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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ, ET AL,)
 Plaintiffs,)
) No. SA:11-CV-360
 vs.)
) San Antonio, Texas
RICK PERRY, ET AL,)
 Defendants.) September 6, 2011

VOLUME 1

TRANSCRIPT OF BENCH TRIAL

BEFORE THE HONORABLE ORLANDO L. GARCIA,
 THE HONORABLE XAVIER RODRIGUEZ,
 UNITED STATES DISTRICT JUDGES,
AND THE HONORABLE JERRY E. SMITH,
 UNITED STATES CIRCUIT JUDGE

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18 computer-aided transcription.
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1 (September 6, 2011.)

2 (Call to Order.)

3 JUDGE GARCIA: Okay, ladies and gentlemen. We are
4 ready to proceed on this trial. We would like to hear from
5 the plaintiffs. You will be permitted 15 minutes opening
6 statement. Do not feel compelled to use all 15 minutes.

7 If you will make your opening argument in the order,
8 unless necessary otherwise, in the order that you will be
9 presenting witnesses. So we will begin -- unless you wish to
10 yield to someone first.

11 Okay. Let's begin. Well, first, let's have some
12 announcements, first, to go again.

13 MR. GARZA: Jose Garza and Joaquin Avila and Ricardo
14 Cedillo and Mark Kiehne for the plaintiff MALC.

15 MS. PERALES: Nina Perales and Robert Wilson for the
16 Latino Task Force plaintiffs.

17 MR. RICHARDS: David Richards and Rick Gray for the
18 Perez plaintiffs.

19 MR. VERA: Luis Vera and Manuel Escobar for the
20 LULAC intervenors.

21 MR. RIOS: Rolando Rios representing the Honorable
22 Congressman Henry Cuellar, who I believe is here, over here.

23 MR. DUNN: Chad Dunn for the Texas Democratic Party.

24 MR. HICKS: Renea Hicks, and with me, Abha Khanna.
25 Congressman Gonzalez is here, with -- for the Rodriguez

1 plaintiffs.

2 MR. HEBERT: Jerry Hebert for the Quesada
3 plaintiffs, along with my co-counsel, Jesse Gaines, who has
4 been admitted pro hoc vice.

5 MR. BLEDSOE: Gary Bledsoe for the African-American
6 Congressional intervenors, Congresswoman Eddie Bernice Johnson
7 is here. And also for the NAACP -- is here, and my co-counsel
8 for the NAACP -- and I am with the individual intervenors --
9 Allison Riggs and Robert Notzon.

10 JUDGE GARCIA: Go ahead.

11 MR. BLEDSOE: And Victor Goode as well.

12 JUDGE GARCIA: Okay. Thank you, sir.

13 MR. SCHENCK: Your Honor, David Schenck for the
14 State. Along with me is David Mattax, Bruce Cohen, Andrew
15 Colminero, Matthew Frederick and John McKenzie. You will be
16 hearing later today from Ana Jordan.

17 JUDGE GARCIA: Thank you, sir.

18 Okay. Let's hear from the plaintiffs.

19 MR. GARZA: Good morning. As a preliminary matter,
20 Your Honor, I spoke to counsel for the State this morning and
21 it is my understanding that we have an agreement on the
22 plaintiff's exhibits. And, therefore, pursuant to the Court's
23 suggestion at the pretrial conference, plaintiff MALC offers
24 Plaintiff's Exhibit No. 1 through No. 84 into evidence.

25 JUDGE GARCIA: Okay. And these are all agreed upon?

1 MR. MATTAX: Yes, Your Honor -- lodged any
2 objections --

3 THE REPORTER: Counsel, you need to slow down.

4 MR. MATTAX: I understand.

5 We are not going to lodge any objections to the
6 exhibits, reserving any issues with respect to relevancy. Of
7 course, the Court can look at these and determine what they
8 want to expedite matters.

9 JUDGE GARCIA: Sure.

10 MR. MATTAX: Later on, we have lots and lots of
11 notebooks to get together at the break.

12 JUDGE GARCIA: Sure. Thank you, sir. Okay.

13 MR. GARZA: So was there a ruling from the Court
14 on --

15 JUDGE GARCIA: Yes. They are all admitted.

16 MR. GARZA: Thank you, Your Honor.

17 Frederick Douglass once said that power gives
18 nothing without command. And in Texas, that has been the
19 history of redistricting. In each decade over the last four
20 decades, minority voters have come to the courts to secure
21 relief.

22 Whether the legislative process and the executive
23 branch were controlled by Democrats or Republicans, it didn't
24 matter. Redistricting was done on the backs of the minority
25 voters of Texas.

1 The Mexican-American Legislative Caucus has three
2 claims before this Court. One deals with the one-person,
3 one-vote issue, as articulated by the United States Supreme
4 Court in Cox versus Larios.

5 Plaintiffs' evidence will show that the State had
6 made no effort to attempt to have a quality of population
7 between districts. Every witness that has testified, the
8 record before the legislative bodies that considered this said
9 their goal was to achieve a ten-percent deviation or not to
10 exceed a ten-percent deviation.

11 That is not their obligation. Moreover, as Cox vs.
12 Larios indicates, there is no safe harbor at ten percent, if
13 the State chooses to place a more severe burden on one group
14 over another, whether that group be political or racial.

15 And the evidence in this case will show that over a
16 number of factors, the same sort of factors that were
17 considered by the District Court in Cox versus Larios, it was
18 affirmed by the Supreme Court, the State of Texas placed a
19 higher burden in the weight-distributed population on the
20 Latino community of Texas.

21 So that is our one-person, one-vote claim. That,
22 however, is also evidence of our Section 2 claim. Our Section
23 2 claim requires plaintiffs to prove three essential
24 categories of evidence.

25 The first one is what is generally referred to as

1 the Gingles 1 requirement. We must show the Court that it is
2 feasible to draw at least one more minority opportunity
3 district, however that happens to be defined, than the plans
4 that were offered and adopted by the State of Texas.

5 So that is the Gingles 1 criteria. Do we have
6 additional minority opportunity districts or Latino
7 opportunity districts?

8 The second Gingles factor deals, and the third
9 Gingles factor deal with racial block voting. The plaintiffs
10 have to demonstrate that in Texas, elections are race
11 polarized, that Latino voters are cohesive as a voting unit
12 and that their candidate of choice is usually defeated by an
13 Anglo, an Anglo block vote that is sufficiently large to
14 defeat that choice. And we will present evidence, as will
15 other plaintiffs, of the existence of racial block voting in
16 Texas.

17 And then the third category of evidence is what is
18 generally referred to as the totality of circumstances
19 category, and that encompasses a wide range of evidence
20 dealing with political reality in Texas.

21 And on this, there will be evidence that addresses
22 the factors that the Congress suggested be looked at, and in
23 addition, additional factors that look at the political
24 reality of today, and that is where the one-person, one-vote
25 analysis is relevant to a Section 2 claim.

1 Things like the paucity of minority-elected
2 representatives goes into this category, the history of
3 discrimination, continuing effects of historical
4 discrimination.

5 Any evidence that shows that the minority community
6 is disadvantaged in the political process is relevant to the
7 totality of circumstances analysis that the Court needs to
8 make.

9 And then finally, our third claim. And this claim
10 is both under Section 2 and the Fourteenth Amendment, and that
11 is that the evidence will show that the redistricting in Texas
12 was accomplished as a racial gerrymander, an intentional
13 discrimination.

14 Now, in order to prove an intentional discrimination
15 claim under either Section 2 or the Fourteenth Amendment, it
16 is not necessary for the plaintiffs to come in with a smoking
17 gun, although the evidence that we have in this case, I think,
18 comes close to that.

19 The standards for evaluating the intent portion of
20 this case are formed by the United States Supreme Court
21 decision in Village of Arlington Heights. But even more
22 relevant, because this is a redistricting case, is Garza
23 versus Los Angeles County, which actually found intentional
24 discrimination in the drawing of a redistricting plan for the
25 board of supervisors for Los Angeles County.

1 And, again, there are a number of factors that you
2 look at. Was there a change in the process that is different?
3 There will be evidence that that was, in fact, the case.

4 Is there an adverse impact on a minority community?
5 And, again, the evidence will show that there was. In
6 addition, are there characteristics of this matter that
7 indicate a racial gerrymander?

8 That is, when you look at the map, does it, in fact,
9 show that there was an attempt to go out and secure minority
10 voters?

11 We have on the easel an example of that. We have
12 the bottom portion of District 26 that is surrounded by
13 District 12 in the congressional plan adopted by the State of
14 Texas.

15 Switch the board.

16 So when you look at -- not only is that tail that
17 comes into Tarrant County oddly shaped, that you notice that
18 those odd shapes are done for a purpose, that is, to secure
19 minority voters.

20 This is an exhibit that is in our notebook. It has
21 been admitted by the Court, and it shows the manner in which
22 the lines were drawn to capture Latino voters out of Tarrant
23 County and put them in a county that was majority Anglo, what
24 is usually referred to in voting rights lingo as a stacking.

25 So when you look at racial gerrymanders, you will

1 see cracking done with both plans, stacking, as we show here,
2 and packing. Cracking, stacking and packing, the three
3 traditional ways that redistricting plans are racially
4 gerrymandered.

5 And we believe our evidence will establish a
6 violation of one-person, one-vote, as defined by Larios, a
7 violation of Section 2 of the Voting Rights Act, as defined by
8 Thornburg versus Gingles, both as to effect and intent, and a
9 violation of the Fourteenth Amendment. Thank you.

10 JUDGE GARCIA: Thank you, sir.

11 And if every lawyer will always state your name,
12 since we have so many, and it would be easier for the court
13 reporter. Thank you.

14 MR. RICHARDS: Thank you, Your Honor. David
15 Richards, Your Honor, for the Perez plaintiffs. We have our
16 exhibits before you, Exhibits 100 through 130, which we would
17 offer at this time.

18 Included in the exhibit book are affidavits from our
19 plaintiffs. We understood we had a stipulation with the State
20 on the standing issue, that if we produced affidavits of where
21 they lived, that they were voters of that county, that that
22 would be sufficient for standing and we would haven't to call
23 them as witnesses.

24 So with that in mind, those affidavits are included
25 in the proffer.

1 JUDGE GARCIA: Okay. They will be admitted, unless
2 there is an objection.

3 MR. SCHENCK: No objection.

4 JUDGE GARCIA: All right. Thank you.

5 MR. RICHARDS: We, like the MALC plaintiffs, have a
6 focus -- although we have other issues, we have a focus on the
7 deviation issue. And just as a historical matter, of course,
8 it began with the notion of the requirement of a good faith
9 effort to achieve population equality. That has been the way
10 the term or the concept has always been stated.

11 Over the years, there grew a certain notion that
12 states in redistricting their own legislative bodies had a
13 certain leeway. In fact, I guess one of the cases came out of
14 Texas. That was White versus Register in 1972.

15 And there, the Court alluded to the fact that Texas
16 had a county line rule with respect to the redistricting of
17 their Lower House, and that would justify, they thought, a
18 leeway deviation of some ten percent.

19 But no one ever said that good faith went out the
20 window. Good faith was still an operative principle here. In
21 the last decade, as Mr. Garza has pointed out, came down Cox
22 vs. Larios, affirming a three-judge court out of Georgia,
23 which had invalidated the legislature activity there; and as
24 characterized by Judge Higginbotham in the Henderson case last
25 decade, in effect, Larios requires, demanded exactitude in the

1 population of districts drawn by the Georgia legislature for
2 partisan gain.

3 Now, what we know here from witnesses, as Mr. Garza
4 has pointed out, that the State simply proceeded on the
5 assumption -- indeed, the witness Interiano testified they
6 proceeded on the assumption that they had a ten-percent leeway
7 when they redrafted or when they drafted the legislative House
8 districts, and he had also testified he was intimately
9 involved in the Texas House plan.

10 So the plan was drawn on the assumption of a
11 ten-percent deviation and permeates throughout the plan. Now,
12 it is obvious, where the county line rule is operating, that
13 some leeway must be accorded to the State, but we are looking
14 at urban counties wholly contained -- wholly containing the
15 legislative districts and there is obviously no justification
16 for deviation within those counties.

17 Indeed, witness Jeff -- who was, I suppose, the
18 longest-serving person from the legislative redistricting
19 board in this field testified on deposition he could think of
20 no compelling reason for there to be deviation within the
21 districts wholly contained within a county.

22 And if you look at the plan and our evidence will
23 show that it is clear they targeted -- Harris County, it is a
24 9.79 deviation, for example. I mean, they targeted
25 ten percent and then used that for a variety of purposes,

1 which we say were both -- well, affected by or tainted by
2 racial, ethnic and partisan gerrymandering, line drawing.

3 And the lines, you will see when the maps come up,
4 if we ever get them up over here, that some of the districts
5 are so bizarre they are only explainable in terms of partisan
6 or ethnic gerrymandering.

7 So that will be our evidence and we appreciate the
8 Court's time.

9 JUDGE GARCIA: Thank you, sir.

10 MS. PERALES: Good morning, Your Honor. Nina
11 Perales for the Latino Task Force plaintiffs. I am being
12 assisted by Sarah of my office, who is going to help figure
13 out the toggle issue that has occurred this morning with the
14 projector so we can show our maps.

15 In the meantime, I would like to introduce one of my
16 clients who is in the court this morning, Joe Cardenas, III,
17 chairman of -- and state director of Texas LULAC.

18 I would also like to introduce my co-counsel,
19 Mr. Robert Wilson, and the attorneys from my firm, MALDEF, who
20 are also here with me today, Rebecca Couto, Nicholas Espiritu,
21 Luis Figueroa and Marisa Bono.

22 We may need to dim the lights, Your Honor, in order
23 to see the PowerPoint.

24 JUDGE GARCIA: Okay. Thank you, Bill.

25 MS. PERALES: Your Honor, we have noticed that there

1 are some lay witnesses in the court this morning, and we would
2 like to invoke the rule at this time.

3 JUDGE GARCIA: Okay. Those persons who will be
4 testifying in this proceeding today or any day are excused.
5 Lay witnesses, right.

6 MR. GARZA: Your Honor, the rule does not apply to
7 parties.

8 JUDGE GARCIA: Right. Of course.

9 MR. GARZA: I would ask that the representative of
10 MALC be allowed to remain in the courtroom.

11 JUDGE GARCIA: Right. Okay.

12 MS. PERALES: And the expert witnesses, Your Honor,
13 are also not covered by the rule, and we do have an expert
14 here.

15 JUDGE GARCIA: All right. Good enough. Thank you.

16 MS. PERALES: Thank you. We can't see the screen at
17 all.

18 JUDGE GARCIA: If you can dim some more lights,
19 Bill, please.

20 MR. BLEDSOE: Your Honor, if we might, could the lay
21 witnesses stay for opening? There is not a conflict with lay
22 witnesses --

23 MR. NOTZON: No one is testifying.

24 JUDGE GARCIA: They are not testifying? Well, how
25 are they witnesses if they are not testifying?

1 MR. NOTZON: Your Honor, the question was, isn't the
2 rule invoked as to hearing testimony? And opening arguments
3 are not testimony.

4 MR. BLEDSOE: And they would leave immediately
5 afterwards.

6 JUDGE GARCIA: That's all right. Go ahead.

7 MS. PERALES: Thank you, Your Honor.

8 The Latino population in Texas has increased
9 steadily over the past decades. It is a little bit difficult
10 to discern. The yellow line is Latino population growth. The
11 top dark blue line, white, nonHispanic. The pink line,
12 African-American. And the turquoise line, other.

13 From 1990 to 2000, the Latino community in Texas
14 grew by 2.3 million. Latino growth is over 60 percent of all
15 the growth in Texas over that decade.

16 In 2000, Texas gained two additional seats in the
17 House of Representatives, in large part because of Latino
18 growth. From 2000 to 2010, the Latino community grew by
19 2.8 million, again, over 60 percent of the state's total
20 growth.

21 This time, Texas gained four new congressional
22 seats, again, in large part because of Latino growth. During
23 the same period, the redistricting plans adopted by the State
24 of Texas have not included any additional Latino opportunity,
25 congressional or statehouse districts.

1 The last time Texas created a new Latino opportunity
2 congressional district was 1991. That district was
3 Congressional District 29 in Houston. Similarly, with respect
4 to the Texas House of Representatives, since 1991, Texas has
5 only created additional Latino majority house seats as a
6 result of a Department of Justice objection and court order,
7 not legislative action.

8 Today, Latinos are 25 percent of the citizen voting
9 age population in the state of Texas. It is time for
10 additional districts in which Latinos have an opportunity to
11 nominate and elect their candidate of choice.

12 The Latino Task Force plaintiffs challenge both the
13 newly adopted congressional and Texas House redistricting
14 plans, because they do not provide an equal opportunity to
15 Latino voters.

16 The Court will hear in this trial about the
17 requirements of the federal Voting Rights Act. The Court will
18 hear that Latinos are sufficiently numerous and compact to
19 comprise the majority of additional districts in Texas. You
20 will hear that racially polarized voting still exists in
21 Texas.

22 You will hear that Latinos continue to work to
23 overcome the effects of past discrimination in education,
24 employment and voting. You will hear that the Texas
25 legislature took specific steps to avoid creating additional

1 Latino opportunity districts, even in the face of substantial
2 population growth.

3 The evidence will show that under the totality of
4 circumstances, additional Latino opportunity districts are
5 required in Texas. The Court will also have the opportunity
6 to review the state legislature's adopted redistricting plans
7 for Congress and Texas House.

8 Neither the new congressional plan or the House of
9 Representatives plan creates new opportunity districts for
10 Latinos; and, in fact, much like 2001, the House of
11 Representatives' plan decreases the number of Latino
12 opportunity districts.

13 Starting with the House plan, in Nueces County, on
14 the left, you will see an inset of the map, H-100. That is
15 the benchmark map. That is the current map, the map we have
16 now, the map under which the 2010 elections were held.

17 To the right, H-283, the State's adopted map. The
18 House plan subtracts representation from Latinos by
19 eliminating House District 33, a Latino majority district in
20 Nueces County. You will see 33 is the little light-green
21 district there in H-100. It is not present in H-283.

22 Your Honor, on top, you will see the Latino Task
23 Force proposed remedial plan with respect to Nueces County and
24 below, again, the State's adopted plan.

25 Although Nueces County is losing a house seat in

1 this round of redistricting, that change did not dictate the
2 loss of a Latino opportunity district.

3 The Task Force remedial proposal demonstrates that
4 in majority Latino Nueces County two Latino opportunity
5 districts can be maintained. 1 and 2.

6 In Cameron and Hidalgo Counties, dramatic population
7 growth provided an obvious opportunity to create an additional
8 Latino opportunity district. The State's plan for the House
9 of Representatives fails to create that additional district
10 that so organically grew there; instead, overpopulating
11 existing districts and pushing excess population to the north
12 into other already existing Latino opportunity districts.

13 The plan below is the State's adopted plan that does
14 not create an additional district. The plan above includes an
15 additional House district by using the overpopulation from
16 Cameron and Hidalgo and combining them in the middle for an
17 additional district, which on this map on the top is green.

18 The Task Force House plan demonstrates the ease of
19 creating a new Latino opportunity House district in Cameron
20 and Hidalgo Counties.

21 Next slide.

22 Here you will see the State's adopted plan on the
23 left, and the Latino -- I'm sorry. Is this the benchmark?
24 The adopted plan is on the right and the Latino Task Force is
25 on the left.

1 The House plan also fails to create a Latino
2 opportunity House district in El Paso, a county that is over
3 80 percent Latino. The state created one of the House
4 districts in El Paso, House District 78, not to be a Latino
5 opportunity district -- that's the purple district there --
6 despite more than adequate population.

7 The State's House plan instead packs Latino
8 population into the other districts in El Paso, 75, 76, 77 and
9 79, in order to ensure that House District 78 has a minority
10 Spanish surname voter registration.

11 The Task Force House plan demonstrates that if you
12 simply follow the neighborhood lines in El Paso County, you
13 naturally balance the Latino population and you make House
14 District 78 a fifth Latino opportunity district.

15 Moving now to the congressional map. That is hard
16 to see, but it will be in your binders, Your Honor, when we
17 start our case.

18 JUDGE GARCIA: All right.

19 MS. PERALES: In the current congressional
20 redistricting plan, the existing Latino opportunity districts
21 in South Texas are all overpopulated. From El Paso in the
22 west, Congressional District 16, big West Texas 23,
23 Congressional District 28, Congressional District 15, in San
24 Antonio, Congressional District 20, on the Gulf Coast,
25 Congressional District 27; they are all overpopulated and this

1 reflects the strong Latino growth in Texas.

2 If you add up the overpopulation across all of these
3 adjacent Latino majority districts, you get 506,723 people.
4 That extra population, which is Latino majority, is almost
5 three quarters of an additional congressional district.

6 To fairly reflect this growth, one need only to
7 maintain the current geography of the Latino opportunity
8 districts and reach north for about a quarter of a district,
9 less than 200,000 people.

10 Instead, the plan adopted by the Texas legislature
11 fractures the existing congressional geography to pull Nueces
12 County out of the configuration of Latino opportunity
13 districts.

14 Nueces County is a Latino majority county of over
15 340,000 people located in South Texas. It has historically
16 been included in a congressional district that ran along the
17 Gulf Coast from Nueces County south to Cameron County.

18 Instead of leaving Nueces County in the district
19 where it has been for 30 years, and leaving it in the
20 configuration of Latino opportunity districts in South Texas,
21 the State's adopted plan strands the 340,000 people of Nueces
22 County in a predominantly Anglo district, where the Latinos
23 lack the opportunity to elect their candidate of choice to
24 Congress.

25 The plan also configures the big West Texas

1 Congressional District 23 to convert it from a Latino
2 opportunity district, as drawn by a court, to a nonopportunity
3 district that, according to the State's own estimates, can
4 elect the Latino preferred candidate in only one out of ten
5 elections.

6 Although Congressional District 23 was already
7 overpopulated, the State pushed in additional geography from
8 predominantly Anglo areas of West Texas that lie north of the
9 Pecos River.

10 This also split heavily Latino Maverick County on
11 the border, and split the city of Eagle Pass, including
12 splitting precincts. And you will see there, Your Honors, the
13 black line of precinct boundaries. The orange line is where
14 the State reached in and carved out half of Maverick County
15 and the city of Eagle Pass.

16 JUDGE GARCIA: Now, that is District 23?

17 MS. PERALES: 23, Your Honor.

18 JUDGE GARCIA: All right.

19 MS. PERALES: And very systemically, the State
20 swapped precincts in and out of Congressional District 23 to
21 reduce its ability to elect a Latino candidate of choice. The
22 State replaced precincts with relatively higher Latino turnout
23 with precincts featuring relatively lower Latino turnout.

24 The result is a cynical sham district, a district
25 that appears to be Latino, because it has a majority of

1 Spanish surname voter registration, but one that cannot
2 perform and was designed not to perform built intentionally
3 from areas where Latino voters are less likely than other
4 Latinos to turn out in an election.

5 The result is six Latino opportunity districts in
6 South Texas, the same number that exists today. The
7 fracturing and manipulation of South Texas Latino population
8 prevents the creation of the additional district where it
9 would naturally occur.

10 Moving to Harris County. In Harris County, since
11 2000, the Latino population has grown by over half a million
12 to total now over 1.6 million. The State's adopted
13 congressional plan does not create an additional Latino
14 opportunity district in Harris County.

15 Combined with Harris County's existing substantial
16 Latino population, the new Latino growth is more than enough
17 population to support the existing Latino majority district
18 and an additional Latino voting age majority district that
19 can, in coalition with African-Americans, elect an additional
20 minority-preferred candidate.

21 In the Dallas-Fort Worth metroplex, the Latino
22 population has grown to over 1.3 million, but Latinos are
23 fractured across six congressional districts in the current
24 plan.

25 Despite the urging of the head of the Texas

1 Republican congressional delegation, among others, the State
2 did not create a Latino opportunity district in the metroplex.
3 Latinos deserve an opportunity to elect their preferred
4 candidates to Congress in the metroplex.

5 One way to draw such a district presented in the
6 Task Force C-190 is to encompass Latino areas in Dallas and
7 Fort Worth and provide an opportunity to elect a Latino-
8 preferred candidate.

9 The Task Force plans for House and Congress
10 demonstrate the ability to create a fair number of Latino
11 opportunity districts, that respect population growth and
12 communities of interest.

13 Thank you for your time and we look forward to
14 presenting our case.

15 JUDGE GARCIA: Thank you, Ms. Perales.

16 Our next plaintiff. Can the lights go back on?

17 MR. VERA: Yes. If you put the lights back on,
18 please. Thank you.

19 JUDGE GARCIA: There you go. Go ahead.

20 MR. VERA: Thank you, Your Honor. May it please the
21 Court, Your Honor, Luis Vera for the LULAC plaintiffs.

22 Your Honor, I don't want to repeat much of what was
23 said by the great Nina Perales and Jose Garza earlier and
24 Mr. Gray. I think they say a picture paints a thousand words.
25 Everyone spoke about Tarrant County. Here it is, Judges. I'm

1 sorry. I keep hitting this thing.

2 This is a Latino community. They completely cut it
3 out to benefit only the Anglo-dominated district. It fits
4 right in there. Okay? This is what they did. And this is
5 what you see throughout Texas, these ridiculous shapes, lines,
6 weaving in and out of neighborhoods, splitting hundreds of
7 precincts throughout the state, predominantly in the Latino
8 and African-American communities.

9 The Latino Task Force talked about Maverick County
10 in the 23rd Congressional District. You will hear from them,
11 and I believe the people from Travis County, the hundreds of
12 thousands of dollars it is going to cost them to redo all of
13 those precincts, but the State doesn't seem to care.

14 In the 23rd Congressional District, the last time --
15 Balderas, the Balderas case, with the Supreme Court, LULAC
16 versus Perry, focused in on the 23rd Congressional District.
17 It was to benefit simply the Republican candidate. They cut
18 it up, fractured it up, and to the detriment of the Latino
19 community.

20 The Supreme Court, through its order, put everything
21 back, so that the Latino community in the 23rd had an
22 opportunity district.

23 They came back and did it again, taking out the
24 predominantly Latino south side, which encompassed the entire
25 Harlandale community, took it out of the 23rd, put it into

1 this 35.

2 And then they take Maverick County, like the second
3 or third smallest county in the state of Texas, and chopped it
4 right in half.

5 In the process, the 28th, which is our good friend
6 Congressman Cuellar, that district is already packed with
7 Latinos, and that is unavoidable, but they pack it even more
8 when they split Maverick County and put it over there.
9 Unnecessary.

10 When you look at Travis County, and we have a slide
11 and we will show it to you later, Austin, Texas became mother
12 Austin. Every congressional -- every major city, starting
13 from Houston, they take out a chunk of a minority community,
14 they cut the little umbilical cord attaching right there north
15 of Austin.

16 San Antonio, the 35th, starting -- where they took
17 the Harlandale community out, little umbilical cord all the
18 way to Austin.

19 Tarrant County, Dallas, take out chunks of minority
20 community, and then you have got this umbilical cord, all the
21 way down to Austin.

22 And what they did with Corpus Christi, the same
23 thing. They take a big chunk of the Latino community, and
24 here is this umbilical cord that goes all the way to Austin.
25 That isn't heard of, but you will see -- you have seen it on

1 the maps. You have thousands and thousands of pages of
2 documents and maps, and you can see that.

3 We have continuously heard in all of these years of
4 redistricting the argument from whoever happens to be on the
5 other side that it is all about politics. It is not about
6 race.

7 My brother Jose Garza said it best earlier. It
8 doesn't matter who is on the other side, whether it is the
9 Republican party, the Democratic party, you name it. The
10 parties keep switching sides. The officeholders keep
11 switching sides. The interest groups keep switching sides.

12 Three people are always standing on the same side,
13 LULAC, MALDEF and the NAACP. We don't switch sides. So this
14 argument that this is political gerrymandering and not about
15 race, well, how come we are always on the same side? We are
16 always having to fight whoever is in power? And that is the
17 whole history. All three of you know that. This Court knows
18 that. The Supreme Court knows that. And that has been the
19 history of redistricting.

20 When you look at the gerrymandering, this ridiculous
21 gerrymandering, we got to name some of these. One we call --
22 it looks like a deer, antlers and everything. Others look
23 like this elbow. It is coming this way and bends this way,
24 just wrapping around communities, to fracture the Latino
25 communities.

1 This is simply about what has been done again by the
2 people in power to dilute the Latino community. A great
3 article that came out -- I guess there is a question of what
4 greatness means, but a great article in the San Antonio
5 Express-News that says something to the effect: With the
6 emerging power of the Latino community, this is maybe the last
7 hurrah for a political party or people that are trying to hold
8 on to power.

9 So, Judges, I think the evidence, not only what the
10 witnesses that will testify on behalf of LULAC and the
11 plaintiffs, that you will hear from the county judge of
12 Maverick County, you will hear from the former Congressman
13 from the 23rd, you will hear from George Korbel, our expert,
14 and George has been doing this for 41 years, more than anyone
15 in this court.

16 And I think that when it is all over, I think the
17 plaintiffs, all of us will have proven what we set forth here
18 before you. Thank you, Your Honor.

19 JUDGE GARCIA: Thank you, sir.

20 Next lawyer, please. Mr. Rios.

21 MR. RIOS: May it please the Court, Rolando Rios for
22 Congressman Cuellar. When President Reagan extended the
23 federal Voting Rights Act, he stated that the right to vote is
24 the most precious of all of our rights, because all other
25 rights flow from it.

1 Our testimony will be limited to the process and
2 plans. Congressman Cuellar has been involved in politics as a
3 State Representative and also as a Congressman. He has been
4 through several processes for redistricting.

5 The process generally is that the Senate and the
6 Texas legislature refers it to the House, and their plan, the
7 House refers it to the Senate on their plan. And generally,
8 the legislature defers to the leadership in the Republican or
9 Democratic caucus in Congress.

10 So being aware of this, early on in the process,
11 several years ago, two years ago, actually, Congressman
12 Cuellar, working with us and the people drawing plans, decided
13 to work with the Republican leadership on drawing something
14 that is fair.

15 Everybody knew that as the figures were coming out
16 that minorities are going to be responsible for almost
17 90 percent of the growth, and we were expecting 4 million
18 people in Texas growth.

19 Four new Congressionals, amazing. And even the
20 Republican leadership, working early with my client, realized,
21 that after 40 years of continually finding that Texas violates
22 the rights of minorities, every decades, it is in the record,
23 that it would be important to provide some representation to
24 the Latino community.

25 So early on, the leadership in the Republican caucus

1 worked with my Congressman: Look, if we get four new
2 Congressionals -- we, obviously, wanted four or three. He
3 said: Let's give them at least two. Dallas is a given. Over
4 a million Latinos. Let's draw a good congressional district
5 for Latinos in Dallas, and a new one in South Texas, and then
6 we will argue about everything else.

7 If we accomplish this little task of two new
8 Congressionals for Latinos, it would be historic. Texas has
9 never given anything to Latinos that it hasn't been forced to
10 by a federal court.

11 All the progress made in Texas by Latinos in the
12 congressional districts has been forced upon the State by
13 federal courts. The last time, when the Tom Delay plan went
14 through -- and they deferred to Tom Delay then. Even the
15 three-judge court said there was no violation. We had to go
16 to the Supreme Court and get that reversed.

17 And, in fact, Congressman Cuellar's districts, which
18 was Webb County, had been split by then. His district was put
19 back together and, in fact, his district is a court-ordered
20 district, the 28th District.

21 So they worked together, sent their ideas to the
22 legislature, Congressman Cuellar and the Republican
23 leadership. And all of a sudden, everything changed, plans,
24 Congressmen talking about plans. Instead of getting two out
25 of four, Latinos got nothing.

1 The Latino community in Dallas, instead of being a
2 Latino district, was eviscerated into seven different
3 districts. It is classic racial gerrymandering. In all
4 fairness, the State's plan is not that bad. They treat it
5 fairly, but he was so outraged by the way that the process was
6 changed that he needed to speak out and provide the
7 leadership.

8 Again, we come before the Court to provide what is
9 fair to the Latino community. Thank you.

10 JUDGE GARCIA: Thank you, Mr. Rios.

11 Next, please.

12 MR. RIGGS: May it please the Court. Good morning,
13 Your Honor. My name is Allison Riggs, and I represent the
14 NAACP plaintiff intervenors. The Texas State Conference of
15 NAACP Branches and individual members of the state NAACP
16 intervened in this case because of congressional and State
17 House plans recently enacted by the Texas State Legislature
18 denied black voters in Texas an equal opportunity to
19 participate effectively in the political process and elect
20 candidates of their choosing.

21 In its case in chief, the evidence that the NAACP
22 plaintiffs will submit will support a finding by this Court
23 that the State of Texas in enacting Congressional Plan C-185
24 and House Plan H-283 intentionally discriminated against
25 minority voters, in violation of the Equal Protection Clause

1 of the Fourteenth Amendment and diluted the minority vote in
2 violation of Section 2 of the Voting Rights Act.

3 The evidence necessary to prove intentional
4 discrimination under the Fourteenth Amendment is present in
5 this case. The state legislature engaged in a bizarre
6 redistricting process that shut out the input of minority
7 citizens and representatives.

8 The state legislature made nothing more than
9 obviously illusory overtures to leaders of the various
10 minority communities and then proceeded to blatantly disregard
11 the comments and perspectives shared by those leaders.

12 Instead, the state legislature incorporated aspects
13 into the redistricting plans that minority leaders
14 specifically warned would make it harder or impossible for
15 minority voters to have an equal opportunity to participate in
16 the political process.

17 In e-mails and in public hearings, decision makers
18 in the process were open about their intent to limit the
19 districts that would elect candidates of choice of minority
20 voters.

21 In the bigger picture, in the state of Texas, this
22 kind of maneuvering is about race, not about political party.
23 Party alliances have changed over time, but the commitment of
24 Anglos in power to maintaining their power at the expense of
25 minority voters has not changed.

1 The evidence and testimony offered by the NAACP
2 plaintiffs will tell a story in which it is clear that
3 intentional discrimination on the basis of race was a
4 predominant motivating factor in the actions of the state
5 legislature.

6 When it comes to Section 2 liability, the NAACP will
7 show that the state legislature could have created new
8 African-American opportunity districts and chose not to do so.
9 Given the growth rate in the African-American population in
10 the state, the underrepresentation of blacks in elected office
11 already and the proven effectiveness of coalition districts in
12 allowing African-American voters to elect candidates of their
13 choosing, the numerical requirements necessary to prove a
14 Section 2 -- to prove Section 2 liability can be satisfied in
15 more than one geographic area in congressional and state house
16 plans.

17 Maps and expert testimony will show these new
18 proposed district were quite compact, complied with all
19 traditional redistricting criteria and did not endanger
20 existing opportunity districts or potential new Latino
21 opportunity districts.

22 Racial and polarized voting is a real and dramatic
23 phenomenon in Texas elections and both experts and lay
24 witnesses will testify to this. The numbers offered by
25 experts in this case will corroborate what black, Latino,

1 Asian and other minority voters experience firsthand every
2 election day here in Texas. Anglo voters consistently vote in
3 a block to defeat minority candidates.

4 There have been in existence for many years
5 coalition districts in which these minority groups have acted
6 in a politically cohesive way to elect the candidates of
7 choice of the larger minority community. These coalition
8 districts continue to exist and their numbers can be expanded,
9 in sticking with the letter and spirit of the Voting Rights
10 Act.

11 The totality of the circumstances show that the
12 situation facing minority voters in Texas today is not one
13 that encourages political participation but, rather, creates
14 new and higher hurdles at every turn.

15 African-American and minority voters continue to be
16 subject to discrimination in voting, education, employment,
17 health, and a variety of other areas. African-American and
18 other minority voters continue to see successful Anglo
19 campaigns marked by subtle and even overt racial appeals and
20 overtones.

21 Anglo-elected officials are more than just
22 unresponsive to the needs of the minority community. They are
23 frequently downright hostile to these needs and interests.
24 All of these factors contribute to a situation in which the
25 redistricting plans enacted by the state legislature amount to

1 minority vote dilution and must be remedied under Section 2 of
2 the Voting Rights Act. All of these factors are evidence of
3 intentional discrimination.

4 With intent and effect, the State of Texas enacted
5 congressional and state redistricting plans that deny
6 African-American voters and all minority voters an equal
7 opportunity to participate equally in the political process,
8 in violation of the Equal Protection Clause and the Voting
9 Rights Act.

10 JUDGE GARCIA: Thank you.

11 MR. BLEDSOE: May it please the honorable members of
12 this Court. I represent the African-American Congressional
13 intervenors, NAACP, individual party, Howard Jefferson, and --

14 JUDGE GARCIA: And for the record, your name is?

15 MR. BLEDSOE: Gary Bledsoe.

16 JUDGE GARCIA: Right. Okay.

17 MR. BLEDSOE: Gary Bledsoe.

18 JUDGE GARCIA: Thank you.

19 MR. BLEDSOE: And I guess, to begin with, we move
20 for the admission of Exhibit 601 to 632, which would be our --

21 JUDGE GARCIA: Any objection?

22 MR. MATTAX: No objection.

23 JUDGE GARCIA: Great. Those are admitted.

24 MR. BLEDSOE: Thank you. Your Honor, I would like
25 to point out to the Court that I think the evidence will be a

1 good bit different than how it has been pointed out in the
2 media.

3 I think that one of the things that we are very
4 seriously believing that we will be able to show you clearly
5 is that this whole process was rife with discrimination. And
6 why was it rife with discrimination?

7 Well, one of the things that you heard Mr. Rios talk
8 about was, there were three African-American Congresspersons
9 who tried to work cooperatively with members of the Texas
10 delegation, and they, in good faith, tried to work with those
11 individuals to have districts created that would indeed be
12 effective opportunity districts for African-Americans. But
13 instead, what was created was what we would call a tension
14 district, because in the same situation, when you refuse to
15 give proper due to voters, other voters, in this case, Latino
16 voters, that what happened was Latino voters were
17 unnecessarily placed into those districts, when other
18 districts could have been created for Latino voters.

19 Now, we will show very clearly that in the
20 communities at stake here and, really, statewide, there is a
21 coalition between African-Americans and Latinos. The history,
22 the similarity in the histories, the discrimination that the
23 parties still endure and face, and the way that they exercise
24 their right to vote at all levels does indicate that, clearly,
25 they operate at a common interest.

1 But in this situation, by creating the districts in
2 the way that they have done, and not giving proper due to
3 others, this, obviously, will put great pressure on those
4 districts in the coalition, that is permitted to sustain those
5 districts, and so those districts, obviously, will possibly
6 become a zone of conflict between parties who have always been
7 in coalition with each other, so it is masterfully drawn and
8 designed to do that.

9 And what happens is, the other districts, therefore,
10 lock in those districts, so the minorities would be limited to
11 those districts, with the requirements under the Voting Rights
12 Act, in terms of creating a new district.

13 So it is cleverly drawn and it is extremely
14 important that we not allow that to continue, because what we
15 feel is that, obviously, we should be a nation about
16 discussion and issues and be able to allow all people to
17 participate in the political process.

18 But if we look at this map overall, we can see very
19 clearly in another instance why it clearly involves
20 discrimination. Currently, the African-American voters have
21 three effective opportunity districts. Those are made less
22 effective by this plan.

23 But out of 32 seats in Texas, the African-Americans
24 would have about 9.3 percent of the current congressional
25 seats. Under this new plan, there are only three, and that is

1 three out of 36, but the growth of African-Americans exceeded
2 the growth of whites over the past ten years. 589,000 new
3 African-Americans came to this state and only 547 new whites
4 came to the state.

5 Clearly, the rough proportionality that the law
6 requires would suggest that we should create an additional
7 seat for African-Americans, which, indeed, was done.

8 But secondly, if we look at the influence, we, at
9 the NAACP, have what is called a report card, and that report
10 card tracks people in Congress and the United States Senate
11 and evaluates how they vote on issues of importance to our
12 community.

13 And right now, there are ten Congresspersons who
14 represent minority districts, who generally vote the way the
15 NAACP would want them to vote, and there is one influence
16 district.

17 So out of 32 votes in Congress, there are eleven
18 votes that are somewhat dependable for the African-American
19 community. With this new plan, what this new plan does is,
20 there would only be ten out of 36.

21 So not only do you have a reduction in the
22 percentage, but you will have a lot less influence in
23 Washington, and this is what this is about.

24 Now, and when you look at that, you can also come to
25 the conclusion that if minorities are now the majority in this

1 state, and Anglos are less than a majority, but they dominate
2 72 percent of the Congressional districts, that you have to
3 reach the conclusion that this plan is designed to give more
4 weight or credence to a white vote, because what occurs is
5 that those that are not packed into minority districts are
6 isolated in districts, where they won't get representation, or
7 they are put in districts where Congress folks do not believe
8 in the things that they believe in.

9 You take the African-American community in Travis
10 County and Austin, Texas, you have a district running up all
11 the way to north Texas. That is really going to limit or
12 restrict the ability of those individuals to have proper
13 representation.

14 We also will be able to show you where there is a
15 clear need for us to have relief in a situation like this,
16 because not only are we trying to get effective districts that
17 were not Balkanized, where all of the businesses, et cetera
18 weren't taken out by a congressman who didn't look like the
19 congressman here, who wanted to have their districts look a
20 certain way, but we are also understanding that what this is
21 is the culmination in many ways of what is called a southern
22 stretch.

23 I think many of us have heard about the southern
24 strategy, and this is not a political term. What the southern
25 strategy is intended to do is marginalize African-Americans

1 and Latinos, so this means that it is clearly intended to be a
2 racial gerrymander in the sense that what you -- the idea or
3 belief is to limit the influence of African-Americans and
4 Latinos by restricting their voice and who you place them in
5 districts with.

6 We will present to you some horrible things that
7 talk about the Obama effect, and they talk about the rise in
8 voting in the white community because of the antagonism
9 created by the election of Barack Obama or the concern about
10 immigration in the state, and we can see how it manifested
11 itself this last session of the legislature, and we will
12 discuss that with you.

13 And we can see very clearly how even this, these
14 plans, 1085 and 283, how they clearly manifest this increased
15 hostility and discrimination that takes place. So we would
16 ask you to take particular attention, particular note to those
17 issues.

18 And the one thing that we think that would be
19 abundantly clear is that there is an increasing -- there has
20 always been a coalition between African-Americans, Latinos and
21 Asians, but with the recent events from the 2010 election, we
22 can see where there is a break -- well, it is getting closer
23 than it has been in the past.

24 In 2010, because of the Obama effect and the
25 immigration issue, typically speaking, the turnout of voters

1 in statewide gubernatorial election years is about 60 percent
2 of what it is for presidential election years.

3 And this past election, 2010, the Latino community
4 turned out with 50 percent, a little less than 60 percent.
5 The African-American community turned out a 60 percent of what
6 it did in 2008. But the Anglo community turned out at about
7 90 percent. I think that shows clearly why we have the great
8 landslide that we did in 2010 and the increased hostility due
9 to those effects. Thank you very much.

10 JUDGE GARCIA: Thank you.

11 MR. HICKS: May it please the Court, Renea Hicks for
12 the Rodriguez plaintiffs. We present only a congressional
13 case. We do not have any state house claims in our lawsuit.

14 The Anglo population -- during this past decade, the
15 Anglo population grew less, I mean, in raw numbers, not
16 percentages, in raw numbers, grew less than either the black
17 or Hispanic population in Texas. In fact, it was swamped by
18 the Hispanic population growth. Anglos are now only a
19 plurality of the state's population and Texas is now a
20 majority minority state.

21 Yes, the legislature, advancing 185, has drafted a
22 plan where Anglos are a majority of the voting age population
23 in 64 percent of the districts.

24 Under Plan C-185, 88 percent of voting age Anglos
25 are in districts where Anglos are a majority of the

1 population. 88 percent. In contrast, half of that
2 percentage, 44 percent of the voting age Hispanics were in
3 majority Hispanic districts.

4 This wouldn't matter if there wasn't racially
5 polarized voting in Texas, but there is racially polarized
6 voting in Texas. There are high levels of racial cohesion
7 among minority voters and polarization with regard to how they
8 vote in contrast to Anglo voters across the entire state.

9 Roughly 75 percent or more of Hispanic voters and
10 90 percent or more of blacks vote for the same candidates.
11 There is one exception to this pattern -- and Anglos don't
12 vote for those candidates.

13 There is one exception to this pattern. It is in
14 Travis County, Texas. Judge Smith in 1993 sat on an en banc
15 panel where, essentially, he made -- he joined in a panel that
16 made this kind of finding. It holds true today, and it holds
17 true through the last decade.

18 There, in Travis County, it is not nirvana, but it
19 is true that there seems to be consensus by everybody that
20 somewhere between the low 40s and the high 40 percent of
21 Anglos cross over and vote in support of the same candidates
22 that minority voters vote cohesively for. That is the
23 background.

24 It is not as though the legislature, in drawing this
25 map, didn't have a choice about what to do and didn't have a

1 choice about how to take into account this growth and the
2 voting patterns that we have just discussed.

3 Other plans were available to them which create more
4 minority opportunity districts, while also more closely adhere
5 to what might be called neutral or traditional redistricting
6 principles, such as county line cuts, cutting precinct
7 lines -- are measures of partisan fairness that are accepted
8 in the political science community.

9 All of us have different, what we call demonstration
10 maps under plan -- under Gingles 1, Gingles 1, 2 and 3
11 factors, especially Gingle 1 factors. All of us have
12 different approaches to show the Court about how things could
13 have been done differently to give minority voters a fairer
14 opportunity and an equal opportunity in the voting patterns.

15 Our views -- the use of this demonstration map,
16 C-166, and that is the one our expert, Dr. Ansolabehere -- and
17 I will provide you how to spell that name later -- will be
18 referred to as an example, not a proposal, but an example of
19 how additional minority districts could be created, and with
20 regard to our constitutional claim in Travis County, how they
21 could be created and also put this tri-voting coalition back
22 together in Travis County.

23 RC-166 shows that an additional Hispanic opportunity
24 district, coming out of the Rio Grande Valley, Congressman
25 Hinojosa's home base, could have been created. It could have

1 been created that takes into account the racially polarized
2 voting patterns and population of Hispanics in the area, but
3 reuniting Nueces County.

4 You heard Ms. Perales talk about it -- and perhaps
5 Mr. Garza; I don't recall whether he said something -- about
6 reuniting Nueces County with its traditional base in the
7 valley, and the Hispanic voters, the large number of Hispanic
8 voters that are in Nueces County.

9 That could have been done easily. It was done with
10 great planning and effort by the state to cut it loose from
11 that traditional base, and that is a prime example of how both
12 under Section 2 and under the Constitution there was
13 discrimination against Hispanic voters, districts coming out
14 of the valley.

15 An additional Hispanic opportunity district similar
16 to the one Ms. Perales was referencing could have been created
17 in Harris County. We have a different approach to how it
18 could be demonstrated, but we have one that -- I think
19 that 166 demonstrates it, could have been created in Harris
20 County, Congressman Green's home territory, while respecting
21 the voting patterns of African-Americans in the two existing
22 districts that are in Harris County.

23 An additional minor opportunity district could have
24 been created in Dallas-Fort Worth. It is a long -- it has
25 been soft since the 1980s, frankly. And now, after incredible

1 Hispanic population growth there, we still have not a single
2 Hispanic opportunity district in the Dallas-Fort Worth area.
3 And it could have been created. The legislature decided, we
4 don't have to create one there. Even if it is close, we don't
5 have to create one there. We can go create an Anglo-dominated
6 district anywhere we want and isolate Hispanic voters any way
7 we feel like in that area.

8 And I think several people, Mr. Garza and Mr. Vera,
9 both reference what happened, coming out of Denton County, the
10 arm that comes down, and this narrow, little arm that comes
11 down and grabs huge Hispanic population concentrations out of
12 Tarrant County, isolates them.

13 District 6 comes up out of Ellis County and grabs
14 another batch of Hispanic voters out of the Dallas-Fort Worth
15 area, to isolate them from the other group that was isolated
16 through the District 26 grab of Tarrant County voters. This
17 was done over and over again.

18 In Travis County, the -- which is where we have a
19 constitutional claim about the Balkanization of Travis County.
20 In Travis County, 60 percent of the Hispanic population in
21 Travis County is not in what was created as an ostensible
22 Hispanic opportunity district, district 35.

23 60 percent of Hispanic population in Travis County
24 is not in that district, and virtually all of the
25 African-American population is in another district outside --

1 Travis County.

2 They, instead, are chopped up into four additional
3 pieces, and they are sent off in kind of a spiral, exploding
4 spiral nebula to Harris County in District 10, to Waco and
5 College Station in District 17, to Tarrant County, going up to
6 the hill country in District 25, and back down to Bexar County
7 in District 21.

8 The State's own experts have said District 35 is not
9 a compact district, and you will hear testimony to that
10 effect.

11 And so it is not an adequate substitute, just in
12 LULAC versus -- versus whomever. I can't remember. The 2006
13 Supreme Court decision. The Supreme Court said that District
14 25, that was created, that could not be -- could not make up
15 for the destruction of District 23 that the legislature had
16 done in 2003.

17 They have done a destruction, as Ms. Perales pointed
18 out clearly to you, I think, they have destroyed District 23
19 as the Hispanic opportunity district. They did it on purpose
20 and you can't make the substitution in this situation.

21 The short of this is, the legislature has set up an
22 Anglo-dominated congressional district plan out of proportion
23 to any measure of Anglo voting presence in the relative
24 populations.

25 They did it by fragmenting minority voters

1 everyplace across the state it was possible to fragment them.
2 So we have both Section 2 and constitutional claims with
3 respect to this. Thank you.

4 JUDGE GARCIA: Thank you.

5 MR. HEBERT: Good morning, Your Honor. Gerald
6 Hebert for the Quesada plaintiffs. And I just thought it
7 would be helpful for me to, since the last shall be first and
8 the first last, according to the Bible, I will finish up for
9 the plaintiffs and say, that because the partisan
10 gerrymandering claims have been dismissed, I wanted to take an
11 opportunity, maybe five minutes this morning, to tell you what
12 our claims are and how they relate to some of the other
13 plaintiffs, and I am not going to repeat anything that,
14 obviously, the other co-counsel have said on my side.

15 We do challenge the Congressional map. We have a
16 group of black and Latino voters scattered throughout the
17 state and challenge the congressional district map.

18 Our first claim, and we haven't heard anything about
19 this today, the first claim that we have, and a number of
20 plaintiff groups have as well, is that the plan hasn't been
21 precleared under Section 5 of the Voting Rights Act, the
22 congressional map, and we don't think it will be, and at the
23 end of the day, the Court will have to put into place a plan
24 to remedy the fact that the current district plan of 32
25 districts is obviously malproportioned, in violation of the

1 Constitution, and so we will need a remedial plan.

2 So we have a Section 5 claim, and we have a Section
3 2 claim, and I am not going to get into that. Our expert
4 witness, Dr. Alan Lichtman, will talk about voting strengths
5 of Latinos and African-Americans throughout the state and
6 their vote dilution evidence will show that they are denied
7 opportunities, meaningful opportunities to elect their
8 candidates of choice, with racially polarized voting patterns
9 and the rest.

10 What I want to spend a minute to talk about, though,
11 is the evidence that you will see, not necessarily orally and
12 through witnesses, but mostly through documentary evidence
13 that shows that the dilution of minority voting strength that
14 took place here was intentional and is contained in e-mails of
15 congressional members.

16 They were turning to the legislative people who were
17 drawing the map. They talked about the Voting Rights Act
18 concerns. They expressed concerns about how difficult it was
19 going to be to comply with the Voting Rights Act. They talked
20 about the need to avoid retrogression under Section 5. They
21 talked about the need to avoid diluting Latino and
22 African-American voting strength.

23 Even Congressman Lamar Smith, and you will see
24 documents to this effect in April, during the regular session,
25 gave them a plan that created a new minority opportunity

1 district in the Dallas-Fort Worth, Tarrant County region, and
2 basically said, you know, given the growth that Mr. Hicks just
3 talked about, 65 percent of the growth from 2000 to 2010 was
4 the Latino population in the state. 65 percent!

5 89 percent of the growth in Texas came from
6 non-Anglos. 89 percent. They gained four seats in Texas on
7 the backs of Latinos and African-Americans, and they get no
8 new districts out of it?

9 The Voting Rights Act speaks, cries out to give them
10 their fair opportunity to elect candidates of their choice.
11 And by the way, Congressman Smith, even though he put that map
12 in the hands of the legislative leaders, no Dallas-Fort Worth
13 district was ever drawn. It never showed up.

14 And, in fact, at the end of the day, Congressman
15 Barton's district director wrote an e-mail saying: This map
16 has real problems under the Voting Rights Act.

17 So they not only knew it, and they not only knew it
18 because most of the attorneys and their clients on this side
19 of the courtroom went before the legislature and told them so,
20 they knew it because their own people told them so, and the
21 population told them so.

22 Now, District 23, I am not going to belabor that.
23 District 23 and 27, Canseco and Farenthald, you know, it is
24 like the State is addicted to vote dilution when it comes to
25 23. They just can't help themselves, right?

1 I mean, what happened is the exact, same thing here
2 with Canseco happened with Bonilla, right? Bonilla is not the
3 candidate of choice of Latinos throughout the decade. And
4 then when they do redistricting, they say: Hey, we have got
5 to bump him up, because it is getting to the point where
6 Latinos are about to elect a candidate of choice.

7 In 2010, Canseco is not the candidate of choice for
8 Latinos, and neither is Farenthald. And what does the
9 testimony show? Well, they say: We went ahead and made those
10 districts better for them to get reelected.

11 Well, that may be a perfectly legitimate political
12 goal, but you can't do it at the expense of minority voters.
13 You just can't do it.

14 Now, the State cynically will say: Oh, yes, but we
15 created two new districts. Well, if you take two away and
16 then you create two new ones -- and cynically, they label them
17 34 and 35, to make them seem like they are new districts --
18 you are not really giving the minority population their fair
19 share of the districts, and proportional representation or
20 proportionality is a relevant factor under the totality of the
21 circumstances test, as Johnson vs. DeGrandy makes quite clear.

22 So we have Section 2 claims. We have intentional
23 discrimination claims. We also, like many of the plaintiffs,
24 have racial gerrymandering claims in the minority community.

25 You are going to see in the maps that the Quesada

1 plaintiffs present, show, we are going to shave the minority
2 population in areas like Tarrant County with blacks and
3 Latinos and then show you the lines over them, so you can see
4 how the minority community there and in other parts of the
5 state is sliced and diced to prevent them from electing a
6 candidate of their choice.

7 And the State overrelied every time they had an
8 e-mail exchange about the map being drawn, they always talk
9 about SSVR, Spanish surname voter registration, or they talked
10 about Hispanic citizen voting age population, or they talked
11 about the percentage black.

12 The State has relied on race and relied on race in
13 an over -- overly so, and they did so and allowed those racial
14 considerations and minority language considerations to
15 subordinate traditional redistricting principles that divided
16 communities of interest, and when that happens, it is a
17 violation of the Fourteenth and Fifteenth Amendments' command
18 against racial gerrymandering.

19 So I ask the Court, at the end of the day, when you
20 hear all of the evidence, we believe you will agree that
21 across the state, blacks and Latinos continue to be the
22 victims of discrimination in Texas.

23 JUDGE GARCIA: Thank you, sir. We will now hear
24 from the State of Texas.

25 MR. SCHENCK: Good morning. And may it please the

1 Court, Your Honor, David Schenck for the State defendants. I
2 think the first order of business, we would like to move for
3 admission of Defendant's Exhibits D-1 through D-49. I believe
4 there is no objection.

5 JUDGE GARCIA: Any objection on this side?

6 MR. GARZA: No objection from the plaintiff.

7 JUDGE GARCIA: There being none, they are admitted.

8 MR. SCHENCK: Thank you.

9 Surely, Texas has grown, but I don't mean that just
10 literally. We all agree that massive numbers of people,
11 particularly Latinos and African-Americans, have been moving
12 to Texas over the past decade.

13 In fact, we have grown to the point in this state
14 that it can no longer even speak, accurately at least, about
15 majority or minority ethnic populations in this state, because
16 there is no literal ethnic majority population in Texas.

17 We are proud of that growth. We are proud of that
18 diversity, and we are proud that people from all over the
19 country and all over the world see something better in Texas
20 that makes it worth calling home.

21 But when I say that Texas has grown, I mean
22 something larger and more important than the crass demographic
23 numbers that race would suggest. I mean Texas has evolved
24 into something that people living here in 1965, when the
25 Voting Rights Act was passed, would scarcely recognize.

1 The political and social conditions, which the
2 plaintiffs will talk much about, in the second decade of the
3 21st century, there is little resemblance to the state of the
4 1960s and 1970s. Our civic population, at this point, is as
5 diverse and as integrated as any in human history.

6 Of course, that is not just true in Texas. You will
7 see it across the country, and I think it was well reflected
8 in our last presidential election. But when we look with
9 respect to voting, at least here in Texas, we are long past
10 the days of polarization based on the race of the candidates
11 running for office.

12 Those days are over. The plaintiffs in this case
13 cannot demonstrate either the type or the degree of racial
14 polarization that Section 2 would require in order to redraw
15 lines based on race, nor would the Constitution permit such a
16 reading of Section 2 in any event.

17 Rather, all of the data in this case is going to
18 show that there are differing levels of party affiliations
19 among people of different races. That is a phenomenon that no
20 court nor no act of Congress can or should attempt to cure.

21 The mere fact that we are talking at this point
22 about two functioning political parties here in Texas or
23 elsewhere in the south suggests that we are well beyond the
24 days of the vote being used an effective tool of racial
25 oppression.

1 Surely, classifying our citizens and separating them
2 on account of their race to advance the interests of political
3 parties perverts Section 2 and violates the Constitution. It
4 confuses the disease with a cure, as Jack Wiener put it in
5 Hayes versus Louisiana.

6 The plaintiffs will argue otherwise in virtually
7 every respect, and they are wrong. First, they are claiming
8 that the State as a whole violated the Fourteenth Amendment
9 here by deliberately disenfranchising people on the basis of
10 their race.

11 That is, that the majority of both houses of the
12 legislature and the government had in mind not in advancing
13 the incumbencies of the Republicans or the minority Democrats
14 in both houses that were, in fact, preserved, but, rather,
15 that their goal was to hurt people because they were black or
16 Hispanic.

17 That is clearly not the case, and I think that you
18 will see that the plaintiffs themselves move very quickly from
19 attempting to prove that defamatory accusation and moving on
20 to their main arguments here, which is a Section 2 case.

21 And that argument, what they are hoping to do is
22 have you to draw more districts on the basis of race,
23 concentrating African-Americans or Latinos or combinations of
24 African-Americans, Latinos and Anglos, because they happen to
25 vote for Democrats, according to the plaintiffs' experts.

1 But as the plaintiffs are pushing for more racial
2 gerrymanders, the real question is mainly a legal one: How
3 far can you push Section 2 and the cases that construe it
4 before it breaks against the Fourteenth Amendment?

5 Well, surely, they are there and well beyond with
6 the arguments they are making in this case. And to the extent
7 they are pressing the Fourteenth Amendment, the Court can and
8 should reject those arguments.

9 Happily, though, most of the arguments they are
10 making here don't require the application of the canon of
11 constitutional avoidance, because they have already failed
12 under even the most generous interpretations of Section 2 that
13 have ever been given by courts.

14 Let's start with a congressional map. And I am
15 going to ask if we can turn the lights down. We have some --

16 To even start a claim under Jenkins, they are going
17 to have to show that it is possible to draw a reasonably
18 compact district in which Latino citizens of voting age
19 control the outcome by their propensity to block vote. Absent
20 compactness, we don't get any further.

21 Here is what they came up with in Dallas. This is a
22 district that Ms. Perales was showing to us earlier. And I
23 agree, you are going to hear testimony that Congressman Lamar
24 Smith tried to draw a Latino majority district in the DFW
25 metroplex, and so did the people on the ground, in both houses

1 of the Texas legislature.

2 None of them worked. Neither does that one. The
3 Latino population is simply too spread out in Dallas and also
4 suffers from low citizenship rates, so there simply aren't
5 enough eligible voters to assure that this district would
6 perform, even if they went through the machinations of drawing
7 a district that is noncompact.

8 That is just the first and most obvious failure.
9 The plaintiffs also regularly tout the high Latino population
10 growth and imply that it compels -- in fact, I heard it stated
11 directly today, a proportional increase in racially
12 gerrymandered districts in the state to assure that the
13 majority of voters -- are Latino.

14 Well, here is what Section 2 says about that, this
15 last sentence that I highlighted for you in bold. Provided
16 that nothing in this section establishes a right to have
17 members of a protected class elected in numbers equal to their
18 proportion of the population.

19 This statute, I think we can all agree, is hardly a
20 model of clarity. That, at least, is quite clear.

21 Now, that is not to say, as Mr. Hebert just pointed
22 out, that rough proportionality is totally irrelevant. If the
23 plaintiffs can satisfy all three of Gingle's prongs, the Court
24 can consider proportionality as part of its ultimate totality
25 of circumstances analysis.

1 Or it can just do what the Supreme Court did in
2 Johnson versus DeGrandy, where it simply assumed ongoing
3 discrimination on all three prongs of Gingles and disposed of
4 the claim where rough proportionality was present.

5 Well, guess what? When we are looking at the actual
6 eligible voters in Texas, here is what we have in the Texas
7 congressional delegation. Eight out of the current 36 total
8 districts, 22 percent, are opportunity districts. Latinos
9 constitute 24.7 percent of the citizen voting age population,
10 which is the relevant target under Section 2.

11 I suspect the majority of our time before the Court
12 will be spent upon Gingle prong two, the supposed
13 justification for drawing the districts here on the basis of
14 race in both the House and Congress; that is, that there is
15 cohesive, polarized voting among Latino voters. But despite
16 the suggestion that Latinos are a monolithic population, at
17 least insofar as the voting is concerned, the data don't
18 support that conclusion.

19 The experts are all going to largely agree on
20 reliable social science methods for measuring that metric, but
21 virtually all of the expert testimony, using a variety of
22 those methods, arrive at a number that essentially 75 percent
23 of Latinos who tend to vote for Democrats, regardless of race,
24 at least in the general election.

25 Gingles says that the amount of polarization

1 necessary to redraw lines on the basis of race would vary,
2 depending on circumstances, but I submit to you that
3 75 percent isn't polarization.

4 And there is more to the story than that 75-percent
5 figure will suggest. Texas already has lots of
6 congressional districts drawn under the auspices of the Voting
7 Rights Act, with high concentrations of African-American or
8 Latino voters.

9 In fact, we have ten before this map, plus we have
10 one new one that the legislature made on CD 35, which I will
11 point out that, in fact, it is not just a majority of Hispanic
12 voting age population. It is a majority of Hispanic citizen
13 population.

14 Two of those existing districts, CDs 27 and 23 --
15 which 27, I believe, is now 34 -- were supposed to elect a
16 Democrat because of the monolithic preference of Latinos,
17 supposedly, to vote for the Democratic candidate in any
18 general election.

19 But guess what? The exit polling would suggest,
20 contrary to the expert's reports, that Latinos aren't actually
21 voting at 75 percent, but something closer to 60-40, and that
22 would seem to be consistent with the results that we saw on
23 the ground. You see these 23 and 27.

24 Lastly, plaintiffs spend little to no time
25 addressing Gingle's third prong, the other side of

1 polarization, that white voters are voting as a block to
2 prevent the election of majority candidates or -- I'm sorry --
3 minority candidates.

4 They are not voting as a block in any legally
5 significant sense. In fact, just the opposite is true. White
6 voters are voting for and electing African-American and Latino
7 candidates at record rates in this state. They just happen to
8 be Republicans.

9 We see it in our Supreme Court. We see it in both
10 houses of our legislature, and we are very proud of it, and it
11 is going to continue with or without any intervention from the
12 courts.

13 And White voters are also voting for Democratic
14 candidates, regardless of the race of the individual
15 candidates, at about 25 percent in the general election and at
16 30 percent or more for the Latino surname candidate in the
17 Democratic primary. That is not polarization, by any
18 reasonable measure.

19 In fact, the only polarization here is partisan
20 affiliation. Fixing it by racial gerrymandering, because
21 somebody doesn't like the rate at which whites or Latinos
22 happen to vote for one political party, is absurd and an
23 unconstitutional stretch of Section 2.

24 For that reason, Section 2 has already been read in
25 this Circuit and elsewhere to not be compelling.

1 The plaintiffs' House claims fair even worse. The
2 House is elected by the same voters who show the same race
3 blind voting patterns, but the House is also subject to the
4 State constitutional restrictions governing how it is drawn,
5 which in themselves are race neutral, and that prohibit the
6 drawing of lines --

7 And even putting all of that aside, plaintiffs still
8 in many cases can't draw a district that would actually
9 perform, or that would be reasonably likely to -- here is just
10 one example.

11 This is the West Texas district they want you to
12 draw. Finally, Texas has a primary constitutional
13 responsibility for drawing these maps, and I would ask the
14 Court to remember that.

15 In doing so, the State was free to make whatever
16 judgments and policy decisions it deemed necessary, so long as
17 it didn't violate federal laws or the Constitution. In any
18 litigation like this one, that question whether the State
19 violated federal law or the Constitution, the State is
20 entitled to presumption of good faith and legality. The
21 burden of overcoming that presumption lies squarely with the
22 plaintiffs.

23 But regardless of the presumption or where the
24 burden is placed, we are confident that after you hear the
25 evidence in this case, you will see that the State's plans are

1 well within the State's law. Thank you.

2 JUDGE GARCIA: Thank you.

3 The plaintiff will call its first witness.

4 MR. GARZA: Plaintiffs call Representative Trey
5 Martinez Fischer.

6 MR. SCHENCK: Your Honor --

7 JUDGE GARCIA: I'm sorry.

8 MR. SCHENCK: Ana Jordan, of the Attorney General's
9 Office, will be presenting cross-examination.

10 JUDGE GARCIA: All right. Thank you, Counsel.

11 COURTROOM DEPUTY: Would you raise your right hand,
12 please, sir.

13 (Oath administered to the witness.)

14 COURTROOM DEPUTY: You may have a seat.

15 *-*-*-*-*-*-*-*

16 DIRECT EXAMINATION

17 BY MR. GARZA:

18 Q. Representative Martinez Fischer, where do you reside?

19 A. I live in San Antonio, Bexar County, Texas.

20 Q. And how long have you lived in Bexar County?

21 A. All of my life, about 41 years.

22 Q. Are you Mexican-American?

23 A. I am.

24 Q. And are you a registered voter and citizen of Texas?

25 A. I am.

1 Q. Were you educated in Texas, in San Antonio?

2 A. Yes. I went to both public and private school, public
3 high school, and received my first college degree in San
4 Antonio.

5 Q. Can you describe generally the resources that are
6 available to school districts and communities around town?

7 A. Well, in the state of Texas, there is not a state income
8 tax, so for the principal financing of our public school
9 districts, we rely on our property tax system. Sort of, the
10 resources and access to resources typically comes down to an
11 issue as to how much poorer communities can generate based on
12 property values versus more affluent communities, and so often
13 there is a debate that communities of color and poor
14 communities have a more difficult time achieving educational
15 ability as those that are more affluent.

16 Q. And is this an issue that regularly comes before the
17 legislature?

18 A. Yes. In fact, I suspect that we will find ourselves back
19 in the courthouse to discuss that very issue.

20 Q. When were you first elected to the House of
21 Representatives?

22 A. I was elected in the primary of March, excuse me, in March
23 of 2000.

24 Q. And was this your first endeavor in politics in San
25 Antonio?

1 A. Sort of. I was elected as a precinct chair for my
2 neighborhood, which I thought was a very important campaign.
3 And subsequent to that, in the year 2000, I did run for the
4 State House of Representatives.

5 Q. And have you been involved in political races in and
6 around San Antonio since then?

7 A. Yes, I have been.

8 Q. And across the state as well?

9 A. I have. In my years in the House of Representatives, I
10 find myself getting involved in races virtually all over the
11 state.

12 Q. And you have also had campaigns that you have run
13 yourself?

14 A. Yes, I have, here in San Antonio.

15 Q. So you are familiar with voting patterns around the city
16 and the town?

17 A. Absolutely. With particular profiles and characteristics
18 of what makes candidates good candidates, what makes elections
19 winning campaigns, and the reasons and motivations that
20 communities are looking for in their elected officials.

21 Q. And generally, has it been your experience that
22 Mexican-American voters vote for, come together to vote for a
23 candidate?

24 A. I believe that is the case. I do believe that there are
25 instances when there are groups that have difference of

1 opinions in, let's say, primary elections maybe over a
2 preferred candidate, but in most instances, when there is a
3 nominee going into a general election, you will find
4 communities of color tend to stick together and support a
5 candidate of their preference.

6 Q. And in nonpartisan races, for instance, for city council,
7 do you also find that tendency, that is, Latinos voting
8 together for a candidate?

9 A. Yes, I do. In that regard, my experience is more limited
10 to San Antonio, Bexar County.

11 Q. In your experience, do Mexican-American candidates work
12 with the black community in political campaigns in Bexar
13 County and across the state?

14 A. Yes. That is my opinion.

15 Q. And do blacks and Hispanics within the community work
16 together on political issues and political campaigns?

17 A. Yes. Both, I believe in the community and in the
18 community that I would call the House of Representatives in
19 Texas.

20 Q. Would you describe for the Court what the Mexican-American
21 Legislative Caucus is?

22 A. Yes. The Mexican-American Legislative Caucus is the
23 oldest and largest Latino caucus in the United States. It was
24 founded officially in the 1970s, and we are a nonpartisan
25 caucus.

1 At the time of our formation in the seventies, it
2 was formed virtually to protect members of the legislature who
3 were Mexican-American from the party that was in control at
4 that time, which was the Democratic party.

5 And throughout the course of its existence, we have
6 grown in stature and in prominence and is known for being a
7 policy caucus. We are officially a 501 C6 entity, with the
8 Texas Mexican-American Policy Council.

9 We also have an independent 501 C3, which runs our
10 fellows program. And then we are an official caucus of the
11 House, officially being formed by the House and following and
12 respecting all of the rules and regulations, as issued by
13 either the code, the statutory codes or by the Committee on
14 House --

15 Q. And one of the exhibits, Representative, that we have in
16 this case, Exhibit 83, is the bylaws of the caucus, and in
17 that it states the purpose; is that correct?

18 A. Yes, it does.

19 Q. And there is also in Article 2, requirements for
20 membership, to be a MALC member. Can you briefly describe
21 those to the Court?

22 A. Yes. And forgive me for the informality, but I often tell
23 people that there are two requirements to be in the
24 Mexican-American Legislative Caucus. You either have to be
25 brown or you have to have a brown heart.

1 Being brown is, obviously, if you are of Latino
2 descent, you automatically apply, you can apply and receive
3 admission into the caucus. For those that are not Latino,
4 they have to live in districts that are 50-percent Latino
5 voting age population, and they have to make application and
6 must sit and be observed for an entire session, so that the
7 caucus, the executive committee or in lieu of the executive
8 committee, perhaps a nominations committee could observe the
9 voting behaviors and the policy stances of that individual to
10 determine whether or not they would find themselves working
11 with us on matters of import to the Latino community.

12 Q. And is the organization nonpartisan?

13 A. We are nonpartisan caucus, yes.

14 Q. And so do you have members of MALC that are both Democrats
15 and Republicans?

16 A. I am currently in the middle of my sixth legislative
17 session. My first session, I came in as a member of MALC. We
18 had Republican members and, you know, it has reached a high
19 point in this last legislative session, where there are, I
20 believe, at least six Latinos who are Republican, and I
21 believe three, if not four of them have chosen to be members
22 of MALC.

23 Q. How did MALC decide to file this action?

24 A. Well, there are really a couple of reasons. First and
25 foremost, many members that are in the legislature today were

1 around ten years ago, and despite the fact that the Texas
2 House was in Democratic control, the map that was produced
3 ultimately, by either the House vote or a combination of the
4 Legislative Redistricting Board, had -- I guess some of the
5 biggest impact was made on the Latino community; in other
6 words, it was very personal to me.

7 I find myself paired with a legislative colleague
8 that I have known since the third grade for no apparent
9 reason. And as you travel throughout the state, we found MALC
10 members were disproportionately impacted by decisions of the
11 Legislative Redistricting Board.

12 At that time, MALC found itself on a shoestring
13 budget and lacked access to the resources that they needed to
14 be able to advocate for themselves, but nevertheless, we
15 managed to get involved, advocate very effectively on behalf
16 of the Latino community, and I believe that we were very much
17 a reason why the Department of Justice issued a letter of
18 objection.

19 So that is sort of the historical framework. In the
20 current context, I think we found ourselves wanting to be more
21 prepared than we were ten years ago. And so in my capacity as
22 chairman of the caucus, I am given wide, broad authority to
23 execute the policies and programs, so long as there is a
24 purpose to benefit the Latino community.

25 I truly believe, the executive committee believes

1 and I imagine a great majority of the Mexican-American
2 Legislative Caucus believes that policy outcomes are very much
3 tied to the individuals that represent those constituencies
4 and either advocate for or against certain policy
5 propositions.

6 So we knew, given the experience of ten years ago,
7 and given the fact that there was the most dynamic growth of
8 minorities in a decade, that gave Texas an unprecedented four
9 congressional seat pickup, which they have not seen since
10 Reconstruction in the 1860s, certainly a period that may not
11 repeat itself in my lifetime or my children's lifetime, we
12 felt that this was very important to make sure that the
13 90-percent minority growth and the specific 65-percent of
14 Latino growth in the decade be adequately represented when it
15 came to drawing Congressional and state rep lines of
16 representative districts.

17 Q. Having made the decision to bring this litigation, have
18 you heard any protests from any member of MALC in its
19 involvement?

20 A. No, and I will tell you this. MALC, we are a very rigid
21 caucus, but we are colleagues. I mean, we work on issues.
22 Most of the time, we work together. It is the sort of caucus
23 that the executive committee is virtually charged with the
24 official duties of the caucus.

25 The chairman is given a wide authority. But any one

1 member of the caucus can bring any one issue and say: I
2 believe this is an issue for the caucus or, conversely, I
3 don't believe it is appropriate that we involve ourselves in
4 certain matters.

5 And at that time, any member who requests to be
6 heard on that will be brought before the body and we will have
7 a discussion. We had, in my view, no less than three, perhaps
8 as many as five meetings on redistricting.

9 At no time did anyone ever suggest that I was headed
10 in the wrong direction or that I wasn't taking matters into
11 account, and frankly, the working group that was put together
12 of members who actively wanted to be engaged in the subject of
13 redistricting, there was very little discussion about, you
14 know, the direction, whether it be a good direction or bad
15 direction. We knew we had to get to work, and that's what we
16 did.

17 Q. And in the redistricting process, Representative, what was
18 MALC's role?

19 A. Well, MALC, I believe, if I understand your question, MALC
20 created its own role. I mean, MALC did not have an official
21 role in redistricting. We have -- number one, we don't have
22 an office in the Capitol. We don't even have a computer line.
23 We don't even have a state-issued computer. We have no
24 resources that are issued by the State.

25 If we had any access to any resources, that access

1 was not given specifically to MALC. They were given to
2 individual members, as all members have access to the same
3 technology and equipment, provided that if you were to choose
4 to work on redistricting, if you will, you had to choose
5 between dedicating your office and your resources to working
6 on behalf of yourself or your delegation, if you are from a
7 multi, you know, member delegation, or you can work on MALC
8 redistricting.

9 We did not have a stand-alone setup formality. We
10 did not have any opportunity to make our preferences known to
11 the leadership, to the Speaker, in terms of who should be on
12 the committee and how many MALC members should be on the
13 committee.

14 We were fortunate enough that we did have some MALC
15 members on the committee, but that wasn't through our design.
16 And quite frankly, everything that MALC did was virtually on
17 its own, either through self fund-raising or through
18 sacrifices that members made to put their personal interests
19 aside, to dedicate their resources and whatever staff time
20 they had available to work on a much larger picture, which
21 would be statewide redistricting. And those were our two most
22 fundamental challenges, was finances, resources and time,
23 which is something you really need, if you are going to be
24 effective in this pursuit.

25 Q. And even with those limited resources, Representative,

1 MALC was able to establish or draw alternative plans that it
2 promoted?

3 A. Yes, we did.

4 Q. And what was the -- what were the goals and why were you
5 developing plans to present to the legislature?

6 A. Well, again, I mean, with proper context, with the State
7 having received or benefitted from what I believe was dynamic
8 and record minority population growth, I believe as early as
9 some of the beginning days of the legislative session, when it
10 was announced how many counties would be receiving a certain
11 number of representatives, in the instance of Harris County,
12 an announcement was made that while it traditionally had 25
13 seats, it was going to be reduced to 24 seats.

14 And so we started to realize at a very quick pace
15 that there were efforts being made to reduce the minority
16 representation, at least in Harris County. And with that
17 being sort of our first, you know, real clue, it brought us to
18 the point to where we began to communicate with our members to
19 figure out what was going on in their delegations.

20 And I will give you a very good example. I am from
21 the Bexar County delegation. I am here from San Antonio. The
22 Speaker of the House made it very clear that delegations ought
23 to be able to come together for the purposes of drawing their
24 own maps.

25 In the instance of, you know, Bexar County, we had

1 access to Mr. Hanna, who attended most of the meetings. We
2 had access to the Speaker's personal redistricting council,
3 Geraldo.

4 We made every meeting, when he was asked to come.
5 And the Bexar County delegation, you know, worked to arrive at
6 a consensus, and I will say that there was very little
7 dispute.

8 There was some dispute. Most of it resolved in very
9 little floor activity, with respect to those disputes.
10 However, as you started to engage the Rio Grande Valley
11 members, we began to learn that not all members were meeting
12 together, that, you know, representatives from Gonzalez,
13 Representative Munoz, Representative Martinez were meeting,
14 but could not, you know, secure the attendance of
15 Representative Pena, could not secure the cooperation of
16 Representative Pena, despite the fact that Representative Pena
17 is from the Rio Grande Valley and is a member of the
18 redistricting committee.

19 We started to learn in Harris County that members
20 felt that they weren't given an opportunity to truly, you
21 know, reflect what they believed to be the proper direction
22 for a Harris County map and often, you know, found themselves
23 arguing over issues and interpretations of the Voting Rights
24 Act.

25 And for those that were following the legislative

1 proceedings would have saw and learned, that the proceedings
2 came to a complete halt over Harris County for at least two,
3 if not three hours. The legislative debate just stopped. We
4 went into recess, and the purpose of the recess was so that
5 the Harris County delegation could get in a back room and try
6 to figure out if they can rectify and correct concerns they
7 had.

8 MS. JORDAN: Your Honor, I am going to object at
9 this point. This is a narrative. I don't recall what the
10 question was anymore, so I would ask for the --

11 JUDGE GARCIA: Go to your next question, Counselor.

12 BY MR. GARZA:

13 Q. As you developed plans, as you were hearing these sorts of
14 concerns, what were the goals for the plans that you were
15 developing?

16 A. Well, again, recognizing the growth, and recognizing that
17 there were efforts being made to not adequately represent that
18 growth in the legislative maps, we began to draw maps from
19 scratch, looking at ways that we can enhance minority
20 opportunities by taking into account existing districts that
21 were already performing minority opportunity districts and
22 finding ways by which we can enhance that by creating
23 additional minority opportunity districts.

24 Again, you know, being challenged by time and
25 resources, I believe we managed to effectively demonstrate

1 that in the maps that we submitted.

2 MR. GARZA: Your Honors, we are going to focus the
3 testimony of Representative Martinez just on two plans that
4 were submitted by MALC. The first plan we are going to talk
5 about is plan 205, which is Exhibit No. 1 of plaintiffs, and
6 is also one of the exhibits in the joint offerings that were
7 notified by the parties.

8 And the reason we have chosen two was because this
9 encapsulates one goal or a set of goals. And the second plan
10 we are going to talk about is Plan 201, which has a different
11 goal that it meant to achieve. So we want to present not
12 every plan that MALC worked on -- that would be repetitive --
13 so we want to focus on this plan or one set of goals and Plan
14 201 for the second set of goals.

15 BY MR. GARZA:

16 Q. So we have on the screen, Representative, Plan 205,
17 Plaintiff's Exhibit No. 1. And would you describe for the
18 Court what you were attempting to do with Plan 205?

19 A. Sure. Plan 205 represents a map that we believe was
20 following the guidelines established by legislative council,
21 which gave Section 2 and the opportunity to create minority
22 opportunity districts was given a higher preference over the
23 whole county rule, as illustrated in the leg. council voting
24 rights or redistricting guide.

25 So what this does is that it creates minority

1 opportunities in Hidalgo County, in Nueces County, Harris
2 County, in Dallas, Tarrant metroplex, El Paso County and in
3 West Texas.

4 Q. And you mentioned -- so with Plan 205, you mentioned that
5 if you were able to draw a minority opportunity district, that
6 would take precedent over complying with the whole county
7 line?

8 A. Yes.

9 Q. And what is your understanding of what the whole county
10 line is?

11 A. Well, my understanding is that we have a whole county line
12 rule that is in our State Constitution. I know that it has
13 been interpreted by the courts to be important, but sometimes
14 not as important as creating minority opportunity zones, or
15 Section 2.

16 And while that is just my lay understanding of the
17 law, I believe that is consistent with what I read when I
18 reviewed the redistricting primer that was produced to us by
19 the Texas Legislative Council, that said these are sort of the
20 guidelines that we wish to follow.

21 And so this map, if it made a county line break, it
22 was done so in order to advance a minority opportunity,
23 pursuant to Section 2.

24 Q. So the Texas Legislative Council produced a how-to
25 booklet, then, for members of the legislature?

1 A. Yes. And I need to state that, you know, the Texas
2 legislature, by design, is a citizen legislature. We meet six
3 months every other year, and sort of the notion is --

4 MS. JORDAN: Your Honor, I am going to object as
5 nonresponsive.

6 JUDGE GARCIA: Try to be more specific or --

7 MR. GARZA: Your Honor, I believe that he is laying
8 context in order to answer the question about why he relies on
9 the Texas Legislative Council's publications. I think it is
10 part and parcel of the question.

11 JUDGE GARCIA: All right. I will permit it. Go
12 ahead.

13 THE WITNESS: Members of the legislature don't write
14 their own legislation. I mean, we are a citizen legislature.
15 Not every member of the legislature is an attorney. We have
16 heavy reliance on legislative counsel, not just for writing
17 our individual pieces of legislation and to get counsel on
18 matters that we are pursuing, on an issue of black
19 redistricting, because it is so technical, and requires a lot
20 of interpretation of the law, there was a specific guidebook
21 that was given to have members -- or help members, assist
22 members by setting some parameters for redistricting. And so
23 this handbook made a specific reference to factors to
24 consider.

25 And in the placement of priorities, in my reading of

1 it, it placed breaking county lines for minority opportunity,
2 it gave it a higher priority over preserving the whole county
3 line rule.

4 Q. And if we might, could we put page 37 of Exhibit 1. In
5 Nueces County, you mentioned, what was the goal of Plan 205
6 with regard to Nueces County?

7 A. In Nueces County, the attempt was to restore two minority
8 opportunity districts that had been performing over the course
9 of the last decade. There were districts that already had
10 existed, but in the map that was being presented by the State,
11 there was a pairing of two minority opportunity districts that
12 were currently held by an Anglo Republican and a Hispanic
13 Republican.

14 Q. So that in the MALC plan, the current District 33 and 34
15 are both majority citizen voting age population under age 100?

16 A. Yes, they are.

17 Q. And in the 205 plan that was developed by MALC, they
18 remained citizen voting age -- Hispanic citizen voting age
19 majority districts?

20 A. Yes.

21 Q. And then the State's plan District 33 is removed from
22 Nueces County; is that correct?

23 A. It is.

24 Q. So that was the purpose behind drawing the Plan 205 for
25 Nueces County?

1 A. Yes, to demonstration that you could draw a map that
2 preserved the existing minority opportunities, and at the same
3 time, you know, districts that were adequately performing over
4 the decade, and this is what -- wasn't presented by the State.
5 In fact, there was a decision made somewhere to merge those
6 two minority opportunity districts.

7 Q. All right. And moving now to page 24 of Plaintiff's
8 Exhibit No. 1.

9 MR. GARZA: Is the exhibit notebook clear, Your
10 Honor, on how these are numbered?

11 JUDGE GARCIA: Right. Mr. Garza, does the
12 representative have a copy of the exhibit?

13 MR. GARZA: He does.

14 THE WITNESS: I'm sorry.

15 BY MR. GARZA:

16 Q. Exhibit No. 1, page 24.

17 A. Harris County.

18 Q. You mentioned in your description on 205 that you
19 increased the number of Latino opportunity districts in Harris
20 County; is that correct?

21 A. Yes. That is correct.

22 Q. In Plan 205. And so on the screen now, we have the Harris
23 County map. And can you identify, again, the goals generally,
24 and which district in District 205 that was not a citizen
25 voting age majority district, as under 205?

1 A. Sure.

2 Q. Does that question makes sense?

3 A. I believe so, if I am answering the right question. In a
4 general sense, for Harris County, again, there was a decision
5 made to reduce the delegation from 25 members to 24, and
6 despite the fact that the statistical percentage for the ideal
7 population was no different today than it was ten years ago,
8 there was a decision to reduce.

9 In that reduction, there were two minority coalition
10 districts that were merged. And forgive me for not knowing
11 numbers to names, but I would say that they are currently
12 represented by Representative Scott Hochberg and
13 Representative Hubert Vo.

14 Those districts were prepared. And then population,
15 particularly Latino population, was removed from
16 Representative Legler's district and placed into
17 Representative Farrar's district, so that Representative
18 Farrar's district statistically would become a majority SSVR,
19 Spanish surname voter registration district.

20 However, Representative Farrar's district was
21 already performing at its current levels and was not in need
22 of additional SSVR population, but I believe, in my view, by
23 not placing that population in Representative Legler's
24 district, which at the time I believe was about a 57,
25 59-percent Latino population, it prevented that district from

1 becoming an additional minority opportunity district by a
2 majority CVAD, citizen voting age district, and Spanish
3 surname voter registration district.

4 Q. And in the plan that was then developed by MALC and
5 presented, District 144 -- which I believe is Representative
6 Legler's district?

7 A. Yes.

8 Q. -- is enhanced to become a citizen voting age Latino
9 majority district; is that correct?

10 A. Yes, sir. That's what the MALC intent was in Plan 205.

11 Q. And the balance of the existing Latino opportunity
12 districts are maintained?

13 A. Yes. The status quo is maintained.

14 Q. And you unpaired the merging -- the representatives from
15 the merging of the minority districts?

16 A. Yes, I did.

17 Q. Now, turning to -- if we could go back to the state map,
18 page 1 of the exhibit.

19 Now, in his opening remarks, you heard counsel for
20 the State, he didn't identify the district, but the district
21 that he was talking about in West Texas was MALC's District
22 84?

23 A. Yes.

24 Q. Is that correct?

25 A. Yes.

1 Q. And that is in the Panhandle area of Texas?

2 A. Yes, it is.

3 Q. And could we focus on that, please? And it is a little
4 odd-shaped. The State isolated it. And you will admit that
5 it looks odd, doesn't it?

6 A. Yes, it does.

7 Q. And what was the purpose of drawing that district,
8 District 84?

9 A. District 84 was also a district that complemented District
10 81, which is another district now proposed in West Texas that
11 MALC believed would give minorities in West Texas, in both of
12 those districts, the opportunity to elect a candidate of their
13 choice.

14 District 81 does not resemble the configuration of
15 District 84. And the primary difference is, while they are
16 both rural districts, the area that encompasses District 84
17 happens to be an area, you know, where the Latino population
18 resides, and most of that is based on what I would imagine to
19 be similar interests, in terms of where these Latinos were
20 working.

21 Many of them were farm workers. Many of them work
22 in meat-packing plants. Many of them reside in poorer
23 communities, that I am not saying are, you know, colonias.
24 Although some of them are called colonias, it is not a colonia
25 in the traditional sense that we know them to be in South

1 Texas along the Mexico border, but these are very impoverished
2 communities where working families sort of reside and tend to
3 cluster. And so that is what the intent of 84 was.

4 Q. There are fewer people in the Panhandle of Texas?

5 A. Yes, by far.

6 Q. So it is more -- there aren't population concentrations
7 where you can go in and develop a district; is that correct?

8 A. Right. I mean, rural Texas and West Texas, for those who
9 are observing redistricting just from a 30,000-foot view,
10 recognize that the biggest population challenges that existed
11 across the entire state mostly rested in West Texas and, in
12 one instance, in the Beaumont area.

13 But West Texas had a significant population decline,
14 and so the configuration on the map speaks to that, and
15 particularly when you are trying to create a minority
16 opportunity, it may not be pretty, but I would suspect that
17 there are other districts that would rival the appearance of
18 84 in other parts of the state that don't elect --

19 Q. In the adopted --

20 A. In the adopted one, yes.

21 Q. And, in fact, District 84 is over 53-percent Spanish
22 surname registration?

23 A. It is.

24 Q. Until the MALC 205 plan?

25 A. Yes, it is.

1 Q. So, Robert, if you could pan down to District 81 in West
2 Texas.

3 And, again, looking at District 81, Representative,
4 as I understood your testimony, that the intent there was also
5 to create a majority Latino district, and that is what you
6 accomplished in 81?

7 A. Yes, sir. That is what 81 purports to do.

8 Q. In a fairly compact district for West Texas, again, taking
9 into consideration the dispersion of the population?

10 A. Yes.

11 Q. And that district is over 52-percent Spanish surname
12 registration; is that correct?

13 A. It is.

14 Q. Now, the districts that we are describing, in Harris
15 County and in West Texas, there are no comparable districts to
16 those districts in the state's map; is that correct?

17 A. They are not.

18 Q. And the restoring of District 33 in Nueces County, there
19 is no comparable district to 33 in Nueces County?

20 A. No, it doesn't exist --

21 Q. And if we can move over to El Paso. And in El Paso, I
22 believe you stated that you were receiving, looking at five
23 districts that were majority seat Hispanic?

24 A. Yes, we did. And by -- again, by enhancing a district to
25 adequately reflect the population growth, in this instance, El

1 Paso County, that I believe is either in the high seventies or
2 low 80-percent Latino for the entire county.

3 Q. And the adopted plan only has four districts in El Paso
4 County that have Spanish surname registration --

5 A. Yes.

6 Q. -- CVAD majorities?

7 A. Yes. That's the case. And the resulting -- you know, the
8 population that would have prevented -- or excuse me. The
9 population that would have allowed District 78, which is what
10 I am speaking to, to become a majority CVAD district was
11 easily, you know, found in the neighboring districts, because,
12 again, I mean, the population of Latino citizen voting age
13 population is so rich in El Paso County.

14 Q. And if we could pan down south, Robert, to the Hidalgo and
15 Cameron County region of the state, down on the border. And
16 in Hidalgo and Cameron County -- and that would be page 1. It
17 is still on page -- it is the block on the right-hand corner
18 of the exhibit.

19 And was MALC successful in drawing a new Latino
20 majority district in Hidalgo and Cameron County?

21 A. Yes. MALC offered District 72, that one that is
22 predominantly Hidalgo County, and it spilled over into Cameron
23 County.

24 Q. And all of the current districts in Hidalgo and Cameron
25 County are maintained in this plan?

1 A. Yes, they are. All of the -- you know, the incumbent
2 perspective or status quo perspective, you know, all of the
3 districts remained intact, which there was excess population
4 as well as population that could be drawn from Cameron County.

5 Q. And all of the districts are relatively compact and no
6 incumbent is --

7 A. That is correct.

8 Q. And finally, with regard to Plan 205, if we could move up
9 to the Dallas-Fort Worth area. And if we could call up
10 page 12.

11 Would you describe to the Court what Plan 205
12 accomplished in the Dallas-Fort Worth area?

13 A. The initial commentary about Dallas County was that there
14 was discussion that a seat might be lost in Dallas County,
15 just based on very early projections on population, sort of a
16 knee jerk reaction to the census numbers.

17 When we began to look at Dallas County and Tarrant
18 County, we recognized that there was the opportunity, in two
19 instances, to create a coalition opportunity district with
20 African-Americans and Latinos, and so that is what 205
21 purports to do, I believe, in District 102 and I think it is
22 107.

23 Q. All right. So both of those are majority Latino, but they
24 are not CVAD districts?

25 A. They are not CVAD districts.

1 Q. Now, let's look at Plaintiff's Exhibit No. 5. And this is
2 MALC's Plan 201; is that correct?

3 A. Yes, it is.

4 Q. Now, most of the plans that were submitted by MALC had the
5 same goals as 205, but 201 was different; is that correct?

6 A. Yes. It was different, in the sense that what MALC wanted
7 to do is play by the rules. And in map 205, we played by the
8 rule that leg. council guided us to give, you know, minority
9 opportunities under Section 2 a higher priority than the whole
10 county line rule.

11 In discussions and debate, they were summarily
12 rejected, just based on, "We are not going to do it," type
13 principles. In large part, very specifically, Chairman
14 Solomons was very vocal about it, adhering, strict adherence
15 to the county line rule, and that would prevent him from, you
16 know, being able to acquiesce in some instances and, in fact,
17 went so far as to say that he knew that that was going to be
18 an issue that was going to be resolved by the courts, and so,
19 so long as we are on the Texas floor of the House, we were
20 going to be, you know, adhering to the Texas Constitution and
21 we will leave the litigation for another time.

22 Plan 201 says: Okay, Chairman Solomons. We will
23 operate under your rules. We will produce a map that makes
24 the same if not less cuts to county lines than you did in the
25 state map, and we believe that when we do that, we will still

1 provide a map that provides enhanced opportunities for
2 minorities to elect candidates of their choice. So that was
3 the overarching purpose of 201.

4 Q. So if -- when you compare Plan 201 to the plan adopted by
5 the State, Plan 150, there are the same or perhaps fewer
6 county cut lines; is that right?

7 A. Yes. That is correct. And the result was, by adhering to
8 the same number of cuts that the state map did or perhaps
9 less, we were still able to provide on a more limited basis,
10 we were still able to provide opportunities for minorities in
11 El Paso and Hidalgo County and Nueces County and in Harris
12 County.

13 Q. All right. And, in fact, if we could zoom in, then, on
14 Hidalgo and Cameron County, Robert, down on the border.

15 Now, the State's plan in drawing the Valley district
16 brings District 31 into Hidalgo County from the west and
17 District 43 into Cameron County from the north, correct?

18 A. Right.

19 Q. But in your plan, you sealed off the border of Hidalgo and
20 Cameron County so that all of the districts are wholly
21 contained within Hidalgo County; is that correct?

22 A. That is correct.

23 Q. Now, in the manner that the State drew, there were no new
24 districts in the Valley; is that correct?

25 A. Yes, that is correct.

1 Q. And by sealing off the borders of Hidalgo and Cameron
2 County, what was the result?

3 A. Well, by sealing off the border, there was sufficient
4 population to add a 7C to the Rio Grande Valley, and that was
5 a big issue of contention, because what the State had done
6 with its map is it took that population excess and brought in
7 other districts that were already minority opportunity
8 districts, and rather than creating a new opportunity for a
9 7C, that population was absorbed by already performing
10 districts.

11 And what this does, with less cuts to this area than
12 the State map, we were able to show that you could have a
13 seventh Rio Grande Valley seat that is majority citizen voting
14 age population and, at the same time, not impact the existing
15 districts that are there that are currently represented by
16 minorities and are the choice of the minority community.

17 Q. Let's turn, finally, in summary of those two plans, to
18 Exhibit No. 70. And that will be page 3 of the exhibit
19 binder.

20 And, Robert, if you could highlight the numbers
21 for -- can you switch the highlight over to HB 150 from the
22 MALC plan? Leave those plans highlighted. There is a space
23 between the highlights.

24 Were you able to find it, Representative?

25 A. Yes. Yes, I think so.

1 Q. They are bulky.

2 A. Thank you.

3 Q. Okay. Now, first, the MALC plans, that encompasses Plan
4 205 in the description; is that correct?

5 A. Yes, it does.

6 Q. Page 3?

7 A. Yes, sir.

8 Q. And then the whole county, the whole county plan is 201?

9 A. Yes. The 205 is -- had the title of house bill -- excuse
10 me -- MALC plans, and then the map 201 is labeled MALC whole
11 county plan.

12 Q. So looking at each matrix for measuring the opportunities
13 of Latinos that have generally been talked about, how does
14 first the whole county plan do?

15 A. Well, in a general sense, I mean, the whole county plan,
16 despite being limited to minimizing cuts to counties, still
17 outperforms House Bill 150 as enacted, anywhere from looking
18 at the metric of Spanish surname voter registration of
19 50 percent or more, the House Bill 150 created 30 districts.
20 The MALC county plan created 32.

21 If you -- you know, jumping around, if you look at
22 the combined African-American, Hispanic voting age population
23 over 50 percent, House Bill 150 created 54 districts. The
24 MALC county plan created 59.

25 And so in almost every metric of minority

1 opportunity, the MALC county plan, working with the same
2 limitations and ground rules that House Bill 150 purports to
3 do, still provides better opportunities for minorities and, at
4 the same time, has districts that are more compact, to a ratio
5 of 9.70 percent versus 9.92 percent, as enacted in House Bill
6 150.

7 Q. All right. And then the MALC plans, the Plan 205, does
8 even better?

9 A. It does. And just briefly, in the area of Spanish surname
10 voter registration, again, House Bill 150 created 30
11 districts. The MALC plans map created 34.

12 If you look at combined African-American and
13 Hispanic voting age population districts, House Bill 150
14 created 54. We created 62.

15 And so Hispanic citizen voting age population, the
16 State produced a map with 30 districts that met that criteria.
17 We produced 34. And, again, we did this by making the
18 district more compact and having a smaller top-down deviation
19 of 9.69 from their 9.92.

20 Q. All right. Now, moving to the congressional districts,
21 did MALC present plans on congressional districts as well?

22 A. We did.

23 Q. And, again, the purpose was similar to the goals that you
24 had on the State House?

25 A. Yes. And also, there was more of a laser-like focus on

1 the congressional map, because we realized, as the session,
2 regular session began to expire, there had not even been a
3 committee hearing or even any public testimony on the
4 congressional map.

5 And so our antennas were up, in a sense, because we
6 knew that there was going to be a congressional map, but none
7 of the, you know, perfunctory, you know, issues that accompany
8 any piece of legislation were being demonstrated by the State
9 and led us to believe that somebody was writing the map, but
10 the public wasn't involved.

11 And so we had a heightened sense of awareness and
12 wanted to spend time on the congressional maps. But, again,
13 you know, time being nonexistent, resources being not
14 plentiful and, you know, access to the technology was again
15 limited, and we found ourselves having to sort of draw maps in
16 the dark, because we had no baseline of comparison of what was
17 being done by the State.

18 Q. In fact, the State didn't produce a committee plan until
19 the special session?

20 A. That is correct. And I believe this all runs together,
21 but I believe that there was very little time. I think the
22 first time that the congressional map was even produced, it
23 was voted on in some capacity within three days.

24 MR. GARZA: All right. And, again, Your Honor, we
25 are not going to go over all of the districts that we created.

1 We could do that, but we have already done that with the
2 House.

3 JUDGE GARCIA: All right.

4 MR. GARZA: So with the congressional plans, it is a
5 very similar process, so what we will do is we will go
6 directly to the summary table that shows what we were able to
7 accomplish.

8 JUDGE GARCIA: All right.

9 BY MR. GARZA:

10 Q. So if you could turn now, Representative, to Exhibit
11 No. 70 again, but this time, page 2.

12 Now, Representative, the demonstration plans, by the
13 way, that MALC presented were C-163, C-164, or has adopted
14 163, 164 C-187, and C-188, which are contained in Plaintiff's
15 Exhibits Nos. 11, 13, 15 and 17. Now, what were the goals,
16 generally, what were the differences between the plans that
17 you were developing?

18 A. Well, in a general sense, I mean, if MALC was able to draw
19 four different demonstration maps, and it sort of led me to
20 believe that if minority opportunity was clearly a priority,
21 it could have been easily done, because we did it in some, you
22 know, different machinations four different times.

23 So the idea was, I don't -- you know, MALC does not
24 have this hard-line preference on where minority opportunities
25 should be, but we do believe that when we are accounting for

1 65 percent of the growth of the state over the last decade,
2 and if we believe in the notion that the current congressional
3 delegation is underrepresented in that capacity, we thought
4 that we can demonstrate in certain areas of the state, albeit
5 in Central Texas, South Texas, Dallas-Fort Worth metroplex and
6 Harris County, that you could create that minority
7 opportunity, and we were hoping that by being able to present
8 multiple maps that we would be able to prevail or at least
9 persuade some of these legislative leaders that were riding
10 and drawing this map that came from those very same areas,
11 that perhaps they would recognize that we could find, you
12 know, the opportunities, not being residents of those
13 communities, and that we thought if we could show it and
14 demonstrate it that we could have a reasoned discussion about
15 it, and that was to no avail.

16 Q. So all of the plans, for example, have additional Latino
17 opportunity districts in Dallas, in fact, two districts in
18 Dallas, and one district in Harris, and then some plans have
19 an additional district in Central Texas --

20 A. Yes, sir.

21 Q. -- and others, an additional district that runs from the
22 border north, right?

23 A. Right. And, again, some of the discussion was, the only
24 way you could draw an additional minority opportunity district
25 was to connect Austin to San Antonio.

1 And I said: Well, why -- we present a map and say,
2 well, we can do the same thing connecting San Antonio to
3 Bastrop. You know, why can't we look at that?

4 And, you know, so, again, any time -- you know, talk
5 was -- talk did not have the same kind of meaning and value
6 that a map would have. And so someone said earlier, a picture
7 paints a thousand words.

8 I mean, we thought we had to demonstrate it in map
9 drawing, because just on discussion, it wasn't penetrating,
10 and so, again, you know, the areas that we found, you know,
11 real opportunities for minorities to elect candidates of their
12 choices rested in Houston, the Dallas metroplex, Central
13 Texas, which could be, you know, Austin to San Antonio or some
14 combination inbetween into that.

15 Q. So if we could highlight, Robert, Plans C-185 and C-163
16 and Plan C-188.

17 And, again, looking at all of the matrix that folks
18 look at to evaluate the ability of minorities to impact a
19 district, how did the plans that MALC drew compare to the
20 State's plan?

21 A. Again, understanding that congressional districts are much
22 larger than State House districts, I don't know the precise
23 population for an ideal district, but I do know it is 167 for
24 a State House, and, you know, about five of us are in
25 Representative Gonzalez's district here in San Antonio. And

1 so, nevertheless, these are bigger districts, and despite
2 that, when you look at the performance of Senate Bill 4, you
3 will find that this was a map that was drawn and created
4 eight -- excuse me -- yes, it gave eight Hispanic citizen
5 voting age population districts.

6 We were able to demonstrate under Plan 188 that you
7 could do nine. When you looked in the area of Hispanic voting
8 age population of 50 percent or more, the State offered a map
9 that would give seven.

10 In all of our maps, we either produced eight, in
11 most instances, and nine in Plan 188 to demonstrate that you
12 could have gone a little further.

13 And you looked at the combination of African-
14 American and Latino population being 50 percent or greater or,
15 excuse me, of the African-American voting population and
16 Hispanic citizen voting age population, the State produced a
17 map that had eleven of those districts. We produced a map
18 that had 13 and 14 under Plan 188, again, you know, showing
19 that using the same population and drawing the map under our
20 constraints, not having the availability to sort of use the
21 State's map as a benchmark or a baseline, we were able to
22 blindly create more opportunities, and, again, I mean, with
23 the idea and understanding that we would hope to prevail and
24 reason with with those in charge of the legislation and the
25 leadership, but that was to no avail.

1 Those were summarily rejected. I don't believe one
2 amendment offered by any minority in the State House was
3 adopted by the legislature.

4 MR. GARZA: Pass the witness.

5 JUDGE GARCIA: Does any other plaintiff have any
6 inquiry? Keeping in mind not to ask the same question or be
7 repetitive.

8 MR. HEBERT: Your Honor, we have kind of agreed on
9 our side that unless there is an absolute reason for a second
10 plaintiff's counsel to ask questions, we are going to try to
11 defer and go right to the defense.

12 JUDGE GARCIA: All right. Very efficient for the
13 Court. Thank you for that.

14 Cross-examination by the state.

15 MS. JORDAN: Your Honor, may I have a few minutes to
16 get our notebooks copied?

17 JUDGE GARCIA: Sure. Let's take a brief recess.

18 MS. JORDAN: Thank you, Your Honor.

19 (Change of court reporters.)

20 *-*-*-*-*-*-*-*

1 (Open court, 10:40 a.m.)

2 MS. JORDAN: May I proceed, Your Honor?

3 JUDGE GARCIA: Yes. I guess everybody's here.

4 MS. JORDAN: Can you hear me okay?

5 JUDGE GARCIA: Yes, I can.

6 **CROSS-EXAMINATION**

7 BY MS. JORDAN:

8 Q. Representative Martinez, my name is Ana Jordan. I'm an
9 attorney. I work in the Attorney General's office. I
10 represent the State of Texas in this case. Do you understand
11 that?

12 A. Yes, I do.

13 Q. You and I have never met before?

14 A. We have not.

15 Q. You gave a deposition in this case a couple of months ago;
16 is that correct?

17 A. I did.

18 Q. I put a copy of that deposition in front of you. Do you
19 see it?

20 A. Yes.

21 Q. Okay. I'm going to leave it up there so in case we have
22 to refer to it, you have it -- you have it close to you.

23 The other thing I put up there were the defense
24 exhibits. There's two volumes. Do you see those?

25 A. It's the one with the triangle?

1 Q. I think to your right. There's a Volume 1 and a Volume 2.

2 A. Okay. This is triangle Ex, I guess that's Defendant Ex?

3 Q. Yes.

4 A. Okay. Then I have them.

5 Q. Finally, the third notebook that I put in front of you is
6 a copy of the joint exhibit books. It contains the maps that
7 are -- we're going to be talking about in this case.

8 A. Yes, joint maps. I have it here.

9 Q. Okay. All right. I'm going to talk a little bit about
10 your background first, and then we'll get to the maps and your
11 testimony on direct.

12 Now, you testified that you are born and raised in
13 San Antonio; is that correct?

14 A. Yes.

15 Q. Okay. Are you -- are you providing testimony that you are
16 one of the Latinos that are suffering from the effects of past
17 discrimination?

18 A. I'm not sure I understand the question.

19 Q. Okay. Some of the plaintiffs, including MALC, I think,
20 have indicated that Latinos today are still suffering from the
21 effects of past discrimination. Are you testifying that you
22 are currently suffering from the effects of past
23 discrimination?

24 A. Well, as a -- as the chairman of MALC, I feel that, you
25 know, members of MALC certainly have made that argument.

1 As an individual, as just Trey Martinez Fischer,
2 the citizen, I am not someone that I believe is personally the
3 subject of overt discrimination. The district I represent as a
4 state representative I would argue has some of the most
5 disproportionate lack of access to basic, you know, services
6 and needs that --

7 MS. JORDAN: Your Honor, I'm going to object as
8 nonresponsive, that last part of it.

9 JUDGE GARCIA: You might be more responsive,
10 Representative.

11 Go ahead and follow up with the same question.

12 MS. JORDAN: Thank you, Your Honor.

13 BY MS. JORDAN:

14 Q. My question was whether or not you, individually, believe
15 that you are suffering from the past effects of discrimination.

16 A. I believe in my lifetime I've experienced the past effects
17 of discrimination, yes.

18 Q. Okay. Now, you testified that you graduated from a
19 college -- from college, correct?

20 A. Yes, I did.

21 Q. What's the name of the college that you graduated from?

22 A. I graduated from University of Texas in San Antonio.

23 Q. And what degree did you get?

24 A. Bachelor's in political science.

25 Q. And before you went to college, did you testify or did I

1 hear you say that you went to private school in San Antonio?

2 A. I did.

3 Q. What's the name of that private school that you went --

4 JUDGE RODRIGUEZ: What's the relevance of that
5 question?

6 MS. JORDAN: Your Honor, Mr. Martinez Fischer just
7 testified that he believes he's suffering from --

8 JUDGE RODRIGUEZ: That's not relevant. Let's keep
9 this to relevant questions.

10 BY MS. JORDAN:

11 Q. In that case let me ask you, what is your current
12 profession?

13 A. I'm a lawyer.

14 Q. And what area of law do you practice?

15 A. I have a general civil litigation firm, and I also do some
16 family law and some criminal defense.

17 Q. And where did you obtain your law degree, sir?

18 A. The University of Texas.

19 Q. And when did you graduate from law school?

20 A. 1998.

21 Q. Now, is your father a graduate of higher education --

22 A. No, he's not.

23 Q. -- institution?

24 A. No, he's not.

25 Q. Is your mother?

1 A. No, she's not.

2 Q. And you were able to go to college and law school; is that
3 correct?

4 A. That's correct.

5 Q. Okay. And you're making a pretty good living as a lawyer,
6 correct?

7 MR. GARZA: Your Honor, object. The Court has
8 instructed the counsel to move to relevant subjects. And she's
9 --

10 JUDGE GARCIA: We'll sustain that. Let's move on.

11 BY MS. JORDAN:

12 Q. All right. Mr. Martinez Fischer, you also testified that
13 you were elected as a state representative in 2000; is that
14 correct?

15 A. Yes.

16 Q. Now, were you a member of the legislature, I guess you
17 were, during the 2001 round of redistricting?

18 A. I was.

19 Q. And you were also a member of the legislature during the
20 2003 round of redistricting; is that correct?

21 A. I was.

22 Q. Okay. And so you -- you testified on direct examination
23 that you thought it was important to be prepared before the
24 current round of redistricting began; is that correct?

25 A. Yes, I did.

1 Q. When did you start preparing for the redistricting round
2 this time around?

3 A. Well, I believe we actively started interviewing potential
4 lawyers to represent the caucus I would say somewhere in the
5 fall of 2010.

6 Q. You started interviewing lawyers to represent the caucus
7 during the redistricting process in the fall of 2010; is that
8 correct?

9 A. That is correct.

10 Q. I'm sorry. I'm not able to hear you very well. Can you
11 speak up a little bit for me, please?

12 A. Sure. Is this better?

13 Q. Yes, sir.

14 Okay. And you said you started talking to
15 lawyers. Did you anticipate filing a lawsuit in this
16 redistricting matter before the session started?

17 A. No. I anticipated the need to have specialized counsel in
18 voting rights in preparation for the legislative session.

19 Q. Why did you see the need -- feel the need to engage
20 specialized counsel for that purpose?

21 A. As the chairman of MALC, I felt I had a heightened sense
22 of responsibility to the membership of MALC considering what
23 happened to MALC members in 2001 and especially in light of the
24 fact that the MALC membership was not able to engage in the
25 legal proceedings until after a map had been presented and

1 produced by the legislative redistricting board.

2 So we found ourselves -- at least in my
3 experience, I found ourselves not being adequately prepared and
4 not having necessary resources in place to have the advice of
5 counsel and those of experts to give us what I believe would be
6 necessary legal advice in a very complicated, technical subject
7 matter.

8 Q. So you agree that redistricting is a very complicated
9 process, correct?

10 A. I believe it's very difficult.

11 Q. It deals with a lot of law that is not entirely clear; is
12 that correct?

13 A. Well, I believe it's difficult because it's a hybrid of
14 both legislative actions and litigation. And I think, you
15 know, as a policymaker, there are very few issues that are
16 legislated on the house floor and then are moved immediately
17 into the courtroom. We have seen that in very rare instances,
18 this time, but over the course of my six terms in the Texas
19 house this is an issue that's sure to survive the session and
20 find its way into a courtroom.

21 Q. And so you retained counsel; is that correct?

22 A. No. I began to interview counsel in the fall of 2010.

23 Q. Okay. And when did you ultimately retain an attorney?

24 A. My best recollection, would have had to have been, I want
25 to say, in the, you know, late fall -- before the legislative

1 session for sure. By January of 2011 I know for certain that
2 we had counsel.

3 Q. And who was that attorney?

4 A. Mr. Garza.

5 Q. Now, did you also seek out consultation of map drawers in
6 the fall of 2010, the same time that you were looking for
7 counsel?

8 A. No.

9 Q. Why not?

10 A. Because I didn't know that we needed map drawers.
11 I -- you know, again, voting rights is, you know, a very unique
12 and complicated subject. I felt that if we hired somebody like
13 Mr. Garza, that Mr. Garza would advise us as to what we needed.

14 Q. What you needed in terms of what?

15 A. In terms of being prepared resource wise, whether that
16 would be through, you know, demographers or political
17 scientists. MALC never hired a map drawer.

18 Q. Okay. And so did you ultimately hire demographers or
19 political -- I'm sorry. What else did you say? Political
20 scientists.

21 A. MALC retained two experts. I'm not quite sure what their
22 official titles are, but it's Dr. Morgan Kousser and Dr. Jorge
23 Chapa.

24 Q. Did you hire a demographer or a political scientist during
25 the redistricting process itself?

1 A. I believe we entered into agreements with our experts with
2 the understanding that we would engage them at the time as
3 directed by our counsel. I can't tell you precisely what day
4 or what month that occurred, but I could tell you we probably
5 did not have the need for a demographer in January of 2011, and
6 perhaps we might have in May of 2011.

7 Q. Okay. So the answer is -- okay. Well, I guess what I'm
8 getting at is were you able to provide the legislature a copy
9 of a map before the proposed map created by the map drawers
10 within the legislature was revealed or --

11 A. Yes.

12 Q. -- introduced?

13 A. And I'm sorry. I don't know who you refer to when you say
14 the map drawers. I don't --

15 Q. You don't?

16 A. I didn't understand your question. I'm sorry.

17 Q. Okay. Do you know who -- okay. Well, let me -- let me
18 ask it this way. Let's go through the chronology. Okay. So
19 the legislature convened in January of 2011; is that correct?

20 A. Yes, it is.

21 Q. The census numbers came out in February of 2011, correct?

22 A. I will take your word for it. I'm not sure.

23 Q. Do you recall?

24 A. I do not.

25 Q. Okay. And how much time does the legislature have in any

1 regular session?

2 A. 140 days.

3 Q. And is that dictated by the Constitution?

4 A. It is.

5 Q. So the legislature can't go beyond that. They have to
6 conduct all of their duties within that timeframe; is that
7 correct?

8 A. They have to pass a budget in that timeframe.

9 Q. Okay. Now, the redistricting process did not just involve
10 the congressional map and the house map. It involved other
11 maps as well, correct?

12 A. It did.

13 Q. How many other maps did the legislature have to draw
14 within the 140 days?

15 A. I believe they drew maps for the State Board of Education
16 and for the Texas Senate, in addition to the Texas House and
17 the U.S. Congress.

18 Q. And how did the legislature draw those? Were they done at
19 the same time, or were they done serially?

20 A. I don't know. Perhaps it could be both. I know they were
21 presented for debate individually. I just don't -- I don't
22 know how they were constructed or created or maintained.

23 Q. So my understanding is that they drew one map. And then
24 once that got passed, they went to another map. Is that your
25 recollection?

1 A. My recollection is they debated the maps individually, but
2 I don't know how they were constructed.

3 Q. Okay. So in addition to redistricting, the 82nd
4 legislature had a number of other items on the agenda; is that
5 correct?

6 A. Yes, including the emergency items.

7 Q. Can you identify those for the Court, please?

8 A. In -- just in general, from my recollection?

9 Q. From the most important down to the least important.

10 A. Well, I believe the most important was the budget. But I
11 believe that others felt that sanctuary cities was more
12 important than that. Some felt that voter identification
13 legislation was more important, being deemed an emergency. I
14 believe they felt that a sonogram bill was more important than
15 the budget, deemed it emergency. And I believe that there was
16 one more dealing with loser pay civil litigation.

17 Those were four declared emergency items which
18 enabled the legislature, through the order of the Governor, to
19 begin working on that on day one, as opposed to day 30 for
20 committee and day 60 for the floor, as prescribed by the Texas
21 Constitution.

22 So aside from those, we had a number of agency
23 bills that required Sunset review. We had members' individual
24 legislation. We also had the -- I mentioned the budget, and we
25 had redistricting.

1 So suffice it to say, it was a very tall order for
2 a session. And the only difference between the '11 session and
3 the '09 session was the inclusion of redistricting.

4 Q. Okay. So you agree with me then that the legislature had
5 a lot going on, correct?

6 A. Yes. It stays busy.

7 Q. They had a short period of time in which to get all of
8 this done, correct?

9 A. They had a -- they have a prescribed period of time. It
10 wasn't short. It was the time that we have afforded to us that
11 we've been practicing for the last twelve -- since I've been
12 there at least.

13 Q. And so during this process -- now, you're saying that
14 there were -- it was not enough time. Well, let me distinguish
15 between the house map and the congressional map. Now, the
16 congressional map was not drawn until the special session; is
17 that correct?

18 A. I don't know that.

19 Q. Okay. The congressional map was not debated until the
20 special session; is that correct?

21 A. That's correct.

22 Q. Okay. So during the regular session, were there any
23 public hearings conducted with respect to the house map?

24 A. The state house map?

25 Q. Yes, sir.

1 A. Yes, there was.

2 Q. In fact, the house -- okay. Are you a member of the House
3 Redistricting Committee?

4 A. I am not.

5 Q. Okay. Do you know of any Hispanic members that were
6 members of the House Redistricting Committee?

7 A. Yes, Representative Mike Villarreal from San Antonio is
8 the vice chairman. Representative Aaron Pena from the Valley
9 was on the committee. Representative Carol Alvarado from
10 Houston was on the committee. Representative Roberto Alonzo
11 from Dallas was on the committee.

12 JUDGE GARCIA: How many members are on the committee,
13 Representative?

14 THE WITNESS: Your Honor, I believe it was 15 or 16.

15 JUDGE GARCIA: Okay. All right. Thank you.

16 BY MS. JORDAN:

17 Q. And were those the only four Hispanic legislators that
18 were on the committee?

19 A. That comes to my memory, I believe.

20 Q. Okay. And Mr. Villarreal is part of the San Antonio
21 delegation?

22 A. He is.

23 Q. And you have a good relationship with Mr. Villarreal?

24 A. I've known him since the third grade.

25 Q. Okay. Any other members of the San Antonio delegation on

1 the house committee -- redistricting?

2 A. I do not believe so.

3 Q. Okay. Now, do you recall Chairman Solomons, the -- do you
4 recall Chairman Solomons talking about the fact that this was a
5 member-driven fact -- member-driven map?

6 A. I don't, but I wouldn't disagree with that statement.
7 That's what it should be, yes.

8 Q. Okay. You don't recall him stating it over and over again
9 on the house floor that this was -- the house -- the state
10 house map was a member-driven map?

11 A. No. I don't recall him stating that in the house floor,
12 and I don't recall him telling me that in conversations.

13 Q. Okay.

14 A. And we had several.

15 Q. Well, if the house journal reflects that he said that, you
16 wouldn't have any reason to disagree with that, correct?

17 A. Absolutely not.

18 Q. Okay. Now, in fact, when Chairman Solomons asked the
19 members -- or do you know what Chairman Solomons meant when he
20 said that the map was member-driven or --

21 A. I don't. I mean, I can speculate. I know what it means
22 to me.

23 Q. What does it mean to you?

24 A. Well, if someone tells me this is a member-driven map,
25 then it's telling me that the members decide what the map

1 should look like.

2 Q. Did you have input on what your district -- how your
3 district was drawn?

4 A. I participate as a member of the Bexar County delegation
5 in coming up with a Bexar County plan that included the
6 district I represented, yes.

7 Q. And are you happy with the way that your district was
8 drawn?

9 A. I am satisfied. I had a different opinion from the very
10 beginning, but I -- you know, it's a consensus map based on
11 consensus of the delegation. So it's not my decision that
12 should trump everybody else.

13 Q. And so the San Antonio or the Bexar County map was
14 actually dropped in as drawn, correct?

15 A. I believe so. There was an amendment or two on the house
16 floor during debate, and I can't remember whether it was
17 changed or was it -- or it was attempted to be changed. I
18 believe the amendment failed by the person who offered it. I
19 just don't know if they were restoring or creating something
20 new.

21 Q. Okay. And you said that you thought it was a consensus
22 map.

23 A. Sure. Would you like for me to explain?

24 Q. Actually, the consensus -- reaching consensus as a
25 legislature -- legislator is an important thing, correct?

1 A. It should be. We should strive -- yes.

2 Q. And you do that on a regular basis, trying to negotiate
3 with other legislators to get things passed, correct?

4 A. To varying degrees and depending on the climate of the
5 body and the electoral map, I guess.

6 Q. Well, it's a give-and-take process, correct?

7 A. Well, yes and no. Yes, it should be that way. And in
8 2009 I will tell you that I thought there was a lot of
9 consensus and give and take.

10 In 2003 it didn't really matter what the minority
11 party wanted to offer because it was always defeated on the
12 floor. And the composition of the state legislature, of the
13 house at least, in 2011 had a much wider gap between the two
14 parties than it ever had in the twelve years of service that I
15 have given to the state.

16 Q. But general speaking, being a legislator requires --

17 JUDGE RODRIGUEZ: Counsel, perhaps I'm just confused
18 about where you're headed. I mean, is there relevance to this
19 questioning? What's your point?

20 MS. JORDAN: Your Honor, the plaintiffs have alleged
21 that this process was discriminatory; that it was somehow race
22 based, there was some kind of intent to discriminate against
23 minorities. And so what I'm trying to get at is that this is a
24 political process where there's give and take, not -- you know,
25 there's negotiation that's going on. It's not unusual --

1 JUDGE GARCIA: Well, you might ask him how it is or
2 was discriminatory and how in his opinion he believes it is
3 race based. I understand where you're leading to, Counselor,
4 and we appreciate that. But if you'll just ask him the point
5 you're trying to make or raise, it would save a whole bunch of
6 time. Okay?

7 MS. JORDAN: Okay.

8 JUDGE GARCIA: Thank you.

9 MS. JORDAN: Thank you, Your Honor.

10 BY MS. JORDAN:

11 Q. So can you identify, as you sit here today, any act by any
12 particular legislature -- legislator that you believe was
13 intended to discriminate against minorities?

14 A. In redistricting?

15 Q. In redistricting.

16 A. Okay. Yes, I will say, given the level of engagement as a
17 member of the Bexar County delegation, at the request of the
18 speaker and the chairman of house redistricting, the Bexar
19 County delegation met no less than a half dozen times, and
20 perhaps even more, to come up with a consensus negotiated map
21 that's bipartisan, that has a heavy concentration of voting
22 rights implications and has several minorities that are the
23 preferred candidates of the minority constituencies in Bexar
24 County.

25 That did not exist with regard to the statewide

1 map. That did not exist -- there was not a single discussion
2 that brought together the minority caucuses to discuss the
3 implications of the statewide map insofar as it related to
4 existing districts occupied by minorities, and insofar as it
5 existed in terms of creation of additional minority
6 opportunities based upon the census.

7 Very specifically speaking, I can point to an area
8 in Harris County, if you will, where two minority coalition
9 districts, represented by Representative Hochberg and
10 Representative Bohac. And if you look at the district as it
11 was drawn, created and passed, not by them, but by the author
12 of House Bill 150, you will find that that district --

13 JUDGE GARCIA: If you could be a little bit more
14 specific, Counselor. I'm sorry.

15 THE WITNESS: Yes, sir. Thank you, Judge.

16 JUDGE GARCIA: Representative.

17 THE WITNESS: That district would -- the constituency
18 as created in that district would elect an Anglo democrat over
19 a minority. You will see in Travis County -- excuse me. In
20 Nueces County you will see that there is a map that was
21 produced that paired two minority opportunity districts with an
22 Anglo Republican versus a Hispanic Republican in the district
23 that --

24 MS. JORDAN: Your Honor -- I'm sorry.

25 JUDGE GARCIA: Let me see if I can get this. And if

1 I'm wrong, feel free to tell me I'm wrong, which is a rarity
2 that a judge would ever be --

3 THE WITNESS: I wouldn't do it -- I wouldn't do it
4 from here.

5 JUDGE GARCIA: You suggested that the speaker or the
6 leadership either went to or communicated with the Bexar County
7 delegation and suggested or asked for your -- y'all's input,
8 and that was done.

9 THE WITNESS: Yes, sir.

10 JUDGE GARCIA: Likewise, was that process utilized
11 with minority districts; that is, did the leadership -- for
12 instance, did the leadership go to MALC and say, y'all try to
13 draw something statewide and give it to us, which I think -- is
14 that where you're going, Counselor?

15 MS. JORDAN: Yes, sir. Thank you, Judge.

16 JUDGE GARCIA: Okay. Thank you.

17 THE WITNESS: And I apologize, Your Honor. I thought
18 it was specific to districts.

19 But in general terms, in terms of process, the
20 leadership never asked for input from MALC. And, in fact, it
21 was MALC that had to ask the leadership just for access to
22 resources that we didn't have. We did not have a committee
23 room. We did not have access to the committee room. We did
24 not have the red apple software that -- you know, issued and
25 licensed to MALC. We did not have additional staff that the

1 speaker had to advise the speaker on redistricting.

2 And so in terms of process by which if every bill --
3 you know, if there's a notion that we have consensus on
4 legislative priorities or big, big items, there was never an
5 attempt at any one time where legislative leaders that were
6 offering their district map, that asked to engage members of
7 MALC to sit down and work towards a consensus on coming up with
8 a map that would accomplish some of the goals -- caucus.

9 Q. Okay. When you say we, you're talking about MALC. But
10 the legislature did consult with the individual members of MALC
11 on various occasions about the house map, correct?

12 A. Well, I know that nobody talked to me. And suffice it to
13 say I communicated with my Bexar County colleagues. You know,
14 we were complying with the request by the speaker -- or not
15 necessarily a request, but just sort of advice to try to come
16 up with a map for Bexar County because the ultimatum that
17 Chairman Solomons would say over and over again is, if you
18 can't come up with a map collectively, we'll draw it for you.

19 And so I think that if that's, you know, one's
20 interpretation of working in a cooperative spirit, that was
21 really more of an ultimatum. And, in fact, I think some would
22 argue that that's what happened in some areas of the state.

23 Q. Well, Chairman Solomons never told you that you couldn't
24 go talk to him if you had a suggestion, correct?

25 A. No. But, in fact, I talked to him. I engaged Chairman

1 Solomons.

2 Q. Okay. So you did provide input to Chairman Solomons
3 regarding the house map, correct?

4 A. No. I think that I just -- I made a plea for him to
5 consider some minority opportunities. And I believe his answer
6 was that he couldn't if it violated the whole county rule.

7 THE REPORTER: If it violated the --

8 THE WITNESS: The whole county rule. I'm sorry.

9 BY MS. JORDAN:

10 Q. Do you have a good relationship with Chairman Solomons?

11 A. As a matter of fact, I do.

12 Q. And you don't think he's racist, do you?

13 A. I think that he -- as an individual I think he's a good
14 man. I think he's authored some legislation that would call
15 that into question.

16 Q. You don't think that he had the intent to discriminate
17 against minorities in this drawing of the house map, do you?

18 A. In redistricting?

19 Q. In redistricting.

20 A. I don't believe that he intended to do that.

21 Q. Okay. Now, you don't have any evidence that any
22 particular member had intent to discriminate, do you, with
23 respect to the house map?

24 A. Well, as I was saying in Harris County, I believe that the
25 net effect of a map that was drawn --

1 Q. Okay. So you're going to refer to Harris County. Now,
2 what particular legislator that drew the map in Harris County
3 do you think had the intent to discriminate against minorities?

4 A. From the beginning I do not know who drew the map. But
5 what I'm saying, the map that was defended by Chairman
6 Solomons, the map that was presented by the chairman, the map
7 that is in litigation produced a map with two districts in
8 Harris County that merged two performing minority opportunity
9 districts, that gave the advantage to an Anglo Democrat over a
10 Hispanic Democrat. I think that there is a form of
11 discrimination there.

12 I think in the Coastal Bend area, when you take
13 two performing minority opportunity districts that are
14 currently represented by an Anglo Republican and a Hispanic
15 Republican, when you merge those two districts, you immediately
16 lose one minority opportunity, and I think it's an open
17 question as to whether a minority can get elected in what's
18 left of that district.

19 I believe when you do that at the same time you're
20 sparing an Anglo Republican district in Nueces County, I
21 believe -- I would argue that's discrimination. I believe in
22 Travis County the fact that none of the Anglo Democrats were
23 targeted when it was very clear in the congressional map you
24 couldn't say the same thing, I believe that there was a
25 preference in design to protect Anglos at the expense of

1 minorities.

2 Q. Well, we're talking about the house map for now. Okay?

3 A. Right.

4 Q. And so the only questionable drawing that you think smacks
5 of racial intent is Harris County; is that correct?

6 MR. GARZA: Your Honor, I object. That
7 mischaracterizes his testimony. He gave three examples, at
8 least three examples in his narrative. He said Harris County.
9 He said Nueces County and Travis County.

10 JUDGE GARCIA: Well, just rephrase your question,
11 Counselor.

12 BY MS. JORDAN:

13 Q. I'm trying to understand what intentional acts of
14 discrimination that you are relying on to prove that these
15 map -- these lines were drawn with discriminatory intent.

16 Okay. So which -- what acts by particular
17 legislators do you think constitute intentional racial
18 discrimination in drawing the maps? And I'm talking just about
19 the house maps right now.

20 A. Sure. Specifically on the state house maps, I believe
21 I've attempted to articulate it in three instances. I'm a
22 layperson. I'm a legislator. I'm a lawyer. I may know some
23 of this. But I know that we have, you know, an expert who's
24 analyzed this on a statewide basis and perhaps could show you
25 statistically or empirically where those acts of discrimination

1 are. I mean, I can tell you the three that I know off of my
2 head, based on my memory.

3 Q. Okay. Let's distinguish them between discriminatory
4 effect and discriminatory intent. Okay? Do you -- do you --
5 what is your understanding of discriminatory effect?

6 A. I believe that when there is an act that has an effect of
7 discrimination.

8 Q. Okay. Do you agree that if it has a discriminatory
9 effect, it may not have been intended to be discriminatory? It
10 just may result in that discriminatory effect.

11 A. I believe that it may have or it may have not been
12 intended, yes.

13 Q. So what I'm trying to pin down here is what evidence
14 you're relying on to show discriminatory intent, not
15 discriminatory effect.

16 A. Well, I believe, again, for me speaking in the state
17 house, that when you raise the issue that the intent or the
18 action of the map drawers or the -- or Chairman Solomons
19 resulted in a discriminatory effect and you put them on notice
20 that there's a discriminatory effect, and if there is no
21 remedy, if there's no attempt to remedy, if there's not even a
22 discussion on coming up with an alternative, when, in fact,
23 there are, it would leave me with the opinion that there is
24 something that's driving that decision.

25 I can't get into those members' heads and

1 understand what it is, but I know that it wasn't as if it was
2 just done silently, without anybody, any member of MALC or any
3 member of the legislature raising the issue.

4 Q. But you testified that it was a complicated process. And
5 isn't it true that Chairman Solomons relied a lot on Texas
6 legislative counsel to provide guidance as to what the legal
7 parameters were in drawing these maps? Correct?

8 A. I don't know that. I know that the chairman was well
9 equipped with committee staff, just like any other member. All
10 it takes is a log-in and password to draw maps on your own.
11 We rely -- I rely on legislative counsel for guidance. I don't
12 ask legislative counsel to draw maps for me.

13 Q. But isn't it true that Chairman Solomons basically
14 disagreed with the legal aspect of redistricting with you, and
15 not necessarily that he was intending to discriminate against
16 minorities?

17 A. Our fundamental disagreement centered on the whole county
18 line. And in the instance I gave you in Harris County that all
19 happened within Harris County. That didn't happen -- that was
20 wholly within Harris County. So our -- but our principal
21 disagreement on these minority opportunities centered on
22 whether or not -- you know, when and where can you break a
23 county line?

24 Q. And Chairman Solomons had a different opinion as to when
25 and where you could break a county line than you did, correct?

1 A. Yes. And he said you couldn't do it.

2 MS. JORDAN: Your Honor, may I approach the easel?

3 JUDGE GARCIA: Yes. Of course.

4 BY MS. JORDAN:

5 Q. Okay. Before I get to this, I'd like to just clarify some
6 definitions for us before we get started. Okay. Can you tell
7 me what your definition of minority opportunity district is?

8 A. My definition is a district by which minorities have the
9 opportunity to elect a candidate of their choice.

10 Q. Now, minority opportunity district, does that include
11 African-Americans and Latinos or just one or the other?

12 A. I believe it involves minorities. And so I think you can
13 look at them individually, or you can look at them in
14 combination.

15 Q. So it can be Hispanics, plus African-American?

16 A. Or Asian.

17 Q. Or Asian.

18 A. Or non-Anglo.

19 Q. Now, can you tell me the difference between -- are you
20 using Mexican American, or are you using Latino, or are you
21 using Hispanic?

22 A. I use them all.

23 Q. You use them all?

24 A. Yes.

25 Q. So Mexican American is the same as Latino in your mind?

1 A. Yes.

2 Q. Okay. Now, what's the -- you have a total population
3 figure in all of these voting rights data, correct?

4 A. That's correct.

5 Q. Then you have the Hispanic voting population, voting age
6 pop., correct?

7 A. That is correct.

8 Q. That's what is known as HVAP?

9 A. Yes.

10 Q. And then you have the Hispanic citizen voting age
11 population, correct?

12 A. Yes.

13 Q. And that's Hispanic citizen voting age population. Okay.
14 Then you also had SSVR?

15 A. Yes.

16 Q. And what does that stand for?

17 A. Spanish surname voter registration.

18 Q. Okay. And then you had a non-suspense SSVR. What is
19 that?

20 A. I'm not sure.

21 Q. Okay. Do you know if the SSVR is different from the
22 non-suspense SSVR?

23 A. I don't know what non-suspense SSVR is.

24 Q. Okay. Now, when you were presenting these maps to the
25 legislature, the H205 and H201, were you using SSVR or were you

1 using HCVAP?

2 A. We were -- I mean, obviously -- excuse me. I analyzed
3 HVAP, HCVAP, SSVR, BVAP, HCVAP plus BVAP. So again, I mean,
4 it's -- you know, looking at it just through strictly Latino
5 lenses is, you know, one approach. But we also looked at the
6 metrics for African-American voting age population as well.

7 Q. Well, I'm focusing on Hispanics for now. Okay?

8 A. Yes. And I guess what I'm saying is our analysis did not
9 look at it that way. We -- I couldn't give you answers just
10 extrapolating out Hispanic statistics because all of our data
11 was inclusive of African-American voting age population as
12 well.

13 Q. Okay. And so when you talk about the 65 percent growth,
14 the Latino growth in Texas, between 2000 and 2010 --

15 A. Yes.

16 Q. -- that encompasses the total growth, not just Hispanic
17 citizen map or SSVR, but all of the population --

18 A. That's correct.

19 Q. -- of the Latinos that came to Texas, correct?

20 A. That's correct.

21 Q. So you're talking about noncitizens, correct? In the
22 total population, that 65 percent, you're talking about
23 noncitizens?

24 A. Okay. Yes.

25 Q. Is that correct?

1 A. I mean, I don't know the census methodology, but I would
2 imagine -- I know that the census has the ability to
3 extrapolate, you know, citizen voting -- you know, citizens
4 versus noncitizens. So I imagine they have a metric for it,
5 but I don't know it.

6 Q. Well, what are you referring to then when you say 65
7 percent of the growth is attributed to Hispanic?

8 A. That number I get from the census. And how they arrive at
9 it, I don't know. I just know that's the number that the
10 census gives us.

11 Q. Okay. So you don't know if that includes citizens or
12 noncitizens?

13 A. I know that --

14 MR. GARZA: Your Honor, he's answered that question.
15 This is the third time she's asked that question.

16 JUDGE GARCIA: All right.

17 THE WITNESS: I don't know how the census aggregates
18 the population and if they separate noncitizens when they issue
19 that data point. I just know that the data point was that
20 Texas grew by 89 percent minority. 65 percent of that growth
21 was Latino.

22 BY MS. JORDAN:

23 Q. And it may have -- that 65 percent growth may have
24 included noncitizen?

25 A. Quite possibly.

1 Q. And it may have included Hispanics that were under the
2 voting age. So under 18, correct?

3 A. Correct.

4 Q. So for the relevant -- for the Voting Rights Act the
5 relevant population is a Hispanic citizen of voting age,
6 correct?

7 A. I believe that -- I don't know that to be the case, only
8 because there was litigation that MALC was involved in where
9 that was the proposition. And I believe it was dismissed.

10 Q. Okay. So Spanish surname, where does the -- the
11 legislature get the Spanish surname voter registration rates
12 from the Secretary of State; is that correct?

13 A. That's correct.

14 Q. And do you recall whether or not the legislature had
15 access to data regarding HCVAP or SSVR when they were drawing
16 the map lines for the house, state house map?

17 A. I know that HVAP was available. I know SSVR was
18 available. I don't know if HCVAP is, you know, an automatic,
19 you know, metric that you can pull into the map for analysis.

20 Q. So the HCVAP was not available to Chairman Solomons at the
21 time he was drawing his map --

22 A. Right. I --

23 Q. -- the state house -- at the time that the state house
24 maps were being drawn?

25 A. Yeah. I'm sorry. I don't know if it was available at

1 all. I just -- I don't remember that being one of the areas
2 that I looked at when I was drawing or analyzing maps.

3 Q. Now, on direct examination you talked about the growth in
4 various parts of the state. You talked about Nueces County,
5 certain of these districts you say were overpopulated. I put a
6 pin, a green pin to indicate those that you've indicated, that
7 MALC has indicated are overpopulated with Hispanics.

8 I've also put a red pin in those districts where
9 your -- MALC has indicated that the population is
10 underpopulated. So I guess we can use MALC's map.

11 Did you refer to a Table 1 that contained the
12 deviations in population during your direct examination? Do
13 you recall?

14 A. I talked about deviations. I don't know -- do you know
15 what exhibit that was?

16 Q. Do you have the exhibit list?

17 MR. GARZA: I think it's Exhibit 70.

18 THE WITNESS: Exhibit --

19 MS. JORDAN: Seven.

20 MR. GARZA: Seven zero.

21 MS. JORDAN: Actually, I'm looking at the map, at a
22 table that you submitted in --

23 (Discussion off the record)

24 BY MS. JORDAN:

25 Q. Okay. Let me get -- okay. Now, do you agree with me that

1 most of the districts in west Texas, El Paso, are currently --
2 under the current plan -- I mean, under the engrossed plan,
3 H283, are underpopulated?

4 A. I don't know that.

5 Q. Okay. So we're talking about five districts in El Paso.
6 Four of them are Democrat. One of them is Republican; is that
7 correct?

8 A. I believe so, yes.

9 Q. Okay. And to your knowledge, was the El Paso delegation
10 responsible for drawing the map that was put into the engrossed
11 map for El Paso?

12 A. I don't know if the El Paso delegation worked in group to
13 come up with a group map.

14 Q. Are -- is the El Paso delegation -- are they all members
15 of MALC?

16 A. Let me think of the membership. Yes, they are. All of
17 them are.

18 Q. So the El Paso delegation didn't create any additional
19 Hispanic districts; is that correct?

20 MR. GARZA: Your Honor, I object. I believe he
21 testified he didn't know if the delegations drew a plan.

22 JUDGE GARCIA: What was your question again, Counsel?

23 MS. JORDAN: My question was whether or not the El
24 Paso delegation had attempted to draw additional majority
25 Latino districts in El Paso.

1 JUDGE GARCIA: I see. Okay. The witness will answer
2 the question, if he knows.

3 THE WITNESS: I don't know if the El Paso delegation
4 made that decision.

5 BY MS. JORDAN:

6 Q. Well, if they had not provided Chairman Solomons with a
7 map that had an additional majority Latino district in it,
8 would you still be of the opinion that the El Paso area is an
9 example of possible racial discriminatory intent?

10 A. My analysis for El Paso County, you know, looked at the
11 entire county population statistics and saw that all but one
12 district had a majority SSVR and that it wasn't, you know, a
13 very difficult exercise to equalize all those and make every
14 district an SSVR district. And so that's -- that's what we
15 did.

16 And I can tell you nobody from El Paso County told
17 me that they didn't like that idea. Perhaps they may have
18 voted against it, and we have a voting record that will speak
19 to that. But that was part of our public filing, and that was
20 something that was, you know, readily before every member of
21 the house to analyze when these maps came to the floor.

22 JUDGE SMITH: But the question is whether there was
23 intentional discrimination as to El Paso County. That was her
24 specific question, and I didn't quite hear an answer to that.

25 THE WITNESS: And I -- and sorry, Judge. I don't

1 know how the El Paso map was drawn. I don't know if it was
2 drawn by the delegation or by someone else. That was -- that's
3 what I was saying.

4 BY MS. JORDAN:

5 Q. Okay. Now, with respect to Dallas/Fort Worth area, there
6 are two Hispanic minority -- Hispanic districts, House District
7 90 and House District 104; is that correct?

8 A. I believe that there are two. I don't know the numbers,
9 but --

10 Q. Okay. And House District 90 is underpopulated; is that
11 correct?

12 A. I don't know that.

13 Q. And House District 104 is overpopulated, correct?

14 A. I don't know that.

15 Q. Okay. I'm sorry. This is Dallas, not Harris County.

16 A. I still don't know that.

17 Q. Okay. All right. So in Harris County there are four
18 Hispanic majority districts, correct?

19 A. I believe so.

20 Q. And those are Districts 148, 140, 145 and 143, correct?

21 A. I think -- I think so. And I apologize. I know them more
22 by the names of the -- of the members, but I will -- if those
23 are the -- if that's Representative Hernandez, Walle, Farrar --
24 Hernandez, I think -- I don't know if I mentioned Hernandez --
25 and Alvarado. Okay.

1 Q. So there are four districts in Harris County, two
2 districts in Dallas County.

3 Now, do you recall whether or not the delegation
4 from each of these respective counties, were they able to reach
5 an agreement with respect to the maps that would be drawn --
6 dropped into the statewide map?

7 A. I know from going to Dallas, I know from talking with
8 Representative Anchia that he was able to draw a district that
9 he was comfortable representing. I know in --

10 Q. Okay. I'm sorry. Stay -- Representative Anchia is a
11 Dallas representative?

12 A. Yes, Dallas representative. I don't know his district
13 number, but he's from Dallas.

14 Q. And the other representative from Dallas is Geren?

15 A. No, Alonzo.

16 Q. Alonzo. I'm sorry. So Alonzo and Anchia, do you recall
17 whether or not they could agree on how the districts should be
18 drawn in Dallas, in the house map?

19 A. I don't recall insofar as Anchia and Alonzo -- agree on
20 Dallas County. I know individually how they felt about the
21 Dallas County map. But I'm not aware of whether they arrived
22 at that collectively or independently.

23 Q. Okay. And Chairman Solomons asked -- okay. I'm sorry.

24 So during the debates on the house map, were there
25 any particular requests to increase SSVR in the Dallas/Fort

1 Worth area?

2 A. I believe --

3 Q. Do you recall?

4 A. I recall there were -- that Representative Alonzo had
5 brought an amendment that I believe was designed to create
6 additional minority opportunity. The precise, you know,
7 mechanism of how they achieved it, I don't remember. But he
8 certainly offered an amendment, I believe.

9 Q. Okay. But my question was whether or not you know of a
10 request to increase the SSVR in Dallas County with respect to
11 these two minority --

12 A. I'm not -- I'm not aware of a specific request as to SSVR.
13 I am aware of a request as to minority opportunity.

14 Q. Okay. Now, we already talked about San Antonio?

15 A. Yes.

16 Q. You all were able to agree on a map there, correct?

17 A. For the most part, yes.

18 Q. And that was adopted and put into the house plan, correct?

19 JUDGE GARCIA: Let me ask you, Counselor, was there a
20 possibility to increase a minority -- create or increase a
21 minority opportunity district in Bexar County?

22 THE WITNESS: Your Honor, when the data was first
23 released, I -- simple math indicated that Bexar County was
24 slightly over the ten member requirement. As you may recall,
25 ten years ago Bexar County had 11 members, and we lost

1 population, and so that delegation shrank to ten.

2 And so immediately this time around, when the census
3 number came out and the population of the ideal district was
4 announced, it was determined that Bexar County had 10.3 or, you
5 know, somewhere in that area districts. And I've known from my
6 experience that other counties, such as Harris County, was able
7 to round up. And so my initial -- my initial inquiry to the
8 delegation was that we should explore looking at adding the
9 eleventh seat to Bexar County.

10 JUDGE GARCIA: Okay. But perhaps, Mr. Garza, you can
11 answer this. Your party -- you don't have any problem with the
12 Bexar County map?

13 MR. GARZA: None of our claims allege --

14 JUDGE GARCIA: Bexar County.

15 MR. GARZA: -- Bexar County, Your Honor.

16 JUDGE GARCIA: Okay. That answers my question.
17 Thank you.

18 THE WITNESS: Thank you, Judge.

19 BY MS. JORDAN:

20 Q. So now we're left with this area in Nueces County where
21 y'all think that an additional majority Latino district can be
22 drawn, correct?

23 A. Yes. Nueces County or the Valley? You pointed to the
24 Valley.

25 Q. I'm sorry. I'm talk about along this border area. So

1 that's the Rio Grande Valley, correct?

2 A. Yes. Yes.

3 Q. And Nueces County is up, going north a little bit up of
4 the Rio Grande Valley, correct?

5 A. Yes.

6 Q. But Nueces is still a border area, correct?

7 A. It's a border with the Gulf Coast. It doesn't border
8 Mexico, as the Rio Grande Valley does.

9 Q. Right. But there's a boundary there. You know,
10 there's -- population can't go past that boundary --

11 A. That's correct.

12 Q. -- because that's water, correct?

13 A. That's correct.

14 Q. And when you go south, that's the same issue, is that
15 there's a boundary there that you cannot cross anymore. So the
16 only way to go, if you're in the Rio Grande Valley, is to go up
17 and north, correct?

18 A. That's correct.

19 Q. Okay. Now, District 74 is Gallegos' district. Now,
20 that -- that district is underpopulated, correct?

21 A. I don't know that.

22 Q. 80 -- District 80 is King's, Representative King's
23 district, correct?

24 A. I believe it is.

25 Q. And that -- and State Representative King's district is

1 also underpopulated; is that correct?

2 A. I don't know that number.

3 Q. Okay. Well, can we do Table 1? Let's put it up so that
4 we can see.

5 Based on the data that is contained in joint
6 exhibit book, which is -- contains the map and the voting
7 rights -- voting rights data. Do you see it, on H283? Can you
8 look at it and find it?

9 A. Is this it?

10 Q. Yeah. 283. Look at the total voter population with the
11 SSVR rates on it for me, please. Keep going.

12 A. Towards the back?

13 Q. All right. Now, I'm asking you to look at the population
14 and voter data with voter registration comparison.

15 MR. GARZA: Your Honor, excuse me. I don't mean to
16 interrupt, but I don't have a copy of that exhibit.

17 JUDGE GARCIA: That's defense exhibit.

18 MR. GARZA: I don't think they furnished me with a
19 copy of that exhibit.

20 JUDGE GARCIA: It's not one of the agreed upon
21 exhibits?

22 MS. JORDAN: Yes, sir, it is.

23 MR. GARZA: Your Honor, we not have been furnished a
24 copy.

25 JUDGE GARCIA: Perhaps you can give him a copy or

1 show him a copy.

2 MS. PERALES: This is maps and data.

3 MS. JORDAN: That's it.

4 MR. GARZA: It's Exhibit 1.

5 JUDGE SMITH: What is the binder and label? I'm
6 sorry.

7 MS. JORDAN: The binder is the joint agreed maps and
8 data.

9 JUDGE RODRIGUEZ: And where in this binder?

10 MS. JORDAN: In H283. And there are population and
11 voter data with voter registration comparison. So the report
12 is actually labeled -- can I see it?

13 THE WITNESS: Sure.

14 MS. JORDAN: -- red 202.

15 JUDGE SMITH: So where do we turn in that binder to
16 find this?

17 MS. JORDAN: H283.

18 JUDGE SMITH: All right. Okay. Thank you.

19 (Discussion off the record)

20 JUDGE GARCIA: Okay. And what is the page number,
21 Counselor?

22 MS. JORDAN: The report is red 202.

23 JUDGE GARCIA: I got it.

24 MS. JORDAN: Okay.

25 MR. MATTAX: This is a demonstrative exhibit that --

1 JUDGE GARCIA: Right.

2 MS. JORDAN: Your Honor, this information that's on
3 the screen in State's Table 1 was obtained using the red 202
4 report that has been admitted into evidence.

5 JUDGE GARCIA: Okay. But what's the exhibit number
6 from that to this book?

7 MS. JORDAN: That demonstrative exhibit is not
8 numbered.

9 JUDGE GARCIA: Oh, I see. Okay.

10 MS. JORDAN: So I'm going to ask Representative
11 Martinez Fischer to refer to the table up on the screen.

12 JUDGE GARCIA: In other words, you don't have that
13 exhibit --

14 MS. JORDAN: That exhibit is not offered into
15 evidence at this time.

16 JUDGE GARCIA: Okay. It's merely demonstrative.
17 Okay. All right. I understand.

18 BY MS. JORDAN:

19 Q. Okay. Now, if you turn to District 41 in the red 202
20 report --

21 A. In red 202? Is that what you said? Red 202?

22 Q. Yes. Uh-huh. District 41.

23 A. Okay.

24 (Discussion off the record)

25 BY MS. JORDAN:

1 Q. So District 41, according to the red 202 report, is
2 underpopulated by 4.41, correct?

3 A. Yes. A deviation, yes.

4 Q. All right. And District 41 is Aaron Pena's district,
5 correct?

6 A. I believe so.

7 Q. And that's in the -- this area down here, in the Rio
8 Grande Valley, correct?

9 A. That's correct.

10 Q. And I put that -- I placed a red pin where the
11 underpopulation occurs based on this data, correct? Do you
12 agree?

13 A. In general sense, yes. In the location, yes.

14 Q. Okay. So then District 42 is also underpopulated. I
15 placed a red pin where District 42 is, which is the Raymond
16 district, correct?

17 A. Representative Raymond is from Webb County, so yes.

18 Q. And then I placed a red pen in Quintanilla's district,
19 which is District 75 up in El Paso.

20 A. Yes. Representative Quintanilla is from El Paso.

21 Q. Okay. So this chart reflects that there are a lot of
22 districts in the border region area that are underpopulated,
23 correct? So we have Hidalgo County district, which is
24 Representative Gonzalez' district is underpopulated. You have
25 Raymond's district, which is in Webb County, that is

1 underpopulated. You have Quintanilla --

2 MR. GARZA: Your Honor, before we move on, I would
3 object to using this demonstrative exhibit. The basic reason
4 is that the information that's contained in here is wrong.

5 JUDGE GARCIA: It's what?

6 MR. GARZA: The information that's contained in this
7 demonstrative exhibit is wrong. Representative Gonzalez does
8 not represent District 41, as counsel initially asked. It's
9 Representative Pena. District 90 is not in Dallas County.
10 It's not represented by Geren. So this is not based on
11 information that's contained on the exhibit. Therefore, it's
12 not a proper demonstrative --

13 JUDGE GARCIA: You're suggesting it's not accurate?

14 MR. GARZA: It's not accurate. So the -- the
15 explanation is that this -- this exhibit is properly used
16 because it comes from data that's been furnished to us. The
17 exhibit is wrong. It has mistakes on it. So it's not related
18 to the data that we've been provided. So it would be
19 inappropriate to use this as a --

20 JUDGE GARCIA: Well, if it's wrong, we shouldn't be
21 using it.

22 MS. JORDAN: Well, Your Honor, the data that I'm
23 relying on is the deviation of the districts. So these are
24 underpopulated districts. This is what I'm relying on.
25 District 41 is underpopulated. That's accurate.

1 JUDGE RODRIGUEZ: But the point, Counsel, is we can
2 look at red 202 and follow what you're saying. We don't need
3 to see that demonstrative. So let's take down the
4 demonstrative and ask a question.

5 MS. JORDAN: Okay. Go ahead and take it down. I was
6 trying to make it easier for the Court, and I apologize.

7 BY MS. JORDAN:

8 Q. Okay. So then -- in any event, these pens do represent,
9 based on the data, underpopulation in these areas and
10 overpopulation in these areas as well.

11 Now, I believe what you testified was that there
12 are opportunities to create additional majority Hispanic
13 districts here; is that correct?

14 A. For the state house?

15 Q. In the Rio Grande Valley. Yes, sir.

16 A. For the state house?

17 Q. Yes, sir.

18 A. Yes, a seventh seat in the Valley.

19 Q. Okay. So the only way to do it, though, would be to break
20 county lines, correct?

21 A. No. There is -- I mean, as is proposed now, there are
22 county line breaks. Using the same or less breaks than what's
23 in House Bill 150 engrossed, you can create the seventh seat in
24 Hidalgo County.

25 Q. In which map are you saying that county lines won't have

1 to be broken to create an additional majority redistrict in the
2 Rio Grande Valley?

3 A. What I'm saying is using the same, if not lesser, number
4 of cuts than -- that's in 150, we could accomplish a seventh
5 district, as opposed to bringing Representative Guillen into
6 Hidalgo County.

7 JUDGE SMITH: But there would still be cuts, I think
8 is the --

9 THE WITNESS: Yes. And I'm sorry, Your Honor. What
10 I'm trying to say is -- what my testimony -- what I thought I
11 said was, in map 201, which is the map that we used that
12 minimized the number of cuts to county lines, we used for the
13 entire state the same number of cuts that the state used in
14 House Bill 150.

15 JUDGE SMITH: Right.

16 THE WITNESS: And so if we cut in Hidalgo, that may
17 have been the case, but it didn't amount to additional cut that
18 was over and beyond House Bill 150.

19 JUDGE GARCIA: Are you saying -- I'm sorry.

20 JUDGE SMITH: Well, I think the question
21 misunderstood that you were saying that there wouldn't have to
22 be any cuts to create the seventh seat in the Valley. But
23 you're saying, no, there would be cuts. But you're comparing
24 the number of cuts statewide to the number of cuts in the plan
25 that was enacted?

1 THE WITNESS: Yes, sir.

2 JUDGE SMITH: All right.

3 BY MS. JORDAN:

4 Q. Okay. So there would be county line breaks in this area
5 in order to create a new district in the Rio Grande Valley,
6 correct?

7 A. Yes.

8 Q. Now, looking at this map, this is a growth map that we did
9 admit into evidence, and this is Defense Exhibit -- Defense
10 Exhibit 43, and it's in Volume 2.

11 A. Do I still need this?

12 Q. No.

13 A. Okay.

14 JUDGE SMITH: Volume 2, did you say? I'm sorry. The
15 state's volume 2.

16 MS. JORDAN: Yes, sir. Volume 2, Exhibit 43.

17 MR. MATTAX: 45.

18 MS. JORDAN: This is Exhibit 45. It's difficult.

19 JUDGE SMITH: Okay. Here it is.

20 (Discussion off the record)

21 MS. JORDAN: Turn to 43. It is -- so, Your Honor,
22 we're referring to D43.

23 JUDGE GARCIA: D43.

24 JUDGE SMITH: Or 43. All right.

25 JUDGE GARCIA: Okay.

1 JUDGE SMITH: Yeah. There it is.

2 BY MS. JORDAN:

3 Q. So according to this map, D43, green represents the
4 growth, percent growth. And so there's growth here in the Rio
5 Grande Valley, as you can see. And then there's also growth --
6 is that Webb County?

7 A. That's Webb, yes.

8 Q. In Webb County. But in all the other parts along the
9 border, there's actually no growth or very little growth in
10 these areas, which explains the underpopulation in those
11 districts; is that correct?

12 A. Well, I'm going to -- I do see -- I don't think it's
13 correct. I do see shades of pink that represent anywhere
14 between 5 percent to 20 percent growth.

15 Q. Or a negative --

16 A. There is some --

17 Q. -- percent growth?

18 A. Yes. But overall -- I don't think that the overall -- I
19 can't say that the overall arithmetic shows negative growth in
20 west Texas and the Rio Grande Valley.

21 I see some very strong growth in certain pockets
22 of south Texas. And then I see some average growth in an area
23 that is known to have sufficient growth -- I mean, sufficient
24 population losses, like up here in upper west Texas by the
25 panhandle, where there's just clusters of counties that are

1 dark red. From El Paso going down to Cameron you don't see
2 that, except for one county that touches the Mexico border.

3 JUDGE SMITH: Well, according to this exhibit, the
4 average growth rate for the state is 20.6. So anything below
5 that would be below average, and anything above that would be
6 above average. Is that where we are?

7 MS. JORDAN: Yes, sir. Yes.

8 JUDGE SMITH: All right. So a county may have grown
9 by 15 percent, but it would still be below the average for the
10 state?

11 MS. JORDAN: That's correct.

12 JUDGE SMITH: If I'm reading this right. If I'm not,
13 please correct me.

14 MS. JORDAN: No. You're correct, Your Honor.

15 BY MS. JORDAN:

16 Q. So I'm focusing on the border area, Representative.

17 A. Yes, ma'am.

18 Q. And based on this map, anyway, the border area did not
19 grow, starting from El Paso to Maverick County and through Webb
20 County, that area did not grow between 2000 -- significantly,
21 did not grow significantly between 2000 and 2010, correct?

22 A. Right. I guess that area between El Paso and Webb did not
23 grow in conformance with the state average of 20.6.

24 Q. Okay. All right. So -- now, there are 150 districts in
25 the state house map, correct?

1 A. Yes, there is.

2 Q. And what is the ideal population for each district?

3 A. I believe it's 167,000 and some change.

4 Q. Okay. Now, this data, can you go to the bottom, scroll
5 down to the bottom?

6 Now, according to my calculations, if you add up
7 all of the county population going from El Paso to the Rio
8 Grande Valley, including Willacy County, Cleburne, all the way
9 up to Nueces County, the total combined district population is
10 3,227,380 people. The ideal population for each district is
11 167,637; is that correct?

12 A. I believe so, yes.

13 Q. Okay. So if you divide the total population along the
14 border area by the ideal population, according to my
15 calculation you get 19.252 districts.

16 Now, how many districts -- I mean, that's the
17 amount of districts that are currently in the 283 state house
18 plan. So I guess where do you get the additional district? If
19 we were to disregard the county line rule, how would you
20 accomplish creating a new district in the Rio Grande Valley
21 using the population that is available in the border region?

22 A. Well, you -- if you're -- in your chart you say the growth
23 rate for the State of Texas, the average growth rate, was 20.6
24 percent. Cameron County alone is shaded that same color,
25 yellow, that says that counties growing faster are shown in

1 green, and counties that matched the statewide growth are shown
2 in light yellow.

3 If you just look at Hidalgo and Cameron alone, you
4 will see that they've grown anywhere from -- according to your
5 chart, from 19 percent up to 81 percent. And I don't know how
6 you ignore that growth by not rewarding that district with an
7 additional opportunity.

8 Now, where does that come from in the formula from
9 El Paso up to Corpus? That's never been -- that has never been
10 MALC's contention. MALC's contention's always been that you
11 can demonstrate the potential for a minority opportunity
12 district. And in the Rio Grande Valley, specifically Hidalgo
13 and Cameron, paints the obvious picture that the growth is
14 there to support the additional seat.

15 JUDGE GARCIA: Counselor, is Hidalgo County reflected
16 on that?

17 MS. JORDAN: Yes, Your Honor.

18 JUDGE GARCIA: Oh, okay. All right.

19 JUDGE RODRIGUEZ: You stop where? And why don't you
20 go down to Cameron County?

21 MS. JORDAN: I'm sorry?

22 JUDGE RODRIGUEZ: Where do you stop on the map, and
23 why don't you go to Cameron County?

24 MS. JORDAN: We go -- we go down to Cameron County
25 and Hidalgo.

1 JUDGE RODRIGUEZ: You include Cameron County in this
2 count of 3.2?

3 MS. JORDAN: Yes, sir.

4 JUDGE SMITH: You're including every county that
5 touches the Rio Grande River from El Paso to Brownsville and
6 then up to and including Nueces?

7 MS. JORDAN: Yes, sir. We include Nueces. We
8 included Atascosa, which is District 35.

9 THE WITNESS: Atascosa.

10 MS. JORDAN: Atascosa. Sorry. And District 80,
11 which is King's district so --

12 MR. GARZA: Do you have a copy of that demonstrative
13 exhibit?

14 I'm sorry. Your Honor, may I request a copy of this
15 exhibit? We've not been furnished --

16 JUDGE GARCIA: Perhaps you can get it during the
17 recess.

18 MR. GARZA: Thank you, Your Honor.

19 JUDGE GARCIA: Or do you need it for redirect?

20 MR. GARZA: Well, I might need it for redirect.

21 JUDGE GARCIA: Okay. Perhaps you can get it at some
22 point --

23 MR. GARZA: This is the first time --

24 JUDGE GARCIA: -- while you still have your witness
25 here.

1 Now, of those 19, how many are Hispanic legislators?

2 MS. JORDAN: They're all Latino. I believe -- no,
3 only one exception.

4 JUDGE GARCIA: Okay.

5 MS. JORDAN: Hunter and Scott, which is --

6 JUDGE GARCIA: All right.

7 MS. JORDAN: -- 32 and 34.

8 THE WITNESS: Tracy King.

9 MS. JORDAN: And Tracy King.

10 BY MS. JORDAN:

11 Q. Representative, you also talked about the fact that Harris
12 County went from 25 districts to 24 this redistricting round.
13 Now, do you -- do you recall in the 2001 redistricting round
14 where -- the Democrats during that time were in charge,
15 correct? They were the majority in the state house side,
16 correct?

17 A. That's correct.

18 Q. And you were a state representative at that time, correct?

19 A. Yes, I was.

20 Q. And in 2001 there was a bill introduced by the Democrats
21 to -- there was a proposed plan that would reduce from 25
22 districts in Harris County to 24 districts in Harris County; is
23 that correct?

24 A. I don't remember, but I don't have any reason to disagree
25 with that.

1 Q. Can you turn to Exhibit 49 in the Defendant's Exhibit
2 notebook?

3 A. I'm sorry. Could you repeat that?

4 Q. Defendant's notebook, it's Defendant's Exhibit 49.

5 A. 49.

6 Q. It's the last one.

7 JUDGE SMITH: There's no 49 in our notebook.

8 JUDGE GARCIA: Nor in mine.

9 JUDGE SMITH: Mine only goes through 45.

10 JUDGE GARCIA: Mine goes through 48.

11 MR. MATTAX: Exhibit 49 appears not to have been put
12 in the house record from the house journal from the year 2001.

13 JUDGE GARCIA: Yeah. If you'll just get those for us
14 at some point.

15 MS. JORDAN: Yes, sir, I will.

16 May I approach the witness, Your Honor?

17 JUDGE GARCIA: Yes, of course.

18 BY MS. JORDAN:

19 Q. Representative, I'm showing you what's been entered into
20 evidence as State's Exhibit 49. And I'd ask that you read into
21 the record -- or first, let me ask, who is D. Jones?

22 A. It's former member Delwin Jones from Lubbock.

23 Q. And what party is he affiliated with?

24 A. He's a Republican. He's retired now, but he's a
25 Republican law maker. And he was chairman of redistricting in

1 2001, if I remember correctly.

2 Q. And he was the redistricting --

3 A. I believe he was the committee chairman in 2001 for the
4 house, yes.

5 Q. Committee chairman for redistricting?

6 A. Yes, I believe so.

7 Q. Okay. And can you tell the Court what date -- what is the
8 document that I'm showing you?

9 A. You're showing me the house journal supplement from May 7,
10 2001, the 68th day, Page 11.

11 Q. And what is -- can you read into the record what I've
12 highlighted in yellow?

13 A. Yes.

14 Q. And who is -- who is speaking?

15 A. Talton: Is that correct? That's Representative Robert
16 Talton, retired from Pasadena.

17 Q. What party affiliation?

18 A. He's a Republican. Delwin Jones, Republican, retired
19 chairman of the redistricting: When we considered all of the
20 restrictions and guidelines and they were all applied to Harris
21 County just as they were the rest of the state, it developed
22 this plan that we are discussing of 24 members. And let me
23 digress a moment from the immediate question of review that
24 taking -- that taking of the total census population of Harris
25 County, Harris County was "entitled" to 24.4 house seats.

1 We, if you recall, in our meeting with Harris
2 County delegation requested that the delegation consider two
3 plans. One a 24 membership plan and another a 25 membership
4 plan. And the reason for that was that because of the Harris
5 County situation population wise, and I don't mean that
6 critically, that was -- that as we developed the entire plan
7 for the entire state, there was always a possibility that we
8 could -- that we would end up with a pattern that created only
9 125 districts in other parts of the state. And I told the
10 delegation when I met with them that I would request a 25
11 member plan and a 24 member plan because if we -- if we should
12 have developed only 125 districts, then we would go above our
13 guideline rule of these -- of those districts. Those counties
14 with a proportional district above 50 percent would get the
15 above number. Those below the lesser number.

16 Harris County was one of those below, but we were
17 prepared to put in 25 districts. In the event the total plan
18 was developed, only 125, it would let us violate that rule. As
19 it eventually developed, we had 126 under the new merit
20 distribution that we -- that we are required to follow. And we
21 then went to the 24 member plan instead of the 25 member plan.

22 Q. So isn't it true that in 2001 the Democrats proposed a
23 plan that would reduce the district in Harris County from 25 to
24 24?

25 A. That journal represents that Delwin Jones offered that

1 plan, and he's not a Democrat.

2 Q. Well, was there a proposal in 2001 by the Democrats or --
3 to reduce from -- to reduce the Harris County district from 25
4 to 24?

5 A. It appears that there was a proposal from Delwin Jones.
6 He's not a Democrat, though.

7 Q. Do you recall -- I'm asking you, do you recall whether or
8 not there was a proposal from the Democrats?

9 A. No. I know there was an end result of 25 seats. And I
10 figured that was a function of the legislative redistricting
11 board. But I don't recall there being a separate plan run by
12 anybody for 25 seats.

13 Q. Do you recall voting for a plan that would reduce Harris
14 County districts from 25 to 24 in 2001?

15 A. I believe I recall voting for the map in total. I don't
16 remember how I voted on specific amendments or certain plans.

17 Q. And that map in total would have reduced Harris County
18 districts from 25 to 24, correct?

19 A. If that's what happened, yes.

20 Q. And you voted in favor of that map, correct?

21 A. I did.

22 Q. Okay.

23 JUDGE GARCIA: Let me ask you, Counselor, the ideal
24 size of the district is 167,000?

25 THE WITNESS: Yes, sir.

1 JUDGE GARCIA: Okay. And the population of Harris
2 County, under the census count, how many -- was it below -- how
3 many excess numbers -- did you have 167,000 at least growth in
4 Harris County?

5 THE WITNESS: Based on the arithmetic it would have
6 yielded 24.4 districts.

7 JUDGE GARCIA: Okay. All right.

8 BY MS. JORDAN:

9 Q. Now, is MALC claiming that the state -- the legislature
10 should have adjusted the census figures to reflect an
11 undercount of Hispanic population?

12 A. I don't believe that the state legislature can adjust the
13 census. I think that can only be done by the Department of
14 Commerce.

15 Q. The Department of Commerce?

16 A. Yes. The Office of the Census, yes.

17 Q. So it's not your position then that the state should have
18 adjusted the census data?

19 A. It's our position that the census is inaccurate. But the
20 remedy would involve the federal government in adjusting the
21 census and not -- the state doesn't have the authority to do
22 that.

23 Q. And have you taken any steps towards that?

24 A. I know that we pled that in our complaints. I believe
25 that we were involved in some degree in parallel litigation in

1 Sherman, Texas that dealt with the census. We didn't get an
2 opportunity to advance that because the plaintiffs in that case
3 dismissed the Department of Commerce and the census from the
4 complaint, leaving us without the ability to have a remedy.
5 And other than that, I don't -- I don't know as far as where we
6 are at with our census issue.

7 Q. Okay. But are you using the fact that the legislature did
8 not adjust the census data as part of your evidence that
9 there's some kind of discriminatory intent in drawing the maps?

10 A. I don't believe the legislature has the ability to adjust
11 the census.

12 Q. Do you believe that the legislature should have adjusted
13 those amounts, those calculations of those -- that data?

14 A. I think the census is wrong. I don't believe that the
15 legislature is empowered statutorily or constitutionally to
16 correct the wrong.

17 Q. Okay.

18 JUDGE GARCIA: I think the question -- or rather, I
19 think the response is, even if you believed it, the legislature
20 itself cannot come in and say, well, we know what the Census
21 Bureau said, but we're going to use this number instead?

22 THE WITNESS: I mean, yes, Your Honor. In summary
23 that's what I believe.

24 JUDGE GARCIA: Okay.

25 BY MS. JORDAN:

1 Q. Okay. So you're saying that the legislature was right to
2 rely on the census data as it -- to draw the maps, correct?

3 A. No. I said that the -- I believe that the census is
4 wrong. But I do not fault the State of Texas for there being a
5 faulty census. I believe the State of Texas used the census
6 data that was made available to them by the Office of the
7 Census. It doesn't mean it makes it right. It doesn't mean
8 that the actions that resulted from that in reliance upon
9 faulty data doesn't make that right, either.

10 But it would be, you know, meaningless for us to
11 assert that the legislature impose a remedy in an area that
12 they're not empowered to do. And so that's why we filed an
13 independent complaint on seeking an adjustment of the census
14 for some hard to count areas, not just in the border, but in
15 other big cities in the state.

16 Q. Well, you said you filed it in the complaint. But did you
17 file a complaint against the United States Census?

18 A. We filed the complaint in our petition for this lawsuit.

19 Q. Okay. But that seeks a remedy through the state.

20 A. Right.

21 Q. Forcing the state to do something, right?

22 A. It forces the federal government to do something, yes.

23 Q. Did you file a complaint against the U.S. Census,
24 Representative Fischer?

25 A. I don't believe that we did. I believe we've alleged a

1 complaint in this lawsuit that deals with the undercount of the
2 census.

3 Q. Well, as a Hispanic elected official, do you agree with me
4 that in this day and age in Texas that Hispanics have an
5 opportunity to participate in the political process?

6 A. They certainly have the right to vote, yes.

7 Q. Well, and they have the right to run for office and win.
8 I mean, they have the right to run for office, correct?

9 A. They do, yes.

10 Q. And they have the opportunity to run for office, correct?

11 A. They do.

12 Q. They have the opportunity to be elected to office,
13 correct?

14 A. That's correct.

15 Q. And certainly, that's reflected in the state house,
16 correct?

17 A. Yes.

18 Q. How many Hispanic legislators are in -- are -- Texas state
19 house?

20 A. I know that there are 39 members of MALC. And of the 39,
21 not all of them are Latino. And so I'm guessing here, but I
22 would say somewhere maybe in the range of 29 or 30.

23 Q. And even in the local elections, such for -- offices such
24 as mayor, sheriff, county treasurer, those positions are, in
25 these Hispanic areas, predominantly filled by Hispanic

1 officials, correct?

2 A. Not necessarily. Generally speaking. I mean, Mayor Chad
3 Foster is the mayor of Eagle Pass and is --

4 Q. Well, let's talk about Bexar County. That's where you're
5 from, correct?

6 A. Yes.

7 Q. Who is your mayor?

8 A. Julian Castro.

9 Q. He's Hispanic, correct?

10 A. He is.

11 Q. How many city council people -- how many city council
12 members do you have?

13 A. Including the mayor -- we have ten council members and one
14 mayor.

15 Q. How many of those are Hispanic?

16 A. I would say seven, I believe.

17 Q. And certainly, our Texas Supreme Court is a very -- is a
18 diverse group, correct?

19 A. I believe that it is.

20 Q. Do you know how many minorities sit on our Texas Supreme
21 Court?

22 A. I don't know. I've had the occasion to meet some of them.
23 So I know that there are more than three.

24 Q. Okay.

25 MS. JORDAN: I'll pass the witness, Your Honor.

1 JUDGE GARCIA: All right. Thank you.

2 Okay. Mr. Garza, you may proceed.

3 **REDIRECT EXAMINATION**

4 BY MR. GARZA:

5 Q. Representative, you mentioned, when you were being quizzed
6 about whether this was a legislative -- legislator-driven
7 process in redistricting, that the delegation in Bexar County
8 was able to reach a consensus and present a plan. Was that
9 also the case in Harris County?

10 A. I don't believe that it was. And while I can't comment on
11 proceedings that took place before floor deliberation, I can
12 tell you that while we were debating the redistricting bill,
13 the house came to a grinding stop for about three hours. And
14 it, you know, was told to me and I later learned that it was
15 because the Harris County delegation was in the back room
16 having a very passionate discussion about Harris County map.

17 Q. Were you aware that the Harris County delegation had, in
18 fact, agreed upon a 25 member plan? Did you know about that?

19 A. I have learned that since, yes.

20 Q. And, of course, the -- that's not part of the HB150?

21 A. It is not.

22 Q. And in Hidalgo County were the -- was there consensus
23 among representatives that represent Hidalgo County on a map
24 that impacted Hidalgo County?

25 A. I was -- I was specifically engaged in the Rio Grande

1 Valley map because there was a freshman in the delegation who
2 I, you know, was working with, sort of mentoring. And I was
3 concerned that the delegation wasn't meeting, that one member
4 of the delegation would refuse to meet in group to discuss a
5 way to come up with a consensus.

6 And the Cameron County delegates didn't feel like
7 they were in an appropriate spot to discuss issues between
8 Hidalgo and Cameron County if Hidalgo County wasn't going to be
9 of some short of consensus, didn't want to, you know, work
10 towards a plan and then have it, you know, sort of, you know,
11 rejected by Representative Pena.

12 Q. Now, there was also -- and you were also asked questions
13 about whether Representative Anchia had been able to secure a
14 district that he was in favor of, for his district.

15 A. That's correct.

16 Q. Did he vote for 283?

17 A. He did not.

18 Q. He voted against it?

19 A. He voted against it.

20 Q. And Representative Alonzo from Dallas, did he vote against
21 it?

22 A. He did.

23 Q. Okay. And most of the Latino members of the Texas house
24 of representatives voted against 283; is that correct?

25 A. That is correct.

1 Q. And most of the members of MALC, the overwhelming number
2 of the members of MALC and Latino legislators voted against
3 283; is that correct?

4 A. That is correct.

5 Q. Do you think the legislature intended to eliminate a
6 district in Nueces County?

7 A. I believe that they did.

8 Q. And so if that district happened to be a VRA protected,
9 Section V protected, Latino majority, Spanish surname majority,
10 Hispanic citizen voting age population district, then they
11 intended to eliminate such a district; is that correct?

12 A. When they eliminated, they did so knowing those variables
13 that you just mentioned.

14 MS. JORDAN: Your Honor, we would object. This is a
15 Section V question. This is not a Section V case. This is
16 Section II.

17 JUDGE GARCIA: All right. It'll be sustained, that
18 part.

19 Go ahead.

20 BY MR. GARZA:

21 Q. And you were also asked questions about a debate from the
22 house journal in 2001 regarding the plan that was adopted by
23 the Texas house of representatives in 2001. In fact, in 2001
24 the Texas house of representatives did not adopt and the
25 legislature of Texas did not adopt a plan for the Texas house

1 of representatives; is that correct?

2 A. That is correct.

3 Q. In fact, the plan was drawn by the legislative
4 redistricting board?

5 A. That's correct.

6 Q. And the legislative redistricting board can't draw a plan
7 unless the legislature fails to draw a plan; isn't that
8 correct?

9 A. That is correct.

10 Q. So any question about whether there was a vote on a 25 or
11 a 24 member plan for Harris County is really irrelevant because
12 no plan came out of the legislature that year; is that correct?

13 MS. JORDAN: Objection, leading.

14 JUDGE GARCIA: Yeah.

15 MR. GARZA: It was leading, Your Honor. I apologize.

16 JUDGE GARCIA: Okay. All right. Thank you.

17 MR. GARZA: I have no further questions, Your Honor.

18 JUDGE GARCIA: Any questions from the state?

19 MS. JORDAN: No more questions, Your Honor.

20 JUDGE GARCIA: Okay. We will -- and you're through
21 with Representative Fischer, right?

22 MR. GARZA: Yes, Your Honor. May Representative
23 Fischer be excused?

24 JUDGE GARCIA: Yes, he is.

25 THE WITNESS: Thank you, Your Honor.

1 JUDGE GARCIA: He probably wants to be.

2 Okay. Let's take a recess to 1:30. And who will be
3 your next witness, Counselor?

4 MR. GARZA: Dr. Jorge Chapa.

5 JUDGE GARCIA: Dr. Chapa.

6 (Recess at 12:14 p.m., change of court reporters)

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P R O C E E D I N G S

JUDGE GARCIA: Before we begin, Mr. Garza, I understand there is someone from DOJ here, a Jaye Sitton; is that right?

MS. JAYE SITTON: Yes, Your Honor.

JUDGE GARCIA: If you could come up here just for a moment. I understand you're in the voting section.

MS. JAYE SITTON: Yes, your Honor.

JUDGE GARCIA: Can you give us whatever you can tell us, the status of the case and where it is and where -- when it might be resolved?

MS. JAYE SITTON: Well, I am not authorized to enter an appearance or to comment, but I can say, as I think you were informed, that the court in D.C. has given a deadline for our answer of September the 18th and we will meet that deadline. Sorry. September the 19th.

JUDGE GARCIA: September the 19th.

MS. JAYE SITTON: At 3:00 p.m.

JUDGE GARCIA: Okay. Thank you. Thank you very much, ma'am, for being here.

MR. GARZA: Before we resume I have one very small, minor housekeeping matter. When I offered MALC Exhibits I asked if 1 through 84 be admitted into evidence and I meant to say 1 through 85, so I ask that Exhibit 85 be admitted into evidence.

JUDGE GARCIA: Is there any objection?

MR. COHEN: None as --

1 JUDGE GARCIA: Okay. Then it's admitted. Yes.

2 MR. NOTZON: Robert Notzon for the NAACP Union Leaders.

3 I've talked to defense counsel and we would like to make a verbal

4 motion to amend our witness list to add -- and it's agreed

5 insofar as they would not waive their ability to object to

6 relevance. We're going to add Charlie Chen of 5926 Warm Mist,

7 Dallas, Texas 75248. Home number of 972 -

8 JUDGE GARCIA: We don't need the home number.

9 MR. NOTZON: Yes, your Honor.

10 JUDGE GARCIA: Okay. Any objection?

11 MR. MATTAX: We'll need to discuss to get an

12 opportunity to get a deposition beforehand but, regardless,

13 that's -- no objection on --

14 JUDGE GARCIA: All right. Thank you.

15 MR. VERA: Also on behalf of LULAC we have submitted

16 both the e-mail and copies to the State of all LULAC exhibits.

17 The court has copies of 1 through 50, plus all the sub-parts that

18 go with it that we have for admittance.

19 JUDGE GARCIA: Okay. Any objection?

20 MR. MATTAX: No objection.

21 JUDGE GARCIA: Those are admitted.

22 MR. VERA: Thank you, Judge.

23 MS. PERALES: Your Honor, at this time the Task Force

24 plaintiffs move their exhibits numbered in the range 200 to 391.

25 We have shared these with the State.

1 JUDGE GARCIA: Any objections?

2 MR. MATTAX: A couple of clarifications with respect to
3 that. And I believe the same clarification with Mr. Hebert.
4 With respect to newspaper articles that are being admitted, I
5 don't object to those that -- so long as they're not being
6 offered for the truth of the matter asserted I would have no
7 objection for newspaper articles for what they're worth.

8 JUDGE GARCIA: Okay. These are newspaper articles
9 related to what?

10 MS. PERALES: Some of the newspaper articles, Your
11 Honor, are demonstrative of legislator statements during the
12 process. They aren't offered for the truth of the matter
13 asserted.

14 JUDGE GARCIA: Okay. All right.

15 MS. PERALES: And also, Your Honor, we have a number of
16 exhibits that we're moving for admission subject to the exercise
17 of legislative privilege because they are depositions that may
18 include material --

19 JUDGE GARCIA: Okay.

20 MS. PERALES: -- that certain legislators would want to
21 vote privilege on.

22 JUDGE GARCIA: Okay. If you'll tell us beforehand the
23 day before or the day of that you're going to use them so we can
24 give that appropriate consideration.

25 MS. PERALES: Yes, Your Honor.

1 JUDGE GARCIA: Okay.

2 MR. MATTAX: Yes. Thank you, Your Honor. That was the
3 next point I was going to make. I've tried to contact the
4 various legislatures whose names may have been mentioned to see
5 if they will, in fact, lodge an objection.

6 The other thing I'd like to do now is move for
7 admission of the agreed exhibits. We have two forms of agreed
8 exhibits. I don't believe they were moved for admission. The
9 joint exhibit list is all the maps that have been provided and
10 that's J1 through J40, the different maps, including the maps
11 passed by the legislature, I move for admission.

12 JUDGE GARCIA: All right. Any objection on this side?

13 MR. GARZA: No objection.

14 JUDGE GARCIA: None. Okay. Fine. They're admitted.

15 MR. MATTAX: We also have compiled for the court a
16 joint expert exhibit list which has three binders which have been
17 provided to the court designated E-X 1 through E-X 20 and these
18 are the expert reports of the various witnesses that will be
19 proffered in this case that we've put together and I move for
20 admission.

21 MR. GARZA: No objection.

22 JUDGE GARCIA: All right. Those are in.

23 MR. MATTAX: Lastly, Your Honor, we have one witness
24 who is going to be out of town next week on a vacation on a
25 vacation. It's some mission work. His name is Roy Handownton.

1 I've sent an e-mail to counsel seeing if they would object to
2 trying to have him out of order this Friday and we'll discuss
3 that once I hear back from other plaintiffs.

4 MR. GARZA: The only thing I would add to that is the
5 plaintiffs are conferring. We're a little concerned about
6 out-of-town witnesses that have already been scheduled, but we'll
7 confer --

8 JUDGE GARCIA: Confer and let us know in the morning.
9 Okay?

10 MR. GARZA: I'm sorry?

11 JUDGE GARCIA: Let us know first thing in the morning
12 or later today.

13 MR. GARZA: Yes, Your Honor.

14 MR. MATTAX: And -- and we suggested Friday because
15 he's leaving on Saturday. We can do it earlier. We would limit
16 our direct very discretely because he has been deposed, just for
17 some clarification of some of the issues that have been raised.
18 He's the lawyer -- excuse me, the person who drew the
19 Congressional map in the House and we wanted him to have -- this
20 court to have the opportunity to see him in --

21 JUDGE GARCIA: Mr. Garza, if you would let us know as
22 soon as you can.

23 MR. GARZA: Yes, Your Honor. We will confer. The
24 deposition is available and we agreed -- it's a fairly extensive
25 deposition and -- and the State did announce at the beginning

1 that they might be using that in lieu of live testimony so -- and
2 we will confer and we'll --

3 JUDGE GARCIA: Okay. All right.

4 MR. HICKS: A housekeeping matter. Not a good
5 housekeeping matter by me. This is Rene Hicks for the Rodriguez
6 plaintiffs. In addition to the exhibits that are already in
7 we're just going to have one exhibit. It's a demonstrative
8 exhibit that lists candidates from Travis County. And due to a
9 technical glitch, meaning I couldn't figure out how to do the
10 equipment. We haven't printed it out yet. We're going to print
11 it out this evening and we'll send it out to everybody.

12 JUDGE GARCIA: All right. Fine. Anything else?

13 MR. BLEDSOE: Your Honor, you may recall we did bring
14 up to ya'll the likelihood we were going to ask for a special
15 time for members of Congress. And I guess there are four members
16 of Congress who have planned their schedules hopefully to testify
17 on -- on Monday.

18 JUDGE GARCIA: What are you proposing? That they
19 testify Monday, all four?

20 MR. BLEDSOE: All four. All four on Monday. I think
21 one in the afternoon and three --

22 JUDGE GARCIA: Okay. And who are the members of
23 Congress?

24 MR. BLEDSOE: Sheila Jackson-Lee who is here now.
25 Congress-woman Eddie Bernice Johnson, who is here. Congressman

1 Al Green and Congressman Henry Cuellar.

2 JUDGE GARCIA: Well, now, were any of them here during
3 this morning's testimony or was there any --

4 MR. BLEDSOE: They're all parties, Your Honor. They're
5 all parties, so --

6 JUDGE GARCIA: Okay. They're parties. I'm sorry.
7 Okay. So you're asking whether they can testify on Monday?

8 MR. RIOS: Monday morning.

9 JUDGE GARCIA: I'm not trying to limit you. We just
10 trying to figure out our schedule. How many minutes do you
11 believe -- and again I'm not trying to limit you. How many
12 minutes do you believe each Congress person will testify.

13 MR. RIOS: For me, Congress Cuellar, it's 30 to 45
14 minutes.

15 MR. BLEDSOE: Something similar probably for --

16 JUDGE GARCIA: Okay. For the other three?

17 MR. BLEDSOE: One out-of-town witness that -- with
18 special accommodation from the State. I think they wanted to
19 take his deposition 48 hours before he was to be deposed and so
20 he would have an extended stay to have him on Monday as well as
21 Dr. Vernon Burton.

22 JUDGE GARCIA: Okay. Any concern, objection from the
23 State?

24 MR. MATTAX: No, Your Honor.

25 JUDGE GARCIA: Okay. Then let's plan on it Monday

1 morning. Okay.

2 MS. RING: Judge, the witness has not been sworn in.

3 JUDGE GARCIA: Okay. Go ahead.

4 **JORGE CHAPA,**

5 having been first duly sworn, testified as follows:

6 EXAMINATION

7 BY MR. AVILA:

8 Q. Good afternoon, Your Honor. My name is Joaquin Avila and
9 I'm the attorney for plaintiff MALC and I'll be doing the direct
10 examination of Dr. Jorge Chapa.

11 Dr. Chapa, can you please tell us your current
12 position?

13 A. I'm a professor at the University of Illinois in
14 Urbana-Champaign with appointments in independent student
15 government and public affairs, the department of sociology and
16 the department of Latino and Latino studies.

17 Q. And, Dr. Chapa, in terms of your previous employment history
18 have you conducted work with the Bureau of the Census?

19 A. Yes, I have.

20 Q. In what capacity?

21 A. I've worked consulting, advising, meeting with the Census
22 Bureau's officials and staff since 1980 from the Census
23 Bureau -- census data has been the major topic of my academic
24 research since before 1980. From 1994 through 2002 I was a
25 member of the Census Bureau's advisory committee on racial

1 methods of statistics. I've attended several research
2 conferences by the Census Bureau and gave a paper that was
3 published by the Census Bureau. I think it was 1990. It was the
4 early 1990s. I was on the ad hoc committee on racial statistics.
5 I met with the Census Bureau early in the 2000s. I also was
6 appointed as a member of the National Research Counsel Panel on
7 residence rules for the census that was sponsored by the Census
8 Bureau.

9 Q. Dr. Chapa, in your previous work dealing with census data
10 and demography issues have you had an opportunity to work on
11 undercount issues affecting the Latino community?

12 A. Yes, I have.

13 Q. Could you give us a very brief description of what that work
14 entailed?

15 A. It has been a -- yes, a major topic of my interaction with
16 the Census Bureau. My first visit there in 1980 was about the
17 differential undercount of racial minorities. I went again to
18 visit them with a delegation of MALDEF lawyers in 1989.
19 Particularly concerned about enumeration in the colonias of south
20 Texas. That was a topic of my research paper for the Census
21 Bureau at a special conference on enumeration. It was a major
22 component of my duties on the racial network advisory committee
23 among many others. They had a task force on colonia enumeration
24 and helped to minimize underenumeration. And I always met with
25 that task force and I advised the Census Bureau staff on -- in

1 charge of those activities on how -- how they might proceed. And
2 it's been -- well, certainly discussion about correction of the
3 census was a major part of my duties and my responsibilities as a
4 member of the advisory committee so it's been a big part of my
5 official involvement with the Census Bureau.

6 Q. And as part of this involvement has your previous work
7 involved working on methodologies and techniques for the
8 enumeration of population groups?

9 A. Yes, it has.

10 Q. And can you just very briefly describe the nature of that
11 work?

12 A. Well, a lot of it was just procedures to minimize the
13 undercount. Also a lot of academic work reviewing methods to
14 correct or adjust for underenumeration.

15 And by the way, if I may to your previous question,
16 differential enumeration was also a big part of the National
17 Research Counsel Committee on Residency Rules. So there's one
18 more -- which was sponsored by -- an independent committee but
19 sponsored and requested by the Census Bureau. And they got -- a
20 lot of the concern of the National Research Counsel Committee was
21 again minimizing differential enumeration, which is kind of in
22 the 2000 census -- well, the Census Bureau discovered in its
23 analysis of the census that they had undercounted minority groups
24 with the African-Americans and Hispanics, but they had
25 overcounted mainly Anglos to a large degree. So the concern

1 was -- their concern and the concern of the committees and all my
2 moment was to get a complete and accurate count of all groups.
3 And that's why I had to change the focus from underenumeration to
4 differential enumeration.

5 Q. And as far as your educational background have you received
6 any collegiate or postgraduate degrees?

7 A. Yes.

8 Q. Can you describe that for me?

9 A. Yes. I have -- well, my undergraduate degree is in biology
10 with honors from the University of Chicago. I got separate
11 masters degrees in sociology and demography from the University
12 of California, Berkley, and I got a Ph.D. in sociology from UC
13 Berkley as well.

14 Q. Have you testified as an expert witness in any voting rights
15 cases?

16 A. Yes, I have.

17 Q. Can you just give us a brief description of that testimony?

18 A. I testified on the Hispanic demographics in the 2000 Texas
19 redistricting cases under various names. In all three of them
20 actually, and they're listed in my report. I was a witness in
21 the city of Euclid, Ohio in their voting rights case, the defense
22 of their voting rights accusations. Also the yes proposition 200
23 in Arizona and this trial.

24 Q. Okay. In your capacity as a sociologist have you conducted
25 any studies on socioeconomic disparities involving the Latino

1 community and whites?

2 A. Yes, I have.

3 Q. And can you describe the nature of those studies?

4 A. It's been a major focus of my academic research at least
5 since -- well, about 1980. About that time I would start -- that
6 focus has been part of almost everything I've written.

7 MR. COHEN: If it please the court, the State
8 understood from last week's instructions the Court wanted to move
9 things along expeditiously. Dr. Chapa and many of the other
10 experts already have their CVs in the record. We will have no
11 objection to --

12 JUDGE GARCIA: Okay. Why don't we just bypass that
13 portion.

14 MR. COHEN: I was going to say if he'll simply specify
15 the area that he's going to talk about.

16 MR. AVILA: In that case, to speed things up, Your
17 Honor, I would request that the court designate Dr. Chapa as an
18 expert on demography, census data and techniques involving the
19 census undercounts of Latinos as well as the history of
20 discrimination against Latinos and its lingering effects on the
21 Latino community.

22 JUDGE GARCIA: Any objection?

23 MR. COHEN: No, Your Honor.

24 JUDGE GARCIA: Okay. Great. Move on. Thank you.

25 Q. (BY MR. AVILA) I'd like to now direct your attention to

1 what's been marked as MALC Plaintiff Exhibit 20, which is your
2 report, but for purposes of the court it is Exhibit E1, I
3 believe, that's part of the joint exhibits so you -- okay.

4 Now, Dr. Chapa, were you retained by MALC to perform a
5 certain demographic analysis?

6 A. Yes, I was.

7 Q. And what was the nature of that request?

8 A. They asked me to look at the size, distribution and
9 demographic characteristics of Texas's Hispanic population,
10 whether demographic evidence shows Hispanics in Texas --

11 (Interruption by reporter.)

12 A. Sorry, past discrimination which hinders their ability to
13 participate effectively in the political system. How relevant
14 socioeconomic characteristics relate to proposed redistricting
15 plans. The proportion of Hispanic citizen voting age population
16 which -- abbreviated H-C-V-A-P or HCVAP compared to the total
17 CVAP, citizen voting age population, in selected districts and
18 various plans and the impact of the census enumeration on these
19 issues.

20 Q. Now, with respect to the tables that are a part of MALC
21 Plaintiff's Exhibits Number 46 and 47, and those the court should
22 have in separate notebooks, I want to direct your attention to
23 Exhibit 47, page 2. Now, these tables that were attached to your
24 report, do they reflect the findings of the results of your
25 studies?

1 A. Yes, they do.

2 Q. Okay. So let's go very quickly now through table one which
3 is 47.2. Can you very briefly describe to us what was your
4 finding with respect to that table?

5 A. Well, I find that the pop -- the population sections
6 grew -- the population of Texas grew rapidly between the years
7 2000 and 2010. And the Hispanic population grew even more
8 rapidly. I also looked at concentric growth of the Hispanic
9 population in Texas counties that had either a large number or a
10 high concentration of Hispanics and those are detailed in table
11 one.

12 Q. And in table -- I'll now direct your attention to table two,
13 which is page 47.8. Can you let us know when you find that?

14 A. Just a second. Okay. Yes, I have table two in front of me.

15 Q. Can you express -- can you state to the Court what your
16 findings were with respect to that table?

17 A. This table shows that Hispanics in Texas, either as a -- a
18 group of all Hispanics or a group of Hispanics born in the United
19 States or Hispanics born in Texas, residing in Texas at the
20 time of the American--they were interviewed by the American
21 Community Survey--still have lower levels of educational
22 attainment than non-Hispanics.

23 Q. Now I direct your attention to page 47.9 which is table
24 three. Can you relate to the Court what findings are expressed
25 in this table?

1 A. With the same groups it shows that Hispanics in these three
2 categories that we've discussed before have lower incomes and
3 lower wage and lower earning, wages and salary--in other words,
4 earnings--than non-Hispanics.

5 Q. Now I direct your attention to table four of page 47.5. And
6 can you state to the court what your findings were with respect
7 to that table?

8 A. Yes. This -- table four looks at the same -- well, the
9 educational attainment measures, the same ones they use for the
10 whole state for the same population -- well, the same age group.
11 Well, this group is 20 -- 25 -- ages 25 and over for each of the
12 15 -- 17 counties I identified having large Hispanic populations
13 in table one. And it shows that in every county Hispanics have a
14 lower level of educational attainment than non-Hispanics.

15 Q. Okay. Now I want to direct your attention to table five
16 which is page 47.6.

17 A. Yes, I have it.

18 Q. Can you state to the court what your findings were that are
19 included in this table?

20 A. Well, it's the same set of counties. And here I look at the
21 left side of the page where I compare the median household income
22 for the total population, Hispanic population. It shows that
23 Hispanics households have lower incomes than the total population
24 for the same 17 counties that are highlighted in table one.

25 Now, the right side of the page is the same set of

1 counties. It shows per capita incomes, but that figure, that
2 data, the per capita income by race, was available from this data
3 set for the total population for the Hispanic population and the
4 white non-Hispanic population. And to me that table highlights
5 the difference between the Hispanic population -- well, the
6 Anglos we'll call them in this court. The Anglo or white
7 non-Hispanic population.

8 The other tables when you compare, for example, on the
9 left side of the page, the problem with comparing Hispanics with
10 total populations in some of these counties is that Benson --
11 Webb County, for example, 90 -- almost 96 percent of the
12 Hispanic -- of the population of the total county is Hispanic.
13 So the comparison with -- isn't as strong -- it doesn't highlight
14 the desired differences. Everybody is Hispanic or almost
15 everybody in Webb County is Hispanic. If you're comparing the
16 total population you're almost comparing the same group, but the
17 data on the right side of the page really highlights if you
18 look at -- well, the population -- again, it's not available for
19 that group, but it shows that there's a real difference between
20 the Hispanics and Anglos.

21 Q. Now I want to direct your attention to page 47.7, which is
22 table six. Can you state to the court what your findings were
23 with respect to that table?

24 A. Again -- yes. Again, for the same set of counties there is
25 one more economic indicator. It shows that the poverty rate is

1 higher for Hispanics and typically much higher in this total
2 population so it's one more economic indicator.

3 Q. Now in your -- as a former director of -- in your previous
4 capacity were you ever a director of a Latino/Latina studies in
5 a -- in a university?

6 A. Yes, I was. I was the founding director of a Latino studies
7 program at Indiana University.

8 Q. And during your tenureship there did you have an opportunity
9 to teach courses on history affecting Latinos?

10 A. Yes, I did. I devised and taught a number of courses on
11 Latino history in the U.S., in the Midwest and in Indiana.

12 Q. And as part of that discussion or part of those courses did
13 you examine the type of data that you presented in tables 1
14 through 6?

15 A. Yes, I did.

16 Q. And in your professional opinion are these tables indicative
17 of discrimination against Mexican Americans or Latinos?

18 A. Yes, they are.

19 Q. And in your professional opinion are there any lingering
20 effects of that past discrimination?

21 A. Yes, there are.

22 Q. And can you describe to us what those lingering effects are?

23 A. Well, besides -- in addition to the ones showing these
24 tables, there's a lower economic and educational attainment, they
25 do have -- both of those factors are strongly associated with

1 lower rates of registration, voting and participation in the
2 political system.

3 Q. I now want to direct your attention to page 47.1 or 10 and
4 that is page 7.

5 A. Okay.

6 Q. And can you state your findings with respect to that table?

7 A. Yes. It shows that the -- the growth -- the total number of
8 citizens, voting age population of the non-Hispanic white
9 system -- voting age population and the Hispanic citizen voting
10 age population. It shows that the -- well, first of all, it
11 shows a number in 2000 -- and years of joint or a cumulative
12 total for the years 2005 and 2009, which I'll talk about in a
13 second and then for each year in 2005, 2006, 2007, 2008, 2009.
14 And the table shows there's a very rapid growth in the Hispanic
15 citizen voting age population in the last five years as of 2005
16 through 2009, and also an increase in percentage of the state's
17 total citizen voting age population from 24.6 percent in 2005 to
18 25.5 percent in 2009.

19 And one more point about that table. It also shows,
20 and I think this is important, that the 2009 Census Bureau
21 estimate of the citizen voting age -- Hispanic citizen voting age
22 population of three million, nine hundred forty -- excuse me, 944
23 thousand in '88 is essentially larger than the estimate -- they
24 produce from the 2005/2009 DOJ special tabulation of 3,674,800.

25 Q. Now, I notice that on this table there are the initials ACS.

1 What does that stand for?

2 A. American Community Survey.

3 Q. And can you very briefly describe to the court what -- what
4 is the American Community Survey?

5 A. It's an ongoing survey conducted by the Census Bureau that
6 was intended to be a substitute for the information that they
7 previously derived from what is known as the long form of this
8 annual census. I mean, they interviewed people, 250,000
9 households a month, and the sample is designed so it could be
10 accumulated over time. So again it provides current data on
11 detailed socioeconomic characteristics. A more current estimate
12 that -- for many items that the government needs to measure for
13 funding formulas from -- various purposes required by law.

14 Q. How is the ACS or the American Community Survey different
15 from this annual census as conducted by the Census?

16 A. Well, very -- a different design. There are different
17 residents rules. There is a slightly different structure of
18 questionnaire. Different procedures for collecting the data.
19 The ACS is collected by a full-time professional staff and they
20 use telephone techniques, computer-assisted survey techniques and
21 in-person interviews to collect the data. And also mailout,
22 in-person and mailout interviews. So a multimodal data
23 collection.

24 It's a small -- well, it's a smaller sample size than
25 the long form of the annual census. But also for small

1 geographic areas. The only way you can get estimates for small
2 geographic areas with a census tracking lot group is by
3 accumulating the data over five years. Whereas on the long form
4 census you get this data for the same areas as block groups and
5 census tracks all collected -- well, around census day.

6 Q. Now, is there -- is the ACS information, the data, is that
7 the only data that -- provided by the Census that can tell you
8 information on non-citizens and their voting age?

9 A. Well, it's the only -- there are other surveys that have the
10 information, but they're only available for very -- I mean,
11 they're valid only for very large geographic areas. I think
12 particularly of some supplements for the -- it used to be called
13 the current population survey which the Census Bureau has
14 recently renamed. And the acronym is ASEC, but I'm not sure -- I
15 don't recall exactly what it stands for. But this is the only
16 data for which you can get citizenship -- this is the only data
17 set, the only data source for which citizenship information is
18 available in small geographic areas.

19 Q. And what are some of the advantages to the use of this ACS
20 data over those -- this annual census with respect to
21 citizenship?

22 A. It doesn't really -- I guess the only advantage is to what
23 we have. I do think the -- for the purposes of citizenship data
24 the long form data were better. For most of the other uses for
25 which the Census Bureau used and this government used the sample

1 data, the long form data, the ACS is superior. But for the
2 purposes of redistricting, if we had a choice between the two,
3 the long form data would be better and preferable, but we don't
4 so this is the best data available on that topic.

5 Q. Okay. I'd like to now turn your attention to table eight
6 and I want to turn your attention to page 46.5 which is plan
7 C185, the adopted congressional plan.

8 JUDGE GARCIA: What's the exhibit number, please?

9 MR. AVILA: 46.5.

10 JUDGE GARCIA: 46.5.

11 MR. AVILA: Yes.

12 Q. (BY MR. AVILA) Now, can you explain what that table
13 incorporates?

14 A. Okay. It's -- as I described in my report, it describes a
15 method to use the American Community Survey citizenship data
16 to -- and voting age population data for census tracts in Texas
17 to estimate a race-specific citizen -- a CVAP ratio we call it.
18 A CVAP ratio. I applied that ratio to the results of the 2010
19 popula -- PL data population counter-redistricting for each race
20 and then tabulated those results according to the census blocks
21 identified by the -- by the map drawers or from MALC.

22 So they sent the list of census blocks in each
23 district, merged those files with the CVAP data, CVAP PL data
24 set, and then produced estimates of the total population. I'll
25 read across from left to right. The total population in each

1 district. The total voting age population in each district. The
2 Hispanic voting age population in each district. The
3 African-American voting age population in each district. The
4 total citizen voting age population of each district, total CVAP,
5 HCVAP, African American CVAP, and then the percent of each
6 district that was HCVAP, African-American
7 percent --African-American CVAP and percent HCVAP and
8 African-American CVAP combined.

9 Q. Now, based on your analysis of the CVAP data that you
10 presented in that last column on table eight of page 46.6 --

11 A. I'm sorry?

12 Q. 46.5. I'm sorry.

13 A. Okay.

14 Q. How many citizen voting age majority districts that are a
15 combined minority, Hispanic and African-Americans, are there?

16 A. 12.

17 Q. 12. Okay. Now I want to direct your attention to page 46.2
18 which is a congressional plan that was presented by MALC. And
19 it's the same -- does this table reflect the same categories as
20 plan 185 that we were just talking about?

21 A. Yes, it does.

22 Q. Okay. And so for all of these -- these plans that we have
23 here in terms of the congressional districts that go from pages
24 46.2 to page -- well, page 2, page 3, page 4, page 6 and page 7,
25 those are all the same categories in terms of the population

1 characteristics?

2 A. That's right. They are.

3 Q. And so with -- with these tables then can you compare what
4 the number of majority Latino, African-American CVAP districts
5 were in the adopted plan to proposed plans that were proposed by
6 MALC?

7 A. Yes, I can.

8 Q. And can you take, as an example, one of them and just
9 indicate how many majority minority African-American, Latino CVAP
10 districts were created?

11 A. Sure. In the exhibit numbered 46.2 for plan C163 there were
12 13 CVAP majority districts and that means districts where the
13 majority -- African-American and Latino CVAP combined. And one
14 district that was I would call a borderline district that was 48
15 percent CVAP, African American CVAP combined. I called it
16 borderline because the latest data -- I use the same CVAP data as
17 the Texas legislative counsel did. It's the same 2005, 2009 data
18 set. And we know from the data by table seven that that's lower
19 than the 2009 citizenship rates. Probably lower than the 2010
20 data sets. So the borderline district, the district -- the 36 --
21 even though I estimate that it's 48 percent, HCVAP and
22 African-American CVAP combined, it well may be 50 percent or
23 more.

24 Q. And you're talking about plan C13? 163?

25 A. Yeah, C163.

1 Q. Okay.

2 A. So that's this plan. There's 13 CVAP districts that are
3 over -- the vast majority is the one that may well be a majority.

4 Q. And as we go through these plans if you could just tell us
5 what the number of majority Latino CVAP districts were in these
6 particular plans.

7 A. Is that Latino CVAP or --

8 Q. Latinos and African-Americans.

9 A. Okay. So for plan C164 --

10 Q. Which is page 46.3?

11 A. Yes. Thank you. Again, 13 CVAP majority districts. One
12 borderline district. For plan 165, page 46.4, 13 CVAP, one
13 borderline district. And for plan 187, page 46.6 there are 14
14 CVAP majority districts. And plan 188 there were 14 CVAP
15 majority districts and one borderline district.

16 Q. Thank you. Now I want to direct your attention to page
17 46.8, table 9. And what does that table reflect?

18 A. Essentially the same analysis as we just went through for
19 the congressional districts, the same categories except these are
20 for legislative house districts. Table nine, number 46.8, it
21 shows that there are a number of 55 African-American, Hispanic
22 CVAP majority districts.

23 Q. Now, the -- I want to direct your attention to page 46.10,
24 which is the plan -- House plan 283, which is House bill 150, the
25 adopted house plan. There is a typo on page -- on that page; is

1 that correct?

2 A. That is correct.

3 Q. Instead of -- where it says table 11 at the top it should
4 say in plan H283 instead of 203; is that right?

5 A. It does say -- actually, the typo -- there is a typo.

6 Q. Yes, there is a typo.

7 A. I believe -- I mean, is it 203? I'm not --

8 Q. I believe -- and correct me if I'm wrong, but I see at the
9 top the title there's a --

10 A. Oh, I see. The actual title. Yes, I see. Yes. I'm sorry.
11 Yes, that's a typo.

12 Q. Okay.

13 A. There's also another error on the table.

14 Q. Okay.

15 A. And the left-hand column numbers the district except that
16 the numbers skipped the first district so there's really -- on
17 the bottom the annotation says number HCVAP plus African-American
18 CVAP majority districts should equal 50 instead of 49.

19 Q. And the correction in terms of the title should be 283?

20 A. Yes, that's plan H283.

21 Q. Okay. So now when we take the -- let me make sure I
22 understand this. So what this table tells you is that there are
23 50 districts in this plan that have over 50 percent combined
24 Latino, African-American citizenship voting age population?

25 A. That's right.

1 JUDGE GARCIA: Mr. Avila, what's the correct plan
2 number?

3 MR. AVILA: The correct plan number is 283, Your Honor.

4 JUDGE GARCIA: Okay. All right.

5 MR. AVILA: And that was the plan adopted by the House.

6 JUDGE GARCIA: Okay.

7 Q. (BY MR. AVILA) Now let's look at page 46.9, which is plan
8 205, which is the plan that was adopted or that was proposed by
9 MALC. When we look at -- are you there?

10 A. Yes, I am. Thank you.

11 Q. Now, when we look and we're comparing that same column, the
12 number of districts that are over 50 percent Latino
13 African-American citizen voting age population, how many
14 districts are we talking about?

15 A. There's 58 there.

16 Q. And when we look at -- we return our attention to page 46.8,
17 the table nine, which is the -- another plan proposed by MALC,
18 H201, which was in the previous testimony described as a whole
19 county plan that was presented by MALC, when you compare that
20 column, the same columns that we've been comparing, how many
21 majority Latino CVAP districts do you have?

22 A. There are 55.

23 Q. Latino CVAP African-American districts?

24 A. Yes. There are 55.

25 Q. Okay. Dr. Chapa, after reviewing all of these tables do you

1 have any -- any findings with respect to whether Latinos are
2 experiencing a significant growth rate including Latino CVAP here
3 in the state of Texas?

4 A. Yes, I do. Both the total population, the voting age
5 population, the citizenship voting age population, are growing
6 very rapidly.

7 Q. And with respect to -- after reviewing these tables and your
8 testimony, do you have any findings with respect to whether
9 Latinos have experienced a history of discrimination that
10 continues to have lingering effect on the Latino community?

11 A. Yes, I do. I -- the same indicators that I and the other
12 sociologists concerned with that. There are -- lower levels of
13 income, education and earnings still continue to the present day
14 and they still have the lingering effect of lowering the Latino
15 participation rates in vote and registration and politics in
16 general.

17 Q. And based on the tables you just reviewed and the testimony
18 that you've presented do you have any findings with respect to
19 whether Latinos are sufficiently concentrated that they are able
20 to create majority minority districts?

21 A. Yes indeed. They are sufficiently concentrated to form a
22 number of CVAP majority districts.

23 Q. And that would include African-American -- combined
24 African-American, Latino citizen voting age population districts?

25 A. Yes, that's right.

1 MR. AVILA: Your Honor, may I have a moment?

2 JUDGE GARCIA: Yes, of course.

3 MR. AVILA: Pass the witness, Your Honor.

4 JUDGE GARCIA: Okay. Thank you. And state your name
5 for the record, please.

6 MR. COHEN: Yes, Your Honor. Bruce Cohen for the State
7 defendants.

8 CROSS-EXAMINATION

9 MR. COHEN:

10 Q. Good afternoon, Dr. Chapa.

11 A. Good afternoon.

12 Q. It's good to see you again.

13 A. Thank you.

14 Q. I want to first talk about the racial history -- the history
15 of the treatment of Hispanics in Texas that you talked about.
16 You talked about it both in your expert report that's been
17 tendered as an exhibit, you talked about it with me during the
18 deposition when we met a few weeks ago, and I think you spoke
19 about it briefly just now.

20 Now, so we're clear, you're not talking about
21 traditional forms of state discrimination like a poll tax or
22 covenants that restrict certain religions or certain ethnicities
23 to certain increments. That is not what we're talking about;
24 isn't that right?

25 A. Well, not those in particular. Certainly not those specific

1 examples.

2 Q. Okay. Those don't take place anymore?

3 A. Not to my knowledge.

4 Q. What's the last one that you can name of that sort that
5 actually took place?

6 A. Well, I'm not sure about restrictive covenants. I suppose
7 they probably ended in 1960 sometime.

8 Q. Okay. I'll throw one out for you and you tell me if you can
9 go later than that.

10 A. Okay.

11 Q. In 1967 the nation -- the Supreme Court got rid of
12 anti-miscegenation laws, laws that restricted intermarriage. In
13 Texas that law went away in 1970. Can you -- can you tell me
14 anything later than 1970?

15 A. Again, not about the -- those particular areas.

16 Q. 1973 maybe. Multi-member districts finally got rid of it in
17 Texas pretty much. Can you take me any later than a state action
18 in 1973?

19 A. I think -- well, that's discriminatory. I have doubts about
20 the at large elections particularly, for example, in Austin I --
21 is that a state action? Is the structure or voting district of
22 the Austin city council --

23 Q. No.

24 A. That's --

25 (Simultaneous talking.)

1 Q. Actually, county of Travis, they're over here. I'm
2 representing the state of Texas and I'm trying to find out what
3 the state has done. And we can agree that you can't come up with
4 anything past 1973 of that level. Is that a fair statement?

5 A. On those particular areas.

6 Q. Okay. Well, you talked briefly about education.

7 A. Yes.

8 Q. You talked about it two to three different times. Talk to
9 me about school funding. Is school funding an act of de jour
10 state discrimination in your understanding of the demography of
11 Texas?

12 A. I would say I know the facts of -- both the K through 12 and
13 higher education -- well, in K through 12 Hispanic students --
14 were -- this is a study I did, I believe, 19 -- '97, '98 just
15 before I left Texas. Most Hispanics were in school districts
16 that received lower levels of funding in the K through -- from
17 the state in K through 12 system. Also at the same time
18 Hispanics between south Texas and the border area had much less
19 access to higher education programs than they did -- than the
20 population of the rest of the state.

21 Q. Are you familiar with, as many of us are, Edgewood
22 Independent School District versus Kirby?

23 A. Yes.

24 Q. That was -- that was a decision by the Texas Supreme Court
25 among other cases?

1 A. Among others, sure.

2 Q. And would you agree with me that when educational
3 fund -- when educational funding concerns were litigated in the
4 Texas courts that an answer within the Texas constitution was
5 found by the state of Texas?

6 MR. AVILA: Objection, Your Honor, to the extent that
7 it calls for a legal conclusion. We're not offering him as a --

8 MR. COHEN: I understand. I'll take it back a step.

9 Q. (BY MR. COHEN) Would you agree with me that the issue of
10 funding schools was resolved in the courts and not, for example,
11 at the voting booth?

12 A. As far as I know, yes. Yeah.

13 Q. Now, you talked a lot about the Census Bureau and frankly we
14 talked about it a lot last time and you taught me the term
15 underenumeration, undercounting. And one of the things we talked
16 about was, I think, briefly the budget of the Census Bureau. If
17 I told you it's about 14 and a half billion dollars I wouldn't be
18 too far off, would I?

19 A. Well, it depends. I don't know. Plus it's also a question
20 of when. The budget does still -- the annual census but I'm
21 not -- I'm not aware of the total budget.

22 Q. Okay. Now within the Department of Congress and the Census
23 Bureau there's already been set up an administrative process to
24 address differential -- I'm sorry, to address undercount or
25 underenumeration. That's a correct statement, isn't it?

1 A. Well, it's been set up to assess it rather than address it.
2 They are determining the extent of it.

3 Q. We may be talking about two different things, sir.

4 A. Okay.

5 Q. It's my understanding -- and I'm not a demographer and I
6 certainly not a censusist, but it's my understanding that if I,
7 as an individual, think that I have found a problem with a count,
8 typically an undercount, then I can file an administrative claim
9 or hearing or complaint with the Census Bureau to have them look
10 into that. Are you familiar with that process?

11 A. Well, there's several. Actually for individuals it's
12 not -- the process is more towards governments than an
13 individual. If an individual calls up the Census Bureau and said
14 I was not counted -- I mean, per the standard census procedure
15 would be to say "we'll get you a form."

16 Q. Sure.

17 A. If you do that during census time.

18 Q. Uh-huh.

19 A. There's a period before and after the census where local
20 governments and other agencies have input into the census.

21 Q. Well, let's take it back then if we're not going to talk
22 about individuals. We've talked a little bit already in this
23 trial about some counties. And I know Hidalgo and Cameron County
24 in the Rio Grande Valley specifically. Now, it's your contention
25 from your report that Hidalgo and Cameron County have an

1 underenumeration of Hispanics in colonias. Did I basically get
2 that right?

3 A. Yes.

4 Q. Okay. And Hidalgo County certainly had a process by which
5 it could inform the Census Bureau that it thought that it
6 perceived an underenumeration of its -- of its residence. That's
7 a correct statement?

8 A. Yes.

9 Q. In fact, you were retained still during the legislative
10 session and you looked at that issue, didn't you?

11 A. Well, the issue of the underenumeration in Hidalgo, Cameron
12 County. Not the redress of the Census Bureau.

13 Q. Understood. Did you attempt the redress on behalf of your
14 clients or did the lawyers who retained you do so to your
15 knowledge?

16 A. Those weren't part of my duties.

17 Q. Okay. Did you alert any member of the Texas legislature,
18 including any member of MALC, that you perceived that there may
19 in fact have been an underenumeration of Hispanics in Hidalgo or
20 Cameron County?

21 A. I did not.

22 Q. Okay. If we could very briefly talk about tables 1, 2 and 3
23 that you looked at before.

24 A. Okay.

25 Q. And if you-all could put up table three that would be very

1 helpful.

2 MR. AVILA: What page?

3 MR. COHEN: 46.5.

4 A. It's 47.4.

5 Q. (BY MR. COHEN) Thank you so much. You've got a copy of it
6 in front of you. I think the Court does too.

7 A. I'm sure.

8 Q. But just take one second. Okay. That's great. Now, if I
9 understand this chart that the age is 25 to 64, that's -- that's
10 a not-unusual way to describe the working age population of a
11 society, correct?

12 A. Correct.

13 Q. So demographically if you talk about someone 25 to 64 you've
14 caught them in their working years from the beginning of really
15 adult entry into the workforce, post schooling training, until
16 about retirement age, right?

17 A. Right.

18 Q. And we could have done this a lot differently if you wanted.
19 We could have done more discreet cohorts, right? 25 to 35, 35 to
20 45, 45 to 50, that sort of thing, right?

21 A. Right.

22 Q. It's your contention if you take this 40-year spread you're
23 going to see the results every 10 years. That's about what you
24 said I think when we had a deposition, right?

25 A. Yes.

1 Q. Except the problem throughout is that while -- this is
2 median personal income and median wages and salary, and so it's
3 very difficult in many respects for us or for the Court to
4 compare young Texans, the ones who are 25 to 30 still watching
5 MTV, with the ones in their 60s who are doing better things in
6 their life. Okay? It's very difficult when we look at U.S. born
7 Texans, 25 to 35, and really know how closely correlative they
8 are to the median personal income in wages and salary of the ones
9 who are in their 50s and 60s. That's a fair statement, isn't it?
10 I mean, you could have done it but you didn't, right?

11 A. I actually -- I would say I have -- I've done -- I've
12 produced, reviewed, analyzed hundreds of tables --

13 Q. Sure.

14 A. -- of these data or comparing Hispanics and non-Hispanics in
15 Texas, controlling for various demographic differences and
16 looking at cohorts, five-year cohorts, 10-year cohorts. Of the
17 hundreds of tables with thousands of figures that compare I don't
18 recall a single different -- a single comparison where Hispanics
19 and Texans were higher or equal to non-Hispanics in Texas.

20 Q. That's not the question, sir. That's an interesting
21 observation that at every level Hispanics are trailing
22 non-Hispanics. I think that's essentially what you just said?

23 A. Yes.

24 Q. But we don't know -- for example, I guess you-all call it
25 the delta. How much -- how much the slope is by which there's a

1 change at each generation. Whether, for example, the younger
2 generation is doing better or the more established generation,
3 the ones in their 30s, are doing better. Here --

4 A. Better than whom?

5 Q. I'm sorry?

6 A. Better than whom?

7 Q. I guess then the generation ahead or behind them. Are they
8 closing the gap or is the gap widening? We can't tell that from
9 this chart, can we?

10 A. That's correct.

11 Q. Okay.

12 A. But excuse me. Actually it should be for cohort. I think
13 you mean cohort.

14 Q. Cohort. Cohort. There's another issue that I notice here.
15 Texan-born Texans. 25 to 64. Now, there's nothing that tells me
16 that a Texan-born Texan has lived in Texas from the ages of six
17 months to 50. I'm going to think of a friend of mine who was
18 born in Texas, thanks God for it but was taken north as soon as
19 soon as their parents could get out of here. Couldn't get back
20 to Texas until they were 50. Now, that person is a Texas-born
21 Texan, isn't she?

22 A. She is.

23 Q. And yet almost all of her professional life, all of her
24 education, indeed all of her earning up until the point that she
25 was blessed enough to come back to Texas, actually took place

1 outside of Texas, didn't it?

2 A. In that case yes.

3 Q. Okay. I told you I just wanted to look at the chart for a
4 minute.

5 JUDGE GARCIA: And the relevance of that, Counselor?

6 MR. COHEN: That, Your Honor, no matter how long you
7 stare at this chart there's just not that much you can get from
8 it. Let's move on though.

9 JUDGE GARCIA: Well, what percentage do you think are
10 in the category of your friend that was born in Texas, went to
11 the north and came back many years later? Wouldn't it be true
12 that most Texans that were born here stayed in Texas or have
13 stayed in Texas?

14 MR. COHEN: No, Your Honor. I don't know that it's
15 true. It might well be true.

16 JUDGE GARCIA: Okay.

17 MR. COHEN: It's also true that a lot of Texans have
18 spent years out or years in.

19 JUDGE GARCIA: We know these figures are presumably
20 correct because there no objection.

21 MR. COHEN: No, Your Honor, there is no objection to
22 the facts stating what they state, but they are only -- they
23 state no more. And Dr. Chapa's suggestion that you can draw one
24 more conclusion from them than the numbers that are on the screen
25 is maybe a bridge too far.

1 JUDGE GARCIA: I see.

2 MR. COHEN: Thank you, Your Honor.

3 Q. (BY MR. COHEN) Now, you talked about the lingering effects.
4 As we moved on you said -- you talked about poverty, education,
5 income. And we don't need to look at the charts anymore because
6 you said immediately that you've examined the same data, I think
7 in a study you did at IU, and you said that these lingering
8 effects are strongly associated with voting, I guess decreased
9 voting rates, decreased registration and more generally decreased
10 participation in the electoral process. Do I understand that --

11 A. It wasn't my study. I think there's a plethora of studies,
12 political science, that show that that's true; that people with
13 lower levels of education and lower incomes participate less in
14 our electoral system.

15 Q. Okay. I'll --

16 A. That's what I said.

17 Q. I'll accept that for what it is. Would you explain to me
18 how changing voting districts addresses that particular problem
19 of participation?

20 A. Well, the participation rates are lower. If you create
21 districts with minority -- majority they have more chance -- they
22 still participate. And in fact as I said during the deposition,
23 there's evidence -- there's literature to show they participate
24 at a higher rate in districts where there is a majority minority
25 population.

1 Q. I understood you to say that registration was a key problem.

2 A. Well, that's a problem too. Participation at every level.

3 Q. Isn't registration most easily addressed through
4 registration drives?

5 A. Well, I think it would be more easily addressed by changing
6 the registration law. I'm a big fan of same day registration.

7 Q. Okay.

8 A. I think that would be a very easy remedy.

9 Q. And that's a remedy that doesn't require judicial
10 intervention in the legislative process of redistricting, right?

11 A. Well, that's part of it. Registration is separate. That's
12 why there's many reasons, many barriers to participation, many
13 consequences of lower levels of education income to electoral
14 participation. Registration, there's turnout, but certainly --
15 so there's lower registration rates and even among registered
16 voters lower participation rates.

17 Q. Now, maybe I'm understanding this tautologically or maybe
18 I've got it backwards, but if the education rates increased for
19 Latinos, then the expectation is that their voting registration
20 and participation in the electoral process would increase?

21 A. As a group, yeah. Yeah, certainly.

22 Q. So just like registration is a matter that can be addressed
23 by registration drives, isn't -- isn't lower education a matter
24 best left to increased educational opportunity?

25 A. No. If you look at this group that we talked about, 25

1 through 64 --

2 Q. Sure.

3 A. These are by -- by age 25 most people have finished school.
4 They're eligible to vote for the rest of their lives and they're
5 done with their education. So perhaps for their children, if
6 their children were given--their school age children--equal
7 opportunities for education and equal results perhaps that there
8 probably -- the theory would be their participation would be
9 equal. But for this group -- I mean increasing the education of
10 their school age children is not going to change the education
11 levels of these voting age adults.

12 Q. Does the League of Women Voters only speak to people 25 and
13 under?

14 A. I don't know.

15 Q. How about LULAC? Does LULAC only prepare materials for
16 people 25 and under?

17 A. I don't know.

18 Q. In your experience?

19 A. I'm not --

20 Q. Are public service announcements only run on Nickelodeon or
21 are they on adult channels too?

22 A. I've seen them on adult channels.

23 Q. Okay. And not the adult channels that people may think.

24 A. But I don't recall seeing them in Texas. I've lived here a
25 long time.

1 Q. It seems to me, Dr. Chapa, if the issue were education of
2 voters that education of voters can take place irrespective of
3 advanced degrees that a person has attained so long as that
4 person can read, write and has a willingness to participate in
5 the system. That's a fair statement?

6 JUDGE RODRIGUEZ: Was that a question or a statement?

7 MR. COHEN: That was a question. I think I said "isn't
8 it."

9 A. I'm sorry. What --

10 Q. (BY MR. COHEN) That was my question.

11 A. Okay. The education I'm talking about is not only knowledge
12 about voting and these procedures, although that's part of it.

13 Q. Okay.

14 A. The finding is education as we're talking about here is the
15 kind that occurs in public schools and universities. The more
16 and the kind that I measure in these tables and show Hispanics
17 still have a lower level of, that's the kind of education that's
18 also strongly associated with lower participation in registration
19 and voting.

20 Q. Okay. Just a couple of more questions, Dr. Chapa. And it's
21 about the table HR -- without having to look at it, the ones that
22 listed CVAP, HVAP, HVAP plus -- now, if I understand those
23 charts, you did those without any examination of compactness. Is
24 that a fair statement? You later made a statement about
25 compactness, but you didn't look at those table date charts with

1 an analysis of compactness, did you?

2 A. Well, only to the degree that the data in table one speaks
3 to compactness.

4 Q. Okay.

5 A. Table one shows that the 17 counties listed on that page
6 have 77 percent Hispanic population. And again in my early
7 conversations with Mr. Garza we talked about limiting the
8 analysis to a small number of counties.

9 Q. What about analysis of effect on incumbents? You didn't do
10 any of that, did you?

11 A. No.

12 Q. Is it fair to state, cutting to the chase, that the only
13 thing you looked at with respect to those charts were age,
14 citizenship and color of skin? I guess location also.

15 A. Well, I looked at the demographic factors that's in my
16 table.

17 Q. Okay. Did they include anything other than the location of
18 the individual by house or congressional district, the race or
19 ethnicity of that person, their age and citizenship status?

20 A. Well, there's other of that in there, but I didn't examine
21 it.

22 MR. COHEN: Okay. I've got no further questions.
23 Thank you.

24 JUDGE GARCIA: All right.

25 MR. AVILA: Your Honor, may I have a moment?

1 JUDGE GARCIA: Yes, of course.

2 MR. AVILA: No further questions.

3 JUDGE GARCIA: All right. Thank you. You're excused,
4 sir. If you'll call your next witness.

5 MR. GARZA: The plaintiff MALC calls Dr. Morgan
6 Kousser. If I could have a moment to speak to him.

7 JUDGE GARCIA: Yes, of course.

8 MORGAN KOUSSER,
9 having been first duly sworn, testified as follows:

10 JUDGE GARCIA: What do we need, Counsel?

11 MR. GARZA: Your Honor, I was inquiring about the
12 availability of a mobile mic. There are a number of charts that
13 Dr. Kousser is going to explain that would require him to go to
14 the screen.

15 JUDGE GARCIA: You mean have him go down there?

16 MR. GARZA: Yes. In other words, leave the witness
17 chair.

18 JUDGE GARCIA: Sure. That would be all right, wouldn't
19 it?

20 JUDGE SMITH: Maybe he could speak out.

21 MR. GARZA: I think the problem is to make sure the
22 recording is maintained.

23 JUDGE GARCIA: Right. You might call the IT folks.
24 Why don't you cover some area that you can cover from there.

25 MR. GARZA: I will do that, Your Honor. Thank you.

EXAMINATION

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BY MR. GARZA:

Q. Dr. Kousser, can you tell the court your current position?

A. I'm a professor of history and social science at California Institute of Technology.

Q. And how long have you been at Cal Tech?

A. Too long. Since 1969.

Q. And can you describe for the court a few of the courses that you teach there and what the emphasis of your work there has been?

A. Well, for my sins I teach graduate students how to write, but that's not my primary interest. I've been teaching a course in the history of the United States Supreme Court for nearly that 40 years and I teach a freshman humanities course. This year it was on the post Second World War, United States. It's been on civil war reconstruction, et cetera. I've taught courses in race relations. Long ago I taught an econometrics course.

Q. And one of your more recent books that you've authored is "Colorblind Injustice, Minority Voting Rights and the Undoing of the Second Reconstruction." What's the focus of that book?

A. The focus of the book in general is the effect of institutions and institutional rules on the history and development of race relations in the United States. But more specifically it looks at some cases that I testified in and the backgrounds of those cases, particularly perhaps for this -- for

1 this court the aftermath of Shaw versus Reno, the remand case
2 called Child versus Hunt in North Carolina, congressional
3 redistricting case. And Bush versus Vera, the Texas
4 redistricting case, congressional redistricting case from the
5 1990s.

6 So it looks at those and some other cases and the
7 history of the development of the two reconstructions, the first
8 reconstruction after the Civil War, the second reconstruction
9 after the Second World War, and compares them and tries to draw
10 conclusions, analyzes them, tries to draw conclusions about them.

11 Q. Okay. Among the issues in Shaw versus Reno and Bush versus
12 Vera were the questions of intentional discrimination and racial
13 gerrymandering; is that correct?

14 A. That's correct.

15 Q. And among the many cases in which you've testified your
16 testimony was taken in a case called Garza versus Los Angeles
17 County; is that correct?

18 A. That's correct.

19 Q. And Garza versus Los Angeles County was appealed to the 9th
20 Circuit and affirmed and certiorari was denied in that case; is
21 that correct?

22 A. Correct.

23 Q. Okay. And again one of the principal or main issues
24 involved in Garza versus Los Angeles County was the question of
25 intentional discrimination vis-à-vis a redistricting plan?

1 A. That's correct.

2 Q. And you were the principal attorney -- excuse me, principal
3 expert for the plaintiff's attorneys?

4 A. I was.

5 Q. And were your findings in that case accepted by the district
6 court and the appellant court?

7 A. Yes. The district court -- the first third of the
8 district's court opinion basically tracked my report and the
9 appeals court affirmed unanimously on that ground.

10 MR. GARZA: Your Honor, as was indicated with
11 Dr. Chapa, we don't want to waste the court's time with a lot of
12 review of the -- so we would ask the court to designate and
13 accept the testimony of Dr. Morgan Kousser as an expert on the
14 impact of election systems including redistricting plans on
15 minority voting opportunities including examining the question of
16 racially polarized voting.

17 JUDGE GARCIA: Any objection?

18 MR. SCHENCK: No objection.

19 JUDGE GARCIA: All right. Accepted.

20 Q. (BY MR. GARZA) Dr. Kousser, what have you been asked to do
21 in this case?

22 A. Well, I was asked -- excuse me -- I was asked to look at
23 essentially three issues. One issue is racially polarized
24 voting. That issue ties into other issues, but let me put that
25 aside.

1 And then there are issues that come out of the case
2 called Larios vs. Cox that relate to population disparities in
3 the Texas State House in the plan that was adopted and trying to
4 explain how those could have occurred, what the justifications
5 for them were and whether there is -- there was any partisan
6 or -- and/or racial bias in the pattern of those -- of those
7 disparities.

8 And the third was in general the intent of the
9 legislature in the -- in the way it adopted both the Texas State
10 House plan and the congressional plan, what is the intent, were
11 there any -- was there any discriminatory intent evidenced in the
12 adoption of those plans and the form of those plans.

13 Q. Now, in doing the work that you did in this case and in the
14 work that social scientists and political scientists and
15 historians do in these types of studies, is it common for experts
16 to rely on court rulings to inform their analysis regarding
17 election practices in the minority community?

18 A. Yes. Anybody who would testify on racially polarized voting
19 is probably familiar with the Gingles case from 1986 and the
20 standards that are set out there, some of the discussion that's
21 set out there. I certainly am. I've written about this in other
22 things.

23 And it would be the same thing with respect to the
24 Larios case if people testified on it. If you're trying to
25 figure out what sort of evidence you ought to examine and that

1 evidence is in some sense governed by what the courts have said
2 then you have to try to figure out what evidence you're going to
3 need and what you should examine so you have to look at the court
4 cases.

5 Q. All right. So let's -- let's begin with your analysis of
6 the -- of whether racial block voting exists in Texas elections.
7 And let me call your attention to Exhibit E-1. So I'm not sure
8 if you have the --

9 A. Is this my report?

10 Q. Yes.

11 A. Okay. I've got a copy of it.

12 Q. That's P-19.

13 JUDGE GARCIA: Mr. Garza, we now have the microphone.

14 MR. GARZA: Excellent. Thank you, Your Honor. Just in
15 time.

16 JUDGE GARCIA: Okay.

17 MR. GARZA: Page 19.

18 Q. (BY MR. GARZA) So to begin with, Dr. Kousser, why is -- why
19 is examining the existence of racially polarized voting important
20 in your analysis?

21 A. Well, it's important in several respects. First of all,
22 it's -- it ties into the Gingles factors, whether there is
23 cohesion in the minority community in voting, whether there is
24 cohesion in the majority community in voting. So the second and
25 third Gingles factors are connected with analyzing racially

1 polarized voting.

2 But it's also concerned -- it's also important when one
3 considers whether there are groups that are definable which might
4 might be discriminated against in the formation of districts in
5 two ways. One is population dispersion. If Latinos are not a
6 group for political purposes then what difference does it make if
7 there's bias against Latinos in the population dispersion. If
8 Democrats are not a group what difference does it make? So it's
9 important in determining that.

10 And also in determining the intent of the framers of --
11 the people who drew lines in particular districts. If you have
12 some idea of how cohesive the majority group and the minority
13 groups in this case are in politics and what the past voting
14 behavior of them has been then you can assess that more easily.
15 So it's relevant to all those three things.

16 MR. GARZA: Robert, 17.

17 Q. (BY MR. GARZA) And how do you define racial block voting,
18 Dr. Kousser?

19 A. Well, what I have done is essentially I look at the Gingles
20 case. In the Gingles case Justice Brennan used two definitions
21 of racially polarized voting, which for want of anything better I
22 have adopted. One is whether the majority group in that case
23 from North Carolina was simply two groups, blacks and whites,
24 whether the majority group and the minority group vote
25 differently. If you had an electorate that was composed of all

1 whites would the outcome be different than if you had an
2 electorate that was composed of all blacks. That's one
3 definition.

4 By that definition if 50 -- 50.1 percent of one group
5 opposes 49.9 percent of the other group, that's racially
6 polarized voting. We feel more comfortable the further away it
7 gets from 50, but that's one definition.

8 And there's some compelling reason, there's some common
9 sense that lies in back of that. We want to know whether race
10 makes a difference. This is the simplest definition of whether
11 race makes a difference.

12 The other way is whether it's -- the patterns of racial
13 polarization are statistically significant at conventional social
14 scientific levels. By that definition even if both groups of two
15 were on the same side of the 50 percent line you could possibly
16 have racially polarized voting and they would vote very
17 differently. And suppose that 90 percent of one group and 50.1
18 percent of another group voted on the same side. But there was a
19 little change, the 50.1 dropped down to 48, 49, 46, something
20 like that and then the outcome of the election could be
21 different. So there this is another way to think of things.

22 And I've just never found any particular social
23 scientific or commonsensical reason to think that those were bad
24 definitions or really to be able to choose between them. So in
25 all the cases that I've testified in and I think in all scholarly

1 writings that's what I meant by racially polarized voting.

2 Q. So essentially if the groups vote differently and that that
3 difference matters in the election?

4 A. Yes.

5 Q. Now, are there different methodologies that are employed to
6 measure statistically the existence of racial block voting?

7 A. Yes, there are.

8 Q. And which methodologies did you employ in your analysis
9 here?

10 A. I looked at three of them. One is simple ordinary least
11 squares regression which is the procedure that was used by
12 Professor Grofman that was sort of blessed by Justice Brennan in
13 Gingles. So it has precedence both in time and it has a Supreme
14 Court opinion that says that's the right thing to do.

15 The second is weighted least squares which we'll get to
16 discuss which is weighting by population or votes or something
17 else. And that's another way that things have -- that people
18 have analyzed racially polarized voting.

19 A third is the ecological inference technique that was
20 developed by Gary King in -- at Harvard which gets past some of
21 the problems with the other two methods. There are some other
22 methods kicking around there -- out there. I don't think any of
23 them have been used in federal court yet. They may be. And
24 we'll probably have some -- some different methods if you and I
25 are back here 10 years from now, but those are three that I used.

1 Q. So least squares, weighted least squares and EI?

2 A. That's correct.

3 Q. And which of these methodologies did you employ to examine
4 these elections?

5 A. I employed all of them.

6 Q. Okay. And would you briefly, Dr. Kousser, if you could,
7 approach the screen and explain to us how these regression
8 analyses work?

9 A. Is this on?

10 Q. It is.

11 A. I'm going to start with ordinary least squares. It gives
12 you the simplest idea and all the other methods are basically
13 like it. So if you understand that then you can understand
14 everything.

15 This is a simple analysis graph with -- is this -- can
16 you see this?

17 JUDGE GARCIA: Yes.

18 THE WITNESS: Good. This is just a standard XY
19 coordinates. On the X axis is a percent Latino of registration.
20 On the Y axis it's the percent in the general election of 2010
21 for lieutenant governor for the Democratic candidate,
22 Chavez-Thompson. And the dots are the percentage of the votes in
23 each -- and the percentage of registration in each State House
24 district. I could have used all of the precincts in the state,
25 but that would have been about 8400 and it would have just been a

1 cloud and it would have made it more difficult to understand.

2 So you simply find -- this is about 10
3 percent -- percentage Latino of registration and they vote about
4 20 percent for Chavez-Thompson. And you put all 150 on a graph.
5 Then you run an equation, you've got the line that in some sense
6 best fits all of the points. That's what this line is.

7 The way to think about the estimate of racially
8 polarized voting here is to look at the right -- a line on the
9 right drawn perpendicular to the Latino registration line that
10 simply goes from zero to 1. And on the left it goes from zero to
11 1. Where this line crosses the Y axis is essentially the point
12 at which a district would vote for Chavez-Thompson, the estimate
13 is that a district would vote for Chavez-Thompson that had no
14 Latinos in it at all. And here if it had -- was 100 percent
15 Latino that would give you the estimate of how they would vote.

16 So the racially polarized voting analysis through
17 ordinary squares regression simply asked what -- where does the
18 line cross here, where does the line cross here.

19 There are also characteristics of equation which are
20 given below. This figure is the place where it crosses the Y
21 intercept, 37.4 percent. And this figure here is the slope of
22 the line and if you add the two together that's where it crosses
23 the intercept above 100 percent. So it's fairly simple but that
24 should give you a general idea. Probably you've seen this
25 before, but that's what I did.

1 MR. GARZA: Your Honor, just so that it's clear we're
2 looking at the Common Exhibit Number 1 for experts, and this is
3 at page 16 of that -- of that binder. And if we could turn to
4 page 18. 19.19, Bob.

5 Q. (BY MR. GARZA) And what's the difference between
6 this -- what we saw before and this particular one?

7 A. This is simply the weighted estimate and it is weighted by
8 the number of votes. The number of votes cast in each district
9 was not the same. If there were large numbers of votes the
10 circles are larger. Here there's a district that's about 90
11 percent Spanish surname registration. They voted in fairly high
12 numbers so the circle that's related to it is relatively large.
13 Here's one that's about 35 percent Latino. It did not vote in
14 such high levels so that the circle is small.

15 So in computing where the regression line would go, the
16 larger circles are given more weight than the smaller circles.
17 The interesting thing about this graph compared to the other
18 graph, and this is true in general of all of this analysis, is
19 that it doesn't seem to make very much difference if you weight
20 or not weight, whether you use EI or the other two procedures.

21 If you look at the -- if you compare the
22 coefficients -- if you'll remember from the first figure the
23 intercept over here was about 37. Here it's about 35.5. The
24 slope was about 53 here. It's 54.5.

25 So the bottom line of all of these figures, to give you

1 some general view, is this data is very strong. The racially
2 polarized -- racial polarization is in the data. It's not in the
3 methods. So no matter which methods you use, whether it's simple
4 regression, whether it's weighted least squares, whether it's EI,
5 all the estimates are very similar. And so it's -- this is data
6 driven. It's not methodology driven.

7 MR. GARZA: Page 21, 19.21.

8 Q. (BY MR. GARZA) And on page 20 of your report, Dr. Kousser,
9 you do the same table for the -- for -- why don't you tell us
10 what that -- what the difference is between this chart and the
11 others that you've done?

12 A. Well, this is simple least squares. This is from a
13 congressional race in 2002, state representative race in 2002.
14 This is sort of a regression line and a packing parameter
15 regression line that social scientists would die for. It is a
16 very, very tightly packed regression line. There's a very strong
17 relationship between these two variables.

18 The reason I put this on is to show you why people
19 sometimes -- why people prefer ecological inference as a
20 technique because if you follow this regression line up to the
21 right-hand side axis it will be above a hundred percent. So the
22 estimate here is that more than a hundred percent of Spanish
23 surname registrants voted for Luna in this particular race and
24 that bothers people. We don't like to have more than a hundred
25 percent of the people voting.

1 In this case it's simply because -- that would be in
2 most places in Texas. This is one of the reasons why people get
3 worried by ordinary least squares regression. And this is one of
4 the reasons that Gary King proposed another technique, a more
5 sophisticated technique and one that was constrained never to
6 give you estimates between -- that are outside the zero to one
7 commonsensical bounds.

8 So I present this simply to tell you why you might use
9 a more sophisticated technique that takes up more computer time.

10 Q. Okay. So if we could now call your attention, Dr. Kousser,
11 to table two of your report in which you've begun to show the
12 results of your analysis.

13 MR. GARZA: And that would be 19.29 and page 28 of
14 Dr. Kousser's report in the -- in the expert's report box.

15 Q. (BY MR. GARZA) And let me ask you what -- would you
16 describe this table?

17 A. This is a table about the general election of 2010. It
18 looks at Spanish surname -- races that included Spanish surnamed
19 candidates. And it gives the result of a -- an ordinary least
20 square analysis, the first figures for all the precincts in the
21 state.

22 Here if you look at the 75.9 figure that's the estimate
23 of Latinos voting for Chavez-Thompson, that simply -- to go back
24 to what I discussed before, that's simply where it hits the
25 right-hand side axis. And the 27 percent figure, which is the

1 estimate of non-Latinos voting for Chavez-Thompson, that's where
2 it hits the left-hand side axis.

3 So what I'm trying to do here immediately is to
4 translate the graphs that you've already seen to these estimates
5 that you'll be seeing in this trial quite a lot just to say this
6 is -- this is how you get from one to the other.

7 Substantively what this shows is that if you look at
8 the lieutenant governor's race, you look at the land
9 commissioners' race, you look with a non-Latino candidate, a
10 Democrat but a non-Latino candidate for the Supreme Court
11 position three, you'll find overwhelming racial block voting.
12 You'll find in each case 75 to nearly 80 percent of Latinos
13 voting for the Democratic candidates, two Latino candidates, one
14 non-Latino candidates. And for the Republicans and the
15 non-Latinos vote, 27 percent -- 26.6 percent to 30 percent for
16 the Democratic candidates. Latinos vote in very small numbers,
17 very small proportions for the Republican, Libertarian or Green
18 candidates. And this is a pattern we see again and again and
19 again. This is a typical graph. We could go through all 15 of
20 those that are like that but we probably will not.

21 Q. We'll choose a couple of ideal ones here.

22 A. Good.

23 Q. And, Dr. Kousser, before we move from this chart, let me ask
24 you, so does this show that Latino voters are cohesive in the
25 general election?

1 A. Yes, they look very cohesive to me and it shows that the
2 other voters are cohesive and that they vote against the
3 candidate of choice of the Latinos

4 Q. So what you have is a vote differential that matters as
5 you've defined racially -- racial block voting earlier?

6 A. This is quite substantial racial polarization.

7 Q. How would this compare to studies that you've done in other
8 parts of the country?

9 A. Well, it's quite similar to studies in other parts of the
10 country and it's quite similar to the elections that were taken
11 in Gingles which were on the order of 75/25, rates between whites
12 and blacks for black candidates in North Carolina during the
13 1970s. So, you know, I've looked at elections in Memphis. I've
14 look at elections in Selma. I've looked at elections -- even
15 some elections in Los Angeles and other parts of California,
16 South Carolina. These are quite similar.

17 Q. And just so that we can get a contrast, so this was the
18 simple least squares analysis, right, methodology?

19 A. That's correct.

20 MR. GARZA: If we can look now at table six, page
21 19.36, Bob.

22 Q. (BY MR. GARZA) Now, this -- this table you used King's EI
23 methodology; is that correct?

24 A. That's correct.

25 Q. And what was the resulting -- what did that show?

1 A. The results are very similar to what they were using, simple
2 least squares. Over 70 percent of Latinos vote for Latino
3 candidates. This 26.6 percent is very similar to
4 Chavez-Thompson, the estimate for non-Latino voting for
5 Chavez-Thompson in ordinary least squares. The same thing for
6 Uribe. A little less -- some of these -- sometimes EI uses a
7 method where you'll get slightly different answers each time you
8 run it because it's based upon running a probabilistic sample run.
9 So it can be slightly different, but here it's 67.9, within about
10 70.

11 In any case it is the voting patterns are very strong,
12 very similar to what you got using simple least squares.

13 Q. All right. I noticed that in this particular chart you
14 have -- it didn't make a difference if the Republican nominee was
15 Latino or not. The Latino voters still coalesced around the
16 Democratic candidate?

17 A. That's correct. And that was true in simple least squares
18 and -- squares. All seven.

19 Q. Even though the Republican, Hispanic Republican, seems to
20 have gotten slightly more support from the Latino community?

21 A. Slightly more and slightly less support from the non-Latino
22 community.

23 Q. And slightly less from the non-Latino community. But across
24 the six tables or five tables where you switched out
25 methodologies, the results were consistent throughout?

1 A. They were. And I should point out also they were
2 consistent, also whether you used 8400 precincts or 150 House
3 districts. So it wasn't the way that you were aggregating
4 things, aggregating the votes into districts that made any
5 difference either. It doesn't make any difference which method
6 you used. It doesn't make any difference how you aggregate
7 districts whether you use 150 or 8400. This data is -- the
8 racially polarized voting pattern is strong enough that it gets
9 past all of those things.

10 Q. And how would you respond to the notion that since Latino
11 voters are shown -- are showing voter cohesion around the
12 Democratic candidate even when the opposing candidate is Latino
13 that this shows that partisan voting rather than racial voting
14 explains the behavior?

15 A. Well, in order to test whether that was true I looked at a
16 set of elections in which partisanship could not have explained
17 voting, that is to Democratic primary elections. Everybody who
18 is voting in that election, every candidate who is running in
19 that election, is a Democrat or at least they choose a Democratic
20 ballot. So that just couldn't be the case that partisanship is
21 determining whether Latinos are cohesive within the Democratic
22 party and whether non-Latinos are cohesive within the Democratic
23 party. It couldn't be explained by partisanship.

24 Q. So let me call your attention to table 7 of your report
25 which is on page 37 of his report, Your Honor. And if you could

1 explain to the court -- would you -- now, this is an analysis you
2 used -- that you did as you were describing that using unweighted
3 ordinary least squares; is that correct?

4 A. Right. And I think this is the whole -- I think this is all
5 the precincts in the state. You know, two things about this
6 table. One, the racial polarization is still there and, in fact,
7 Latinos are more cohesive than they were in the general election,
8 87 or around 80 percent of Latinos vote for Chavez-Thompson in
9 the primary rather than the 80 or so, 75 or so in the general
10 election. And that's true for Uribe too. Over 90 percent of
11 Latinos vote for him.

12 And in the primary -- if we can go back, non-Latinos
13 vote in somewhat higher proportion for the Latino candidate but
14 the Latino candidate is not the candidate of choice for the
15 Latino community within the Democratic primary.

16 So the racial polarization is at least as large within
17 the Democratic primary as it is within the general election and
18 this could not have been -- Latinos and non-Latinos could not
19 have been cohesive because of partisanship because partisanship
20 is controlled for here.

21 Q. And within -- would you scroll up? You also did a couple of
22 races to attempt to measure racially -- racial block voting in
23 the Republican primary; is that right?

24 A. That's right. I believe that in a Supreme Court position
25 nine of the Hispanic candidates had a Hispanic surname and

1 there's essentially no racial polarization in the Latino vote, at
2 least in the Guzman versus Vela race. Guzman does better among
3 non-Latinos than Vela does, but this is not very strong racial
4 polarization. I wouldn't consider this really racial polarized
5 voting.

6 And if you looked at -- I don't think that there are
7 any Spanish surnamed candidates among Republicans for Supreme
8 Court position number 3. There's no pattern of racial
9 polarization here.

10 Q. And could that be a function of the paucity of Latino voters
11 participating in that primary?

12 A. Certainly.

13 Q. Again, we won't go through each of the Democratic party
14 methodology -- I'm sorry, Democratic primary methodologies, but
15 we would perhaps take a look at table 11 which is on page 41 of
16 the report. And just to get a flavor of how the different
17 methodologies working -- it's 19.42 -- and here you again use
18 King's EI methodology?

19 A. The results are almost the same as they were using simple
20 least squares. It just doesn't make any difference.

21 Q. And then looking at 19.43 at table 12 on page 42. Can you
22 explain to the court what you were looking at here?

23 A. Okay. Here what I'm looking at is a series of contests in
24 which you have Spanish surnamed Republicans running against
25 Democrats, usually Spanish surnamed, for state legislative races

1 and for a couple of congressional races. And it simply looks at
2 the racial polarization in these races.

3 The questions were, in fact, Latino voters are -- will
4 break for for a Latino Republican or whether they are cohesive
5 for the Democratic candidate in these particular contests. And
6 the answer is overwhelmingly that they're cohesive for the
7 Democratic candidate. Here is the Luna race that we had a
8 picture of before. Here is the above 100 percent figure, but
9 it's essentially 100 percent. Virtually all the Latinos voted
10 for Luna in this particular race in 2002.

11 And the other races the Latino cohesion is even more
12 true than it is in the statewide races. And very often the
13 non-Latino cohesion is really incredibly genetic. Here only
14 three and half percent of non-Latinos are estimated to have voted
15 for the Democratic candidate Ortiz and state representative
16 Torres in 2010.

17 MR. GARZA: And could you scroll down on the next page
18 to the bottom race on page 43, 19.44. 19.44, the last.

19 Q. (BY MR. GARZA) In the congressional race in the 2010
20 election, Dr. Kousser, can you tell from that from your analysis
21 whether Congressman Consecro was the candidate of choice of the
22 Latino community?

23 A. You could tell and he wasn't. He got the estimate here is
24 12.3 percent of the Latino votes compared to 83 percent for
25 Rodriguez.

1 MR. GARZA: And if we could go to the next page,
2 Robert, in the top election.

3 Q. (BY MR. GARZA) In District 27 can you tell us which of the
4 candidates was the preferred candidate of choice in District 27
5 in the 2010 election?

6 A. The Latino candidate of choice was Ortiz with 85 percent of
7 the vote. Farenthold got 13.4 percent of the vote in this
8 estimate. So Ortiz is clearly the candidate of choice in the
9 Latino community.

10 MR. GARZA: And there's a number of charts using
11 Dr. Kousser's analysis using different methodologies. We won't
12 go through each one of them. As Dr. Kousser has testified the
13 results are virtually the same.

14 JUDGE GARCIA: All right.

15 Q. (BY MR. GARZA) Dr. Kousser, did you also do an analysis
16 to -- so far we've looked at the analysis that you've done and
17 compared Latino to non-Latino voters. Did you also examine or
18 attempt to examine breaking out the non-Latino voters?

19 A. I did.

20 MR. GARZA: And if we could -- Robert, look at 19.53
21 and that would be on page 52 of the -- of the expert's report.

22 Q. (BY MR. GARZA) Would you describe to the court how you did
23 this analysis?

24 A. This does not use the Spanish surname registration. What
25 this uses is the voting age population taken from the census as

1 the independent variables. So you've got non-Hispanic whites you
2 might call Anglos here, African-Americans you might call blacks,
3 and Hispanics and other which would be Asian-Americans, people
4 that checked other characteristics, it's the same sort of
5 analysis.

6 This is based on simple least squares. Here's a table
7 of least squares. And here is the estimate of the proportion of
8 Anglos who voted for Dewhurst for lieutenant governor. It's
9 about 90 percent. Blacks negative. Hispanics about 28 percent.
10 If you look at the Chavez-Thompson line about 7 percent of Anglos
11 voted for Chavez-Thompson. Virtually all African-Americans voted
12 for Chavez-Thompson. Two-thirds of Hispanics voted for
13 Chavez-Thompson. 55 percent of others voted for Chavez-Thompson.
14 So it's the same kind of analysis except here instead of having
15 Hispanics and all three other categories melded together we break
16 out all of those categories. We have to use census figures. We
17 only have voting age population. We don't have -- there's no way
18 to put in citizenship, Anglo citizenship or citizenship/other.
19 At least I don't know how to do that. It would certainly be much
20 more complex to do, but this gives you a very good idea.

21 The take-home line from this is if you look at
22 African-Americans and look at the Democratic lines in each of the
23 races essentially all African-Americans are cohesive voting for
24 the Democratic candidate in the general election. Of Latinos
25 it's around two-thirds in all other races.

1 Q. And would it be fair to say then, Dr. Kousser, that blacks
2 and Hispanics are coalescing around the Democratic nominee in
3 these elections?

4 A. Certainly.

5 Q. And they're showing voter cohesion?

6 A. Certainly.

7 Q. And that Anglo voters are voting different from the minority
8 voters?

9 A. Very different indeed.

10 Q. And the results make a difference?

11 A. They make a difference. All the Latino candidates lose
12 except Guzman who is a Republican.

13 Q. All the minority preferred candidates lose as well?

14 A. That's correct.

15 Q. And this more clearly shows how the Anglo communities are
16 voting because what I was noticing is in the -- like, for
17 instance, in table two where you did Latino versus non-Latino it
18 showed that Chavez-Thompson was getting 27 percent of
19 non-Latinos, but that's impacted I suspect by the black vote?

20 A. Yes.

21 Q. So the differential is really 6.9 to 67.1 when you look at
22 Anglos versus Hispanics?

23 A. That's correct.

24 Q. And, again, regardless of methodology --

25 MR. GARZA: If we could look at table 16, 19.54,

1 Robert, page 53.

2 A. This is simply weighted least squares looking at the same
3 elections the patterns are exactly the same. I could go over and
4 you'd see them again and again.

5 Q. (BY MR. GARZA) As you mentioned earlier, it's the data
6 that's driving the results. Regardless of methodology you're
7 able to show racial block voting?

8 A. That's correct.

9 Q. So based on your analysis were you able to form an opinion
10 about whether Latinos are politically cohesive?

11 A. I was able to form an opinion and they are.

12 Q. And based on your analysis were you able to form an opinion
13 whether elections in Texas are racially polarized?

14 A. I have formed an opinion and they are.

15 Q. And whether Anglos vote sufficiently as a block to defeat
16 the Latino preferred candidate?

17 A. I have formed an opinion and they do.

18 Q. And based on your analysis have you formed an opinion
19 regarding the interaction between Hispanics and black voters?

20 A. In general elections Hispanic and black voters
21 overwhelmingly support the Democratic candidates the same. They
22 are cohesive in general elections.

23 Q. And finally, Dr. Kousser, does anything in your report
24 suggest that partisan voting explains the differentials between
25 Anglo and Hispanic voters in Texas elections?

1 A. There was a simple test of that and it turned out that the
2 racial polarization is within the Democratic primary just as
3 strong as it is in the general elections. Partisanship cannot be
4 the explanation.

5 Q. Is race and ethnicity then still the best predictor of voter
6 behavior in Texas?

7 A. It certainly is.

8 Q. So moving on now to the balance of your report, Dr. Kousser,
9 can you tell the Court -- so we've covered racial block voting.
10 Now in terms of your analysis of compliance with one person/one
11 vote, describe to the Court the sorts of thing you looked at for
12 making your determination?

13 A. Well, in the Larios part of the report I was asked to look
14 at the Larios case and in general to look at population
15 disparities across State House districts. So the first thing I
16 did was went back and read the Larios opinion again, which I
17 hadn't read since it came out, and tried to determine from
18 reading the opinion what sort of evidence the judges -- convinced
19 the judges in that case because I wanted to be able to do -- to
20 look at the evidence, the pattern of the evidence.

21 JUDGE GARCIA: Hold on.

22 MR. SCHENCK: Can I ask that the witness take the
23 chair?

24 THE WITNESS: I think we're done with charts.

25 MR. GARZA: We're not quite done with the chart. I'm

1 not sure --

2 JUDGE GARCIA: Are you going to put one up here?

3 MR. SCHENCK: I don't mind him talking about the law
4 also. I'll take him on cross but I don't want this to be a moral
5 argument.

6 JUDGE GARCIA: If you're not going to do any charts
7 right now why don't you take the seat. Thank you.

8 MR. GARZA: Robert, 19.64. 64.

9 Q. (BY MR. GARZA) So, Dr. Kousser, you were
10 saying -- continue.

11 A. I need to know what sort of evidence I should look at in
12 order to determine whether the population disparities
13 were -- were biased and what sort of evidence had convinced the
14 court. I wasn't trying to do a legal analysis. All I was trying
15 to do was to figure out what sort of evidence I should examine.
16 So I looked at the Larios decision in order to try to figure out
17 what sort of evidence I should look at.

18 Q. And do you recall what kind of evidence you looked at to
19 evaluate this issue?

20 A. There are a whole series of things that are discussed in the
21 Larios opinion and I tried to look at all of them. The first
22 thing that I looked at and sort of the most basic thing in the
23 whole analysis is to figure out whether there are population
24 disparities and how much they are. The second thing is to look
25 to see whether the districts that are overpopulated are of a

1 particular character. Do -- are they more likely to be Latino
2 districts than non-Latino districts, are they more likely to be
3 Democratic districts than Republican districts and so on.

4 And there are a series of other things that the Larios
5 court looked at and which I thought were logical to look at to
6 try to figure out whether there was bias. I looked at the
7 process, the way that the districts were drawn up. The Larios
8 court said, look, the Georgia Democrats who were at issue in this
9 case were the ones who drew up the districts. They had a
10 disproportionate increase -- influence on the redistricting
11 committees, the districts were drawn up by Democrats and then
12 sort of sprung on Republicans. The Republican amendments were
13 turned down. They -- the districts were drawn -- were made
14 public at the last minute. There weren't a lot of hearings about
15 the particular maps. The districts were less compact than the
16 previous districts had been. And there were a whole series of
17 other factors that I took into account that are enumerated in the
18 report.

19 Q. Well, let's begin with figure five which is on page 63 of
20 your report and what has been put up on the screen. Do you need
21 to approach the screen, Dr. Kousser? Can you see it?

22 A. I think it would be better if I did, sir. Is that okay?

23 JUDGE GARCIA: Yes, sir. Of course.

24 A. This is a simple histogram that tells you the population
25 deviations for House districts by percentile. This is the number

1 of districts that were underpopulated by four to five percent.
2 It's 17 districts. This is a number from three to four percent.
3 It's 15 districts. On the other side are the ones that are
4 overpopulated. It was 20 districts.

5 If you say okay, districts ought to be equal, if we
6 were trying to set up equal districts one would expect to find
7 very little deviation. Most of the action in this histogram in
8 here, certainly you would expect to find some sort of normal
9 curve. This is what the districts were like drawn in 2000.
10 There were a certain number of them that were underpopulated, a
11 certain number of them that were overpopulated.

12 But this is not a very -- this is a fairly flat
13 histogram. They're not concentrated in the middle, but there's a
14 tremendous amount of concentration on the edges. If you go up we
15 can get to the plan H283 or HB150 for the districts that were
16 drawn in 2011. One will note that there's sort of a U shape
17 about this histogram. And, in fact, there are more districts
18 which are either underpopulated by four percent or more or
19 overpopulated by four percent or more than there were in the
20 previous plan.

21 So if you compare the plan, H283 to H100, the current
22 districts, you find more population dispersion and the question
23 is why.

24 Q. Go to the next page, please. I'm sorry. Page 65. It's 66
25 on yours.

1 A. Here we look at the districts which are majority Anglo.
2 This is a subset of all the districts. Some districts are major
3 Anglo, some districts are majority Latino and some districts
4 don't have a majority in these plans. I decided I would look at
5 the majority Anglo districts and the majority Latino districts.
6 If you look at the majority Anglo districts you'll see more of
7 them are on the left side of the histogram. They're more
8 underpopulated than are on the right-hand side of the histogram.
9 And if you count the number of districts that's are simply
10 underpopulated and overpopulated the exact number is given -- I
11 don't remember it right now but I could add it up quickly -- but
12 in general the Anglo districts are more underpopulated than
13 overpopulated.

14 If we go to the next part of that we look at the Latino
15 districts. The Latino districts are primarily in the
16 overpopulated segment here. So that is not a flat histogram.
17 These districts -- there's bias here. They tend to be
18 overpopulated. Four or five of the districts, the ones from
19 El Paso County, are among these 10 underpopulated districts. I
20 guess it's five. And the apparent reason for this is the county
21 line rule. By the county line rule you have to draw all the
22 districts within El Paso County. You can't go outside of El Paso
23 County to pick up more population. You could, but you would
24 violate that part of the state contitution. The legislature
25 decided not to do that.

1 So there are five districts that fall in here that have
2 to be underpopulated because of the county line rule. If you
3 subtract those then the pattern is even more overwhelming, but
4 it's quite overwhelming anyway.

5 Q. (BY MR. GARZA) With regard to El Paso, Dr. Kousser, the
6 state didn't have any discretion in terms of attempting to
7 overpopulate those majority districts?

8 A. It certainly chose to go along with the county line rule.
9 It could, I suppose, have decided not to go along with the county
10 line rule and to add population from adjoining counties but it
11 did not do that.

12 Q. Okay. Well, one explainer for the -- as you mentioned, one
13 explainer might be for these variances of the old county line
14 rule. Did you look at anything to attempt to discover whether
15 that is the motivating factor behind these wide range of
16 deviations?

17 A. I did.

18 MR. GARZA: And if we could go to 19.69, Robert, that's
19 page 68 of Dr. Kousser's report, figure seven.

20 Q. (BY MR. GARZA) If you could explain to the court what you
21 were doing with these sets of charts.

22 A. Here what I did was I looked at the seven urban counties.
23 If the county line rule was binding then the county -- then all
24 the districts in those counties had to be within those counties
25 and there couldn't be any districts that came in from other

1 counties to bump up the population or decrease the population.

2 So it simply couldn't have been simply the county line
3 rule within those counties that would account for population
4 disparity across the districts. It has to be something else.

5 So what I did was I divided those into three groups.
6 Those districts which are currently represented by Republicans in
7 the seven urban counties, if you look at the population
8 disparities here there's really no particular pattern. There are
9 some that are underpopulated, there are some that are
10 overpopulated, but no particular pattern.

11 If we can go to the next one, look at Democratic
12 districts and this is different. Look at Democratic districts
13 and they tended to be overpopulated within those urban counties.
14 Here are 18 of the districts. There are at least three percent
15 over populated. Only 11 percent of the districts are at least
16 three percent underpopulated, so it seems there's an apparent
17 bias here against Democrats. So does partisanship explain
18 everything here? We can look at part C.

19 Q. The next page.

20 A. It does not. Here we are looking at districts that are
21 currently represented by Latino Democrats and they are almost all
22 overpopulated. So the county line rule can't explain things
23 because all these districts are within counties. Partisanship
24 explains some of it. Democrats are disadvantaged by the way that
25 they drew lines, but that's not all. Latinos are even more

1 disadvantaged. There are even more Latino districts that are
2 overpopulated that could not be explained simply by partisanship
3 and they can't be explained by the county line rule.

4 Q. Dr. Kousser, in addition to looking at the statistics of how
5 these concentrations were working did you also look at obviously
6 other factors that you discussed including whether
7 minority -- the minorities had an impact on the final plan? And
8 I call your attention now to table 17 to page 72 of the report.

9 MR. GARZA: And Robert, it's 19.73.

10 A. Here's what I looked at. When the plan was introduced it's
11 called H113, I looked at the HCVAP, Hispanic Citizen Voting Age
12 Population in each district for the H113 plan. And then I looked
13 at the plan that finally passed, H283. What I was trying to
14 determine here is whether there were changes in the plan from its
15 original introduction to the final passage in a way that would
16 have indicated that they were trying to be fairer to Latinos, at
17 least change districts to make them more Latino.

18 So I compared the number of districts. I compared the
19 districts to see whether there was an increase in the voting age
20 population between those two plans. These are all the districts
21 that were more -- where the change was more than one percent.
22 And what this shows is there are a couple of districts, 40 and
23 41, that essentially -- essentially got interchanged and we'll
24 find out as we go on that there's more to it than that, but
25 they're essentially switched.

1 There is one district that the Latino population and
2 Hispanic citizen voting age population is substantially
3 increased. It's increased from 42.4 percent to 51.4 percent.
4 But in no other cases are there major sorts of changes. So I
5 thought, well, if they were trying -- if the Republicans who
6 controlled this process were trying to reach out to Latinos or be
7 responsive to Latinos who were on the committee or who were in
8 the legislature they would have changed things a lot. This is
9 the changes -- this is the total changes that they did, 40 and 41
10 and 148. The rest are inconsequential.

11 So there's no evidence here that there was an influence
12 of the Latinos, either interest groups or the Latinos in the
13 legislature or African-American legislature on the changes that
14 might have taken place in the plans.

15 Q. And this is one of the factors that the Court in Larios, the
16 district court, looked at to measure compliance with one
17 person/one vote and it was adopted by the Supreme Court.

18 MR. SCHENCK: : Objection, leading.

19 JUDGE GARCIA: Yes, let's not lead, Mr. Garza.

20 MR. GARZA: Yes, sir.

21 Q. (BY MR. GARZA) And where did you derive this particular
22 factor, Dr. Kousser?

23 A. I got it from looking at the Larios case.

24 Q. And let's now turn to table 18 on page 75 of your report.
25 It's 19.76. Could you tell the court the significance of this

1 analysis?

2 A. What I did here was to try to look at various definitions of
3 majority/minority populations and to look at the outcomes in a
4 couple of elections for the state House of Representatives to
5 determine how well they did in each kind of -- well, under each
6 definition of majority/minority.

7 We've already shown, which is why I use one of the
8 things for which I use the racial polarized voting analysis, that
9 Latinos and African-Americans vote overwhelmingly Democratic. So
10 the outcome, which would give the minority preferred candidate
11 would prefer the Democratic candidate to win. Here I've looked
12 at these definitions and saw how many districts were won by
13 Democratic candidates who were Latino Democratic candidates,
14 African-American Democratic candidates, Asian-American Democratic
15 candidates, Anglo Democratic candidates or Republicans, which fit
16 these particular definitions. The Hispanic voting age population
17 was over 50 percent. The Hispanic citizen voting age population
18 was over 50 percent. The black and Hispanic citizen -- I'm sorry
19 voting age population was over 50 percent and the black VAP plus
20 the Hispanic citizen voting age population are over 50 percent.

21 What's the best index and how good are these indexes?
22 Which -- how likely is it that that Latino preferred candidates,
23 African-American preferred candidates can win in districts of
24 this type? One of the things that the Voting Rights Act says
25 is -- talks about an equal opportunity to elect. This gives you

1 an idea of an opportunity to elect. And it looks at two
2 different elections, 2008, a very good year for the Democrats,
3 presidential year, high turnout, high turnout of minorities. And
4 it looks at 2010 which is the opposite, the Republican landslide
5 here, a year of low turnout of minorities, a year where it's the
6 worst possible case, not perhaps the worst possible case. It's
7 the worst case during the decade at least for minority preferred
8 candidates. And so you've got a considerable variance here.

9 Q. Okay. So turning now to table 19 -- so now you've evaluated
10 which type of district is best suited for electoral success for
11 Latino voters; is that right?

12 A. That's right. Let me say one more thing. Even in 2010 if
13 you look at the black plus Hispanic voting age population, not
14 even citizen voting age population but just black plus Hispanic
15 voting age population, in a landslide Republican year in
16 districts that are over 50 percent BHVAP, Democrats win over 80
17 percent of those elections. So that's much more of an equal
18 opportunity to elect. It's close to a certainty to elect in a
19 bad year.

20 And if we looked at the -- previous we looked at 2008.
21 What we would find here is that I think 93 or 94 percent of the
22 minority preferred candidates are elected in BHVAP districts over
23 50 percent. So that really is a certainty.

24 Q. And as I understand your testimony, Dr. Kousser, and your
25 report, it's important to look at this to see and then gauge how

1 many districting plans were offered to the legislature that had
2 more of these sorts of districts than what was passed in order to
3 measure the impact of minority legislators on the process?

4 A. Yes, and to measure the ability of minority voters to elect
5 candidates of choice given the number of districts which have
6 majorities of these demographic characteristics.

7 Q. So if we could turn now to page 79 of the report, table 19.

8 MR. GARZA: That's 19.80, Robert.

9 Q. (BY MR. GARZA) What do you do -- what are you looking at in
10 this table and what does it show?

11 A. This table looks at a series of plans. It's not all the
12 plans, but it is a series of House plans. It starts out with the
13 current plan. It looks at those four indexes of
14 majority/minority strength and counts the number of districts
15 that fall into each category. So if we look at the BHVAP, which
16 I was just talking about in which in a bad year Latinos and
17 African-Americans collect 80 percent or above 80 percent of their
18 candidates of choice.

19 The current plan has 57 of those districts. The
20 committee plan as introduced had 53 of those districts. H283 on
21 final passage had 54 of those districts. H205, which is one of
22 the MALC plans, has 62 of those districts. So you can get a
23 comparison. Even if you think that this is not the best index,
24 this table allows you to compare the number of minority majority
25 districts under four definitions under a whole series of plans.

1 And one of the purposes of it is to see whether there could be
2 more majority minority districts drawn than under 283.

3 Q. So the deviations -- not only does this show that there were
4 more opportunities for minorities and other plans, but in terms
5 of justifying the deviations of these plans they weren't adopted
6 because they have --

7 MR. SCHENCK: Objection, argumentative.

8 JUDGE GARCIA: No, I'll permit the question. Go ahead.

9 MR. SCHENCK: It's testimony. Not a question.

10 MR. GARZA: I was asking a question.

11 JUDGE GARCIA: Yes, I understand that. You may
12 proceed.

13 A. There are a whole series of things that I tried to analyze
14 to see whether there could be other reasons than simply racial
15 reasons or partisan reasons for the population disparities. One
16 of the potential reasons is that the legislature wanted to draw
17 more districts that minorities could have a better chance in.
18 This tests that hypothesis and firmly rejects it.

19 Q. So now turning to table 20 on page 82 --

20 MR. GARZA: That's 19.83, Robert.

21 Q. (BY MR. GARZA) Could it be that the deviations were driven
22 by compactness of the districts, that is that there were no
23 alternatives to offer that were more compact than 283?

24 A. Yes. What this does is it looks at a series of
25 characteristics of the plans and asks the question could these

1 traditional districting principles or other districting
2 principals have been a reason that the legislature adopted 283.
3 They adopted it, the hypothesis would say, because the total
4 deviation, that is the highest district minus the lowest district
5 in population disparity, was less in 283 than it was in the other
6 plans.

7 They could have adopted it because the average
8 deviation -- the deviation of the average district, the mean
9 deviation, was less in 283 than the other plans.

10 They could have adopted it because there were fewer
11 county breaks than in the other plans. They could have adopted
12 it because it was more compact. And I give here two different
13 definitions of compactness and the table and the notes to the
14 table defines these. But what you should know about them is the
15 higher the number or higher the number in this column and in this
16 column the more compact -- where they could have adopted it
17 because it split fewer voter tabulation districts. So this test,
18 this table, tests a series of hypotheses that would account for
19 the adoption of 283 by things that had nothing to do with race or
20 partisanship.

21 MR. GARZA: 19.84, page 84. Can you cut that, the one
22 on the right, cut it out and superimpose it beneath the other
23 one?

24 A. Well, the conclusion is that all of those hypotheses have to
25 be rejected. In fact, 283 has a larger total deviation than it

1 has larger average deviation than the current plan or several of
2 the other plans, that it is less compact than almost all the
3 other plans under either definition and that it splits a lot more
4 voter tabulation districts.

5 So to the extent that we worry about voters being
6 confused because they used to vote at the school house and
7 suddenly they get to the polling place and it's the fire house,
8 or that county registrars get bothered by lots of split voting
9 tabulation districts that they have to reprecinct, all of these
10 reasons can be rejected. 283 is inferior on all of these bases.

11 Q. (BY MR. GARZA) And one of these things that the alternative
12 plans have been criticized for is containing districts that were
13 not compact. Did you do a comparison of the plan against 283?

14 MR. GARZA: And if we could turn to table 21, page 86
15 of the report at 19.87, Robert.

16 A. This just looks at the districts which are black and
17 Hispanic voting age population majority, so it's not just all of
18 the districts which you've already looked at before. On the
19 basis of all of the districts 283 is not more compact. But are
20 the minority districts more compact under 283 than they are
21 under the -- under the other plans? The answer is no, not
22 under -- they're not more compact under 283. They could not have
23 chosen 283, would not have chosen 283 on the grounds that the
24 districts were more compact, even the majority/minority
25 districts.

1 283 is more compact than some of the other plans under
2 some definitions of compactness but certainly not across the
3 board. And in general it's less compact than the previous plan.
4 That could not have been a reason either.

5 Q. Okay. Doctor, thank you. Looking at some of the things you
6 looked at for examining intentional discrimination, did you find
7 inconsistent applications of standards or other indications of
8 intent?

9 A. Yes, sir. One of the things that I did was to look at the
10 House and Senate debates on redistricting plans and they are very
11 informative. They show evidence and certainly charges of
12 inconsistencies in the application of principles and plans. And
13 they are apparent. Those inconsistencies are apparent from the
14 shape of the districts. They are apparent from the populations
15 of the districts. So the evidence on both an objective sense and
16 both an objective sense and from the legislative discussions
17 goes -- says that they are -- there were inconsistencies in the
18 way that districtings were worked out.

19 Q. Okay. And in your report you point to examples of those
20 sorts of -- of items in the debates and you point to certain of
21 the maps that are consistent with -- with the question of intent.
22 So in an analysis of an intent is the shape of the district
23 important?

24 A. It's quite important. One of the things that I did that
25 came out of the Garza case and which is in a chapter of

1 "Colorblind Injustice" is to look at a series of factors which
2 historians and courts have used to try to determine the intent of
3 framers of particular laws. And in redistricting cases in
4 particular one of the things that they have looked at is the
5 shape of the districts, most famously in Shaw versus Reno, but in
6 lots of other cases they have looked at the shape of the
7 districts to try to determine intent. And it's commonsensical.
8 That's what a lot of people have -- historians have done before
9 even judges started doing it.

10 Q. And as an example of that --

11 MR. GARZA: If we could turn now to page 95 of the
12 report and look at figure eight that's on page 19.96, Robert.
13 The one before that, 19.96.

14 A. Okay. This is district 41 in the state house that I said we
15 would get back to. I think it was described on the floor of the
16 House as a transformer district. Somebody has kids. It's a
17 district that immediately attracts your eye and you say to
18 yourself what does this mean, why did they do it this way.

19 MR. GARZA: And if we could turn to the next page,
20 Robert.

21 Q. (BY MR. GARZA) I'm not sure we'll be able to see it
22 clearly, but what do you -- what are you showing then with --

23 A. Well, this does a couple of things. One, it
24 superimposes -- I guess it's Anglo population on the district so
25 that the -- the areas which have a large proportion of Anglos are

1 the darker areas here. It also shows the precincts and probably
2 you would have to look at this really blown up, but if you look
3 at voter -- if you look at the way that the lines are drawn they
4 cut voter districts quite considerably. I think there are 14 VDT
5 cuts in this particular district alone which is more than the
6 total number of cuts in the whole state for the state senate
7 which is 10 or 12.

8 Q. So just within one district they've managed to cut more
9 voting precincts than in the entire senate plan?

10 A. That's correct.

11 Q. And what is that an indicator of, Dr. Kousser?

12 A. Well, obviously something is going on. And if you look at
13 the pattern of population you see what is going on.

14 Q. So if we turn to the next page, page 19.98.

15 A. This is even harder for those people in the audience to see
16 but here we go. The dots are I think 20 people of Anglo
17 orientation, Anglo demography and for each dot. So if you look
18 at the district it captures just about all of the heavily Anglo
19 areas that it possibly could. This is in a county that is quite
20 heavily Latino. That's good. You can see that the shapes are
21 tracking -- trying to capture as many Anglos as they possibly
22 can. And it's apparent simply by looking at the -- at the
23 patterns of demography versus the patterns of the lines on the
24 map that something was going on and this tells you what was going
25 on. They're trying to increase the Anglo percentage in this

1 district.

2 MR. GARZA: If we could now turn to page 101 of the
3 report that's figure nine at 19.02, Robert.

4 A. Okay. This is a district -- this is a House district in
5 Tarrant County. Is it district 90? Anyway, again that's a
6 telltale shape. You look at the district and you say why does
7 this finger cut out of the district. What is it straddling? I
8 don't have a particular name for the district, but the shape is
9 again suspect.

10 Q. (BY MR. GARZA) And there are a number of examples that you
11 give in your report like this one. If we could go to the
12 next -- the next page, 102.

13 A. This is the Latinos who were drawn into the district. You
14 can see that all of the darker portions of this district are
15 heavily Latino. And if you look at the way that it is patterned
16 the lines go very carefully to avoid non-Latino areas and to
17 capture as many Latinos as possible. So it's the opposite of
18 district 41 which was drawn to capture as many Anglos as
19 possible, this is drawn to capture as many Latinos as possible.

20 Q. So like I say, there are a couple of other examples,
21 Dr. Kousser, but we'll move on. Based on all of the analysis
22 that you've done with regard to the House district that was
23 adopted by the state of Texas, 283, have you reached a conclusion
24 regarding its compliance with one person/one vote?

25 A. I have. It is not very compliant with one person/one vote.

1 And the population disparities are clearly correlated with
2 partisanship and ethnicity. Latinos are disproportionately
3 disadvantaged --

4 JUDGE GARCIA: Yes, sir.

5 MR. SCHENCK: Your Honor, I'm fine with the witness
6 giving his opinion but I want to be clear I'm going to object to
7 this as a legal opinion ultimately, the compliance with one
8 person/one vote.

9 JUDGE GARCIA: Mr. Garza. Any response?

10 MR. GARZA: Well, I mean, I think he prefaced his
11 statement at the very beginning that he was doing a social
12 science analysis of this.

13 JUDGE GARCIA: Okay. He's already offered that opinion
14 so you can go to the next question then.

15 MR. GARZA: Certainly, Your Honor. And what I'm trying
16 to get at now, Your Honor, is just a summary of his conclusions
17 and I'll be done with this area.

18 JUDGE GARCIA: Okay.

19 Q. (BY MR. GARZA) So you found that the plan's deviations were
20 not justified and they more heavily burdened Latinos; is that
21 correct?

22 A. That's correct.

23 Q. All right. With regard to your analysis of minority voter
24 cohesion first as to the Latino population your finding was --

25 A. That they were cohesive.

1 Q. And that there was sufficient -- what did you find with
2 regard to whether there was sufficient Anglo block vote to defeat
3 the preferred candidate of the Latino community?

4 A. There was.

5 Q. In a review of all the circumstances that are -- that you've
6 analyzed in this 134-page report how does the balance on the
7 totality of circumstances fall in this analysis?

8 MR. SCHENCK: Objection, calls for a legal conclusion.

9 MR. GARZA: Your Honor, it's part of his analysis as
10 part of political scientist. That's why these experts are hired
11 to Give you their measure of these items to assist the Court in
12 its findings.

13 JUDGE GARCIA: I'll allow it. Go ahead.

14 A. It's clear that there was intentional discrimination and
15 that the totality of the circumstances that I looked at -- I
16 didn't look at all the circumstances. I did not go through an
17 analysis of all the senate factors, but to the extent that I
18 looked at circumstances that either objectively or intentionally
19 indicate bias I found it.

20 Q. (BY MR. GARZA) Thank you. With regard to the congressional
21 districting plan that was adopted, SB4, would you tell the Court
22 what you did to examine the impact of SB4 on the minority
23 community.

24 A. I did a similar analysis in looking at the number of
25 majority/minority districts by various definitions. I looked at

1 the House and Senate debates and I looked at the shapes of the
2 districts. There was no Larios type analysis since all the
3 districts had to be -- had to be zeroed out to have no population
4 disparities at all in the legislature's view.

5 Q. In terms of your analysis of racial block voting and the
6 implications of racial block voting regarding cohesion, those
7 results apply equally to your analysis of the congressional plan?

8 A. Yes.

9 Q. Okay. So then looking at the table 22 which is on page 111
10 of Dr. Kousser's report, did you measure the -- compare the plans
11 for whether they created districts in which minorities had an
12 opportunity to elect candidates of their choice?

13 A. I did. I used the same definitions that I had used to
14 investigate the state House plans and I looked at a series of
15 plans, not all the plans. I looked at several plans including
16 C185 which was the adopted plan. And I tried to see how many
17 districts they set up which had majorities of the Hispanic
18 citizen voting age population, Hispanic voting age population and
19 so on and compared each of the plans, number of districts, with
20 C185.

21 Q. And on each of those categories was there at least one plan
22 that developed more districts than what was adopted by the state?

23 A. Yes.

24 Q. Did you examine the compactness scores for the congressional
25 plans?

1 A. I did.

2 Q. And if we could turn to page 113, that would be 19.114 and
3 that's table 23. And could you describe for the Court your
4 findings with regard to that?

5 A. Again, the question was whether there were alternative
6 explanations to racial and partisan bias that would explain why
7 the adopted plan was adopted. And here I looked at compactness
8 of the whole plan, all of the districts and then I just looked at
9 the districts that each plan drew which had black and Hispanic
10 voting age population majorities. I looked at compactness scores
11 in general.

12 The adopted plan is not substantially more compact.
13 There are other plans that are more compact than the adopted
14 plan, both on a whole plan basis and just looking at the
15 majority/minority districts using that definition.

16 So compactness is an explanation for the choice of the
17 legislature's plan, an explanation which would be non-partisan,
18 non-racial, that can be rejected.

19 Q. Now, in evaluating these plans do you look at -- I've often
20 heard that one of the things that you measure discrimination by
21 in terms of the minority community are these three terms that are
22 used: Packing, cracking and stacking. Are you familiar with
23 those terms?

24 A. Yes, and there's one more that I've been trying to sell for
25 several years now. It's called tacking. You take an area and

1 you just tack another area onto it which is often far away and
2 and doesn't seem to have anything to do with the major area.

3 Been unable to, but --

4 Q. I know some of these terms are fairly obvious in terms of
5 what they mean, but could you briefly describe those to us?

6 A. Packing is when you take districts which are easily
7 controlled by a minority community -- for this particular purpose
8 packing is that -- or for one particular party, and you simply
9 add more people of that designation to that -- that particular
10 district. So you take a district that's 55 percent black and you
11 make it 57 percent black. You make it 60 percent black. That's
12 packing.

13 Cracking is when you split apart a minority community
14 to prevent the formation of one particular -- of a district
15 that's -- could be majority minority or where there would be an
16 opportunity for minorities to elect candidates of their choice.

17 Stacking is where -- it looks at a whole series of
18 districts. You take a bunch of districts and you keep them below
19 the level, all of them below the level, maybe just below the
20 level where minorities can elect candidates of their choice. And
21 tacking I've already explained.

22 Q. All right. And in examining the congressional plan did you
23 find evidence of these traditional racial gerrymandering
24 techniques?

25 A. I did.

1 Q. And if you -- if you would look now at table 24 that's on
2 page 116 and it's at 19.117, Robert.

3 A. This is a current plan. Again, I looked at all these
4 definitions of majority/minority and I looked at the
5 districts that were minority opportunity districts by
6 definitions, by general understanding but by definitions that
7 have been used by various people in this case.

8 So this -- the difficulty about looking at this table
9 with -- in this particular manner is that what you'd really like
10 to do is compare the -- this -- the right-hand column, for
11 example, in the current plan to the right-hand column in the B
12 part of the table.

13 MR. GARZA: So, Robert, can you put them one on top of
14 the other, the two plans again?

15 A. It may not be possible to do that.

16 MR. GARZA: Or the signs if you could just go back to
17 the other one and then highlight -- let's pick HVAP to begin
18 want. Just highlight those numbers. So take off the big one.
19 Go back to the original table and highlight the numbers on the
20 first line in the second column. No, just highlight.

21 ROBERT: Just highlight it?

22 MR. GARZA: Yeah, just highlight it. And then on the
23 bottom one as well.

24 Q. (BY MR. GARZA) Can you see those better that way,
25 Dr. Kousser, or do you want to approach the screen?

1 A. Well, I can give you the general conclusion though I can't
2 really see them from here. Sorry.

3 Q. All right.

4 A. The general conclusion is if you compare them row by row,
5 across the two sets of columns you find that in every case -- I'm
6 not sure whether it's in every case with just HCVAP but certainly
7 in every case in BHVAP they increased all but one. They
8 increased the proportion that's BHVAP. And these are large
9 numbers already. If you look at the BHP -- BHVAP column most of
10 those are over 70 percent. You didn't have to increase the
11 BH -- BHVAP numbers when they're over 70 percent in order for
12 minorities to be able to elect a candidate of their choice. They
13 could clearly do that already. You're just packing those so that
14 there will be fewer of those sorts of people available to put in
15 other districts.

16 Q. So, for example, in district 30 under the current plan, the
17 BHVAP is 71.4 percent and under the adopted plan it's 81.5
18 percent. So that's -- that's an example of what you're talking
19 about?

20 A. That's right. Eddie Bernice Johnson has won that district
21 since 1929 and she's not in any difficulty. She's going to win
22 that district by even more.

23 Q. So if we could now go to table 25 which is on 19.119, page
24 118. And if you would describe for the Court what this shows.

25 A. These are the districts that are just adjacent to or very

1 close to those packed districts. What you find out there is that
2 these district -- these districts are stacked, that all of these
3 districts have HCVAP minorities and two of them have bare BHVAP
4 majorities. So it's the inverse -- it's the yin to the yang of
5 packing. If you don't -- if you pack some districts you unpack
6 the others. These are the unpacked districts.

7 Q. And now you also for the congressional analysis looked at
8 shapes of the districts as you did with the House plan; is that
9 correct?

10 A. That's correct.

11 Q. And that's an important consideration in evaluating the
12 impact on the minority voters and in determining intent?

13 A. That's correct.

14 Q. So if we could turn to page 120 of your report and it's
15 19.121, Robert. As an example, is this one of the districts that
16 you looked at?

17 A. It is. You look at that district and you say was there a
18 lightning strike that hit down the middle of the district and
19 just eliminated all of those people? Who, I asked, is being
20 overweighted here?

21 Q. And if we could go then to -- and so just so that we're
22 clear, the lightning bolt that runs through the middle of Tarrant
23 County is attached to a district north of there in Denton County;
24 is that correct?

25 A. That's correct.

1 Q. Okay. So if we could go to the next slide or the next
2 figure, part B at 121 and it's 19.122, what does that tell you
3 about what's going on with that lightning bolt?

4 A. Well, the people who are in the area that has been hit by
5 lightning are disproportionately Latino. They're the darker
6 figures, the darker dots and they're almost all within the
7 lightning strike area. So the district is drawn so that those
8 people will not be included in the district.

9 Q. And so they won't be included in the Tarrant County
10 district. They will be included in a Denton County district.
11 And why is that important do you think?

12 A. The Denton County district that they're included in is a
13 district in which Latinos have no opportunity to elect the
14 candidates of their choice because they're overwhelmingly
15 non-Latino. So this is how they fit together.

16 Q. And again, Dr. Kousser, you give several examples of that
17 occurring. That is the minority community being extracted
18 from -- from an urban county and placed in another district where
19 their impact is minimized; is that correct?

20 A. That's correct.

21 Q. And all of these districts are fairly odd shaped?

22 A. Yes. It's the correlation of the shape. It's not just the
23 oddity of the shape. It's the correlation of the shape with the
24 demography and the partisanship that's really indicated here. If
25 there weren't any correlation it wouldn't really matter.

1 Somebody is drawing a district so they can go out and pick up
2 their girlfriend in part of the district or they can pick up a
3 campaign manager it doesn't really make any difference, but it
4 makes a lot of difference politically if what they're doing is
5 they're making it more difficult for minorities to select
6 candidates of their choice.

7 Q. So what it did is the shape sent up a red flag for you and
8 your examination showed it was impacting the minority community?

9 A. That's correct.

10 Q. Could you summarize then for the court your findings with
11 regard to SB4, the congressional plan adopted by the state of
12 Texas?

13 A. Well, it had a discriminatory impact in that there were
14 other alternative plans which could have been adopted which gave
15 minorities better chances to elect community -- candidates of
16 their choice. The adoption of SB4 could not have been because
17 the plans were more compact than alternative plans because they
18 weren't more compact than alternative plans. And if you look at
19 the shapes of the districts and compare them with demography it's
20 evident that they were drawn to pack minorities into as few
21 districts as possible, to crack the minority communities so that
22 you could extract -- particularly in urban areas minorities, to
23 make it impossible to draw majority minority districts in those
24 areas and to tack them onto suburban districts where they
25 wouldn't have a chance to elect candidates of their choice. So

1 in both intent and effect I find discrimination in the adoption
2 of SB4.

3 MR. GARZA: Pass the witness.

4 JUDGE SMITH: Let me just ask you something quickly if
5 I may. Back to your testimony about the polarized voting. Was
6 there any effort to distinguish voters who checked the straight
7 party box or pulled the straight party lever from those who went
8 down and marked individual candidates on the ballot.

9 THE WITNESS: Your Honor, I don't have any information
10 on that.

11 JUDGE SMITH: That could make a difference, could it
12 not? In other words, if a voter is determined to vote for a
13 party, that voter might be more likely to check the straight
14 party box rather than selecting individual candidates. But if
15 the voter wanted to -- wanted to differentiate or maybe vote for
16 some races and not others, or vote for names that are familiar,
17 or vote for Hispanic surnames or whatever, whatever it might be,
18 that might make a difference, would it not, in the analysis?

19 THE WITNESS: Well, it might make a difference to a
20 degree, but it would not mean that partisanship and not race was
21 always determinative because in primaries there's no straight
22 party ticket and so --

23 JUDGE SMITH: Right. And I should have prefaced my
24 question that it was only referring to the general population.

25 THE WITNESS: Yes.

1 JUDGE SMITH: All right. So you're just referring I
2 just wanted to be sure that I understood that you did not have
3 information given to you on that and you did not attempt to make
4 that differentiation.

5 THE WITNESS: That's correct, Your Honor.

6 MR. SCHENCK: Your Honor, we have been going three
7 hours. If I could take a short break for the bathroom.

8 JUDGE GARCIA: Of course.

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1 (Open court, 4:44 p.m.)

2 JUDGE GARCIA: Okay. Counselor, you may proceed.

3 **CROSS-EXAMINATION**

4 BY MR. SCHENCK:

5 Q. Dr. Kousser, how are you?

6 A. I'm fine.

7 Q. Dr. Kousser, earlier in your direct testimony you talked
8 about your definition of polarization. You described, as I
9 recall, as statistical significance; is that correct?

10 A. There were two definitions, and that was one.

11 Q. Okay. What's the other?

12 A. The other was a majority of one group versus the majority
13 of the other group.

14 Q. So in theory we could have a 51/49 statistically
15 significant for a majority polarization?

16 A. 51/49 might not be statistically significant. But by the
17 definition that Justice Brennan used in Gingles, that's one of
18 the two definitions that was counted as racially polarized.

19 Q. Okay. Well, let's take that definition and let's say we
20 have two groups of people voting, only two groups, in one
21 district, 51/49. You would say there's potential for racially
22 polarized voting in that district?

23 A. You could count that under this definition as racially
24 polarized.

25 Q. Now, let's assume that you want to draw a district that

1 performs under the Voting Rights Act, in that district, with
2 that population of people. What percentage of the 51 percent
3 voting group do you have to populate the district with in order
4 for it to perform?

5 A. It depends upon the degree of turnout, the degree of
6 registration.

7 Q. Let's control for those things.

8 A. Control for those things?

9 Q. You would have to have a hundred percent of the 51 percent
10 group theoretically to have the 51 percent controlling on
11 election day, right? If the same two -- if the groups were
12 both voting at the same rate, same turnout, right?

13 A. Yes. I suppose that's correct. Sure.

14 Q. And then you mentioned Justice Brennan's opinion for the
15 plurality in Gingles. And, in fact, you cite to it extensively
16 in your report. And I think, if I heard you correctly, you
17 indicated what your recollection of the level of black cohesion
18 in a general election was in that case. Do you recall what it
19 was?

20 A. There were lots of elections that were taken into account
21 in Gingles. And it was -- they -- as my -- my recollection is
22 that they were around 75/25.

23 Q. Is it possible that the black support for black democratic
24 candidates ranged between 87 to 96 percent in the general
25 election in Gingles?

1 A. It's conceivable. You've got the opinion. I don't.

2 Q. Okay. Didn't Justice Brennan in Gingles indicate that the
3 level of cohesion necessary to be legally significant,
4 significant enough to draw new district lines on the basis of
5 race, would vary depending on the nature of the case involved
6 and the nature of the district?

7 A. Yes.

8 Q. Okay. You've written extensively on the topic of voting
9 rights; isn't that correct?

10 A. That's correct.

11 Q. Is there a difference between multimember and single
12 member districts in terms of the risks of vote dilution?

13 A. Certainly.

14 Q. Which ones are worse?

15 A. Multimember districts in which you've got cohesive
16 majorities voting against a minority make it virtually
17 impossible for the minorities to elect candidates of their
18 choice.

19 Q. And what kind of district was involved in Gingles,
20 multimember or single member districts?

21 A. Those were usually multimember districts.

22 Q. Okay. Now, let's talk about your methodology a bit.
23 There are some differences according to which method, as
24 between ER, let's say, and EI, in terms of the numbers that we
25 see generated in your tables; isn't that correct?

1 A. They're very small differences.

2 Q. Okay. Let's look at Table T3. Do you have your brief --
3 I mean, I'm sorry -- your report?

4 A. I can see this.

5 Q. Okay. Do you see the candidate Chavez-Thompson? And this
6 is the 2010 general election for governor.

7 A. Yes.

8 Q. For Latino support you estimate at 77.8 percent?

9 A. Yes.

10 Q. And that's using ER, correct?

11 A. Let me get the whole table before me. I'm not sure
12 whether it's using ER or weighted ER.

13 Q. Can we back up a little bit so we can see the caption?

14 I believe it says, if it helps, least squares
15 weighted by votes.

16 A. So it's weighted ER.

17 Q. Okay. Now, let's go to Table 6 on Page 35 of your report.
18 And remember, we had -- let's see. Can you tell me now what
19 you have as the level of support among Latinos for
20 Chavez-Thompson?

21 A. It's 70.7.

22 Q. Okay. And is that ten percent less than your estimate on
23 Table T3?

24 A. Not ten percentage points less.

25 Q. Okay. But is it ten percent of the -- of the degree of

1 cohesion?

2 A. It's ten percent of 77.8 or 70.

3 Q. Now, let's turn to your report and the deposition
4 testimony, I think you'll recall, insofar as racial identity
5 voting is concerned. Would you agree with me that in general
6 elections African-Americans vote nearly unanimously for the
7 Democrat regardless of race?

8 MR. GARZA: Your Honor -- are you reading from his
9 deposition?

10 MR. SCHENCK: No. I'm asking him a question.

11 MR. GARZA: Sorry.

12 THE WITNESS: If I remember the question now, the
13 answer is yes.

14 BY MR. SCHENCK:

15 Q. Would you agree that Hispanics and African-Americans are
16 not cohesive in a democratic primary?

17 A. In the elections that I have looked at they have not been
18 cohesive within the democratic primary.

19 Q. Okay. And I believe you had significant testimony during
20 your direct examination, in which you looked at the democratic
21 primary to test whether, in fact, race or party affiliation was
22 accounting for Latino cohesion; is that correct?

23 A. That's correct.

24 Q. But so far as your analysis is concerned in this case, you
25 have not determined that -- your analysis is consistent with

1 the conclusion that Hispanics and African-Americans are not
2 cohesive in the democratic primary?

3 A. That is correct.

4 Q. And I do -- as I understand your testimony, you will say
5 that Hispanics vote for Democrats overwhelmingly and regardless
6 of the race of the candidate in the general election?

7 A. That's correct.

8 Q. By "overwhelmingly" you mean at or under 70 percent?

9 A. In general, those are the figures. Some of them are a
10 little under 70 percent.

11 Q. Can we see table T15, please?

12 This, again, is the general election for 2010.
13 You identified the Hispanic candidate of choice in this race
14 for lieutenant governor as Chavez-Thompson with a level of
15 support at 67.1 percent; is that correct?

16 A. Yes.

17 Q. And then if we can go down to the land commissioner race,
18 you identify Uribe as the candidate of choice at 70.2 percent.

19 A. Yes.

20 Q. And then with respect to the election in the Supreme
21 Court, we have a Hispanic surname candidate, Eva Guzman, who
22 only receives 32 percent of the Hispanic vote; is that correct?

23 A. She's a Republican.

24 Q. Yes. At Page 51 of your report I believe you concluded
25 about two-thirds of Latinos support Democrats, regardless of

1 whether they ran against Latino Republicans or not; is that
2 correct?

3 A. Correct.

4 Q. So at least where we're controlling in the general
5 election for a choice between party affiliation and race,
6 Hispanics are not showing any statistically significant
7 difference in their voting pattern?

8 A. I'm sorry. I don't understand that.

9 Q. In the general election, when we look at the choice that
10 Latinos are making between party affiliation and race, the
11 Latino voters, as far as your analysis would show, prefer
12 race -- I'm sorry -- prefer party affiliation as a basis for
13 their vote?

14 A. They are voting for a democratic candidate. There's no
15 evidence that that would be reversed if the Republican were
16 Anglo and the Democrat was Latino.

17 Q. Right. But my question is this: You show, as I
18 understand it, approximately two-thirds -- two-thirds of
19 Latinos supported Democrats regardless of whether or not they
20 ran against a Latino Republican?

21 A. Yes.

22 Q. Okay. And yet, you've testified here today that racial
23 polarization, and I think you put this in the report, is not
24 simply a function of party affiliation; is that correct?

25 A. That's correct.

1 Q. And in coming to that conclusion you looked at the 2010
2 democratic primary; is that correct?

3 A. That's correct.

4 Q. Did you look anywhere else for that conclusion?

5 A. There is other material in other reports, but I did not
6 look at other --

7 Q. Okay. And what were the two races that you looked at in
8 2010 in the democratic primary?

9 A. I looked at the land commissioner's race, and I looked at
10 the lieutenant governor's race.

11 Q. Okay. And based on your analysis of those two races in
12 2010, you conclude that Hispanics are supporting a Hispanic
13 surnamed candidate at a statistically different rate than they
14 would simply be supporting a Democrat in the general election?

15 A. I don't think I can make a statistical comparison between
16 those -- I couldn't run a significance test between those two,
17 at least I didn't run a significance test between those two
18 because they're different elections.

19 But the proportion of Hispanics -- Hispanic voters
20 who voted for Chavez-Thompson in the democratic primary was
21 considerably higher than it was in the general election?

22 Q. Okay. Suggesting to you what?

23 A. That partisanship can't explain Latino cohesion in
24 elections across the board because that was a primary and
25 partisanship couldn't explain Latino cohesion in that election.

1 Q. So you would expect then in the democratic primary that
2 given a choice between a Latino surnamed candidate and any
3 other candidate, we would see a substantially higher
4 probability that the Latinos would vote in the primary for the
5 Latino surnamed candidate?

6 A. Other things being equal, certainly.

7 Q. What is roll off?

8 A. Roll off is the disproportionate likelihood that a voter
9 will not vote in as high proportions in down ticket races than
10 in top of the ticket races.

11 Q. Okay. Can we please see Exhibit D35, please?

12 I believe Your Honors have this exhibit at the
13 bench.

14 Jose, do you have D35?

15 MR. GARZA: This?

16 MR. SCHENCK: I draw your attention -- and, Your
17 Honor, with your permission, I'll approach the witness?

18 JUDGE GARCIA: Yes, you may. Of course.

19 BY MR. SCHENCK:

20 Q. I'm drawing your attention to 2010 democratic primary
21 election, the race for governor. Professor, can you read me
22 the first two names on the ballot for governor in the
23 democratic primary in 2010?

24 A. I hesitate to do this because my Spanish pronunciation is
25 awful. So I will butcher these names. They are Alma Ludivina

1 Aguado and Felix Rodriguez Alvarado.

2 Q. Okay. Can you tell me what percentage of the vote each
3 one of those apparently Hispanic surname candidates received?

4 A. 2.83 and 4.95, respectively.

5 Q. Okay. And given what we know about roll off, would we
6 expect there were more Hispanic voters voting in the governor's
7 race than there were, for instance, for land commissioner?

8 A. Probably. I don't know how far land commissioner is down
9 the ticket and exactly how much roll off to expect in Texas
10 elections. I haven't looked at it.

11 Q. And if I'm recalling correctly, from your Table T7 -- can
12 we have T7, please?

13 From your sample of two, chosen from the 2010
14 primary, you would indicate that 90 point something -- well,
15 between 87 and 90 percent of Hispanic voters would support the
16 Hispanic surnamed candidate. Is there any way that either or
17 both of those two candidates combined received anything like
18 that percentage?

19 A. No. But you will recall on my answer I said other things
20 equal.

21 Q. I'm sorry. I couldn't hear you.

22 A. On my answer to you earlier I said other things being
23 equal. Other things clearly were not equal in that case.

24 Q. But you would agree that you had a sample of two from
25 which you draw this conclusion?

1 A. Yes.

2 Q. Did you not look at the governor's race in preparing your
3 report?

4 A. I think I looked at it, but I didn't -- I did not analyze
5 it. I just ran a regression quickly and didn't do anything
6 more.

7 Q. Why not?

8 A. I wasn't asked to.

9 Q. Who told you which races to analyze?

10 A. I think I was asked by Mr. Garza.

11 Q. But he didn't ask you to look at the 2010 governor's race
12 then?

13 A. No, because it didn't have any prominent Latino candidates
14 in it.

15 Q. Okay. In Mr. Garza's opinion?

16 A. I take it that that was the case.

17 Q. So you didn't analyze it?

18 A. I did not.

19 Q. So you're not in a position to tell me if all other things
20 are equal with respect to these three races?

21 A. Except by looking at these figures, where they clearly --

22 Q. They don't fit your conclusion, do they?

23 A. I'm sorry?

24 Q. They don't fit you your analysis, do they?

25 A. Even in California we knew which candidate was the most

1 prominent candidate in the democratic primary for Texas
2 governor.

3 Q. Again, but from your sample of two, which by -- my
4 understanding of what you're testifying to now, in prominent
5 Hispanic candidates we see a substantial level of support in
6 the democratic primary from Latinos?

7 A. In the election I looked at there was a substantial Latino
8 voter cohesion in those two races for both candidates.

9 Q. Who you now are saying are prominent candidates?

10 A. They were certainly prominent candidates.

11 Q. You don't think there's any reason why Latino voters would
12 be more concerned about land commissioner than the governor, do
13 you?

14 A. I really don't know.

15 Q. You also testified about the one person, one vote
16 argument. You, in fact, cite Larios in your report.

17 THE REPORTER: I'm sorry. I can't hear you.

18 MR. SCHENCK: Larios. My apologies. I've had a cold
19 and am about to collapse.

20 BY MR. SCHENCK:

21 Q. What role did incumbency protection play in your
22 conclusions about the pattern of over and underpopulation?

23 A. I did not look at incumbency protection.

24 Q. Okay. You have several tables, which I think we've shown
25 to the Court earlier, comparing the adopted plan to

1 alternatives that were proposed by a number of litigants in
2 this case.

3 Did you try to control in any way whether -- to
4 whether any of those alternatives relied on the legal
5 arguments, for instance, the existence of a Section II right to
6 a coalition district or whether any of those alternatives being
7 proposed subordinated traditional redistricting purposes to
8 race or whether there were any other legal problems with those
9 alternatives that the legislature ultimately rejected?

10 A. I did not go through a legal analysis of the programs --
11 of the plans.

12 Q. Your analysis earlier with respect to the Larios
13 opinion -- let me draw your attention back to that opinion if I
14 might. In Larios, if you recall, isn't it true that over 50
15 percent of the Republican incumbents were paired and only nine
16 percent of the democratic incumbents had been paired by the
17 majority democratic legislature?

18 A. I don't remember the exact numbers, but you've got the
19 case and I'll certainly accept that.

20 Q. Does anything like that happen in this house map?

21 A. No, it didn't. One of the things that was clearly
22 apparent was the Republicans won so many races in 2010, they
23 picked up -- I think they had 76 before the election. I think
24 they ended up with 99, and two switched after the election. So
25 if any incumbents were going to be paired, it almost had to be

1 Republicans.

2 Q. And, in fact, do you recall how many Republicans are
3 paired in the house map?

4 A. I do not recall, but there were more Republicans paired
5 than there were Democrats under the house map.

6 Q. Does six Republican districts, 12 members paired against
7 each other, refresh your recollection?

8 A. I will accept your --

9 Q. And do you recall how many Democrats were paired by this
10 house plan?

11 A. I do not recall.

12 Q. Do you know of anyone other than the name Bohac or
13 Hochberg that were paired under this house plan?

14 A. I simply don't know.

15 Q. Okay. You also showed the Court some histograms, if you
16 recall, about patterns of overpopulations of the district and
17 had a U, and you had some up and some down. Would you agree
18 with me if you destroy or get rid of six Republican districts,
19 the histogram will look different? It's easier to get rid of
20 overpopulated districts if you just get rid of them?

21 A. What I looked at were districts under a current plan
22 and -- under the current plan and under the proposed plans.
23 And those -- those were districts -- those were districts that
24 did have Republicans in them, yes. But I do not know how many
25 of those districts Republicans were paired with other

1 Republicans in.

2 Q. Well, isn't it true there are a lot of considerations
3 going into how to draw these legislative districts?

4 A. There are a lot of considerations. That's why I tried to
5 operationalize as many of those considerations as I possibly
6 could. And again and again I found out that the choice of
7 those -- the plans that were finally adopted could not have
8 been chosen for those other considerations.

9 Q. You wouldn't -- you didn't try to control for -- you just
10 told me two minutes ago you didn't control for incumbency
11 protection, did you?

12 A. I did not.

13 Q. Okay. And you didn't -- in your view, in fact, you
14 criticized Burt Solomons in your report for failing to follow
15 what you construe as Texas legislative council advice on a
16 relative priority of maintaining county lines, right?

17 A. That's correct, yes.

18 Q. Where do you understand the Texas legislative council's
19 advice to have come from?

20 A. I'm sorry. I don't understand the question.

21 Q. Where -- I believe in your deposition you indicated that
22 you understood Texas legislative council to have instructed the
23 Texas legislature that they should -- they could or should
24 consider Section II compliance and one person, one vote
25 considerations before consideration such as maintaining the

1 county line?

2 A. That's what their redistricting guides that are on their
3 web site said.

4 Q. That's how -- at least that's how you read it?

5 A. It seemed to me quite plain.

6 Q. Can we agree it would speak for itself?

7 A. Certainly.

8 Q. Do you know who is -- who the Texas legislative council
9 is?

10 A. They're the people that provide us with all the wonderful
11 numbers.

12 Q. Are they elected by anybody?

13 A. No.

14 Q. Who do they work for?

15 A. They work for the Texas legislature.

16 Q. But your criticism of the existing plan follows the advice
17 that you understand the Texas legislative council to have
18 given. You expect that the Texas legislature should have
19 looked at that one person, one vote and Section II
20 considerations before considering things like incumbency
21 protection or maintaining county lines?

22 A. Yes. And that's true in redistricting across the country.
23 This was extensively discussed, quite openly, in California.
24 And that was exactly what they said in California. Although we
25 have more in California, more constitutional provisions, we

1 have a compactness constitutional provision written in. That's
2 true of legislatures, that's true of guides to legislatures all
3 across the country.

4 Q. And so your conclusion with respect to the intent to
5 discriminate are connected up with the failure to prioritize
6 now in a way you believe the legislature should have?

7 A. Certainly.

8 Q. Okay. So their failure, let's say, to subordinate the
9 county line rule and their interest in protecting incumbents
10 with either one person, one vote or the Section II mandate in
11 your -- in your mind was incorrect?

12 A. It goes to the question of what their intention was,
13 whether it was discriminatory. Had they had a
14 nondiscriminatory intention, they would have gone along with
15 what legislatures all across the country or citizens
16 commissions, as in California, have done. And they would have
17 subordinated state constitutional or state law provisions to
18 the national goals of equal protection and the -- and
19 nondiscrimination under the 15th Amendment that have been set
20 out by courts all over the country.

21 Q. When you say nondiscrimination under the 15th Amendment,
22 do you mean 14th Amendment?

23 A. I mean the 15th Amendment as well. If -- to the extent
24 that the Voting Rights Act is dependent upon the 15th
25 Amendment, it's -- any time you implicate the Voting Rights

1 Act, you implicate the 15th Amendment.

2 Q. So with respect to the priority between these state rules
3 and Section II's obligation, in your view, to draw additional
4 districts in which minorities would constitute a majority
5 capable of controlling the outcome of the election, you believe
6 the state got their priorities backwards?

7 A. I think that they got their priorities backwards, but what
8 I was determining in the analysis, particularly of this state
9 house plan, was that they could not have chosen on the basis of
10 the county line rule because they didn't follow it in certain
11 circumstances or --

12 Q. When you say they didn't -- when you say they didn't
13 follow it, that's in your opinion they didn't follow it?

14 A. They did not follow it in certain circumstances.

15 Q. In your opinion?

16 A. In my opinion.

17 Q. Are you a lawyer?

18 A. No.

19 Q. Thank you.

20 A. It was also challenged by people in the house.

21 But more important, if you look at instances which
22 could not have been determined by the county line rule, like
23 looking at the urban counties, they could not have chosen what
24 they did because of a desire to follow the county line rule,
25 because the county line rule didn't say that you would --

1 didn't determine whether you would --

2 MR. SCHENCK: I'm going to object as nonresponsive.

3 MR. GARZA: Your Honor, first of all, this line of
4 question has been argumentative. He's interrupted his answer.
5 He's asked a question. He's entitled to answer it.

6 JUDGE GARCIA: I'll sustain that.

7 At this point the Court is going to excuse Judge
8 Rodriguez. He needs to attend to a TRO in another related
9 matter -- not a related -- in another matter and attend to
10 other matters. And Judge Smith and I are going to talk to you
11 about some housekeeping matters. So in terms of testimony,
12 we'll stop here for the day. Y'all may be seated.

13 Okay. First of all, there's three or four matters
14 I'd like to go over. Who are your witnesses tomorrow, Mr.
15 Garza?

16 MR. GARZA: The conclusion of Dr. Kousser.

17 JUDGE GARCIA: Right.

18 MR. GARZA: And that's the last witness for MAL.
19 After MAL --

20 MR. GRAY: Your Honor, Rick Gray for the Perez
21 plaintiffs. And we go next. And our first witness will be Ed
22 Martin who I anticipate will be approximately two hours. We
23 will have two short witnesses thereafter, Rogene G. Calvert and
24 Sarah Winkler. Both are from the Alief area in Houston, the
25 district that you may have been hearing about represented by

1 Representative Hochberg, that part of town.

2 JUDGE GARCIA: And what's the total time of those two
3 witnesses?

4 MR. GRAY: I would -- I'm guessing a total of 45
5 minutes total for both those two.

6 JUDGE GARCIA: Okay. And anybody else after that?

7 MR. GRAY: No, Your Honor. We have two other
8 witnesses, Dr. Murray and Dr. Lichtman, but they're being
9 called by other parties. So we've decided to defer any
10 examination of them until they're called by those parties.

11 JUDGE GARCIA: Okay. All right. Anybody else
12 proceeding tomorrow on the plaintiff's side?

13 MS. PERALES: Yes, Your Honor. Following the Perez
14 plaintiffs, the Latino Task Force will begin with Dr. Henry
15 Flores, who is an expert witness. I don't know how long --
16 it's hard to anticipate the time of cross, but on direct
17 probably 45 minutes; then Dr. Richard Engstrom, possibly 45
18 minutes to an hour on direct; then Dr. Andres Tijerina,
19 approximately 45 minutes.

20 JUDGE GARCIA: Okay.

21 MS. PERALES: And then followed by a series of lay
22 witnesses, Your Honor, from different parts of the state.
23 There are 12 of them. I --

24 JUDGE GARCIA: And that's going to be five minutes or
25 less, I'm sure, right?

1 MS. PERALES: Each one.

2 JUDGE GARCIA: Right.

3 MS. PERALES: Well, it depends on how fast they can
4 talk, Your Honor.

5 JUDGE GARCIA: Well, if they speak Spanish, it will
6 go faster.

7 MS. PERALES: It will, Your Honor.

8 JUDGE GARCIA: All right. And after those?

9 JUDGE SMITH: We're not going to have -- we can't
10 have offers of proof as to any of those? I mean, is it
11 necessary to have -- is this contested testimony or what?

12 MS. PERALES: I will talk to opposing counsel, Your
13 Honor.

14 JUDGE GARCIA: Yeah. Try to get that done today
15 before you call any of those 12.

16 MS. PERALES: Yes, Your Honor.

17 JUDGE GARCIA: Okay.

18 MS. PERALES: That would be the end of our case,
19 which we would expect at this point probably to flow into
20 Thursday morning because we'll be getting a late start on
21 Wednesday. But our case would not be more than a day, Your
22 Honor.

23 JUDGE GARCIA: All right. In any event.

24 Secondly -- hold on a second. Okay. Tomorrow we
25 will work until about 6:15, give or take five, ten minutes.

1 And also, we have so many binders up here, and
2 they're difficult to follow, what I'm going to want, and what
3 the Court wants, is for the parties to label them numerically.
4 That is, regardless of which one it is, as long as they're all
5 consistent, Volume 1 or Book 1, if you'll mark it in front and
6 on the side panel, all of them. And there's some books down
7 here. There's a whole bunch of them here. So let's have that
8 done by morning. So that means you'll have to come up early
9 and get them all numbered.

10 So that way you can refer just to the number and we
11 can find it more readily than we're able to now and we can
12 speed things along. So if y'all will talk amongst yourselves.
13 Also, about the 12 witnesses, see if you can have some offers
14 of proof on that. All right.

15 JUDGE SMITH: Yeah. On marking these binders, by the
16 way, I want to thank every one for your cooperation. And
17 you've done everything we've asked you to do, and everything
18 was fine. This is not a complaint or a criticism at all. But
19 there are so many binders. It doesn't matter what order you
20 number them in. And it doesn't matter how you do it. You can
21 do it with a piece of masking tape or tape a piece of paper on
22 or whatever you want to do, just so that when you call
23 attention to Exhibit 37 and you tell us, Your Honors, that's in
24 Volume 12, we'll know which binder to pick up. And I think it
25 would help.

1 JUDGE GARCIA: Yeah. It doesn't have to be
2 complicated or fancy.

3 MR. GRAY: So you're asking for all the plaintiffs
4 binders be Binders 1, 2, 3, 4?

5 JUDGE SMITH: No, plaintiff and defense. Yeah. And
6 the joint binders. Again, don't worry about what order they
7 come in, just so that they have an identifiable Arabic number
8 that you need.

9 JUDGE GARCIA: Number one here, number one here,
10 number one there.

11 MR. MATTAX: Right.

12 JUDGE GARCIA: Okay. We're in recess till 8:00 a.m.
13 in the morning.

14 (Overnight recess)

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2 I certify that the foregoing is a correct transcript
3 from the record of proceedings in the above-entitled matter. I
4 further certify that the transcript fees and format comply with
5 those prescribed by the Court and the Judicial Conference of
6 the United States.

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