 36.

District 25. The Supreme Court also vacated the part of this Court's judgment that upheld District 25, the Austin-to-McAllen district. *See id.* at 3, 36, 41. The Court explained that "there was a 300-mile gap between the Latino communities [at either end of] District 25, and a similarly large gap between the needs and interests of the two groups," as they diverged in "socio-economic status, education, employment, health, and other characteristics." *Id.* at 18, 25-26 (citations and internal quotation marks omitted). Two Members of the five-Justice majority stated that District 25 violated Section 2 of the Voting Rights Act. *LULAC v. Perry*, slip op. at 2 (Souter, J., joined by Ginsburg, J., concurring in part) ("Plan 1374C's Districts 23 ***and 25*** violate § 2 of the Voting Rights Act" (emphasis added)); *cf. LULAC v. Perry*, slip op. at 29 (majority opinion) ("[T]he enormous geographical distance separating the Austin and Mexican-border communities, coupled with the disparate needs and interests of these populations, . . . renders District 25 noncompact for § 2 purposes.").

Justice Kennedy's opinion for the Court stated that District 25 "will have to be redrawn to remedy the violation in District 23." *LULAC v. Perry*, slip op. at 36 (majority opinion); *id.* (District 25 "must be changed"); *id.* at 37 ("[T]here is no reason to believe District 25 will remain in its current form once District 23 is brought into compliance with § 2."); *see also Session v. Perry*, 298 F. Supp. 2d 451, 528 (E.D. Tex. 2005) (three-judge court) (Ward, J., dissenting in part) ("Restructuring of the South and Central Texas ['bacon strip'] districts is necessary to remedy [District 23's] § 2 violation."), *vacated in part sub nom. LULAC v. Perry*.

II. Basic Remedial Principles

A. Timing

This Court should remedy the illegalities in the 2003 Plan immediately. More than 359,000 Hispanics were effectively disenfranchised in the 2004 congressional election because the 2003 Plan stranded them in District 23, where they lacked any opportunity to elect their preferred candidate. Repeating that injustice in the 2006 election would double the harm inflicted by the State's illegal map.

As the Supreme Court has long held, once a federal court has invalidated a State's districting scheme, it should not hesitate to take "appropriate action to insure that no further elections are conducted under the invalid plan." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). When the Supreme Court invalidated three Texas congressional districts in June 1996 — almost 10 years to the day before it invalidated this map — the three-judge District Court for the Southern District of Texas acted promptly to order such a remedy. *See Vera v. Bush*, 933 F. Supp. 1341, 1342-59 (S.D. Tex.) (three-judge court), *stay denied sub nom. Bentsen v. Vera*, 518 U.S. 1048 (1996). The District Court received the parties' remedial proposals on July 29, 1996, and entered its remedial order on August 6, 1996 — less than three months before the November 5, 1996 election. *See id.* at 1352-53. The remedial order explained that, so long as it was technically feasible to conduct 1996 elections under a new map, the court was required to order one as an interim remedy. *See id.* at 1344-49.

The *Vera* court redrew the three illegal districts plus ten neighboring districts. *See id.* at 1352. It voided the party primary results in all 13 districts, re-opened candidate qualifying for each of those 13 seats, ordered a special "open" election to be held in conjunction with the regular balloting on Election Day in November, and provided for special runoff elections (five weeks later, in December) for seats where no candidate had received more than 50% of the vote

in November. *See id.* at 1352-53. The *Vera* court's order set Friday, August 30, 1996, as the deadline for candidates to file for the 13 redrawn congressional seats. *See id.* at 1352; *see also Love v. Foster*, 147 F.3d 383, 384-85 (5th Cir. 1998) (approving an order calling for November congressional elections followed by December runoffs where needed).

In the November 1996 special congressional elections, a majority of voters in 10 of the 13 affected districts elected a Representative to Congress. December runoffs were required in only three districts.

B. Remedial Redistricting Maps

In a long line of cases stretching back more than a third of a century, the Supreme Court has established principles and procedures to constrain the discretion of federal courts in redrawing district maps. When the State fails to produce a legal redistricting plan, the federal court, in fashioning a remedy, must begin with the State's invalid plan and may alter only those aspects of it that the court has specifically found to be unconstitutional or illegal. All other aspects of the State's plan must be left untouched, as they are presumed to reflect the legitimate policy choices of the State and its citizens. *See Abrams v. Johnson*, 521 U.S. 74, 79, 85 (1997); *Upham v. Seamon*, 456 U.S. 37, 40-44 (1982) *(per curiam)*; *White v. Weiser*, 412 U.S. 783, 793-97 (1973).

The remedial court must differentiate those aspects of the State's plan that are illegal from those that reflect the State's legitimate political policies, and then eliminate the former while minimizing interference with the latter. *See Upham*, 456 U.S. at 43 ("An appropriate reconciliation of [federal legal requirements with the goals of state political policy] can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect."); *Weiser*, 412 U.S. at 795 ("In fashioning a

reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor 'intrude upon state policy any more than necessary.'") (quoting *Whitcomb v. Chavis*, 403 U.S. 124, 160 (1971)). As the *Vera* court put it exactly one decade ago, court-ordered remedial plans must be "tailor[ed] . . . as closely as possible to the scope of the violation" and must "effectuat[e] 'the legislative choices' in the previous districting plans." *Vera v. Bush*, 933 F. Supp. at 1347.

III. The Jackson Plaintiffs' Remedial Plan

Consistent with those basic principles, the Jackson Plaintiffs have drawn a remedial proposal, the "Jackson Plan," or "Plan 1406C." Color maps of the Jackson Plan are attached as Exhibit A to this Brief; statistical packages are attached as Exhibit B.

The Jackson Plan:

- cures the Voting Rights Act violation that the Supreme Court found in District 23, as well as the infirmities in District 25;
- changes only two other districts, thus leaving 28 of the State's 32 districts completely untouched;
- complies with all other federal districting requirements, including the Voting Rights Act and the Constitution's "one person, one vote" rule; and
- adheres to traditional neutral districting principles such as contiguity, compactness, and respect for counties, municipalities, natural regions, and communities defined by actual shared interests.

A. The Jackson Plan Fixes District 23.

The Problem. The Supreme Court held that the State of Texas violated Hispanic citizens' voting rights by severing nearly 100,000 Hispanic residents of eastern Webb County

(including eastern Laredo) from the Court-drawn 2001 version of District 23 and replacing them with a heavily Anglo population in Kerr, Kendall, and Bandera Counties, to the north and west of San Antonio. Those alterations dropped District 23's Hispanic percentage of the citizen voting-age population (CVAP) from 57.5% to 46.1% and eliminated the opportunity for Hispanic citizens in the district to elect their preferred Representative to Congress. That left 359,000 Hispanics stranded in District 23, where they had no hope of influencing, much less controlling, electoral outcomes.

The Cure. The Jackson Plan fully cures that Voting Rights Act violation. It puts all of Webb County (and all of Laredo) back into District 23. And it returns Kerr, Kendall, and Bandera Counties to District 21. These two changes restore all four counties to their traditional locations in Texas's congressional map. Indeed, from the time Texas first became entitled to a 21st congressional district — in the 1930s — up until the enactment of the 2003 Plan, District 21 ***always*** contained the entirety of Kerr, Kendall, and Bandera Counties. And likewise, from the time Texas first drew a 23rd congressional district, in the 1960s, Webb County ***always*** was kept intact in District 23 — until the 2003 Plan overthrew that tradition.[2]

Returning these counties to their traditional district placements restores electoral opportunity to the more than a third of a million Hispanics who had been illegally denied that opportunity by the 2003 Plan. The following table shows not only that the Jackson Plan dramatically improves upon the 2003 Plan's District 23, but also that it fully restores the opportunities that Hispanic citizens had under the Court-drawn 2001 Plan's District 23. The table shows, for all three versions of District 23, both demographic measures of Hispanic

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[2] For more recent congressional maps of Texas, see the various editions of the U.S. Bureau of the Census's *Congressional District Atlas*. For older maps, see Kenneth C. Martis, *The Historical Atlas of United States Congressional Districts, 1789-1983* (1982).

strength and actual returns from recent statewide general elections involving Hispanic Democratic candidates:

Measure of Hispanic Opportunity	2001 Plan's District 23	2003 Plan's District 23	Jackson Plan's District 23
Hispanic Total Population (2000)	66.8	55.1	70.9
Hispanic VAP (2000)	63.0	50.9	67.0
Hispanic CVAP (2000)	57.5	46.1	62.4
Spanish-Surnamed Registrants (2004)	54.2	43.3	59.7
Tony Sanchez (Governor 2002)	54.3	44.0	58.8
Linda Yanez (Supreme Ct. 2002)	55.5	45.8	60.0
Margaret Mirabal (Supreme Ct. 2002)	56.8	47.9	60.7
J.R. Molina (Ct. Crim. App. 2002)	52.6	42.3	57.2
J.R. Molina (Ct. Crim. App. 2004)	47.4	40.5	51.7

As this table demonstrates, the Jackson Plan's District 23 recoups all the losses incurred by the 2003 Plan and actually makes the district four or five percentage points more Hispanic (and more favorable to Hispanic-preferred candidates) than the Court-drawn 2001 version of the district. As this Court is well aware, the 2001 version of District 23 was only marginally effective as a Hispanic opportunity district. *Compare LULAC v. Perry*, slip op. at 22 (majority opinion) (holding that Hispanics "could have had an opportunity district in District 23 had its [2001] lines not been altered") *with LULAC v. Perry*, slip op. at 2-3, 11 n.* (Roberts, C.J., joined by Alito, J., dissenting in part) (stating that the 2001 Plan's District 23 did not perform as an effective opportunity district) *and Session*, 298 F. Supp. 2d at 496 (same). Because this Court's task is to create a protected minority district to cure a Voting Rights Act violation, while eliminating District 25 as a majority-Hispanic district, it would make no sense to construct a new District 23 that is as marginal as it was in 2001.

Indeed, creating a new District 23 that just barely crept over the 50% Hispanic mark not only would jeopardize Hispanic electoral opportunities (and thus fail to fully cure the Voting Rights Act violation); it also would run the risk of using race "to create the ***façade*** of a Latino district," precisely the practice that Justice Kennedy's opinion for the Court condemned. *LULAC v. Perry*, slip op. at 35 (majority opinion) (emphasis added).

The Jackson Plan's District 23 is solidly Hispanic, but would be a competitive district in general elections. Indeed, in the November 2004 general elections, one of the four Democratic statewide candidates (J.R. Molina, running for the Court of Criminal Appeals) carried the district narrowly, two of the Democratic statewide candidates lost the district narrowly, and the fourth (presidential candidate John Kerry) lost it by more than 13 points. In both 2004 and 2002, Democratic statewide candidates in the Jackson Plan's District 23 routinely ran 10 to 15 points behind their performance in the adjoining majority-Hispanic District 28. Across the entire State, 10 districts are more Democratic, and 21 districts are more Republican, than the Jackson Plan's District 23. So District 23 is an adequate cure for the Voting Rights Act violation that the Supreme Court established, but it is hardly a "safe" district.

B. The Jackson Plan Fixes District 25.

The Problem. The Supreme Court also vacated this Court's judgment upholding District 25 against the Jackson Plaintiffs' claim of unconstitutional racial gerrymandering. *LULAC v. Perry*, slip op. at 3, 36-37, 41 (majority opinion). Agreeing with Judge Ward's conclusion, the Supreme Court characterized District 25 as one that would have to be changed in remedying the Voting Rights Act violation in District 23. *Id.* at 36-37 (citing Judge Ward's dissent). Moreover, the Court explained that District 25 was fatally noncompact for Voting Rights Act purposes. *Id.* at 23-29.

The Cure. The Jackson Plan fully cures that defect. The southern part of District 25, in the Rio Grande Valley, is reunited with the southern part of neighboring District 28, which is also based along the Rio Grande in South Texas. And the northern part of District 25, in Austin, is once again placed in an Austin- and Travis County-dominated district located entirely in Central Texas. The improvement in District 25's geographic compactness is dramatic. (For an explanation of the compactness scores, see *infra* Part III-E, at page 16.)

District	Smallest-Circle Score	Perimeter-to-Area Score	Maximum Length	Minimum Width
2003 Plan's District 25	8.5	9.6	nearly 300 miles	less than 10 miles
Jackson Plan's District 25	3.5	5.4	less than 110 miles	nearly 20 miles

So the Jackson Plan not only cures the Section 2 violation in District 23. It also remedies the concerns that Justice Kennedy's opinion for the Court expressed about District 25.[3]

C. The Jackson Plan Is Narrowly Tailored, Affecting Only 4 of the 32 Districts.

The Jackson Plan affects only those districts that have to be altered in order to cure the illegality that the Supreme Court found. Changing fewer districts means that fewer nominations from the March 2006 party primaries will have to be voided, fewer special congressional elections will have to be held in November 2006, and fewer runoffs (if any) will have to be held

[3] Even if this Court did not share the Supreme Court's concerns about District 25, it would be impossible to cure the Section 2 violation in District 23 without redrawing District 25. That's because, under the 2003 Plan, less than half of all registered voters in District 23 and District 28 ***combined*** are Hispanic. So no amount of swapping territory between those two districts could possibly create two districts that both have Hispanic registered-voter majorities. District 25, however, contains more than 150,000 Spanish-surnamed registrants — more than enough to keep the cure for District 23's violations from depleting District 28's Hispanic voter majority.

in December. The Jackson Plaintiffs' remedial proposal therefore is narrowly tailored to fit the scope of the violation, and nothing more.

Recall that the problem with the 2003 Plan's District 23 was twofold: *First*, it lost heavily Hispanic eastern Webb County; and *second*, it gained three heavily Anglo Hill Country counties (Kerr, Kendall, and Bandera). As already explained, the Jackson Plan reunifies Webb County, and its overwhelmingly Hispanic population, in District 23. To do so, it must pull eastern Webb County out of District 28. That in turn leaves District 28 underpopulated, noncontiguous, and insufficiently Hispanic to avoid retrogression and vote dilution — problems that can all be readily cured by attaching to District 28 the southern portion of District 25, which is overwhelmingly Hispanic.

At the other end of District 23, the problem was the three Hill Country counties (Kerr, Kendall, and Bandera) that were added to ensure Anglo control. In the Jackson Plan, all three counties are restored to their historic home in District 21.

It is impossible to cure the problems at both ends of District 23 without redrawing its immediate neighbors (District 21 at the northern end and District 28 at the southern end), as well as redrawing the atrociously misshapen District 25. Therefore, the Jackson Plan minimizes the number of redrawn districts — District 23 plus three nearby districts (21, 25, and 28). The Supreme Court's rulings give this Court no warrant to redraw other districts.

The Jackson Plan also avoids making needless changes to District 23, as it leaves untouched District 23's borders with Districts 11, 16, and 20. And every county that is wholly contained in District 23 under the 2003 Plan remains wholly in District 23 under the Jackson Plan, with the exception of the three Hill Country counties that have to be removed to cure the Voting Rights Act violation (Kerr, Kendall, and Bandera Counties). The Jackson Plan's District

23 therefore contains 77% of the population of the 2003 Plan's District 23 — and ***more than 89%*** of the population of the court-drawn 2001 Plan's District 23. *Cf. LULAC v. Perry*, slip op. at 25 (majority opinion) (discussing the "overlap" between the two most recent versions of District 23, and noting that "the majority of Latinos who were in the old District 23 [under the Court-drawn 2001 map] are still in the new District 23 [under the 2003 Plan], but no longer have the opportunity to elect their candidate of choice.").

D. The Jackson Plan Complies with All Federal Legal Requirements.

In addition to being a narrowly tailored cure for the illegalities of the 2003 Plan, the Jackson Plan complies with every requirement of federal law.

Population Equality. The Jackson Plan is perfectly compliant with the "one person, one vote" rule that flows from Article I, Section 2 of the United States Constitution. Two of the new districts contain 651,619 persons, and the other two new districts contain 651,620 persons.

District	Population in 2003 Plan	Population in Jackson Plan
District 21	651,619	651,620
District 23	651,620	651,619
District 25	651,619	651,619
District 28	651,620	651,620

This perfect population equality is accomplished without splitting a single precinct in 42 of the 44 counties touched by these four districts. Only a dozen precincts, or VTDs (voter tabulation districts), are split in Bexar and Hays Counties.

The Voting Rights Act. The Jackson Plan protects minority voting strength and thus fully complies with the Voting Rights Act. As already explained above (in Part III-A, at pages 7 to 9), District 23 is transformed from a district clearly controlled by Anglo voters to one where Hispanic voters have some reasonable opportunity to elect their preferred Representative to

Congress. And District 28 also remains a solid Hispanic opportunity district, as 70.9% of its adult citizens (as of the 2000 census) are Hispanic and 70.1% of its registered voters (as of the 2004 general election) have Spanish surnames. Of course, under the Jackson Plan, District 25 is no longer a majority-Hispanic district (though it is still nearly one-third Hispanic in total population), because it no longer attaches the Hispanic concentration in and around McAllen to the Hispanic neighborhoods of Austin. But Hispanics remain easily the largest minority group in District 25 and can be expected to exert electoral influence by "play[ing] a substantial, if not decisive, role" in both the Democratic primaries and the general elections. *Georgia v. Ashcroft*, 539 U.S. 461, 482 (2003).

Partisan Restraint. To the extent that the Federal Constitution prohibits excessive partisanship in congressional districting, the Jackson Plan clearly comports with that norm. Under the 2003 Plan, District 21 was solidly Republican and Districts 25 and 28 were solidly Democratic. That remains the case under the Jackson Plan. At the same time, District 23 becomes more competitive, as Hispanics gain a realistic opportunity to elect their preferred candidate.

E. The Jackson Plan Complies with Traditional, Neutral Districting Principles.

The Jackson Plan also adheres to legitimate, traditional districting principles such as contiguity, compactness, and respect for political subdivisions and communities of interest. That is important for two reasons. *First*, adherence to these districting principles "facilitates political organization, electoral campaigning, and constituent representation." *Balderas v. Texas*, Civ. Action No. 6:01CV158, slip op. at 7 n.13 (E.D. Tex. Nov. 14, 2001) (three-judge court) *(per curiam)* (citation and internal quotation marks omitted), *summarily aff'd*, 536 U.S. 919 (2002); *see also Abrams v. Johnson*, 521 U.S. at 101 (affirming the remedial order of a district court that

"was careful to take into account traditional state districting factors"). *Second*, drawing districts with geographic integrity prevents improper considerations from predominating. *See Miller v. Johnson*, 515 U.S. 900, 916-17 (1995); *see also Abrams v. Johnson*, 521 U.S. at 85 (holding that a legislatively enacted plan "is not owed *Upham* deference to the extent the plan subordinated traditional districting principles to racial considerations").

Contiguity. All four new districts in the Jackson Plan are fully contiguous. And unlike the 2003 Plan's District 25, none of them narrows to a 10-mile-wide neck in order to connect population centers that are 300 miles apart.

Respect for Counties. The Jackson Plan pays respect to county lines. Critically important here is the reunification of Webb County in District 23, where Webb County has been located, in its entirety, ever since Texas got a 23rd congressional district in the wake of the 1960 Census. The Jackson Plan also reunifies Comal County (which the 2003 Plan had bisected) and divides Travis County between only two districts (the mathematical minimum, given its large population), rather than three. At the same time, not a single county that was intact under the 2003 Plan is divided under the Jackson Plan.

County	2003 Plan	Jackson Plan
Webb County	2 districts	1 district
Comal County	2 districts	1 district
Travis County	3 districts	2 districts

All together, then, the Jackson Plan creates three fewer county fragments than does the 2003 Plan.

Respect for Municipalities. The Jackson Plan pays respect to municipal lines. Laredo is made intact, returning to its historical role as the anchor of District 23. Austin is once again in

two districts, rather than three. New Braunfels — which the 2003 Plan had divided along ethnic lines, with the majority-Hispanic eastern portion being excised from the majority-Anglo western portion — is now unified.

City	2003 Plan	Jackson Plan
Laredo	2 districts	1 district
New Braunfels	2 districts	1 district
Austin	3 districts	2 districts

Even small municipalities — like Hays County's town of Buda (population 2,404) and Bexar County's Hollywood Park (population 2,983) — are reunited by the Jackson Plan.

Respect for Texas's Regions. The Jackson Plan pays respect to Texas's long-standing regions. Texas is divided into 24 regional councils of government. (See the Texas Association of Regional Councils' Web site, http://www.txregionalcouncil.org/regions.php, for a map of the 24 regions.) The Jackson Plan's districts are more consistent with these regions than is the 2003 Plan. That consistency will allow Representatives in Congress to focus their efforts more intently on county and local governments that share common interests:

District	Regions Touched by the District in the 2003 Plan	Regions Touched by the District in the Jackson Plan
District 21	2	2
District 23	6	6
District 25	6	2
District 28	5	4
TOTAL	19	14

Respect for Nonracial Communities of Interest. The Jackson Plan pays respect to communities defined by actual shared interests and not merely by race or ethnicity. As the table

immediately above shows, the groupings of counties in the Jackson Plans' four new districts are eminently more sensible than in the equivalent districts under the 2003 Plan. And within counties, reunifying municipalities like Laredo, New Braunfels, and Austin goes a long way toward ensuring that actual communities are kept intact. *See Balderas*, slip op. at 7 n.14 ("'Residents of political units such as townships, cities, and counties often develop a community of interest, particularly when the subdivision plays an important role in the provision of governmental services.'" (citation omitted)).

Compactness. The Jackson Plan's new districts are far more compact than their predecessors. As the Court will recall, the Texas Legislative Council has two standardized mathematical measures of compactness: a "perimeter-to-area" score that measures the jaggedness of the district's edges, and a "smallest circle" score that measures the district's elongation. For both measures, the higher the score, the less compact the district. As the following table shows, the average score for the four districts altered by the Jackson Plan improves under both measures, meaning that the changes in the districts make them both less jagged and less elongated. And the same conclusion follows if one focuses on the least compact of the four districts in each plan. District 25 in the 2003 Plan was one of the most bizarrely elongated congressional districts in the United States. By comparison, the Jackson Plan's least compact district, District 28, is less elongated than 6 of the 32 districts in the State's 2003 Plan and is less jagged than 16 of those 32 districts. So it is hardly noncompact.[4]

[4] Similarly, the Jackson Plan's District 28 is less elongated than 3 of the 32 districts in the Court-drawn 2001 Plan and is less jagged than 8 of those 32 districts.

Compactness Measure	2003 Plan	Jackson Plan
Average Perimeter-to-Area Score	6.9	5.6
Average Smallest-Circle Score	5.0	3.7
Worst Perimeter-to-Area Score	9.6 (District 25)	6.5 (District 28)
Worst Smallest-Circle Score	8.5 (District 25)	4.4 (District 28)

Avoiding Needless Pairings. The Jackson Plan avoids needlessly pairing congressional incumbents in the same district. *See Bush v. Vera*, 517 U.S. 952, 964-65 (1996) (plurality opinion) (avoiding the needless pairing of incumbent Members of Congress is a legitimate and traditional districting principle).

The 2003 Plan created five open seats by pairing (or "tripling") nine incumbents in four districts. It also paired District 23's Congressman Henry Bonilla in the same district as his nearly successful 2002 general-election challenger, Henry Cuellar, who now represents (but still does not live in) District 28. The 2003 Plan's District 28 currently does not contain the home of any U.S. Representative. Under the Jackson Plan, none of these facts changes. Also, Congressmen Lamar Smith and Lloyd Doggett remain the sole congressional residents of Districts 21 and 25, respectively. So the Jackson Plan is perfectly neutral as to incumbent locations.

If the Court wished to remove Congressman Bonilla's residence from District 23 in order to enhance Hispanic electoral opportunities there, that would require minimal line changes in Bexar County, affecting only a handful of precincts in Districts 21 and 23.

As the Fifth Circuit has explained, "[m]any factors, such as the protection of incumbents, that are appropriate in the legislative development of an apportionment plan have no place in a

plan formulated by the courts." *Wyche v. Madison Parish Police Jury*, 769 F.2d 265, 268 (5th Cir. 1985); *accord Balderas*, slip op. at 10 n.18; *Vera v. Bush*, 933 F. Supp. at 1351. Therefore, it is entirely appropriate for this Court to leave the existing incumbent pairing as is.

CONCLUSION

For the reasons set forth above, the Jackson Plaintiffs urge this Court immediately to adopt the Jackson Plan and to order Defendants to conduct the 2006 congressional elections in Districts 21, 23, 25, and 28 under that Plan.

Respectfully submitted,

BY: _____

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