

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS, *et al.*

Plaintiffs,

v.

GREG ABBOTT, *et al.*,

Defendants.

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Case No. 3:21-cv-00259
[Lead Case]

ROY CHARLES BROOKS, *et al.*

Plaintiffs,

v.

GREG ABBOTT, *et al.*,

Defendants.

§
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§

Case No. 1:21-cv-00988
[Consolidated Case]

ADVISORY ADDRESSING EXHIBITS

Defendants write to advise the Court of two matters relating to exhibits.

First, in accordance with the Court’s request, Defendants have transmitted paper copies of exhibits utilized during the January 25–29 preliminary-injunction hearing to the chambers of the Honorable Jerry Smith, and a thumb drive containing Defendants’ exhibit to the chambers of the Honorable Jeff Brown. Defendants stand ready to provide additional exhibit copies upon further direction of the Court.

Second, Defendants were recently made aware of a potential ambiguity relating to Exhibit 4 to Defendants’ Opposition to the Brooks Plaintiffs’ Motion for Preliminary Injunction that addresses the creation of certain maps created by Todd Giberson, an employee of the Texas Attorney General Legal and Technical Support Division. *See* ECF 102-1. Defendants did not seek admission of that

exhibit at the preliminary-injunction hearing, and it was not admitted into evidence. Defendants are also not asking the Court to consider the exhibit or any new information. Out of an abundance of caution, however, they file this advisory to avoid any potential misunderstanding.

Paragraph 7 of Exhibit 4 in ECF 102-1 describes four demonstrative partisan-shading maps attached to the declaration as created “using data gathered from RedAppl.” As the Court is aware, RedAppl, the State of Texas’s Redistricting Application, is a software application designed and administered by the Texas Legislative Council (“TLC”). As a colloquial matter, Mr. Giberson described this TLC data as coming “from RedAppl” because RedAppl uses the same TLC data. As a technical matter, however, Mr. Giberson received the TLC data described in paragraph 7 directly from TLC rather than through RedAppl.

To the extent the Court seeks to download the TLC data, it can do so through the TLC’s “Capitol Data Portal,” which is located at <https://data.capitol.texas.gov/>. The underlying TLC data is the same regardless of how one accesses it.

Finally, the State Defendants attach an updated declaration of Mr. Giberson that more precisely describes how the data was obtained. It is attached as “Exhibit A” and a redline reflecting the changes to his prior declaration is attached as “Exhibit B.”¹

¹ The updated declaration contains two other minor clarifications. First, it adds “data analyst” to Mr. Giberson’s job title because he was reclassified from “systems analyst” to “data analyst” in April of 2021. And second, it clarifies the origin of the Spanish-surname data available in RedAppl. Although the Census Bureau gathers the underlying data, TLC makes the determination of Spanish-surname status.

Date: February 4, 2022

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

/s/ Patrick K. Sweeten
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Deputy Attorney General for Special Litigation
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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on February 4, 2022, and that all counsel of record were served by CM/ECF.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN

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EXHIBIT A

UPDATED DECLARATION OF TODD GIBERSON

**IN THE UNITED STATES DISTRICT COURT
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UPDATED DECLARATION OF TODD GIBERSON

1. My name is Todd Giberson. I am over the age of 18 and competent to make this declaration.

2. I am an employee of the Office of the Attorney General (OAG) Legal Technical Support Division (LTS). I have been employed at the OAG since 1994 as a systems and data analyst. Before that, I was employed by the Texas Legislative Council (TLC) as a programmer. I was on the team of programmers who wrote the original RedAppl computer application for drawing districts. I am not a lawyer.

3. RedAppl contains data gathered from various sources, including TLC, the Census Bureau, and the Texas Secretary of State. This data includes borders of municipalities and other local-government bodies and borders of electoral precincts (which the Census Bureau refers to as voter tabulation districts, or VTDs). The data also includes the number of registered voters in each electoral precinct, Spanish surname voter registration, and the election results for each electoral precinct from 2012–present as reported to the Secretary of State by each county.

4. RedAppl also contains data received from the Census Bureau, including its American Community Survey, or ACS. The Census Bureau divides each county into, from largest to smallest,

tracts, block groups, and blocks. The Census Bureau data includes information such as the declared race and ethnicity of persons in a block. The smallest unit for which ACS data is available, however, is a block group. Thus, information gathered by the ACS, such as citizenship, is not available at the block level.

5. By combing this data, RedAppl is able to create maps and reports showing demographic and electoral information in units as small as the block level. By combining data from the block level, it can create maps and reports for any defined area. It is by assigning these blocks to defined areas that RedAppl can be used to create electoral maps.

6. By default, RedAppl displays only county borders. To display other features, such as roads and bodies of water, the user must specify them. To display boundaries besides county lines, the user must specify the type of boundary to display. To display data for an area, either pre-defined within RedAppl (such as an existing House district, a city, or an electoral precinct) or user-generated (such as a proposed Senate district), the user must actively select which data to display. In particular, data regarding race, ethnicity, Spanish-surname status, voting-age population, and number of registered voters is not displayed unless the user actively chooses to display it. Because of this, a user who chose to do so could create a proposed redistricting map having seen only population and electoral results and having never seen information on the race, ethnicity, or Spanish-surname status of the residents of the proposed districts.


7. Exhibits 5–8 to the State Defendants’ Opposition are partisan-shading maps I personally generated using data from TLC. They show the relative percentages of votes cast in the 2020 general election for president in each pictured VTD. Exhibits 5 and 6 are zoomed-in and zoomed-out, respectively, maps of benchmark SD10. Exhibit 7 is a map of SD10. Exhibit 8 is a map of benchmark SD28.

8. Exhibit 9 to the Opposition is a map I personally generated using statistics gathered from

RedAppl. It overlays current SD10 on benchmark SD10. It is color-coded to show the areas that remain from, were removed from, and were added to benchmark SD10 to create current SD10. Each color-coded area shows the population of that area and the percentage of votes cast for Donald Trump in the 2020 general election.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated February 4, 2022.


Todd Giberson

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EXHIBIT B

DECLARATION REDLINE

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I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated ~~December 20, 2021~~ February 4, 2022.

Todd Giberson