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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 7, 2011  
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VOLUME 2

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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1 (September 7, 2011.)

2 JUDGE GARCIA: Okay. Good morning. Let's resume.

3 MR. SCHENCK: Good morning, Your Honor.

4 JUDGE GARCIA: Good morning. You may proceed.

5 MR. SCHENCK: A couple of housekeeping matters.

6 JUDGE GARCIA: Okay.

7 MR. MATTAX: First housekeeping matter, Your Honor,  
8 we mentioned yesterday that Ryan Downton, he was working for  
9 the House and was responsible for drawing the congressional  
10 map. He will be out of town next week, and we are going to  
11 bring him here tomorrow.

12 JUDGE GARCIA: Okay.

13 MR. MATTAX: I don't think there will be a lot of  
14 questioning of him.

15 JUDGE GARCIA: Okay.

16 MR. MATTAX: But I did want to give them the  
17 opportunity to respond --

18 JUDGE GARCIA: Of course. He is your witness?

19 MR. MATTAX: He is our witness, and we would like to  
20 have him out of turn. We will have him available through  
21 Friday to try to squeeze him in with whatever the schedule is  
22 for the plaintiffs, but I would like the opportunity to have  
23 the Court, you know, have him here and ask questions.

24 MR. GARZA: We are going to try to accommodate the  
25 State. I mean, we have logistical issues --

1 JUDGE GARCIA: Right.

2 MR. GARZA: -- to deal with our witnesses, but if  
3 there is a way to fit him in, we are going the try to  
4 accommodate him either tomorrow or Friday.

5 JUDGE GARCIA: Okay.

6 MR. MATTAX: And I guess we will just have to cross  
7 that bridge at some point.

8 JUDGE GARCIA: Right. And he will be available next  
9 week?

10 JUDGE SMITH: No, he is not available.

11 JUDGE GARCIA: Oh, I'm sorry.

12 MR. MATTAX: He is going to Guatemala. He is going  
13 on a mission trip. Costa Rica on a mission trip.

14 COUNSEL: What is he doing?

15 MR. COHEN: Building shelters for underprivileged  
16 children.

17 JUDGE GARCIA: That will be done.

18 MR. MATTAX: And I think on the witnesses --

19 MS. PERALES: Good morning, Your Honor. We have  
20 worked in cooperation with the State very cordially to trim  
21 our lay witness list, the proposal for the Task Force. We  
22 think we will be able to do three live lay witnesses and then  
23 attempt to do the remaining nine through offer.

24 JUDGE GARCIA: Thank you. The Court appreciates  
25 that.

1 JUDGE SMITH: Thank you. That is a big help.

2 MR. MATTAX: That's it.

3 \*-\*-\*-\*-\*-\*-\*

4 CROSS EXAMINATION

5 BY MR. SCHENCK:

6 Q. Good morning. How are you?

7 A. I'm fine. I hope your cold is better, sir.

8 Q. I only wish. I appreciate your concern. Yesterday we  
9 were talking about some of the relative weighting of interests  
10 that the legislature could be looking at in addition to  
11 Section 2 and equal population.

12 As I recall your testimony, you believe that the  
13 legislature misplaced priorities by not pushing top to front  
14 Section 2 obligations and -- one person, one vote; is that  
15 fair?

16 THE REPORTER: Counsel, if you could raise your  
17 voice or speak closer to the mike. I am just trying to make a  
18 good record.

19 MR. SCHENCK: I'm sorry, Karl.

20 BY MR. SCHENCK:

21 Q. Is that fair?

22 A. That is fair, but it doesn't entirely represent my  
23 testimony.

24 Q. I understand.

25 A. Because in many respects, I tried to allow for other

1 considerations that might have explained and tried to show  
2 whether the objective evidence indicated that they had taken  
3 those into consideration and that -- and concluded that they  
4 had not.

5 Q. But you didn't take into consideration every political or  
6 legal or other consideration that the legislature was looking  
7 at? You didn't consider whether, for instance, the fact that  
8 somebody's granddaughter was going to school in some part of  
9 the state would cause somebody to draw a line and go somewhere  
10 else, for instance?

11 A. I did not.

12 Q. Okay. And there are a lot of considerations that the  
13 legislature will be looking at in drawing maps, in addition to  
14 the ones that you controlled; isn't that true?

15 A. It is conceivable. I tried to deal with those that I  
16 thought, when I had run into things in court cases or other  
17 considerations might be considered, things that would provide  
18 a valid legal or constitutional justification for departing  
19 from the principles.

20 Q. If it is all right, Dr. Kousser, I will just ask the  
21 questions and see if we can't move along without getting  
22 necessarily too deeply into the constitutional or legal  
23 opinions that might influence your judgment.

24 One thing I think that you pointed out in your  
25 report at page 81 is some criticism of Chairman Solomons of



1 the House who was responsible, along with the rest of the  
2 House, for drawing the House map that you criticized, and you  
3 say there, and I will read it, if -- I will wait for you to  
4 get with me.

5 A. I am with you.

6 Q. Page 81.

7 A. Yes.

8 Q. It is possible, as you pointed out --

9 JUDGE SMITH: Which binder are we on now? What is  
10 the number?

11 MR. SCHENCK: Binder number 5.

12 JUDGE SMITH: Binder number 5. Okay. Thanks.

13 MR. SCHENCK: And Exhibit 1. It is a herculean  
14 task.

15 JUDGE SMITH: Thank you for all OF the  
16 reorganization with the numbers.

17 MR. GARZA: Exhibit 19. I'm sorry.

18 JUDGE GARCIA: What page is it?

19 MR. SCHENCK: What page? 81.

20 JUDGE GARCIA: Well, it's Volume 5 --

21 MR. GARZA: Exhibit 19.

22 THE WITNESS: Tab 19.

23 JUDGE GARCIA: 19. Okay.

24 BY MR. SCHENCK:

25 Q. There you are discussing possible justifications for the

1 plan that was ultimately adopted by the House, and I believe  
2 you note, and I will read it out loud: It is possible that  
3 other plans might add more districts whose boundaries crossed  
4 county lines. There were TLC guidelines pointed out -- again,  
5 we talked about that yesterday. The county line rule is less  
6 important, a less important legal constraint to observe than  
7 population equality or adherence to the VRA and  
8 nondiscrimination criteria.

9 And during debate on the third reading of the bill  
10 in the House, Representative Yvonne Davis pointed out the  
11 Supreme Court decision in Bartlett versus Strickland, a  
12 decision which Chairman Solomons professed to be unaware that  
13 allowed county line -- allowed splitting counties to create  
14 majority minority districts.

15 Is that a fair criticism, you think, of Chairman  
16 Solomons?

17 A. I didn't -- it is a criticism in the sense that the  
18 Supreme Court had made a decision, which the TLC and  
19 Representative Davis said allowed overriding the county line  
20 rule to draw majority minority districts. All I am saying is,  
21 that is --

22 Q. Let me ask a question. Did the TLC make that  
23 determination or did Yvonne Davis make that determination?

24 A. The TLC guidelines pointed out that the county line rule  
25 had been ruled by the Texas Supreme Court, I think, to have to

1 give way in light of U.S. constitutional restrictions. All I  
2 used that for was to say there was a public realization in  
3 Texas of the priorities that had been established.

4 Q. And I believe we talked about --

5 MR. GARZA: Your Honor, this is the second time in a  
6 row that he has cut off the witness from --

7 MR. SCHENCK: It is because the answer is  
8 nonresponsive.

9 MR. GARZA: They are responsive.

10 JUDGE GARCIA: Then make that objection, Counselor.

11 MR. SCHENCK: I will make that objection.

12 JUDGE GARCIA: Okay.

13 BY MR. SCHENCK:

14 Q. Is it your understanding that Bartlett versus Strickland,  
15 regardless of the source of your understanding, allowed or  
16 required the states to split county lines to comply with the  
17 VRA?

18 A. I was simply saying there that Representative Davis said  
19 that, and that Bartlett certainly did not -- my memory of  
20 Bartlett is a little vague right now. But what it said was  
21 that you could split county lines in order to draw a majority-  
22 minority district, but you didn't have to, that the majority-  
23 minority district did not in all cases cause that to -- cause  
24 you to do that, but in some cases it would.

25 Q. Do you recall whether the Supreme Court rejected the claim

1 that North Carolina was putting forward there to support  
2 splitting its county line?

3 A. It did not have to. North Carolina was saying that it had  
4 to split the county lines. The Court ruled that it didn't  
5 have to.

6 Q. Could we agree that the opinion will speak for itself --

7 A. Certainly.

8 Q. -- rather than stating --

9 A. Of course.

10 Q. -- our understanding of it?

11 THE REPORTER: It would help if we had one at a  
12 time.

13 BY MR. SCHENCK:

14 Q. Also yesterday, you made some observations about packing,  
15 which are on page 116 of your report. You assert that the  
16 legislature was packing the congressional districts; is that  
17 correct?

18 Go to table 24, please. Could we have table 24,  
19 please.

20 A. Yes.

21 Q. Now, I am looking -- thank you very much. I am looking at  
22 your table 24, and I am having a hard time understanding how  
23 it is you come to the conclusion that the legislature packed  
24 these congressional districts.

25 I am looking, for instance, at the first district

1 you identified, District 15. We started with Hispanic citizen  
2 voting age percentage of 71.9 percent; is that correct?

3 A. Yes.

4 Q. We moved to a Hispanic citizen voting age of 71 percent;  
5 is that accurate?

6 A. I think what I was focusing on here was the BHVAP column.  
7 And that, as I showed earlier, in an earlier table --

8 MR. SCHENCK: Objection. Nonresponsive, Your Honor.

9 MR. GARZA: Your Honor, if I may respond to the  
10 objection. It is responsive. He was asking him about whether  
11 this table shows what he was testifying --

12 MR. SCHENCK: That's not what I asked him.

13 MR. GARZA: And his focus is on a different column.

14 JUDGE GARCIA: You say that is not your question?

15 Well, you might reclarify or clarify your question.

16 BY MR. SCHENCK:

17 Q. My question, was District 15, do you contend it is packed  
18 by virtue of moving the Hispanic citizen voting age percentage  
19 of 71.9 percent to 71 percent?

20 A. I believe that if you look at my discussion of this in the  
21 report, I focus on the column of BHVAP, and I have tried very  
22 elaborately to justify --

23 MR. SCHENCK: I am going to object as nonresponsive.

24 A. -- looking at that column.

25 JUDGE RODRIGUEZ: I would like to hear his answer.

1 You can continue.

2 BY MR. SCHENCK:

3 Q. Let's take off --

4 JUDGE RODRIGUEZ: No. I would like to hear the  
5 answer.

6 MR. SCHENCK: I'm sorry.

7 THE WITNESS: I have tried to justify the reason why  
8 we look at that column, and that that column is the most  
9 important in the table. So if you look at that column, as I  
10 said in the text, in all but one of the congressional  
11 districts, the BHVAP is increased. That is what I meant by  
12 packing and that was very clear.

13 But, of course, the table is there using all four  
14 definitions for the judges to look at. And if they think that  
15 one of the other indexes is a better index of the importance  
16 of minority voters, then they can look at that. That's why I  
17 provided all of the information in one table.

18 BY MR. SCHENCK:

19 Q. Are you aware of whether or not there is an obligation  
20 under the Voting Rights Act to create coalition districts that  
21 would consist of both black and Hispanic populations?

22 A. There is controversy about that. There was controversy in  
23 the Senate debate and House debates in the 2006 renewal of the  
24 Voting Rights Act, in particular, as to what the Ashcroft  
25 amendment meant.

1 I detailed that in my paper on the Voting Rights Act  
2 in the Texas Law Review in 2008. There was further  
3 controversy in effect by the contentions that had been made by  
4 people, some people that there was no -- that you do not have  
5 to take anything except one group into account; and  
6 implicitly, in the guidelines under Section 5 of the  
7 Department of Justice, which indicates that there is no one  
8 number which is an index, but you have to consider the -- they  
9 don't say totality of the circumstances, but that is, in  
10 effect, what you mean.

11 So I am aware that there is considerable controversy  
12 and that that is an unsettled question.

13 Q. Okay. Let's assume for the moment that we are looking at  
14 the relevant metric, either HVAP or HCVAP.

15 Is it your testimony that there is packing with  
16 respect to the districts in Texas, the congressional districts  
17 you identified under table 24?

18 A. The numbers speak for themselves.

19 Q. Okay. Well, with respect to HVAP, unless I am getting it  
20 wrong, or HCVAP, which is citizen voting age, District 15 goes  
21 down, District 16 goes down, District 17 goes -- or District  
22 20 goes down. District -- I could keep going. The  
23 differences here are minimal or nonexistent.

24 And going over to BHCVAP, we see 74.2 in District  
25 15. And we see BHCVAP, 73.1. Again, they are going down, for

1 the most part.

2 I mean, if we had -- if Texas had knocked down the  
3 Hispanic citizen voting age populations in these districts to  
4 avoid the BHCVAP or BHVAP problems, wouldn't we be facing the  
5 retrogression problem with respect to these majority-minority  
6 Hispanic districts in Texas?

7 A. It depends on how much you knock them down.

8 Q. Well, let's talk about a couple of districts you have  
9 identified here, District 23 and 27, congressional districts,  
10 in which a Hispanic citizen voting age population was  
11 63.8 percent in 27 and 58.4 in 23. Correct?

12 A. You are reading the numbers. I am sure you are correct.

13 Q. Are you aware that those districts were intended to  
14 perform -- affect District 23, was drawn by the federal court  
15 on remand from LULAC vs. Perry for the purpose of presenting a  
16 district in which the majority-minority Hispanic population  
17 would elect the candidate of its choice?

18 A. Yes. I testified in the trial --

19 Q. And yet it didn't happen?

20 A. It didn't for a while. It didn't in 2010.

21 Q. Right. It didn't perform?

22 A. In 2010.

23 Q. Which means, if anything, the complaint here is you need  
24 to increase the Hispanic voting age population, correct?

25 A. It depends on what else you do.



1 Q. Wouldn't you have expected the districts to perform, given  
2 the level of cohesion, that you have testified to in this  
3 case?

4 A. It always depends on what else is happening. It is always  
5 other things being equal. That is what the social scientists  
6 say. If there is is a big Republican tide, that district was  
7 clearly close enough so that the tide would swamp people. If  
8 there was a big Democratic tide, in a presidential election  
9 with more turnout by minorities and a more Democratic tilt, it  
10 could swing back.

11 Q. Let's look at -- well, let's look at that. District 27  
12 was configured to allow the election of a Hispanic candidate  
13 of choice. Hispanic citizen voting age population on your  
14 chart is 63.8.

15 Let's look up at District 20, which also has  
16 63.8 percent Hispanic voting age percentage. The Democrat won  
17 there, right?

18 A. The Democrats have dominated District 20 since 1961.

19 Q. So it wasn't a function of how racially gerrymandered the  
20 district was? We don't need to see these high Hispanic  
21 citizen voting age percentages anymore?

22 A. Not in District 20.

23 Q. Why?

24 A. You don't need as high as -- I mean, you need -- it needs  
25 to be that high, I suppose, but it probably could go lower.

1 Q. How low?

2 A. There is a tradition -- I don't know. There is a  
3 tradition in District 20. There are particular candidates who  
4 are established in District 20. There is a tradition of  
5 Republicans not seriously competing, I suppose, in District  
6 20.

7 District 20 elected Mr. Gonzalez in 1961. It was  
8 the first congressional district in Texas that had elected a  
9 Latino, and that is obviously of some importance.

10 Q. So, then, I guess there just wasn't the tradition in  
11 District 23?

12 A. The tradition had gone since the federal court redrew the  
13 district.

14 Q. And the voters elected a Republican?

15 A. In a Republican tide year, they did.

16 Q. All right. Let's stay on Congress for a second. If you  
17 will look at table 22, please. And blow that up, please.

18 JUDGE SMITH: We are on page 111?

19 MR. SCHENCK: On page 111, yes, sir.

20 BY MR. SCHENCK:

21 Q. Now, ultimately, you are critical of the State for not  
22 having drawn a traditional Hispanic opportunity district; is  
23 that correct?

24 A. There are plans in which they could have drawn two more  
25 Hispanic opportunity -- well, two more BHVAP districts,

1 several plans in which that was the case.

2 Q. I am looking at your column, HCVAP. At current, you have  
3 seven districts, correct?

4 A. That is correct.

5 Q. Those are majority Hispanic citizen voting age population  
6 districts?

7 A. That is correct.

8 Q. The adopted plan, 185, we have eight; they have gone up  
9 one?

10 A. That is correct.

11 Q. And then I see, going further down, we have one, Plan 188,  
12 in which you have nine districts; is that correct?

13 A. That is correct.

14 Q. Can we take a look at Plan 188, please, C-188? Could we  
15 focus in on the south half of Texas, please. Just a little  
16 bit out. A little too focused.

17 Professor, could you look at the districts that are  
18 numbered 28 and 10 on that map?

19 I will approach. I don't have in my hand a laser  
20 pointer.

21 JUDGE GARCIA: Sure. You may approach.

22 BY MR. SCHENCK:

23 Q. Is it true that District 28 goes from the Mexican border  
24 all the way up to what I assume is Travis County?

25 A. It looks like it's --

1 Q. Sure enough. And is there another trip back on District  
2 10 back down to -- that is deer country down there -- Dimmit  
3 or Duval County, I assume, back to the Mexican border?

4 A. You know Texas geography better than I. I know that these  
5 are long districts.

6 Q. I can tell you it is about a three-and-a-half-hour drive.  
7 Were you here for the opening in this case, by any cause,  
8 Dr. Kousser?

9 A. I was not.

10 Q. Can we have Plan C-185? Which is the adopted plan. Now,  
11 if I tell you that there has been criticism in this case of  
12 the State for having drawn a district called 35 that runs  
13 between Austin and San Antonio, because it too much resembles  
14 the district that Texas had drawn in LULAC vs. Perry, which  
15 went from Austin all the way down to Webb County in one  
16 district, would you accept my conclusion that we are being  
17 criticized for that, for present purposes?

18 A. The plan has been criticized for that.

19 Q. Okay. And that is within your knowledge?

20 A. Yes.

21 Q. Okay. So do you think it is reasonable to say that the  
22 State could be compelled to draw two, what are argued to be  
23 noncompact districts, predominantly on the basis of race, to  
24 run to Mexico and back up to Austin?

25 A. As you have said several times, that's asking for a legal

1 conclusion, but when I was talking to Mr. Garza and discussing  
2 maps, I think that I said something yesterday, something along  
3 the lines of, it is not simply how pretty the map looks on a  
4 flat, featureless map.

5 What is important in order to determine the intent  
6 of the legislature, which is what I was trying to do in  
7 presenting those maps, to look at the overlap between the  
8 shape of the map and the demographics, and perhaps the  
9 politics of it.

10 So looking at the maps, as you presented them, I  
11 can't see that. You didn't give me an overlay of the Latino  
12 population, the black population, the proportion Democratic,  
13 the proportion Republican, so I can't really evaluate in the  
14 same terms as I did in discussing the maps earlier what that  
15 indicates about the intent of the legislature or the intent of  
16 the people that drew the other districts.

17 Q. That's fine. It is very hard to discern the intent of  
18 people for something as broad as all of these plans, with all  
19 of these districts, with all of these metrics, that you have  
20 said, the Justice Department says, don't look at just any one  
21 of them, and all of the political considerations of where  
22 people's grandchildren go to school, where there are -- it is  
23 just hard to determine that, isn't it?

24 A. It is often hard. That's why my report was 134 pages  
25 long.

1 Q. You also provided some testimony yesterday and then your  
2 report had some data or opinions on cracking. Do you recall  
3 that --

4 A. Yes.

5 Q. -- testimony? Can we look at your -- if we have it  
6 loaded -- 120 and 122 of your report. You are identifying on  
7 a congressional map, District 12 in Tarrant County. Could we  
8 zoom up on that?

9 VIDEO TECHNICIAN: 185?

10 MR. SCHENCK: Yes. District 12.

11 BY MR. SCHENCK:

12 Q. And what is it, District 6, your lightning bolt?

13 A. Yes.

14 Q. As I recall. And that looks suspicious to you, doesn't  
15 it?

16 A. Yes, it does.

17 Q. And on its face, it looks like something nefarious is  
18 going on, or potentially?

19 A. Potentially nefarious, but it looks like something you  
20 ought to look at and try to figure out why it was done, and  
21 when you superimpose the Latino population on those two  
22 districts, it becomes evident what was done.

23 Q. By this legislature?

24 A. Yes.

25 Q. And that is part of your overall analysis of what they

1 were doing with the map as a whole?

2 A. That is correct.

3 Q. Okay. Can we see the benchmark plan, C-100? This is a  
4 benchmark now? Okay. Do you see the same lightning bolt  
5 present?

6 A. It is much broader. It goes down from Denton County, but  
7 it is -- that is much less ugly, much less indicative of some  
8 purpose.

9 Q. Do you know, sir, where the Trinity River and I-35 run  
10 through Fort Worth?

11 A. I should know that, because I have run by the Trinity  
12 River. It goes -- I am sure that if you say that it runs up  
13 there, then I would accept that.

14 Q. And the caption under your report is: Who is being  
15 avoided?

16 A. Yes.

17 Q. By the lightning bolt. So in C-100, if we have  
18 essentially the same feature, C-100 is the congressional plan  
19 that went up to the Supreme Court and came back and was  
20 redrawn to fix the old District 23. And we see the same  
21 feature of that.

22 Now, would you agree with me that this legislature  
23 didn't have, at least as far as the dip down is concerned, its  
24 own intention necessarily in mind with respect to maintaining  
25 that feature?

1 A. I don't -- I simply don't know the answer to that  
2 question, sir.

3 Q. It is hard to assume what they are intent was?

4 A. No. It is easy, when you look at the demographics.

5 Q. Okay.

6 A. Do you have a map available that would superimpose the  
7 demographics on this -- on H-100?

8 Q. Are you familiar with --

9 MR. SCHENCK: Well, we are going to have some more  
10 testimony on this issue later, Your Honor. I think it is  
11 probably more productive to just ask one more question and  
12 move on.

13 JUDGE GARCIA: That's fine.

14 BY MR. SCHENCK:

15 Q. Are you familiar with something that is called the Trinity  
16 River Project?

17 A. No.

18 Q. Okay. If I were to represent to you that the Trinity  
19 River Project is in the area that is covered by the -- what  
20 you are identifying here as -- on your exhibit, and that  
21 politicians sometimes like to have these projects in their  
22 district, would that be a race-neutral explanation for any  
23 change to that district?

24 JUDGE GARCIA: What -- I'm sorry. I didn't let the  
25 witness answer.



1           THE WITNESS: It depends on where the Trinity River  
2 Project is. And also, you can provide justifications which  
3 seem to have some neutral justification, but if you look at  
4 the demographic consequences of it, you can see that they  
5 actually don't.

6           Sometimes circumstantial evidence, as Thoreau said,  
7 is convincing like finding a trout in the milk. I never  
8 really quite understood what he meant by that, but if I found  
9 a trout in the milk, I would be worried. This is a trout in  
10 the milk.

11          JUDGE GARCIA: What is the present configuration of  
12 that district; do you know?

13          MR. SCHENCK: Can we go back to C-185? And Ryan  
14 Downton will testify. He will testify as to the explanations  
15 for these things.

16          MR. GARZA: So, Your Honor, I don't know what the  
17 Court meant in terms of the "current." This is the adopted  
18 plan.

19          JUDGE GARCIA: Right. No. I meant today, as of  
20 today.

21          MR. GARZA: And that was the picture that was up  
22 before that.

23          MR. COHEN: C-100 was just --

24          JUDGE SMITH: Yes. It was the one that we were just  
25 looking at.

1 JUDGE GARCIA: Okay.

2 MR. SCHENCK: Do we have the Trinity River Project?  
3 No?

4 JUDGE SMITH: Just to make it clear, C-100 is what  
5 was -- the election of 2010, right?

6 MR. SCHENCK: Right. That is the post LULAC v.  
7 Perry map going forward.

8 JUDGE GARCIA: And is the Trinity River Project all  
9 within that congressional district?

10 MR. SCHENCK: That is my understanding. I believe  
11 it is in Kay Granger's district. And that it will overlap  
12 with --

13 JUDGE GARCIA: And even if it is, what is the  
14 significance of that?

15 MR. SCHENCK: It explains the -- my understanding  
16 is, it would change from what was the lightning bolt, a little  
17 bit fatter to that piece, jutting out.

18 JUDGE GARCIA: So, then, all I have to do is draw a  
19 map and tell the legislature I want this project in my  
20 district and, therefore, draw the lines around that?

21 MR. SCHENCK: No. Not necessarily. But we have  
22 Democrats and Republicans making requests to keep things in  
23 districts or move them.

24 JUDGE GARCIA: Right.

25 MR. SCHENCK: Reconfigure the districts in lots of

1 ways -- that they don't effect -- it is a quotient full. So  
2 it happened in El Paso on the State House map.

3 JUDGE GARCIA: Sure.

4 MR. SCHENCK: It happened all over the state. There  
5 is a lot of --

6 JUDGE GARCIA: Okay.

7 BY MR. SCHENCK:

8 Q. With respect to your conclusions about looking at things  
9 as a whole and pulling them together, and there was a trout in  
10 the milk; is that --

11 A. Yes.

12 Q. Can you show me on either the House or the congressional  
13 map a district where you would say that the Democrats were  
14 disadvantaged but minorities were not?

15 A. I try to look -- the reason that I looked at individual  
16 districts was to get an indication of intent that was apparent  
17 on the maps. Otherwise, I looked at districts in general.  
18 And I did not look for that particular -- I did not look to  
19 determine that, except as it would come out of the general  
20 statistics. I was trying to give the Court an overview of  
21 everything.

22 Q. Okay. That's fine. But with respect to a collection of  
23 districts, or any individual's district, as you sit here  
24 today, you can't tell the Court that there is a district on  
25 either the House or the congressional map in which Democrats

1 were disadvantaged but minorities were not?

2 A. I actually did not look at that.

3 Q. Okay. With respect to advantages that you say the  
4 Republicans might have gained on this map, can you point to  
5 anyplace where Republicans gained but, in your view, Anglos  
6 did not?

7 A. There is a very considerable overlap between partisanship  
8 and ethnicity in current Texas politics, as I said in the  
9 report. If you are going to make minorities a lot worse off,  
10 you are probably going to make Democrats a lot worse off, and  
11 vice versa, in Texas currently.

12 Q. But you can't state any -- a conclusion as to whether the  
13 legislature had in mind, for instance, advantaging a  
14 Republican incumbency over a Democratic incumbency versus  
15 advantaging one race of people over another race of people?

16 A. The legislature was certainly inconsistent in advantaging  
17 incumbents, most publicly in disadvantaging Mr. Doggett,  
18 and --

19 Q. By Doggett, sir, do you mean Lloyd Doggett?

20 A. I mean Lloyd Doggett.

21 Q. And he is the Anglo Democratic representative of  
22 District -- former District 23; is that right?

23 A. Not 23. 25.

24 Q. 25. Okay.

25 MR. SCHENCK: Thank you very much. No further

1 questions. Pass the witness.

2 \*-\*-\*-\*-\*-\*-\*

3 REDIRECT EXAMINATION

4 BY MR. GARZA:

5 Q. I have a couple. So just to be clear, Dr. Morgan, in your  
6 analysis of the one-person, one-vote situation, you, in fact,  
7 found -- what was your finding with regard to whether the  
8 deviations in the population distribution impacted Latinos  
9 more heavily than Democrats?

10 A. It did. I tried to make a distinction there to go beneath  
11 partisanship and to look at Latino Democrats, and they were  
12 worse off, as the figures showed.

13 MR. GARZA: Thank you. No further questions.

14 JUDGE GARCIA: Thank you. You are excused. And --

15 MR. GARZA: That concludes the live presentation of  
16 witnesses for MALC.

17 JUDGE GARCIA: Okay.

18 MR. GARZA: So the Perez plaintiffs will --

19 JUDGE GARCIA: Okay. Go ahead.

20 MR. GRAY: Your Honor, the Perez plaintiffs are  
21 next, and our first witness would be Mr. Ed Martin.

22 JUDGE GARCIA: Okay.

23 MR. GRAY: And we will be referring to Volume 7 of  
24 the exhibit books, which essentially is all maps that we will  
25 be going through.

1 We will call Mr. Martin at this time, Your Honor.

2 COURTROOM DEPUTY: Would you raise your right hand,  
3 sir, please.

4 (Oath administered to the witness.)

5 MR. GRAY: I will give them a minute or two to get  
6 ready, Your Honor.

7 MR. SCHENCK: Mr. Matt Frederick will be on cross.

8 JUDGE GARCIA: Okay. Thank you.

9 MR. GRAY: May I proceed?

10 JUDGE GARCIA: Yes.

11 MR. GRAY: Thank you, sir.

12 \*-\*-\*-\*-\*-\*-\*

13 DIRECT EXAMINATION

14 Q. Would you state your name, please, sir?

15 A. My name is Edward Martin.

16 Q. Okay. And what do you do?

17 A. I am a consultant of public affairs, political consulting.  
18 I have done a lot of work on redistricting over the last 30  
19 years. I've worked in campaign's communications and analyzed  
20 political patterns and particularly with regard to targeting  
21 electoral behavior.

22 Q. For how long have you been a political consultant and been  
23 involved in drawing of maps for redistricting purposes?

24 A. I started doing that in 1981, when I worked for a  
25 legislator whose district -- and we worked on drawing State

1 House districts in 1981 and actually drew some plans that were  
2 ultimately adopted by the Legislative Redistricting Board and  
3 became law.

4 Q. And since 1981, have you essentially every ten years, as  
5 the census has come out, been involved in the redistricting  
6 process, drawing House maps, Senate maps and congressional  
7 maps for members of the legislature, some of which have been  
8 adopted into law?

9 A. Yes, I have.

10 Q. Have you had experience drawing redistricting maps for  
11 entities other than the State of Texas? Counties, school  
12 districts, things of -- cities, things of that sort?

13 A. I have drawn for cities -- I mean, for counties and school  
14 districts, both.

15 Q. Now, briefly, tell the Court the evolution of the  
16 technology, as far as the sophistication of map drawers,  
17 starting in 1981, how you went about drawing a map in 1981 and  
18 how technology has evolved, so that precision laser surgery,  
19 so to speak, can be done on maps today?

20 A. Well, in 1981, we didn't have computerized map drawing.  
21 Some of us remember grease pencils, acetate overlays, and it  
22 was a much more tedious and much more difficult process. One  
23 of the things that the legislator I worked with and I did is  
24 we actually loaded election data and converted it from  
25 precinct returns into census geography and probably had an

1 advantage doing that, but we had to sit up all night and do  
2 that ourselves.

3 Q. Literally, in 1981, you were drawing with a grease pen on  
4 a plastic overlay --

5 A. That's right.

6 Q. -- on a map?

7 A. That's how we did it then.

8 Q. Walk us through, quickly but succinctly, so the Court can  
9 understand, what is the process today?

10 A. Well, today, well, in 1991, we started getting computers.  
11 The Texas Legislative Council had a computerized mapping  
12 system. That was the first time that was adopted. You had to  
13 go reserve time, sit in a room, work with an operator, who  
14 would draw the maps with you. That has now evolved to a point  
15 where every legislator in their office on a laptop, state-  
16 owned laptop or any other machine can literally with a mouse  
17 or with your pad on a computer draw a map.

18 You can add a precinct. You can add a VTD, a census  
19 block, a group of census blocks. You pick the data you want  
20 to be shown as you draw that map, and as soon as you draw a  
21 group of precincts, you can immediately on the screen have  
22 election returns for the selected elections that you may want  
23 to see how the results came in on a partisan basis. You can  
24 see the ethnic or racial percentage. You can see the  
25 percentage of voting age population, ethnic or racial.



1           In other words, if I took out a group of five or six  
2 precincts, I would know the effect that had on that district's  
3 election likelihood, Democrat or Republican. I would know its  
4 racial and ethnic composition, and it is right on the screen  
5 instantly in front of you.

6 Q. First, when the census data comes out, is it loaded into  
7 the system based upon voting precincts that are well-known and  
8 defined, so that anybody drawing a map can have all of the  
9 voting precincts across the state on it?

10 A. They are called, in census language, voter tabulation  
11 districts, and they almost 100-percent conform to the existing  
12 precincts.

13 Q. And when we call them VTDs, voter tabulation districts --

14 A. Right.

15 Q. -- or precincts, if I am a map drawer and I say, "Okay.  
16 In west Dallas, I see these five precincts," and I just draw a  
17 circle around them and hit a button, will it tell me how many  
18 people are in those five precincts, the ethnic background of  
19 those five precincts?

20           And if I say, "I want to see how the -- Governor  
21 Perry and Bill White governor's race, who got what votes in  
22 those precincts," will it pop up on the screen and tell me?

23 A. It will.

24 Q. Likewise, if I draw a district, and say my goal is to have  
25 this district 55 percent for one party or the other, whether

1 Democrat or Republican, I want it 55 percent for my party  
2 based upon the last governor's election, can I draw a district  
3 and then push a button and tell me, whether it is 55-45,  
4 50-50, 60-40, will the computer tell me what kind of political  
5 district I have drawn?

6 A. With a click of a mouse.

7 Q. If I say, oh, my gosh, I am trying to draw a 55-percent  
8 Democratic district or 55-percent Republican district, and I  
9 have only drawn a 53-percent one, can I move precincts in and  
10 out at will until I hit my target number?

11 A. You absolutely can.

12 Q. If I want to draw a district that favors a certain  
13 ethnicity, let's pick Anglos, and I say, I want to make sure  
14 that I have a district that the Anglo population can dominate,  
15 and leave 40 percent of the total population, because I know  
16 minorities may not turn out as much as Anglos, and I draw a  
17 district and I say, draw it and hit the button, will it tell  
18 me what the ethnic breakdown of that district is?

19 A. It will tell you, every time you move a precinct or even  
20 one census block in and out of a district, what the effect is.

21 Q. So if I am trying to draw districts that are Anglo  
22 dominated, and I draw it and I say, "Oops. That's only  
23 32 percent," and I need to get to 40 or 45, whatever my target  
24 number is, can I move precincts in and out and, boom, get to  
25 my number?

1 A. You can. And you can even put shading up on the screen.  
2 You can put a shading that indicates whether a precinct is  
3 more -- a VTD is more Republican or Democratic, based on  
4 colors. You can put ethnic shading on the screen and move  
5 things in and out, so it is easier for people who don't even  
6 know the territory.

7 And a lot of these maps are drawn by people who  
8 don't know the territory and they don't know what they are  
9 doing to a community, so you can even be guided by shading  
10 and -- just to hit your target number.

11 Q. If, for example, I didn't really care about whether I was  
12 going to destroy the city limits of Grand Prairie or the city  
13 limits of some other city, but I merely wanted to pack, for  
14 example, as many Latinos in a district as I possibly could, or  
15 I wanted to make sure I got a district as Anglo as I possibly  
16 could, can the computer do that, just based upon pure ethnic  
17 shading?

18 A. Yes.

19 MR. FREDERICK: I object to leading.

20 JUDGE GARCIA: Well, I think we get the point  
21 anyway.

22 MR. GRAY: Now --

23 JUDGE GARCIA: That is, it seems like this computer  
24 can do anything it wants?

25 THE WITNESS: Whatever you decide you want it to do,

1 within limits, yes.

2 JUDGE GARCIA: All right.

3 BY MR. GRAY:

4 Q. Now, if you will --

5 MR. GRAY: And this is the last question on that  
6 topic, Your Honor.

7 JUDGE GARCIA: All right.

8 BY MR. GRAY:

9 Q. If you will turn to Exhibit 124, which is the only nonmap  
10 I am going to ask you about, and the very last page of that  
11 e-mail. Or the very last page of that exhibit, there is an  
12 e-mail from -- the middle one is from Eric Opiela to Denise  
13 Davis, the Speaker's chief of staff, and to Gerardo Interiano,  
14 who has been identified as one of the primary House map  
15 drawers.

16 Do you see in that e-mail where they are asking to  
17 see if we have hit the 55-percent Republican target?

18 A. Yes, I do.

19 Q. Is that something that is easily doable with the  
20 technology we have today?

21 A. Yes, it is.

22 Q. Now, if you would, let's start -- you have had the benefit  
23 of hearing the testimony of Dr. Kousser about deviations and  
24 packing and cracking and stacking and tacking, correct?

25 A. Yes.

1 Q. You have set forth your -- you have done an analysis of  
2 House map 283, have you not?

3 A. Yes, I have.

4 Q. And your opinions and details are set forth in your  
5 report, which is, I believe, Your Honor's Joint Exhibit 5.

6 I am going to ask you specifically about four areas  
7 of the state and not cover your report in detail, for time  
8 purposes. Okay?

9 A. Okay.

10 Q. First, we will turn to Exhibit 104, please, and Volume 7.  
11 And is this a blowup of the Dallas County House maps as passed  
12 by the legislature of Plan 283?

13 A. Yes.

14 Q. If we will, let's slip to page -- or Exhibit 105, which is  
15 a blowup of the west Dallas section in that map. And can you  
16 see that, sir?

17 A. Yes, I can.

18 Q. Focusing specifically on District 105, the line that drops  
19 from north Dallas into south Dallas on that map, and it is  
20 hard -- it is a little bit hard on the shading here, what  
21 comes through in two different colors.

22 Do you see this line that goes all the way down?

23 A. Yes.

24 Q. Can you tell the Court what population base is at the very  
25 bottom of this line that went down?

1 A. That is probably the most Anglo part of the city of Grand  
2 Prairie, in south Grand Prairie.

3 Q. And as you drop down from roughly where my line is all the  
4 way down to the most Anglo part, that population that you are  
5 cutting right through is what?

6 A. Well, there is Hispanic population, where District 104 is,  
7 that comes all the way from Oak Cliff, all the way out to the  
8 county line in Grand Prairie. That path that goes through  
9 there, if you actually look at it at the block and block group  
10 level, is probably the least Hispanic channel that could have  
11 been drawn, and, actually, there are seven precincts that are  
12 split.

13 The Latino community in Grand Prairie is split by  
14 that line that goes down through Grand -- that's the city of  
15 Grand Prairie south of interstate 30 there. The district  
16 starts up north in Irving, and the two Anglo portions of the  
17 district are that southern tip in south Grand Prairie.

18 Q. Where is the north -- the other part of the --

19 A. And the other part is up in the north part of Irving, just  
20 above that very peculiar gold arm that sticks into the middle  
21 of the city of Irving.

22 Q. Now, let me ask you about the gold arm. The second arm in  
23 this district, you have got one going down and now you have  
24 got one coming in from 103, protruding into 105?

25 A. Correct.

1 Q. Can you tell the Court what population is being grabbed by  
2 the line going from 103 into 105 and taken out?

3 A. Well, that arm goes in and splits approximately ten  
4 precincts, particularly that narrow second digit that goes way  
5 up into northwest Irving. That is the most heavily  
6 concentrated Latino population in the city of Irving.

7 Q. Now, if you will flip to Exhibit 106, and do we have a  
8 black and Hispanic overlay laying out the -- that very thing,  
9 same thing, and it is harder to see here, but --

10 A. If you zoom in a little bit, you can see the black lines  
11 that indicate the district boundaries.

12 Q. If you -- this line right here, coming in 103, and right  
13 there, what -- see how dark it is there, how dark it is there,  
14 how dark it is here?

15 What population are we moving out of 105 or what  
16 otherwise would be in the middle of 105? What population are  
17 we moving out?

18 A. Well, that population is currently in District 105. It  
19 is -- again, that dark indicates minority population. This  
20 shading is black, plus Hispanic, but that is almost entirely  
21 Latino population in that part of Irving.

22 Q. And then when you get down to the bottom of 105, the arm,  
23 where did we go here? When you get to the bottom of that arm,  
24 that population is the Anglo population, correct?

25 A. That is about 40 to 50 percent combined minority. It is

1 plurality and majority Anglo population. If we go back, I  
2 think there is another very peculiar thing that I forgot to  
3 mention on the simple blowup map.

4 Q. Go to Exhibit 105 again, then.

5 A. The other thing that is particularly curious, you see  
6 District 104 coming out, and that is an existing Latino  
7 opportunity district that is represented by Representative  
8 Roberto Alonzo, and that district now is forced, because of  
9 105, to take a detour south about ten or eleven miles around  
10 through some Anglo precincts, then back up the west side of  
11 the county. Now, what is there currently are two districts,  
12 106 and 105.

13 JUDGE SMITH: Could we proceed on question and  
14 answer? He is going well beyond your question.

15 THE WITNESS: I'm sorry.

16 MR. GRAY: He is, and I will put him back on  
17 question and answer.

18 BY MR. GRAY:

19 Q. Let's first finish up with 105, and I will go to 104.

20 A. Okay.

21 Q. The population in the northern part that is essentially in  
22 the center of 105, what is being pulled out of the 103 by this  
23 arm, that is heavy Latino population, correct?

24 A. Yes, it is.

25 Q. The population that is grabbed by taking 105 way south is



1 the most Anglo population down there, correct?

2 A. It is.

3 Q. The net effect of taking the Hispanic population out of  
4 what it had been in 105 and without taking it out and adding  
5 Anglo population in, what effect does that have on Anglo  
6 voting power within 105?

7 A. It increases the Anglo voting age population by about  
8 five percent from the benchmark district.

9 Q. And what effect, if you were to leave the Hispanic  
10 population that is currently in 105 that is taken out by the  
11 arm, leave it in and not drop 105 south to pick up Anglo  
12 population, what would that do to the Hispanic voting power in  
13 105?

14 A. It increases the Latino voting power and, actually, you  
15 begin to see a way to draw an additional Latino district in  
16 Dallas County.

17 Q. Now, the deviation on District 105, 105 is how much  
18 overpopulated?

19 A. Let me check. 105 is overpopulated by 8,091 people.

20 Q. What effect does that deviation have on the ability to  
21 draw minority opportunity districts around -- 105?

22 A. Well, because the additional population is Anglo  
23 population that is taken from the south, it makes it much more  
24 difficult to draw an additional minority opportunity district  
25 in west Dallas County.

1 Q. So if you were to not add the 9,000 or so people dropping  
2 down, then all of a sudden, 105 is no longer Anglo-dominated  
3 but, instead, is Latino-dominated, correct?

4 MR. FREDERICK: Objection. Leading, Your Honor.

5 BY MR. GRAY:

6 Q. Tell the Court what the effect is.

7 JUDGE GARCIA: I will permit the question. Go  
8 ahead.

9 THE WITNESS: It will increase, make it much more  
10 likely to have Latinos be able to elect a candidate of their  
11 choice.

12 BY MR. GRAY:

13 Q. I should have asked some housekeeping questions at the  
14 beginning, and I am going to go through them quickly. There  
15 has been an argument by the State about proportionality and  
16 things of that sort.

17 First, statewide, can you tell the Court what  
18 percent of the vote did Governor Perry get compared to Bill  
19 White for governor, and what percent did President Obama get,  
20 compared to Senator McCain?

21 A. Yes. Statewide --

22 MR. FREDERICK: Your Honor --

23 JUDGE GARCIA: Yes, sir.

24 MR. FREDERICK: -- I have to object. We have been  
25 very generous in letting them have room to talk, but a lot of

1 the things he is talking about here, for instance, is not in  
2 his expert report. He has not provided an opinion on these  
3 matters.

4 JUDGE GARCIA: Are you asking about his expert  
5 report or --

6 MR. GRAY: No, Your Honor. I am asking him just  
7 about -- it is public record.

8 JUDGE GARCIA: Okay. That's right. Go ahead.

9 THE WITNESS: Statewide, Governor Perry received  
10 54.97 percent of the vote and Bill White 42.29 percent of the  
11 vote. Senator McCain received 55.45 percent of the vote, and  
12 President Obama received 43.68 percent of the vote.

13 BY MR. GRAY:

14 Q. Now, in Dallas County, can you give the Court the same  
15 numbers as to Dallas County?

16 A. Yes. In Dallas County, Governor Perry got 42.5 percent of  
17 the vote and Bill White got 55.2. President Obama got  
18 57.27 percent of the vote, and Senator McCain got 41.97.

19 Q. Under the census, can you give the Court the breakdown of  
20 Anglo, African-American and Hispanic individuals under the  
21 census for Dallas County?

22 A. Right. Dallas County is currently 33.1-percent Anglo,  
23 38.3-percent Latino, and 22.3-percent African-American.

24 Q. And how did that change over the decade?

25 A. Well, in Dallas County, over the decade, there was a loss;

1 there are 198,000 less Anglos than there were ten years ago.  
2 There was an exodus of Anglo population. The largest  
3 population growth was Latino, which was, I believe, over  
4 250,000. African-American growth was also about 80,000, if I  
5 recall. And the rest was Asian population. So over 100  
6 percent of the growth was attributable to minority population  
7 growth.

8 Q. And is that reflected, that population, the minority  
9 population growth, is that reflected in districts, minority  
10 districts in Dallas County under House map 283?

11 A. I don't believe it is.

12 Q. If you will, go to Exhibit 1-0 -- let me get it exactly --  
13 103, the existing House map for Dallas County. And  
14 particularly, what I am asking you to look at is the area  
15 around District 105.

16 And can you inform the Court whether or not the  
17 southern dip of 105, as under House map 283, is currently in  
18 the wall, where two of the fingers reaching into 103 and 105  
19 is currently in the wall? Can you let the Court know that?

20 A. No. These -- the unusual configuration is not reflected  
21 in the current benchmark plan.

22 Q. If you will, go back to Exhibit 104, the House map passed  
23 plan for 283. And the Court previously has heard testimony  
24 from Dr. Kousser about -- these are my words, but about,  
25 essentially, a systematic overpopulation of minority districts

1 and an underpopulation of Anglo districts.

2 Can you point out to the Court where on the ground  
3 in Dallas County, at least, that that bears true?

4 A. Well, in these three districts we have been discussing,  
5 District 103 is the most overpopulated district in Dallas  
6 County. It has got a deviation right at five percent, over  
7 about 80 -- almost 8,400.

8 Q. What is the total deviation in Dallas County, by the way,  
9 under House map 283?

10 A. 8.88 percent.

11 Q. From a map drawer's point of view, does there appear to be  
12 any effort in the drawing of Dallas County to draw minimal  
13 deviation maps, maps that would truly comply with one-person,  
14 one-vote?

15 A. No. There is none whatsoever.

16 Q. So you have got 103 being the most overpopulated district,  
17 and that is, in part, because they have taken a large amount  
18 of population out of what otherwise would be 105?

19 A. That is -- that arm did add a significant number of people  
20 into 103, yes.

21 Q. Keep going on how this deviation is affecting the creation  
22 of minority districts for the Court in Dallas County.

23 A. Well --

24 MR. FREDERICK: Your Honor, object. Calls for a  
25 narrative. I am not sure what the question is.

1                   JUDGE GARCIA: Just answer precisely the question  
2 being asked.

3 BY MR. GRAY:

4 Q. Tell me specifically where and how the deviation that  
5 Professor Kousser was talking about, how that has prevented  
6 the creation of additional minority districts in Dallas  
7 County.

8 A. There is extensive Latino population growth in west Dallas  
9 County, and by having these three districts, 103, 104, 105,  
10 overpopulated, that puts as much of that population as  
11 possible into those districts, which makes it much more  
12 difficult to draw additional opportunity districts for that  
13 minority population growth.

14 Q. Dr. Kousser used the term, referred to the terms packing,  
15 stacking, cracking, and --

16 A. Tacking.

17 Q. -- tacking, I believe. By putting, overpopulating all of  
18 the minority districts, what terminology would you call that,  
19 of those four?

20 A. Well, one of those districts is less minority, so by  
21 overpopulating those two, you essentially packed Districts 103  
22 and 104.

23 Q. Now --

24                   JUDGE SMITH: Excuse me, Mr. Gray. Excuse me,  
25 Mr. Gray. Has the witness testified that all of the minority

1 districts in Dallas County are overpopulated?

2 MR. GRAY: He has not.

3 JUDGE SMITH: Okay. Your question seemed to assume  
4 that, at least as I heard it.

5 MR. GRAY: If I did, I made an error, Your Honor. I  
6 was referring to the minority districts in west Dallas County  
7 that we are talking about.

8 BY MR. GRAY:

9 Q. Are all minority districts in west Dallas County that we  
10 are talking about overpopulated?

11 A. In that area of the Latino population, yes.

12 JUDGE GARCIA: Are you talking about 103, 104, 105?

13 THE WITNESS: Right.

14 JUDGE GARCIA: Okay.

15 BY MR. GRAY:

16 Q. Now, are there other areas in Dallas County where the  
17 deviation issue has prevented, in your opinion, the creation  
18 of an additional minority opportunity district?

19 A. Well, deviation and other factors, I think, have prevented  
20 the creation of a minority opportunity district in northeast  
21 Dallas County.

22 Q. And where would that be, sir, on the map we are looking  
23 at?

24 A. That would be where Districts 107, 112, 102, 113 -- if I  
25 had the pointer, I could show you. But upward, right in that

1 area, where all of those districts come together, there is a  
2 significant area of minority population growth in northeast  
3 Dallas, south Richardson. And you will see that that,  
4 frankly, is split among about five districts in that plan.

5 Q. Now, if you were to look back at the minority overlay  
6 district, which is a map, which was 106 for Dallas County, are  
7 we referring to this area right here?

8 A. Yes.

9 Q. And that minority population, instead of being put in a  
10 single district that would give a minority candidate an  
11 opportunity to elect a candidate of choice, is divided in how  
12 many districts?

13 A. Five.

14 Q. Now, I was just handed a note by Mr. Garza that I should  
15 have asked you, in response to Your Honor Judge Smith's  
16 question. Is every Hispanic district minority opportunity  
17 district in Dallas County overpopulated?

18 A. Yes. Every one is.

19 Q. Every single district that is Latino majority opportunity  
20 is overpopulated in Dallas County under House map 283?

21 A. Yes.

22 Q. Now, the taking of minority population in this part of the  
23 county where -- that is the, what, northeast part of Dallas?

24 A. Yes.

25 Q. Taking minority population and dividing it in four or five



1 different directions, what effect does that have on minority  
2 voting opportunities?

3 A. Well, it makes it impossible to create an additional  
4 minority opportunity district, and allows a county that is, as  
5 I stated earlier, only 33.1-percent Anglo to retain --  
6 58 percent of the districts are controlled by Anglos in that  
7 county.

8 Q. Your analysis of the House map 283, and I think you have  
9 just answered it for me, but Dallas will have how many House  
10 seats?

11 A. Fourteen.

12 Q. Of the 14 House seats under your analysis, how many will  
13 be dominated by Anglos?

14 A. Eight.

15 Q. Eight. And a map of eight of 14 is over 50 percent?

16 A. It is 58 percent.

17 Q. Fifty-eight percent, and Dallas County is thirty --

18 A. -- 3.1.

19 Q. -- three-percent Anglo?

20 A. Right.

21 Q. Now, let's shift gears to -- well, before we leave Dallas  
22 County, let's go to Exhibit 107. Exhibit 107 is Plan 288,  
23 which is a demonstration map that you have prepared by my  
24 request; is that correct?

25 A. That is correct.

1 Q. First, under 288, what is the deviation?

2 A. It is 1.74 percent.

3 Q. If I wanted you to take it to zero, literally, no more  
4 than ten or 20 persons different per district, is the  
5 technology there that we can do that?

6 A. Sure. We can take it down to at least a deviation of one  
7 person.

8 Q. Now, in fact, that is what we do -- or that is what the  
9 map drawers do when drawing lines to the United States  
10 Congress?

11 A. It is, indeed.

12 Q. Now, was it difficult for you to put together a map that  
13 had a one-point-whatever-percent deviation?

14 A. No. It was not difficult at all.

15 Q. And your map 288, walk the Court through how it fixes or  
16 deals with the problems that we have identified previously as  
17 far as 105 and northeast Dallas, the cracking of that minority  
18 community.

19 How does 288 solve those two problems?

20 A. Well, you will see in northeast Dallas County, there is a  
21 District 102, and that district in this plan is less than  
22 20-percent Anglo population. It is two-thirds black plus  
23 Hispanic voting age population. I believe it is -- I could  
24 look in my report, but I am pretty sure it is 59.9 percent  
25 black plus Hispanic citizen voting age population.

1 Q. And that is merely doing -- putting together the minority  
2 community in northeast Dallas, as opposed to dividing it five  
3 ways?

4 A. That is correct. It is a very compact district.

5 Q. Now, tell me the -- I am not looking as well -- but 105,  
6 have you fixed that problem?

7 A. Yes. 105 is, in this plan, a Latino majority district  
8 with 66-percent Latino population, over 60-percent Hispanic  
9 voting age population. And districts 103 and 104 are both  
10 retained as performing Latino opportunity districts.

11 Q. So the net effect in proposed House Plan 288 or  
12 Demonstration Plan 288, compared to House passed plan 283, as  
13 far as minority opportunity districts, is a net gain of one?

14 A. There are two additional districts where minority voters  
15 can elect their candidate of choice.

16 Q. And the net deviation difference, compared to the State's  
17 8.88-percent deviation, and the deviation in Plan 288, how  
18 closer to one-person, one-vote have you gotten?

19 A. It is closer by 7.14 percent.

20 Q. Now, let's turn to Harris County.

21 JUDGE SMITH: Before you leave that one, let me just  
22 ask, District 103 there, would you describe that as a trout in  
23 milk?

24 THE WITNESS: If I didn't know Dallas County, I  
25 might do that, but the fact is that there is a reason for that

1 configuration.

2 BY MR. GRAY:

3 Q. Explain to Judge Smith the purpose of that, and the  
4 purpose of that.

5 A. Well, as you see District 100 coming kind of into the  
6 District 103, that is a long-time, traditional  
7 African-American community in west Dallas. It always has been  
8 in District 100.

9 JUDGE SMITH: That is where the projects are, right?

10 THE WITNESS: Yes.

11 JUDGE SMITH: All right.

12 THE WITNESS: And -- well, yes.

13 JUDGE SMITH: There are a large number of projects  
14 there?

15 THE WITNESS: Right, right. Historically. And so  
16 that kind of comes in. Otherwise, you would have a district  
17 that went straight across between the core, the Oak Cliff  
18 Latino community. And there is traditionally, a long-time  
19 core, east Dallas Latino community.

20 But keeping that African-American community in  
21 District 100, where it has been since, I think, the original  
22 maps were drawn in the seventies, is the only reason that  
23 there is an indention and doesn't go straight across.

24 BY MR. GRAY:

25 Q. Could you drop off this -- what is picking up here, going

1 into 103?

2 A. That is east Dallas. It is a Latino community, and you  
3 will see -- I think you have seen in some of the plans that  
4 have been shown earlier, in congressional proposals and State  
5 Senate proposals, those are -- that is often put in Latino  
6 opportunity districts by map drawers. That is literally just  
7 a traditional core neighborhood that has been there as long as  
8 I can remember.

9 Q. Could you cut off 103 and then kind of clean it up and  
10 still have two minority opportunity districts but not  
11 necessarily have the -- have the areas that have traditionally  
12 been in those districts in them?

13 A. Well, you could fill in, I think might be an easier way to  
14 put it, but there is not a lot of population in the west  
15 Dallas section of District 100, and leave some of that eastern  
16 population off, and I think it would still be a performing  
17 district. It would still be a Latino majority district.

18 Q. Now, let's turn to Harris County. Let's start with the --  
19 can you tell us what -- the governor's race or the president's  
20 race, those votes in Harris County?

21 A. Sure. In Harris County, both President Obama and the  
22 former mayor of Houston, Bill White, got just over 50 percent  
23 of the vote. I think Bill White got 50.23. President Obama  
24 got 50.44.

25 Q. And are you familiar with Harris County?

1 A. I am very familiar with Harris County. My parents still  
2 live in the house I was raised in in the city of Houston.

3 Q. And have you been active in political campaigns involving  
4 various races in Harris County?

5 A. It is where I got started in politics.

6 Q. Now, under the census, tell the Court what happened to  
7 the -- well, first, tell the Court what the breakdown,  
8 ethnicitywise, of Harris County is and how it has changed --

9 A. Well, it is remarkable, in the sense that Harris County is  
10 also 33-percent Anglo. It is more Latino than Dallas County.  
11 It is 40.8 percent Latino, slightly more, 18.9 percent  
12 African-American, and also has a fairly significant Asian  
13 population. In the last --

14 Q. And what happened over the decade? How did it change?

15 A. In the last decade, there was an exodus -- or there are  
16 82,000 less Anglos in Harris County than there were ten years  
17 ago, 552,000 more Latinos, 134,000 more African-Americans, and  
18 over 70,000 more Asians.

19 Q. Now, is all of the net growth in Harris County -- did you  
20 say the Anglo population actually reduced --

21 A. By 82,000, correct.

22 Q. So all of the net growth in Harris County is due solely to  
23 the increase in the minority populations in Harris County?

24 A. Yes. Mathematically, it is over 100 percent of the  
25 growth.

1 Q. Does Plan 283, as passed by the legislature, in your  
2 opinion, reflect in any way at all that growth?

3 A. No. It does quite the opposite. It eliminates an  
4 existing minority opportunity district, in my opinion.

5 Q. And that is District 149, correct?

6 A. It is District 149.

7 Q. And we will get to that in just a minute. If you will,  
8 look at District 144. Yesterday morning, Representative Trey  
9 Martinez Fischer testified that there was, in his opinion, at  
10 least, an effort to maintain Anglo voting strength at the  
11 expense of minorities in District 144.

12 One, do you share that opinion?

13 A. I do share that opinion.

14 Q. And if you will, keeping Exhibit 109 in mind, but going to  
15 Exhibit 112, which is the racial overlay, can you explain to  
16 the Court what was done to enhance the Anglo voting strength  
17 in District 144 at the expense of minority population?

18 A. Yes. If we could zoom in on that eastern part of the  
19 county, it might be easier for the Court to see, I think. And  
20 go a little south. Raise it up. There we go.

21 District 144, first of all, the incumbent lives over  
22 in the very northwest corner. If you'll go down a little bit  
23 with your pointer, right under 143. It is where the incumbent  
24 lives. No. Further down and to the left. Come up to the  
25 corner. In a precinct that is -- actually, I think it is 65

1 to 70-percent Latino, so that part of the district where he  
2 lives is maintained.

3           Otherwise, you see a district that goes down into  
4 what is South Deer Park, South Pasadena, all the way over  
5 to -- I guess it is Seabrook, it looks like, right on  
6 Galveston Bay. And then northward, back up through areas that  
7 have very little population along the Houston ship channel.

8           The Latino population -- and I don't recall what is  
9 in the benchmark district, but the other important point about  
10 this is that this district was underpopulated and needed  
11 additional population, as was District 129 and 128 above it.

12           It is not the area of the fastest population growth  
13 in Harris County. So 144 picked up additional Anglo  
14 population, but it retained enough Latino population that that  
15 population was not available to use to create additional  
16 districts.

17 Q. Now, Trey Martinez Fischer testified that it was his  
18 recollection that Latino population out of -- I believe this  
19 is 145 and 147 -- had previously been in 144 and was taken  
20 out?

21 A. It was. There is, near the southern end of 145 --  
22 actually, District 144 used to go across that southern end,  
23 where you see 145, across the Gulf Freeway in an area near  
24 what is called Almeda Mall, and there was Latino population  
25 and some African-American population there as well.



1 Q. So previously, did 144 cross 145 at this tip and then go  
2 into 147, in that area?

3 A. Right where you have your pointer, yes.

4 Q. Pardon?

5 A. Yes. Where you have your pointer used to be in 144.

6 Q. And the map drawers removed the Latino population from 144  
7 that is in those areas that I am pointing to, and by removing  
8 it and then leaving 144, is it underpopulated?

9 A. Currently, the way it is drawn -- just give me one second.  
10 144 is -- yes, it is underpopulated by almost 5,800 people.

11 Q. By underpopulating 144 and removing population, Latino  
12 population out of 144, what is the net effect of -- on Anglo  
13 voting strength and Latino voting strength in 144?

14 A. Well, obviously, it becomes more Anglo, the district, and  
15 voting strength for Anglos is enhanced.

16 Q. And 144 is currently represented by a Latino member of the  
17 legislature or an Anglo member of the legislature?

18 A. No. An Anglo named Representative Legler, I believe.

19 Q. If the 5,700 -- or 5,800 or so underpopulation, the  
20 deviation issue was not there and they added the Latinos back  
21 into that district, what effect would it have?

22 A. Well, it would reduce Anglo voting strength and increase  
23 Latino voting strength, and I think that is also -- a part of  
24 that equation is that both District 145, just immediately to  
25 the west of 144, and District 147 are overpopulated. 147 is

1 the most overpopulated district in Harris County.

2 Q. Now, if 147 is overpopulated and 145 is overpopulated, is  
3 there any reason you can think of why 144 would shed Latino  
4 population into 145 and 147?

5 A. The only reason I can think is to enhance the electoral  
6 opportunity for the Anglos and the Anglo incumbent.

7 Q. Now, if you would, let's go back to Exhibit 109 for a  
8 second, which is the House passed map for Harris County.

9 And if you will, I want you to focus on District 145  
10 that we were just talking about.

11 A. Uh-huh.

12 Q. And it goes south all the way up, up, up, up, and all the  
13 way -- well, tell the Court what, roughly what the southern  
14 boundary is and what the northern boundary is of 145, as it is  
15 drawn.

16 A. Okay. The southern boundary is just past the beltway on  
17 Interstate 45, the outer loop around Houston, and then it  
18 goes -- the district has traditionally been a district that  
19 started in what is called the Eastwood neighborhood, the east  
20 end of Houston, and had the Latino population in the southeast  
21 part of Harris County, which has grown dynamically.

22 JUDGE SMITH: Can we proceed on Q and A? You just  
23 asked him what the southern reach of it was and the northern  
24 reach, and now he is talking about some other opinion he has.

25 MR. GRAY: I will move on.

1 THE WITNESS: Sorry.

2 BY MR. GRAY:

3 Q. Tell the Court what the southern boundary and what the  
4 northern boundary is. That's all I am asking.

5 A. The southern boundary is just past the beltway. And the  
6 northern boundary is up at the very northwest corner, the  
7 Temper Grove and Heights neighborhoods northwest of downtown.

8 Q. And how long of a district are we talking about within  
9 Harris County?

10 A. Twenty-five miles.

11 Q. And are there points -- in fact, just let's just show the  
12 Court. If you will, turn to Exhibit 110. And is that the  
13 channel of 145 that goes from the south all through downtown  
14 and heading north?

15 A. That is the channel of District 145. It is, indeed.

16 Q. And 145, for this period of time, is a total of how many  
17 blocks wide?

18 A. It is three blocks wide, and right where the number is --

19 Q. Let me ask the questions.

20 A. Okay. All right.

21 Q. And right where 145 is, this block, what is sitting right  
22 there?

23 A. That is Minute Maid Park, where the Houston Astros used to  
24 play baseball.

25 Q. So the 145 --

1 JUDGE SMITH: Used to play baseball?

2 THE WITNESS: They are not doing too well.

3 JUDGE SMITH: You mean they don't play very well, is  
4 what you are --

5 (Laughter.)

6 JUDGE SMITH: I think they are still trying to play,  
7 though.

8 THE WITNESS: There is always hope.

9 BY MR. GRAY:

10 Q. Is it fair to say that 145 and the channel is no wider  
11 than a baseball field?

12 A. No wider than the stadium, and that's a pretty small,  
13 little stadium.

14 Q. And what is the -- from a map drawer's point of view, put  
15 your cynic hat on for a second. From a map drawer's point of  
16 view, what is the purpose of -- let's go back to the 109,  
17 Exhibit 109.

18 What is the purpose of extending 135 south and  
19 taking Hispanic population out of 144 and then pushing it up  
20 west and leaving it over up north and leaving it  
21 overpopulated?

22 A. Well, it has the effect of shoving -- that northward move,  
23 it pushes District 148, which is an existing Latino  
24 opportunity district, further out to the north and west and  
25 overpopulates it.

1           By doing so, again, the same thing that happened in  
2 the southeast side of the county, when District 148 takes  
3 areas of Latino growth in the Spring Branch area and parts of  
4 west and northwest Harris County, it makes it very difficult  
5 to draw an additional Latino opportunity district there.

6 Q. So by taking population out of 144 and putting it into  
7 145, that is overpopulated, the Anglo voting strength of 144  
8 is preserved; by shoving 145 north and taking the population  
9 that previously had been in 148, and now putting it into 145,  
10 that has the cumulative effect of preventing the creation of a  
11 minority opportunity district?

12 A. That, in conjunction with other things that were done to  
13 148, yes.

14 Q. What were the other things done with 148 that leads to  
15 that -- to your opinion?

16 A. Well, District 148 and the benchmark plan currently has  
17 been performing for ten years as an effective Latino  
18 opportunity district. It was packed to reach an arbitrary  
19 number of 50-percent Spanish surname voter registration. And,  
20 again, it took additional precincts further to the west, and  
21 had the same effect of taking in areas that otherwise could  
22 have been used in a different configuration to enhance  
23 minority voting opportunity.

24 Q. So are you saying that -- well, one, was the population  
25 that was added into 145 --

1 A. Right.

2 Q. -- was that Latino population?

3 A. Some was Latino and some was Anglo in the Heights there on  
4 the north side.

5 Q. And did it have anything to do with maintaining 145 as a  
6 performing minority opportunity district?

7 A. Absolutely not.

8 Q. By adding that population in and overpopulating 145, 145  
9 is, again, overpopulated under House map 283, correct?

10 A. Correct.

11 Q. What is the effect of that overpopulation on the ability  
12 to create minority opportunity districts in Harris County?

13 A. It makes it much more difficult.

14 Q. And, in fact, could you create an additional minority  
15 opportunity district if you didn't have that constant adding  
16 of population in the district so that they are overpopulated?

17 A. Yes. There were plans introduced and voted on that did  
18 so, several plans.

19 Q. And I am going to come back come back and ask you a  
20 specific question about that in a minute. Now, let's go to  
21 Exhibit 111, which is a blowup of the area of Harris County  
22 which is on the Harris County-Fort Bend line. I think, in  
23 many ways, it is known as the Alief barrier.

24 JUDGE SMITH: Before you leave 145, I just have one  
25 question. You talked about the channel in 145. How wide is

1 the channel in 103, in your demonstration map?

2 THE WITNESS: It is at least a census block group in  
3 almost every place, the whole precinct wide.

4 JUDGE SMITH: But at its narrowest point --

5 THE WITNESS: Oh.

6 JUDGE SMITH: It looks pretty narrow on your map,  
7 but --

8 THE WITNESS: Right. It is at least eight to ten  
9 blocks wide, and some places -- but it is -- generally, I  
10 tried to use whole precincts when I cut those channels, or at  
11 least census block groups.

12 JUDGE SMITH: Okay. So your testimony is that, at  
13 its narrowest, it is eight blocks?

14 THE WITNESS: I would have to literally go in and  
15 see it. Maybe a little more than that. I am not sure.

16 BY MR. GRAY:

17 Q. Now, let's go to Plaintiff's 111, and tell the Court what  
18 this is.

19 A. That is southwest Harris County. It is probably the area  
20 of the fastest minority population growth in the county, and  
21 perhaps in terms of change, over the last ten to 20 years, in  
22 the whole state. The western half of that around the beltway  
23 and west is generally considered the Alief area. The Alief  
24 Independent School District is there.

25 Q. Tell me roughly where District 149 was in this part of the

1 county before it was eliminated.

2 A. Well, it was primarily in -- if you see where District 131  
3 comes in from the southeast, it was part of that, part of  
4 where you see District 137 coming in. And then west of there,  
5 toward the county line, in the Alief area, where that district  
6 133 drops in.

7 Q. So where my pointer is going, is it roughly in that area?

8 A. Yes. Generally in that area.

9 Q. And for a more precise location, if the Court is  
10 interested, if they were to look at the existing map, which is  
11 Exhibit No. 108, it would show it right there?

12 A. Right.

13 Q. Now, let's go back to 111. First, District 149 that was  
14 eliminated, who was the incumbent in that district?

15 A. Representative Hubert Vo.

16 Q. And of what ethnicity is Representative Vo?

17 A. He is Vietnamese-American.

18 Q. And was he the first and maybe only Vietnamese-American  
19 elected to the Texas House?

20 A. He was the first. I know that.

21 Q. Now, describe, if you will, to the Court the population  
22 makeup in that part of the county by ethnicity.

23 A. Well, it is at least -- there are four ethnicities.

24 Representative Vo's -- I would like to check to make sure I  
25 have this absolutely correct. His current district is 26.6-



1 percent Anglo voting age population. It has over 20-percent  
2 Asian population, to the best of my recollection, and also  
3 significant African-American and Latino population.

4 Q. So it truly is a very multiethnic or was a very  
5 multiethnic district?

6 A. That whole area of Harris County is very multiethnic, yes.

7 Q. Now, this area of Harris County, the southwest area of  
8 Harris County, is it a growing area or a declining area?

9 A. No. The population has been growing consistently for the  
10 last 20, 30 years.

11 Q. The area in east Harris County that we looked at earlier,  
12 where District 144 is, was it a growing or declining area of  
13 population?

14 A. It is growing much more slowly.

15 Q. Now, the district that was eliminated in Harris County,  
16 was it eliminated from the fastest-growing part of Harris  
17 County?

18 A. It was eliminated from one of the fastest-growing parts.  
19 I am not sure that is the fastest-growing part.

20 Q. Was the district that was eliminated from Harris County,  
21 was it -- was the member from that district a minority member  
22 in the Texas legislature?

23 A. Yes, and he was a minority candidate of choice. The  
24 voters --

25 Q. And were every Anglo member in Harris County protected

1 under House map 283?

2 A. Yes, they were.

3 Q. Despite Harris County, every bit of the Harris County  
4 growth being attributable to the increase in the minority  
5 population, the minority representation under House map 283  
6 actually was reduced?

7 A. Yes, it was.

8 Q. Now, focusing on House -- District 8 -- 149, the district  
9 currently represented by Representative Vo, that district was  
10 roughly a 25, 25, 25, 25 district?

11 And I know I am in rough numbers, but it was roughly  
12 an equal district, ethnicitywise?

13 A. It was multiethnic in that regard. I can get you the  
14 exact numbers.

15 Q. Was the minority community in that district able to form  
16 coalitions and elect the candidate of their choice?

17 A. Yes, they had.

18 Q. And for how long had they been able to do that in District  
19 149?

20 A. In the state representative elections since 2004.

21 Q. And is that when Representative Vo was first elected and  
22 has been re-elected every two years since then?

23 A. Yes. And he has been reelected with greater margins ever  
24 since then.

25 Q. The coalition of minority voters that were in 149 under

1 House map 283, what happens to those people?

2 A. Well, what happens now is they will be split up among  
3 several districts. District 133 is an Anglo-controlled  
4 district that goes up into the Memorial and out to the Katy  
5 areas.

6 Q. Does adding the population out of 149, the coalition  
7 population out of 149 into 133 do anything to meaningfully  
8 diminish the Anglo's control over that district?

9 A. No.

10 Q. Where does the rest of the population go?

11 A. Well, the most striking thing -- in addition, there is  
12 another Anglo-controlled district. Some of it goes into  
13 District 136, which is based in Memorial Drive, Tanglewood  
14 area, a very high turnout Anglo population.

15 Q. Does any of the addition of any of the coalition  
16 population out of 149 into 136 have any impact on the Anglos'  
17 control over 136?

18 A. No.

19 Q. Where else does the population go?

20 A. Probably, the most telling thing is into District 137.  
21 The current District 137 is a district that already is a  
22 59.8 Hispanic voting age population district. In fact, it is  
23 represented by Representative Scott Hochberg. The district  
24 itself is less than a third Anglo voting age population. It  
25 is a heavily minority district. And so you had two incumbents

1 representing minority opportunity districts paired.

2 Q. Now, prior to adding in the coalition population out of  
3 149 into 137, was 137 already a district in which the minority  
4 community was, in fact, electing the candidate of their  
5 choice?

6 A. They were. And the State itself in its submission to --  
7 for preclearance in 2001 pointed out that it was a fifth  
8 majority Latino district.

9 Q. Now, now does adding the coalition population out of 149,  
10 that part of it that went into 137, does that do anything as  
11 far as maintaining 137 as a minority opportunity district?

12 A. No. It actually decreased the Hispanic voting age  
13 population in the paired district by 4.4 percent.

14 Q. So the net effect is that the Latino voting strength, at  
15 least, is reduced by the destruction of District 149?

16 A. It is reduced somewhat, yes.

17 Q. Now, the population that was in the coalition District  
18 149, the net effect of the destruction of 149 is what, as far  
19 as minority opportunity districts in Harris County?

20 A. It reduces the number of affected minority opportunity  
21 districts by one in the county. Currently, there are six  
22 African-American districts, five Latino opportunity districts,  
23 and this one coalition district that has proven effective,  
24 149. So the total number of districts is reduced from twelve  
25 to eleven.

1 Q. So we are abundantly clear, prior to House Bill 283, in  
2 the Alief area of Harris County, there were two districts in  
3 which the minority community was actually electing the  
4 candidate of their choice right now, and those members have  
5 been serving in the legislature, correct?

6 A. They have, in the Alief and Sharpstown areas, to be  
7 precise.

8 Q. And after House Bill 283, those districts, those two  
9 districts in which minority candidates -- the minority  
10 community was actually electing the candidate of their choice  
11 and they were serving, 283 takes that number from two to one?

12 A. It does.

13 Q. Is there any replacement? Is there any other minority  
14 district in Harris County that the State can say: Yes, we  
15 took it away from you in the Alief, Sharpstown area, but we  
16 gave it to you here or gave it to you here?

17 Is there any replacement at all?

18 A. No. There is no additional minority opportunity district.

19 Q. Now, I want to go back to -- before I leave Harris County  
20 completely, I want to go back to --

21 JUDGE SMITH: Are you leaving 137?

22 MR. GRAY: Yes, sir. Not until you are finished.

23 JUDGE SMITH: Well, you are familiar with the  
24 redistricting that occurred after the 2000 census?

25 THE WITNESS: Yes, sir.

1 JUDGE SMITH: As I recall, Mr. Vo defeated the  
2 Talmadge Heflin in 2004?

3 THE WITNESS: In 2004.

4 JUDGE SMITH: In 2004. And Mr. Heflin was a  
5 representative with a long incumbency.

6 THE WITNESS: Right.

7 JUDGE SMITH: Is it your recollection that the  
8 district was supposedly drawn to protect Mr. Heflin?

9 THE WITNESS: I believe it would have been. He was  
10 a chairman of the appropriations committee.

11 JUDGE SMITH: Right. So it was somewhat surprising,  
12 was it not, that even though the district was drawn to protect  
13 him, that he was defeated by someone who was relatively  
14 unknown --

15 THE WITNESS: Right.

16 JUDGE SMITH: -- at least did not have a political  
17 track record?

18 THE WITNESS: As you will -- and I understand that  
19 you know Houston as well as -- or maybe better than I do.

20 JUDGE SMITH: Not as well, no. I have not studied  
21 the elections as closely as you have.

22 THE WITNESS: But the district was drawn in a way  
23 that the northern part of the current district -- some of it  
24 is north of Westheimer, in the Dairy Ashford area, that area.  
25 So there is an -- in the current area, there is an Anglo

1 population that was a substantial base for Representative  
2 Heflin.

3           What happened is, this demographic change we have  
4 been talking about, there was substantial minority population  
5 growth -- it is the growth I have been describing -- that has  
6 changed that district's makeup dramatically, and that is why  
7 on the ground now it is so heavily minority.

8           JUDGE SMITH: Right. And it changed in a hurry,  
9 apparently.

10          THE WITNESS: It did.

11          JUDGE SMITH: Because between the 2000 census and  
12 then the 2004 election -- really, my question went to the fact  
13 that even though the district was supposedly drawn in a  
14 particular way to protect that incumbent, in fact, a minority  
15 candidate sort of came out of nowhere and was able to not only  
16 win but then to be reelected?

17          THE WITNESS: And with greater margins. I think it  
18 is a reflection of the demographic change in that part of the  
19 county.

20 BY MR. GRAY:

21 Q. To follow up on Your Honor's question, the demographic  
22 changes in that part of the county has led to two  
23 currently-on-the-ground districts that the minority candidates  
24 of choice -- minority voters can elect the candidate of their  
25 choice?

1 A. Correct.

2 Q. Under this plan, the legislature under 283, for whatever  
3 reason, has rolled that back to the way it was at the time  
4 Representative Heflin was elected, correct?

5 A. Essentially, yes.

6 Q. Now, going back to 109, the House map for Harris County,  
7 and to wrap up Harris County for a moment, are you able, as a  
8 map drawer, to fix the -- or undo the destruction of the two  
9 minority op -- or the minority opportunity districts in the  
10 Alief-Sharpstown area that we have just been talking about  
11 and, two, to adjust deviations such that an additional  
12 Hispanic or minority opportunity district can be created in  
13 Harris County?

14 A. Yes. It would be very easy.

15 Q. And have I, in fact, asked you to do exactly that?

16 A. Yes, you did.

17 Q. And if you will, turn to Exhibit 113. And before we ask  
18 you about 113, first, can you tell the Court under 283, what  
19 is the deviation in Harris County?

20 A. 9.74 percent.

21 Q. Is there, from your review of House Plan 283, was there  
22 any effort at all to minimize deviation, to try to draw plans  
23 that were as close as possible to one person, one vote?

24 A. There couldn't have been.

25 JUDGE GARCIA: Well, you say there couldn't have



1       been, but the question was, do you know?

2               THE WITNESS:  No.

3               JUDGE GARCIA:  And how do you know that?

4               THE WITNESS:  I am only basing that on the result  
5       that it ended up being 9.74 percent over.  I mean, a  
6       deviation.

7               MR. GRAY:  I will follow up, Your Honor, and I will  
8       make that clear.

9               JUDGE GARCIA:  Okay.

10       BY MR. GRAY:

11       Q.  In fact, on Plaintiff's Exhibit 113, our demonstration  
12       map --

13       A.  Correct.

14       Q.  -- were you able, with little or no difficulty, to draw a  
15       map for Harris County that not only remedied the problem that  
16       we have discussed in the southwest Alief and Sharpstown area,  
17       and also added an additional minority opportunity district at  
18       a deviation substantially lower than the Harris County current  
19       deviation of 9.93?

20       A.  Yes, I was.

21       Q.  What is the deviation under Plan 113?

22       A.  It is 1.81 percent.

23       Q.  And if I was to ask you to draw a map that had zero  
24       deviation, or a deviation of no more than ten or fifteen  
25       people, could you do that with little or no difficulty?

1 A. It could be done very easily. It would not be --

2 Q. And with all due respect, you are not the only  
3 sophisticated map drawer drawing maps for people involved in  
4 the legislative process?

5 A. No. There are a lot of people that do a good job of  
6 drawing maps.

7 Q. The map drawers that were drawing maps for those persons  
8 in control of this redistricting process, from what you have  
9 studied, knew what they were doing, did they not?

10 A. I believe they knew exactly what they were doing.

11 Q. And they were sophisticated, talented map drawers, were  
12 they not?

13 A. Yes. They apparently were.

14 Q. Now -- and I apologize, but I left out something that I  
15 need to at least bring to the Court's attention.

16 Will you flip back to Plaintiff's 111. Back to the  
17 Alief area. And while we are talking about the sophistication  
18 of the map drawers, if you will look in the middle of 146, do  
19 you see this little, pink box right here?

20 A. Yes.

21 Q. Go back to the normal screen. That district, what  
22 district is this piece voting?

23 A. Well, that is part of District 131.

24 Q. And how can that possibly be in District 131 when it is  
25 sitting in the middle of 146?

1 A. Well, it is connected right along Brays Bayou.

2 Q. Now, there is a little pink line that runs right through  
3 here to this piece. What is the map drawer going down to get  
4 to that piece?

5 A. That is Brays Bayou, I believe.

6 Q. So these map drawers were sophisticated enough to go down  
7 a bayou to pick up population?

8 A. That's what the map shows.

9 Q. Now, if you will look at 134, and there is another little  
10 piece going down the bayou as well? Or is this a continuation  
11 of the bayou on the 134 side?

12 A. Yes.

13 Q. Do we have 146 -- under state law, districts have to be  
14 contiguous, correct?

15 A. Yes.

16 Q. 146 is contiguous, because there is about an eighth of an  
17 inch gap in this bayou that ties the north part of 146 with  
18 the south part of 146; is that correct?

19 A. Yes.

20 Q. In order to do that with that level of precision, is that  
21 the work of a map drawer who knows exactly what they are doing  
22 and exactly how to get to what their goals are?

23 A. Yes, it is.

24 Q. Now, let me digress and go to Exhibit 113. And can you  
25 tell the Court what Exhibit 113 is?

1 A. Exhibit 113 is the plan that you requested that I draw  
2 with little deviation for Harris County.

3 Q. And that is the one that has right at a one-percent  
4 deviation, correct?

5 A. 1.81 percent.

6 Q. And have you solved the problem or restored two minority  
7 opportunity districts in the Alief-Sharpstown area by  
8 Exhibit 113, which is plan 287?

9 A. Yes. That was very easy to do, in part, because all of  
10 those districts were very overpopulated, so it is easy to  
11 bring that population back out and create two very compact  
12 districts in that area.

13 Q. So when you undo the -- what I am calling the deviation  
14 advantage, but when you undo the overpopulating of districts,  
15 does that then provide for the re-creation of the minority  
16 opportunity district that was taken away in 283?

17 A. It made it a lot easier to do, yes.

18 JUDGE SMITH: And this leaves Harris with 25?

19 MR. GRAY: No, Your Honor. This is 24. This is  
20 still 24.

21 JUDGE SMITH: All right.

22 BY MR. GRAY:

23 Q. Now, have you also in map 287 been able to create an  
24 additional minority opportunity district by undoing further  
25 deviation and cracking of the minority community?

1 A. Well, there are two other districts that are majority-  
2 minority in every measure, citizenship, voting age population,  
3 and one that is a substantially Latino majority district, 138,  
4 which is in the northside and over to Spring Branch.

5 Q. Right about here?

6 A. Right there. And it is -- I can look it up, but it is  
7 well over 60 percent in population, and just a little less  
8 than 60 percent of Hispanic voting age population, a  
9 substantial majority district.

10 Now, in west Harris County, District 132, is a  
11 district that also has got a significant minority population.  
12 There has been -- it is one of the areas of the fastest  
13 minority population growth north of Interstate 10, west of  
14 Highway 6 south of Highway 290.

15 I think that is an area that, I think, in the last  
16 five years has grown; the minority population growth has been  
17 extremely dramatic, and the numbers in that district are sort  
18 of stunning for people who think of west Harris County as kind  
19 of an Anglo area.

20 District 132 is a district that has a nonAnglo  
21 citizen voting age population of 50.2 percent, a black plus  
22 Hispanic voting age population of 59.4 percent.

23 Q. So you were able to create, restore the minority coalition  
24 district that had been taken away by 283 and add two minority  
25 opportunity districts and, at the same time, have a deviation

1 of almost nine points lower in Exhibit 113 than what the State  
2 has in 283?

3 A. Yes.

4 Q. And is that simply by unpacking or creating, undoing the  
5 deviation advantage and, two, undoing the cracking of minority  
6 communities where they are cracked and spread apart in Harris  
7 County?

8 MR. FREDERICK: Objection, Your Honor. Leading.

9 BY MR. GRAY:

10 Q. Tell me how you were able to do it.

11 JUDGE GARCIA: Okay. Go ahead.

12 THE WITNESS: Well, one, the deviation made it much  
13 easier to do, because you weren't overpopulating minority  
14 districts in southwest Houston.

15 The other thing, when you didn't push that channel  
16 that is actually two districts going through downtown, three  
17 blocks wide next to each other, when you didn't have that  
18 happen, you are able to recognize the substantial minority  
19 population growth in the west and northwest part of Harris  
20 County, and you end up with a map that is much more reflective  
21 of the demographics of the county.

22 BY MR. GRAY:

23 Q. Under -- my last question on Harris County, and I am  
24 moving to Hidalgo.

25 Under the demonstration map 113, does your map, in

1 fact -- or does 113, in fact, reflect the minority population  
2 growth in Harris County and, in fact, recognize that all of  
3 the growth in Harris County is due to the growth of the  
4 minority communities?

5 A. I believe it does.

6 Q. Now, let's go to Hidalgo County. And first, for a point  
7 of reference, will you look at Exhibit 114? And 114 --

8 I will give the Court a chance to catch up.

9 JUDGE SMITH: Thank you.

10 BY MR. GRAY:

11 Q. 114 is Plan 100, which is the existing districts in  
12 Hidalgo County, as they are on the ground, correct?

13 A. Correct.

14 Q. Hidalgo County has, under 114, has four districts  
15 contained in Hidalgo County, correct?

16 A. Yes, it does.

17 Q. During the past decade, Hidalgo County grew, correct?

18 A. It did.

19 Q. Such as under the census, it was entitled to four whole  
20 districts, plus some additional, excess population that was  
21 tied in to adjoining counties to create a district, correct?

22 A. About 100,000 excess, yes.

23 Q. Now, if you will, first, tell the Court the current makeup  
24 of the Hidalgo County delegation, as far as ethnicity goes.

25 A. Well, all four of these districts are Latino opportunity

1 districts, with a substantially overwhelming Latino  
2 population.

3 Q. The population in Hidalgo County under the census is what  
4 percent Anglo and what percent Latino?

5 A. It is over 90-percent Latino. And the Anglo population, I  
6 don't remember the percentage, but I think there are just  
7 about 50,000, 60,000 Anglos in the entire county out of  
8 775,000 people.

9 Q. So it is no -- that doesn't surprise anybody in this  
10 courtroom to know that Hidalgo County is overwhelmingly a  
11 county of Hispanic citizens, or Hispanic individuals?

12 A. No.

13 Q. Now, during the decade -- well, under House Plan 114, the  
14 existing House plan, tell the Court, who is the current  
15 representative serving out of District 40?

16 A. District 40 is Representative Aaron Pena. It is based in  
17 Edinburg.

18 Q. And who is the current representative out of District 41?

19 A. Representative Veronica Gonzalez, based in McAllen.

20 Q. Now, the reason I ask that is because my following  
21 questions will be focusing on those two districts. During the  
22 decade -- initially, were all four of the representatives from  
23 Hidalgo County elected as Democrats?

24 A. They were.

25 Q. During the decade, did Representative Pena make the choice



1 to switch from a Democrat to a Republican?

2 A. Right after the last election in 2010, yes.

3 Q. So currently, from Hidalgo County, the representatives are  
4 three Democrats and one Republican, Representative Pena?

5 A. Correct.

6 Q. If you will, flip to Exhibit 115. And this is Hidalgo  
7 County as drawn by Plan 283, correct?

8 A. That is.

9 Q. Now, to make it easy on everybody, let's go to 116. And  
10 under Plan 283 of Exhibit 116, who will now be the  
11 representative, or where does -- a better way to put it, what  
12 district does Representative Pena reside in under House Plan  
13 283?

14 A. 41.

15 Q. And where is his residence in 41?

16 A. Up at the northeast corner.

17 Q. Right up here?

18 A. Yes, sir.

19 Q. And under District 40, who will now be the -- where does  
20 Representative Gonzalez reside?

21 A. She lives in that little arm that comes into the middle of  
22 McAllen.

23 Q. Right there?

24 A. Yes.

25 Q. So under House Plan 283, for some reason, at least, the

1 legislature switched Representative Pena from 40 and put him  
2 in 41 and took Representative Gonzalez out of 41 and put her  
3 in 40; is that correct?

4 A. Yes. Well, I mean, both districts have 90, over  
5 98 percent new constituents.

6 Q. Well, I am going to go there in a second. Do your best to  
7 let me ask the questions.

8 A. All right. I will be quiet for a while.

9 Q. What percentage, roughly, of the constituents that  
10 Representative Pena currently represents will he represent  
11 under House Plan 283?

12 A. Roughly, one and a half percent of his current  
13 constituents are still in the district.

14 Q. And so, virtually -- well, not virtually. That is like  
15 98.5 percent of the people he currently represents are no  
16 longer in his district?

17 A. That is correct.

18 Q. And is the reverse true for Representative Gonzalez?

19 A. It is.

20 Q. Roughly 98 percent of the district people that she  
21 currently represents are no longer in her district?

22 A. That is correct.

23 Q. Now, the Court heard --

24 JUDGE GARCIA: Has that occurred anywhere else in  
25 the state?

1 THE WITNESS: I don't recall that big of a switch  
2 ever in 30 years.

3 JUDGE GARCIA: Ever -- I'm sorry.

4 THE WITNESS: I don't recall ever seeing that big of  
5 a switch in 30 years of doing this.

6 JUDGE GARCIA: Was this massive switch consented by  
7 both legislators?

8 THE WITNESS: No.

9 MR. GRAY: And we will flush that out, Your Honor.

10 JUDGE GARCIA: Okay. Go ahead.

11 BY MR. GRAY:

12 Q. Well, let me just flush it out right now. Representative  
13 Gonzalez was opposed to the switch, correct?

14 A. She did. She testified against this plan and offered  
15 alternative plans.

16 Q. And Representative Pena wanted the plan, correct?

17 A. He voted for the plan.

18 Q. Now, we heard yesterday from Dr. Kousser. In his  
19 testimony, he showed the Court an overlay of the outline of  
20 District 41 with the Anglo population in Hidalgo County. And  
21 were you here for that testimony?

22 A. Yes, I was.

23 Q. One, are you familiar with Hidalgo County as a political  
24 operative on the ground? I mean, have you actually worked on  
25 campaigns and done political work in Hidalgo County?

1 A. I have been there, not as frequently as some places, but I  
2 have been on the ground in Hidalgo County.

3 Q. Prior to Dr. Kousser's testimony yesterday, were you aware  
4 that what somebody had done in the configuration of District  
5 41 was go rope in as many Anglos as you possibly could?

6 A. Yes, I was.

7 Q. And why -- how were you aware of that?

8 A. Well, I was trying to determine why this configuration,  
9 when it was drawn, and to have the ability to look at ethnic  
10 shading and get it down to the block level, is how I did it,  
11 where you can see where there are some density and  
12 concentrations of Anglo population; and that map gets, as  
13 Dr. Kousser showed yesterday, it gets almost every dense Anglo  
14 neighborhood or block in the county in that plan.

15 Q. And as a sophisticated map drawer, is this -- if your goal  
16 was to locate and put in as many Anglos as you possibly could  
17 into District 41, how would you grade this map, if that was  
18 the goal?

19 A. Well, they may not be 100, but they got 98 or 99. They  
20 got an A plus.

21 Q. Now, have you actually -- the Anglo population in Hidalgo  
22 County, it is not all in one location, correct?

23 A. No. And we looked -- go ahead.

24 Q. Can you tell the Court whether they were -- were they  
25 successful in getting almost half of the entire Anglo

1 population in Hidalgo County placed in one district?

2 A. Well, of those four district that are wholly in Hidalgo  
3 County, they got about 46 percent of the Anglo population in  
4 one district.

5 Q. Now, can you first -- do you know what the deviation is in  
6 Hidalgo County under House Plan 283?

7 A. Of the four districts wholly in Hidalgo County --

8 Q. Right. Of the four districts wholly within Hidalgo  
9 County.

10 A. I believe it is 9.03 percent.

11 Q. And can you tell the Court, what is the largest or most  
12 overpopulated district in Hidalgo County?

13 A. That is District 39, I believe.

14 Q. Right down here?

15 A. Right.

16 Q. And what is the most underpopulated district in Hidalgo  
17 County?

18 A. District 41.

19 Q. District 41. How many people short is District 41 of the  
20 ideal population?

21 A. 7,399 people.

22 Q. And how much -- how over is District 39?

23 A. 7,746 residents.

24 Q. District 40, is it under or over?

25 A. It is also over.

1 Q. And how much over is District 40?

2 A. I don't recall exactly. I believe it is -- it is at least  
3 6,000 over.

4 Q. And likewise District -- which one am I leaving out?

5 A. 36.

6 Q. 36. Is it over or under?

7 A. It is over. I believe it is over 7,000. All of the other  
8 districts besides District 41 are at least 6,000 over, as I  
9 recall it.

10 Q. So they have overpopulated every district in Hidalgo  
11 County, but substantially underpopulated District 41; is that  
12 correct?

13 A. That is correct.

14 Q. Now, can you, as a map drawer, when you see that, and you  
15 know that there has been an effort to rope in as many Anglo  
16 voters as you possibly can and then underpopulate the district  
17 when it is surrounded by overpopulated districts, as a map  
18 drawer, does that cause you to -- does that raise suspicions  
19 as to what really is going on?

20 A. It definitely makes you wonder why.

21 Q. Now, if you will, do you know now, and will Exhibit 117  
22 show us why?

23 A. Oh. District 117 --

24 Q. No. Exhibit 117. Let's bring that up.

25 A. Oh. Exhibit 117? That is a district that -- that is a

1 map that is shaded for -- you asked --

2 Q. First, Exhibit 117 has blue and red on it. Explain to the  
3 Court what this is.

4 A. This is a map that is shaded for the election results in  
5 the 2010 governor's race. The darker the blue, the higher the  
6 percentage for the Democrat Bill White. The darker the red,  
7 the higher percentage for Governor Perry.

8 Q. And if you -- I won't belabor it, because the Court has it  
9 in front of it, but if you were to follow the outlines of  
10 District 41, do you essentially see that it just outlines all  
11 of the red areas?

12 A. It gets almost every single one of them, yes.

13 Q. And I can't quite hit it precisely here, but there is a  
14 substantial blue area in District 41 up to the right of the  
15 map, right around here. That has gone. That is to do what?

16 A. District 41, that is gone because --

17 Q. No. Why is that in the district?

18 A. Why is that in the district? That goes to get  
19 Representative Pena's residence.

20 Q. That gets his house?

21 A. Right.

22 Q. When you look at Exhibit 117, is there any question in  
23 your mind that what is being done is drawing a map to put as  
24 many Anglos in a district, in a county that is 90-percent plus  
25 Hispanic for the purpose of electing -- for the purpose of

1 enhancing Anglo voting strength?

2 A. No. There is no question that they got as many Anglos as  
3 they could, and that explains the very odd configuration.

4 Q. And is there any question that the Anglos, as reflected in  
5 the governor's race, at least, voted for a Republican  
6 candidate for governor?

7 A. No.

8 Q. Now, we have District 41 being almost 7,500 individuals  
9 underpopulated. If you will look there, does -- when you are  
10 looking at 117, does that explain to you why there is a  
11 deviation of about -- of 7,399 persons, to be precise, why the  
12 deviation was there?

13 A. Well, if you added that many people back in, about the  
14 only other thing -- people that could be put into the district  
15 are Latinos who vote Democratic.

16 Q. So is there any question in your mind that as to District  
17 41, the sole purpose of the deviation is because any other  
18 people you put in there are going to be people that are going  
19 to vote against the candidate that you are trying to protect?

20 A. That is correct.

21 Q. Now, let's go to --

22 JUDGE SMITH: Mr. Gray, there aren't any objections  
23 being raised. I guess that is okay, but you really are doing  
24 the testifying here, and all the witness is doing is saying  
25 yes or no. It really would be helpful if we could get his



1 testimony rather than yours.

2 MR. GRAY: I will do so, Your Honor. I was told I  
3 was on an exceedingly short time fuse, and I think this is  
4 pretty obvious stuff, but I will be happy to cut it back.

5 BY MR. GRAY:

6 Q. Will you look at Exhibit 118?

7 A. Okay.

8 Q. Tell the Court what that is.

9 A. That is a demonstration plan for the four whole districts  
10 in Hidalgo County, drawn to a minimum deviation of less than  
11 one percent. The deviation is only 0.4 percent.

12 Q. And who drew this plan 118 with a 0.4-percent deviation?

13 A. I did.

14 Q. And how does it compare to the deviation in Plan 283?

15 A. It is dramatically lower. It is nine percent lower.

16 Q. And do you have in Plan 118, do you have any of the -- did  
17 you make any effort at all to rope in any particular ethnicity  
18 or population?

19 A. No. I think this plan just reflects the overall county's  
20 ethnicity and population and, to a great extent, the  
21 communities and maintains the district's -- to a great extent,  
22 the constituent-representative relationship, as much as  
23 possible.

24 Q. Now, let's turn to El Paso and look at Exhibit 120. Will  
25 you blow that up a little bit? Just a tad more.

1           In his opening, Mr. Vera referred to a map in the  
2 House plan as looking like a deer and did not describe or  
3 detail what district he was referring to, but it is my guess  
4 he was referring to District 78 in El Paso.

5 A. 77.

6 Q. 77 in El Paso. I'm sorry. Can you first tell me the  
7 ethnicity breakdown of El Paso County?

8 A. El Paso County is 81-and-a-half-percent Latino, only  
9 three-percent African-American, and about 13, 14 percent,  
10 13-percent, I believe, Anglo.

11 Q. And there are five -- how many districts are contained in  
12 El Paso?

13 A. There are five districts there.

14 Q. Contained wholly within the county?

15 A. Wholly within the county.

16 Q. Anything that would prevent the map drawers from taking  
17 the El Paso population, dividing it by five, and drawing five  
18 equal districts of equal population?

19 A. No. And because El Paso County is so close to the bottom  
20 deviation there, there is not that much deviation in any plan  
21 for El Paso County, because --

22 Q. No. What I am asking is, did they -- in this map, this  
23 House Plan 283, is it a zero deviation map?

24 A. No, it is not a zero map.

25 Q. Could it be a zero map?

1 A. Sure, it could.

2 Q. Now, as we -- let's talk about the makeup under House Plan  
3 283 of the districts contained within El Paso County.

4 Can you tell me, what is the Hispanic makeup of  
5 District 75, which is -- I'm sorry. I'm blind.

6 JUDGE GARCIA: It is the eastern part of the county.

7 JUDGE SMITH: Yes.

8 THE WITNESS: Yes. It is the eastern part.

9 BY MR. GRAY:

10 Q. Can you tell me what the ethnicity makeup of that is?

11 A. Yes. And I can't find that report to be precise, but I  
12 believe, in population, it is over 90-percent Latino.

13 Q. And what about 79?

14 A. Again, I am not looking at a report, but I believe it is  
15 close to 80 percent or maybe 79 percent, in terms of just  
16 population.

17 Q. And 76?

18 A. It is over 80-percent Latino.

19 Q. And all of these numbers are Latino numbers?

20 A. Right.

21 Q. 77 under House Plan 283?

22 A. I think that is very close to 80 percent. And, again, I  
23 could look it up for you, but they are all overwhelmingly -- I  
24 do know they are all over six -- I think they are all over  
25 65 -- 67-percent Spanish surname voter registration.

1 Q. And then you get to 68, and I am going to ask you about  
2 some of these. I mean --

3 A. 77.

4 Q. -- 77. I mean, 77, you just told me it was over -- what  
5 is the Latino population of 77, roughly?

6 A. It is close to 80 percent, if not over.

7 Q. Now we get to 78, and as drawn with the fingers going up  
8 from 77 on both directions, what is the Latino population in  
9 78, after whatever population is taken out by these fingers is  
10 taken out?

11 A. Hold on just a second. It is actually reduced in the  
12 current plan. I know that. And I believe its voting age  
13 population is reduced -- hold on just a minute.

14 Q. Just tell us what range we are in.

15 A. It is in the sixties.

16 Q. So you have got 90s, 80s, and then all of sudden you are  
17 into the 60s in --

18 A. Correct.

19 Q. -- in the 60-percent range in District 78?

20 A. Correct.

21 Q. Now, if you will, flip to Exhibit 121. And I am going to  
22 take you up this arm, which is on the right-hand side, I  
23 guess, of the antler going up or out of District 77.

24 Do you know what population is being taken or  
25 grabbed by this arm and put -- that otherwise would more

1 naturally fit in 78, but put in 77?

2 A. Well, in El Paso, that is known as northeast El Paso.  
3 Between -- the green ends right at the border of Fort Bliss.  
4 That is Railroad Drive and the railroad tracks going up east.  
5 And there is a community in northeast El Paso that has been  
6 one coherent community for a long time.

7 It has got its own identity, its own high school,  
8 Irvin High School, as a matter of fact. I have a lot of  
9 family in El Paso.

10 What is done here is, northeast El Paso is literally  
11 just ripped apart as a community. And looking at just the  
12 blocks themselves, some of the more solid Latino blocks, those  
13 precincts are just shredded. And also, there is some  
14 African-American population --

15 JUDGE SMITH: I thought the question was, what  
16 population was being grabbed.

17 THE WITNESS: That is what --

18 MR. GRAY: That is the --

19 THE WITNESS: The Latino population --

20 BY MR. GRAY:

21 Q. What population that would more normally fit in 78, if you  
22 were drawing a compact map, is taken out? Are we taking out  
23 Anglo population or are we taking out minority population?

24 A. No. You are taking out a higher-performing Latino  
25 population, and that is an area where some of the small

1 African-American community in El Paso lives.

2 Q. Now, if you will go back -- I apologize for not having a  
3 blowup. Go back to 120.

4 And on the other arm going up, tell the Court what  
5 population is being taken out of what otherwise would be 78 by  
6 the arm of 77 going in on the left-hand side.

7 A. That is another area of, primarily of -- it is a large  
8 rental area, a lot of apartments along the interstate and Mesa  
9 Drive, up on the west side. They have a Latino population.

10 Q. Is the net effect of these arms that would otherwise go  
11 into 78, by having arms go in and tied into 77, does that  
12 reduce the Latino population and Latino influence in 78?

13 MR. FREDERICK: Objection, Your Honor. Leading.

14 JUDGE GARCIA: I will permit the question. Go  
15 ahead.

16 THE WITNESS: Yes. The Latino population for that  
17 district is reduced over the current District 78.

18 BY MR. GRAY:

19 Q. And if you did not have the arms, either of the antlers on  
20 either side of 77, but if the population was just more  
21 normally as the geography sits, would District 78 under House  
22 Plan 283 have increased minority numbers and increased Latino  
23 numbers?

24 A. Yes, it would.

25 Q. Now, in order to -- did I ask you to draw a map that

1 would -- well, that would fix these problems?

2 A. Well, you asked me and, frankly, there was already a map  
3 that fixed those problems.

4 Q. And will you turn to Exhibit 122? And is this the El Paso  
5 portion of House Plan 232 that was submitted to the  
6 legislature and actually voted down by the legislature, but  
7 was this a map submitted to the legislature?

8 A. Yes, it was.

9 Q. And tell the Court briefly, what is the effect of the  
10 House Plan 232, as it pertains to El Paso? How does it solve  
11 the antler issues that we were just discussing?

12 A. Well, and for some, not to disagree with Mr. Vera, I kind  
13 of look at it as a crab as pinchers, but --

14 Q. And I shouldn't -- and I am not trying to be funny, but  
15 the arms going up --

16 A. The arms are cut off, and the communities are kept -- you  
17 see a much more compact and reasonable-looking map that don't  
18 go in and split apart neighborhoods in northeast El Paso.

19 Q. Now, I want to go back to one area and briefly have you  
20 describe to the Court, under House Plan 283 -- well, first,  
21 tell the Court how many counties there are in Texas that have  
22 two or more whole districts wholly contained within them.

23 A. There are 14 counties.

24 Q. And of those 14 counties, how many seats are wholly  
25 contained within those 14 counties?

1 A. Ninety-three.

2 Q. So -- and how many seat are in the entire Texas  
3 legislature?

4 A. 150.

5 Q. So 93 of the 153 (sic) seats of the Texas legislature  
6 could have been drawn to zero deviation, correct?

7 A. Yes, they could.

8 Q. And that could have been done and not violate the county  
9 line rule whatsoever, because all of those seats are contained  
10 wholly in whole counties, correct?

11 A. That is correct.

12 Q. Of the 93 seats that were drawn, how many of those seats  
13 have a deviation of three and a half percent or greater?

14 A. Well, there are eight of those counties that have  
15 deviations that are greater than three and a half percent, and  
16 they also -- that is 75 of the districts; half of the  
17 districts in the Texas House are in those counties.

18 Q. So of the 93 seats that are wholly contained in these  
19 counties, 75 of them have a deviation of three and a half  
20 percent or greater?

21 A. Yes.

22 Q. And that is one-half of the entire seats in the Texas  
23 House of Representatives?

24 A. That is correct.

25 Q. And as you look at House Plan 283, and if I was to tell



1 you that the legislature is under an obligation to use a good  
2 faith effort to protect one-person, one-vote and to get to a  
3 deviation as low as they can, would you say -- what grade  
4 would you give the legislature in that regard?

5 A. I would give them an F on that, in that regard.

6 Q. Is there any legitimate State purpose that you have heard  
7 of since 1980, when you started doing this, other than the  
8 preservation of county lines, that the State has ever offered  
9 as a justification for its deviation?

10 A. No. That's the only purpose, and that rule applies to the  
11 Texas House only.

12 MR. GRAY: Thank you, Your Honor. No further  
13 questions.

14 JUDGE GARCIA: We will take a brief recess.

15 (Brief recess.)

16 (Change of court reporters.)

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1 (Open court, 10:49 a.m.)

2 JUDGE GARCIA: You may proceed.

3 MR. FREDERICK: Thank you, Your Honor. Matt  
4 Frederick for the state defendants.

5 JUDGE GARCIA: Okay.

6 **CROSS-EXAMINATION**

7 BY MR. FREDERICK:

8 Q. Mr. Martin, I have given you a couple of things to look  
9 at. I've given you a copy of the exhibit notebook, number one,  
10 that's binder number one.

11 JUDGE GARCIA: One?

12 BY MR. FREDERICK:

13 Q. I've also given you a copy of your deposition transcript,  
14 correct?

15 A. Correct.

16 Q. Okay. Thank you.

17 Mr. Martin, I thought that at the end of your  
18 testimony I heard you say that 75 of the 150 Texas house  
19 districts were overpopulated by 20 percent.

20 A. No.

21 Q. Did you testify to that?

22 A. No.

23 Q. Okay. Good.

24 A. What I -- what I -- do you want to know what I said?

25 Q. Yes, please.

1 A. That in eight counties there's a total -- that have 75 or  
2 half the house districts in the state, there's a deviation in  
3 those counties that's over three and a half percent.

4 Q. I understand.

5 And in those counties with multiple districts that  
6 you found some deviation, isn't it true that once you get a  
7 whole county that you know will have a certain amount of  
8 districts, at that point the state ideal population isn't  
9 really as applicable anymore because you're looking at creating  
10 a certain number of districts within that county even if they  
11 are not a perfect multiple of the ideal population; is that  
12 correct?

13 A. The state ideal would not be because the counties -- but  
14 you can create an ideal equal population within those districts  
15 in the county.

16 Q. Okay. And in your demonstration maps, which ideal  
17 population did you use?

18 A. I took the population of the county and divide it by the  
19 number of districts in the county to find the ideal within that  
20 County.

21 Q. Okay. Thank you.

22 You also testified to the current percentage of  
23 various ethnic groups within Dallas County; is that correct?

24 A. Correct.

25 Q. Do you know what the relevant percentage of citizen voting

1 age population is for those ethnic groups?

2 A. In Dallas County?

3 Q. In Dallas County, yes.

4 A. No, I don't.

5 Q. You don't. Okay. You did not consider that in drafting  
6 your report or rendering your opinion?

7 A. No. When you're drawing a map, you -- first, you don't  
8 have that displayed on the screen. You have to have a separate  
9 report run, because that's an estimate from 2007.

10 Secondly, we did get CVAP reports run on the  
11 districts themselves. And I could go back and look through my  
12 notes. And if you have specific districts, I can answer that  
13 question.

14 Q. That's okay, sir. We might get into that in a minute.

15 A. Okay.

16 Q. Now, is it correct that you drew a plan that's called plan  
17 H232?

18 A. I drew that plan, working with some other individuals,  
19 yes.

20 Q. Okay. When you drew plan H232, did you use a grease  
21 pencil to draw that?

22 A. No, I used Red Apple.

23 Q. Okay. Great. And for whom did you prepare that plan?

24 A. Representative Garnet Coleman was the author of that plan  
25 and who asked me to work on that plan.

1 Q. Did he give you any instructions before drafting that  
2 plan?

3 A. Yes. He wanted us to draw maps that reflected the  
4 minority population growth in the state. He recognized that  
5 the demography had changed significantly. We were not to  
6 maximize districts but to draw districts where they fit with  
7 other traditional redistricting principles.

8 Q. Is it fair to say your objective in drawing plan H232 was  
9 to create minority opportunity districts where possible?

10 A. If a minority opportunity district could be drawn, while  
11 you maintained respect for the other redistricting principles,  
12 yes. Not to the exclusion of those principles.

13 Q. Thank you.

14 Do you know what the total deviation -- the top to  
15 bottom deviation of your plan H232 is?

16 A. The statewide deviation on that plan was about 9.8, I  
17 believe. It was significant.

18 Q. Okay. Why did you -- have zero deviation in that plan?

19 A. Well, first of all, all -- the statewide deviation is  
20 going to be 9.7, 9.8 because of the county line rule and the --  
21 in the counties and the districts that take multiple counties  
22 in. So all the plans will have that level of statewide  
23 deviation.

24 Q. Did you zero out or equalize population within major urban  
25 counties in plan H232?

1 A. Not during the legislative session, no.

2 Q. Why not?

3 A. We had very little time to respond to the plan that was  
4 offered. And at that time no one, frankly, asked us to.

5 Q. But I believe you've testified today that it's necessary,  
6 whenever possible, to zero out or equalize population; is that  
7 correct?

8 A. It certainly could be done. I believe it should be done.  
9 But those were not my instructions when I was drawing that map.

10 Q. Do you believe that plan H232 is a legal map?

11 A. I believe it better reflects the minority demographics in  
12 the state.

13 Q. Is that a yes or no?

14 A. I'm -- you know, one, I'm not an attorney, as you know.  
15 And I'm really not -- I don't think I'm going to offer that  
16 opinion. I think it's much more legal than H283 in terms of  
17 minority representation.

18 Q. And you prepared a number of other plans in addition to  
19 H232, didn't you?

20 A. Not for the state house. But yes, I drew other plans.

21 Q. Well, what I'm referring to is your demonstration plan for  
22 specific counties.

23 A. Yes. The demonstration maps I did prepare, yes.

24 Q. And those plans were not presented to the legislature; is  
25 that correct?

1 A. No, they weren't.

2 Q. And who asked you to draw those -- those county plans?

3 A. Mr. Gray asked me to draw those plans.

4 Q. Did he give you any instructions in drawing those?

5 A. He told me to draw plans that reduced the -- you know, the  
6 deviation of those counties to show what was possible.

7 Q. Okay. So would you say that was the main goal in drawing  
8 those other plans?

9 A. That was the primary goal. I used that instruction and  
10 drew them that way.

11 Q. And you said you used Red Apple to draw your maps. In --  
12 when you're in Red Apple, when you're drawing a map, does the  
13 program automatically show you ethnic or racial information?

14 A. If -- no, you select the statistics that you want to put  
15 on the statistics bar at the bottom of the screen.

16 Q. Okay. So if you wanted to see that, you would have to  
17 affirmatively push a button or click the box or --

18 A. Yeah. There is a menu of all sorts of statistics you can  
19 put on there.

20 Q. When you were drawing your maps, did you -- did you turn  
21 the ethnic or racial data on? Did you consider that in Red  
22 Apple?

23 A. Yes, I did.

24 Q. Mr. Martin, on what topics were you designated to testify  
25 as an expert?

1 A. I believe I was designated to testify on the state house  
2 plan, how it -- really, to my knowledge, on the political  
3 impact of the state house plan and on the minority opportunity  
4 districts.

5 Q. But you were not designated to render any opinion on  
6 political cohesion?

7 A. No.

8 Q. You were not designated to give an opinion on candidates  
9 of choice?

10 A. No.

11 Q. In your report you used the term Latino opportunity  
12 district. Could you please just define that for the Court?

13 A. Yes. It's a district that provides Latino voters the  
14 opportunity to elect their candidate of choice.

15 Q. And could -- what about African-American opportunity  
16 district?

17 A. That's a district that provides African-American voters  
18 the opportunity to elect their candidate of choice.

19 Q. I believe you also used the term minority majority  
20 district; is that correct?

21 A. I did.

22 Q. Okay. And what's the meaning of that term as used in your  
23 report?

24 A. That's a district that is -- has a non-Anglo voting age  
25 population majority where there has been evidence from some



1 elections -- and, again, I don't do the regression analysis and  
2 the kind of things that were testified to earlier. But there  
3 is evidence that those candidates who are the minority  
4 candidate of choice have been elected during the past decade.

5 Q. Okay. So is it fair to say that when you say minority  
6 majority district, is that the same thing as a coalition  
7 district?

8 A. Some may describe it that way.

9 Q. Would you describe it that way?

10 A. It does require a cohesive coalition to do that and --  
11 yes.

12 Q. Now, if you would turn to Page 4. I'm going to refer to  
13 your expert report.

14 A. Okay. Hold on just a second.

15 Q. If you have a copy of it up there.

16 A. Yeah, I do.

17 Q. And this would be -- this is Binder 2, Exhibit 5, Your  
18 Honor.

19 A. I think I have a copy.

20 Q. If you'll let me know when you get there, Mr. Martin?

21 A. A lot of paper.

22 Q. Yeah.

23 A. Okay. You're referring to the chart here?

24 Q. Yes, page -- on Page 4.

25 A. Okay.

1 Q. Which is a statewide table.

2 A. Correct.

3 Q. Correct? So this table shows -- you've got 35 Latino  
4 opportunity districts and 12 African-American opportunity  
5 districts in the benchmark plan. Is that accurate?

6 A. That's correct.

7 Q. Okay. And then you show 34 Latino opportunity districts  
8 and 13 African-American opportunity districts in the engrossed  
9 plan, plan H283; is that's correct?

10 A. That's correct.

11 JUDGE SMITH: I'm sorry. What -- this is --

12 JUDGE GARCIA: What page?

13 JUDGE SMITH: Exhibit -- Volume 2, Exhibit 5, did you  
14 say?

15 MR. FREDERICK: Binder 2, Exhibit 5, I believe, Your  
16 Honor.

17 JUDGE GARCIA: And what page on Exhibit 5?

18 MR. FREDERICK: Oh, Page 4.

19 JUDGE GARCIA: Okay.

20 BY MR. FREDERICK:

21 Q. Mr. Martin, you show -- for the engrossed plan you show a  
22 total of 44 minority opportunity districts; isn't that correct?

23 A. That's correct.

24 Q. Now, shouldn't that say 47?

25 A. Well, there are three districts that I consider to have

1 been -- there was retrogression in three of the Latino  
2 districts that may still be effective, but I think I wrote  
3 weakened because I think it is still up in the air to see if  
4 those three districts perform.

5 Q. Well, your table says 44 with three weakened, correct?

6 A. Correct.

7 Q. Okay. But for the benchmark plan you showed 47 minority  
8 opportunity districts, which you got, I presume, by adding 35  
9 Latino and 12 African-American, correct?

10 A. That's correct.

11 Q. But then in the engrossed plan, where you show 34 and 13,  
12 somehow you get 44.

13 A. Okay.

14 Q. But you still showed that three are weakened?

15 A. Yes, that's -- you're -- that's a mistake.

16 Q. So it should be 47?

17 A. Should be 47 with three weakened, yes.

18 Q. Understood. Thank you.

19 And your plan, plan H232, adds one  
20 African-American opportunity district, correct?

21 A. Yes.

22 Q. Which the state's engrossed plan does also, in your  
23 opinion?

24 A. Yes.

25 Q. And your plan, H232, adds two additional districts that

1 you believe are Latino opportunity districts, correct?

2 A. That's correct.

3 Q. Okay. And is it fair to say that all of the other  
4 additional districts, additional minority opportunity districts  
5 that you drew in your plan, are coalition districts?

6 A. They are all -- they have -- none of them have a majority  
7 of one ethnicity or race. That's correct.

8 Q. Okay. And so you would characterize that as a coalition  
9 district?

10 A. Yes. Four of them, if I may, have less than -- no, six of  
11 those have less than 33 percent Anglo population. They are  
12 overwhelmingly minority.

13 Q. Do you know what the -- do you -- in those four that you  
14 just referred to, can you tell me, just right now, what the --  
15 what the relative percentage of citizen voting age population  
16 is for Anglos and whatever minority groups might be a part of  
17 those?

18 A. I could look that up. I can tell you that they are all  
19 substantially non-Anglo citizen voting age population of those  
20 six I mentioned.

21 Q. Well, if we could turn to Page 8 of your report, please.  
22 And that's a chart for Harris County.

23 A. Uh-huh.

24 Q. Now -- have you got that, Mr. Martin?

25 A. Got it.

1 Q. Okay. Now, your report shows the same number of  
2 African-American opportunity districts in the benchmark plan,  
3 plan H283, and your plan, which is plan H287 here; is that  
4 correct?

5 A. That's correct.

6 Q. Okay. You showed five Latino opportunity districts in the  
7 benchmark and plan H283, correct?

8 A. That's correct.

9 Q. And you show six Latino districts in your H287, correct?

10 A. That's correct.

11 Q. Which is the additional Latino opportunity district in  
12 that plan?

13 A. District 138.

14 Q. Is it your opinion that District 138 in plan H287 is an  
15 effective Latino opportunity district?

16 A. It's my opinion it would be, yes.

17 Q. Okay. Do you know what District 138's Latino citizen  
18 voting age population is in H287?

19 A. I believe it's in the high 30s.

20 Q. Okay.

21 A. It's in the 30s. I know that.

22 Q. Would -- do you have any reason to doubt that it was 35  
23 percent?

24 A. I'm sure you have it. That seems reasonable.

25 Q. Do you know what District 138's Spanish surname voter

1 registration is in H287?

2 A. It would be around 30 percent, I believe.

3 Q. Okay. 32 percent, does that sound right?

4 A. Uh-huh.

5 Q. And you still -- you believe that's an effective Latino  
6 opportunity district?

7 A. Knowing that district on the ground and knowing the growth  
8 patterns that are going there, I believe it would be a  
9 performing district.

10 Q. Even though it's substantially below 50 percent CVAP and  
11 SSVR?

12 A. Yes. And it's -- and it's also below 50 percent Anglo  
13 CVAP.

14 Q. So is that a coalition district or a Latino opportunity  
15 district?

16 A. I believe it's a Latino majority district that will  
17 perform for Latinos. There's an existing district that has  
18 performed for ten years abutting that that has very similar  
19 demographic numbers when it was drawn, District 148.

20 Q. But isn't it accurate to say, based on those numbers, that  
21 in order to win an election in that district, generally the  
22 Latino voters would have to join with some other group, whether  
23 it be Anglos, African-Americans, Asians, some other group?

24 A. They may.

25 Q. If we could turn -- oh, I'm sorry. Before we leave Harris

1 County, you mentioned -- I believe you characterized House  
2 District 148 in the state's plan H283 as a packed district?

3 A. Uh-huh.

4 Q. I believe that the basis of that statement was that it was  
5 raised to 50 percent Spanish surname voting registration or  
6 above?

7 A. That's one statistic, yes, that was -- that was -- I think  
8 in that district, as well as one in Tarrant County, that was  
9 raised to 50 percent SSVR when they had already been performing  
10 effectively for a decade. So there was no need to add the  
11 additional population.

12 Q. Okay. But you think 50 percent SSVR is packing?

13 A. In this case, packing is usually dependent on what it does  
14 to other districts in other areas around it, if that population  
15 could have been used in another district. And it could have in  
16 this -- in this case.

17 Q. Will you turn, please, to Page 10 of your report? And  
18 this is a chart for Dallas County. Now, again, your report  
19 shows the same number of African-American opportunity districts  
20 in Dallas County under the benchmark, H283 and your plan, which  
21 here is H288, correct?

22 A. Correct.

23 Q. Your report also shows that your H288 has one more Latino  
24 district than either the benchmark or plan H283; is that  
25 correct?

1 A. That's correct.

2 Q. And which district is that?

3 A. 105.

4 Q. Okay. And is it your opinion that District 105 would be  
5 an effective Latino opportunity district as drawn in H288?

6 A. Again, I believe it will be.

7 Q. Isn't it true, though, that the Latino CVAP of District  
8 105 in your plan is only 35.6 percent?

9 A. I'm sure you're reading it accurately. I also know that  
10 the Hispanic voting age population is -- was it 60.9 percent?

11 Q. I'm sorry. The Spanish --

12 A. Of the HVAP, the Hispanic voting age population.

13 Q. Okay. Is how much?

14 A. I believe it's 60.9 percent, but I'll look it up to make  
15 sure I'm being accurate.

16 Q. Well, that's okay. I'll take your word for it.

17 A. 60.4 percent, actually.

18 Q. Okay. I understand.

19 A. And I think that's a relevant matter as well.

20 Q. When we're trying to figure out what will be, in your  
21 words, an effective district, we're looking at voters, are we  
22 not?

23 A. Yes, we are.

24 Q. So --

25 A. We're looking at votes and how voters vote as well.



1 Q. Of course. Of course. But if we're looking at voters,  
2 why would we look at total voting age population rather than  
3 eligible voters?

4 A. Well, the voting age population of people who can  
5 register, who can vote?

6 Q. Is it -- wouldn't -- wouldn't that be the citizen voting  
7 age population?

8 A. I frankly don't believe the citizen -- that we have an  
9 accurate count of citizen voting age population.

10 Q. Okay. Do you believe then that every person who's counted  
11 in the total Latino voting age population is eligible to vote?

12 A. They definitely could be during the period these maps are  
13 in effect.

14 Q. And so is that the assumption that underlies your opinion  
15 about whether any district will be effective? Do you just --

16 A. No. You look at election returns, as -- I think is the  
17 testimony was given earlier, and go back and look at what's  
18 happened in elections in these types of districts. And in  
19 these districts you have the ability to pull up -- you know,  
20 reconstitute election --

21 JUDGE SMITH: Could you speak up just a bit, Mr.  
22 Martin, please?

23 THE WITNESS: Sure. I'm sorry.

24 You have the ability to go back and look at election  
25 returns for the territory that are -- these districts are drawn

1 in. And you have to analyze elections. Again, I'm not doing  
2 the regression on all that, but in my opinion these districts  
3 would perform for the Latino candidate of -- for the Latino  
4 voters' candidate of choice, yes.

5 BY MR. FREDERICK:

6 Q. So you have to know what the election outcomes are to know  
7 if a district's effective; is that right?

8 A. Turnout and electoral results are definitely important.

9 Q. Okay. And who's the candidate of choice? Do you know  
10 that?

11 A. As I think that we've -- you heard testimony earlier that  
12 Latino candidates have been typically voting in the general  
13 election for the Democratic candidate.

14 Q. So do you assume in your analysis and opinions that the  
15 Democratic candidate is the Latino candidate of choice?

16 A. Again, I don't do the detailed kind of regression analysis  
17 that Dr. Kousser did, who illustrated that -- those numbers  
18 earlier. But if you look at homogenous precincts, you get a  
19 pretty good idea who's voted for. And you have to look at  
20 different elections, and you have to look at each territory  
21 separately. You can't -- you can't make assumptions. You look  
22 at election returns for the districts you draw.

23 Q. Is it your opinion that -- well, when you are evaluating a  
24 district to determine whether it will be an effective Latino  
25 opportunity district, do you start from the premise that the

1 Latino candidate of choice will be the Democratic candidate?

2 A. I look at the returns for those precincts that are Latino  
3 precincts and see how each district behaves.

4 Q. Well, in your experience looking at maps, what does that  
5 usually show you?

6 A. I think you heard testimony earlier that there's been  
7 polarization in general elections and that Latinos have been  
8 voting typically between 70 and 80 percent for Democrats  
9 recently in Texas.

10 Q. But that analysis is not part of your -- your expert  
11 opinion in this case, correct?

12 A. No. I just looked at the returns in these districts that  
13 I drew.

14 MR. GRAY: Speak -- speak up, please.

15 THE WITNESS: Sorry.

16 BY MR. FREDERICK:

17 Q. All right. Now, staying with plan 288 and Dallas County,  
18 did you look at incumbent pairings in evaluating the state's  
19 plan?

20 A. I'm aware of the incumbent pairings, yes.

21 Q. Okay. So you're aware that Dallas County lost two  
22 districts, and there were two sets of Republican incumbents who  
23 were paired in the state's plan, correct?

24 A. Yes. I'm aware of that.

25 Q. Were there any Democratic incumbents paired in Dallas

1 County?

2 A. No.

3 Q. Now, in your plan 288, isn't it correct that that plan  
4 creates two open seats in Dallas County?

5 A. It does.

6 Q. Okay. Isn't it correct that your plan pairs six  
7 Republican incumbents and then pairs a third Republican  
8 incumbent with a Democratic incumbent in Dallas County?

9 A. I'm not aware that six were paired.

10 Q. Okay. Well, I've given you a binder --

11 A. Uh-huh.

12 Q. -- that has all of the maps. And if you can -- you can  
13 turn to the tab marked -- this is Binder 1.

14 A. Got it.

15 Q. If you can turn back to the tab 288. And if you go to the  
16 last page under that tab, it's a document marked incumbents by  
17 district. Could you just look at that very quickly and tell me  
18 how many Republican incumbents are paired?

19 A. Incumbents by district. There are one, two, three, four,  
20 five, six, I believe.

21 Q. Okay. And then Representative Anderson is paired with  
22 Representative Davis; is that correct?

23 A. Yes.

24 Q. Okay. So you've paired -- so your plan, if enacted, would  
25 essentially guarantee that at least three Republican incumbents

1 would be eliminated in Dallas County; is that correct?

2 A. Well, I didn't anticipate this plan being enacted.

3 Frankly, we had very little time to draw a low deviation map  
4 for demonstration that deviation could be achieved. And I  
5 believe that you could probably reduce the number of pairings  
6 if a remedy were actually drawn.

7 Q. So did you consider incumbent pairing at all in drawing  
8 your demonstration maps?

9 A. In places where I was aware of it and aware of their  
10 residence, in some places, yes. I really considered territory  
11 and communities primarily, and deviation. It was an exercise  
12 in deviation and also, as I testified earlier, to show that a  
13 low deviation map could reflect the demographic change in the  
14 state.

15 Q. You're aware, aren't you, Mr. Martin, that in actually  
16 drawing a plan that must be passed by the legislature, it is a  
17 traditional, recognized redistricting principle and  
18 consideration that you can -- you can maintain incumbents in  
19 their districts, correct?

20 A. Yes. That's followed most of the time.

21 Q. Okay. Well, do you know how many -- do you know how many  
22 incumbents were paired in the state's plan, plan H283?

23 A. I believe there were eight pairings, weren't there? It's  
24 just a recollection.

25 Q. I believe there were seven.

1 A. Seven?

2 Q. Well, do you know how many Democratic incumbents were  
3 paired? Let me ask you that.

4 A. Two, I believe.

5 Q. Okay. And is it correct that there were at least 12  
6 Republican incumbents paired in the state's map?

7 A. Yes. And I think that was inevitable. To a great extent  
8 in the rural areas you had population loss. And a large number  
9 of those were in rural areas, and also a county that had  
10 population loss like Dallas County. I think that was largely a  
11 function of places that lost population.

12 Q. But in an urban county like Dallas it would at least be  
13 possible if the legislature had wanted to pair Democratic  
14 incumbents, correct?

15 A. Well, but pairing -- sometimes you pair two Republicans to  
16 save a Republican district and -- because if --

17 Q. I will object to your answer as nonresponsive.

18                   Would it have been possible, if the legislature  
19 had wanted to, in urban districts -- in urban counties such as  
20 Dallas to pair Democratic incumbents, had they wanted to?

21 A. It would have been very -- well, they could have. But I  
22 think you have to consider the other principle, that those are  
23 primarily districts that are considered protected districts.  
24 They're minority opportunity districts. And pairing those  
25 incumbents would -- could very well run afoul of other

1 redistricting principles.

2 Q. You're not aware, based on your analysis of maps or your  
3 knowledge of the legislative session, of any intent to  
4 systematically pair Democratic incumbents in plan H283, are  
5 you?

6 A. No. Well, with one exception, the pairing in Harris  
7 County.

8 Q. You think that pairing two incumbents is systematically  
9 targeting Democratic incumbents?

10 A. I think that pairing two incumbents who represent  
11 substantially minority districts was definitely a systemic  
12 pairing.

13 Q. But even though they only did it once?

14 A. In Harris County I think it had a dramatic impact in that  
15 county where it lost a seat, yes.

16 Q. Fair enough. But we can agree that there were only two  
17 Democrats paired?

18 A. Yes. That's correct.

19 Q. Thank you.

20 Let's move on quickly to Page 11 of your report,  
21 please, which is Tarrant County. Okay. And your report  
22 indicates that the number of Latino opportunity districts in  
23 Tarrant County is the same under the benchmark, plan H283 and  
24 your plan H289, correct?

25 A. That's correct.

1 Q. Let's turn to Page 12 of your report, please. This is  
2 Fort Bend County. You conclude in your report that the  
3 legislature failed to create an additional effective minority  
4 majority district in Fort Bend County; is that correct?

5 A. I did.

6 Q. And you have drawn a district numbered 28 in plan H290  
7 that, in your opinion, is an additional effective minority  
8 majority district in Fort Bend County; is that correct?

9 A. That's correct.

10 Q. Okay. Now, is that a coalition district?

11 A. It's -- to the -- it's a majority minority, very similar  
12 to district -- current District 149 in Harris County, yes.

13 Q. And combined -- the combined Latino and African-American  
14 citizen voting age population in that district is 48.1 percent?

15 A. It's 48.1. And the Anglo citizen voting age population is  
16 36.2. So the non-Anglo population would, therefore, be about  
17 64 percent of the citizens.

18 Q. Let's move, please, to Page 12 -- or we're still on Page  
19 12, El Paso County. Do you know who created the map for the  
20 districts in El Paso County?

21 A. No, I don't.

22 Q. Do you believe -- is it your opinion that the plan for El  
23 Paso County was drawn based on race?

24 A. I believe that was a factor.

25 Q. In what sense?



1 A. Well, in the sense that you have four overwhelmingly  
2 Latino districts, and then you have District 78 which is  
3 also -- had -- they started to perform in some elections in  
4 terms of electing a candidate of choice. We can go back  
5 through that exercise again.

6           Actually, all over the state there was a stated  
7 goal, often stated by Chairman Solomons, that -- trying to get  
8 to 50 percent Spanish surname voter registration. District 78,  
9 which was drawn with -- has now on the ground a 47.5 percent  
10 SSRV was reduced to 47.1 when the alternative plan you saw  
11 earlier -- I wasn't even trying to draw 50 percent. If you  
12 just cleaned up the map, it went over 50 percent. So there's a  
13 definite inconsistency in El Paso County from what was done in  
14 all the other places. And I think the inconsistency definitely  
15 has a racial effect.

16 Q. District 78 was not at or above 50 percent SSVR under plan  
17 H100, though, was it?

18 A. No. It was at 47.5.

19 Q. Okay. Do you believe that it is or was a -- an effective  
20 Latino opportunity district?

21 A. I believe it had been, yes.

22 Q. Okay. What's that based on?

23 A. It's based on, one, it had -- it had elected a Latino  
24 candidate of choice in 2008 before the 2010 tidal election that  
25 we discussed earlier. And it had been electing other

1 candidates of choice in statewide elections as well prior to  
2 that.

3 Q. And who is the incumbent in that district?

4 A. Dee Margo.

5 Q. And what party is he a member of?

6 A. He's a Republican.

7 Q. So that district elected a Republican? I'm sorry?

8 A. And he's an Anglo Republican.

9 Q. And you said that it elected the Latino candidate of  
10 choice in 2008. And who was that?

11 A. Joe Moody.

12 Q. What party was he a member of?

13 A. He's a Hispanic Democrat.

14 Q. And was that his first term?

15 A. That was his first term.

16 Q. Who won that seat before Mr. Moody?

17 A. Pat Haggerty.

18 Q. And what party was he a member of?

19 A. He was a Republican who had, I think, some local -- a lot  
20 of local support from -- he and his family were very well known  
21 in El Paso.

22 Q. How long did he hold that seat?

23 A. I don't -- for quite a while. I don't know exactly how  
24 long.

25 Q. More than ten years?

1 A. I believe so.

2 Q. And you don't know who actually drew the El Paso map, do  
3 you?

4 A. No, I don't.

5 Q. So as far as you know, the El Paso delegation could have  
6 agreed on the map for that county and then dropped it in the  
7 map; is that correct?

8 A. That's one hypothetical.

9 Q. All right. I'm going to move on to Hidalgo County now.  
10 This is on Page 13 of your report. And if I could ask for  
11 Exhibit 117 that was displayed during the direct examination.  
12 Could I ask y'all to look up that, please?

13 MR. FREDERICK: Have we taken your cord?

14 MR. GRAY: You've taken the cord.

15 BY MR. FREDERICK:

16 Q. Could you zoom in just a bit on the -- kind of the  
17 southern part of that -- of the county, please?

18 So Mr. Martin, you, I believe -- and correct me if  
19 I'm wrong. I believe you testified that this district -- well,  
20 District 41, which we can see up there on the overlay, was  
21 drawn for Anglos; is that correct?

22 A. It has -- almost 46 percent of the Anglos in those four  
23 districts are located in District 41.

24 Q. Okay. Can you tell me where it says Anglos on that map?

25 A. No, sir. That's a map, as I testified earlier, that

1 illustrates the governor's election from 2010.

2 Q. Okay. And so when you say Anglo, in looking at that map,  
3 you mean Republican?

4 A. No. That's not what I -- that isn't what I meant by that.  
5 What I -- we saw earlier, I was -- Mr. Gray asked me if I was  
6 here during Dr. Kousser's testimony where he demonstrated that  
7 the density of Anglo population that was grabbed by that map.

8 Q. In your opinion, will the incumbents in Hidalgo County,  
9 other than Representative Pena, do they have a good chance of  
10 being reelected in 2012?

11 A. Well, I honestly don't know, but I do know that  
12 Representative Gonzalez is having to campaign with 98-point --  
13 I think 98.5 or 98.7, I forget which one's which, but almost an  
14 entirely new constituency, which is -- when we're talking about  
15 traditional redistricting principles, is sort of a historic  
16 tossing that one out the window.

17 Q. Okay. We can move, please, to Page 14 of your report.  
18 This is Bell and Lampasas County.

19 A. Oh, yeah.

20 Q. And you state in your report that plan H283 fails to  
21 create a majority minority district in Bell and Lampasas  
22 County; is that correct?

23 A. That's correct.

24 Q. And I believe that you have -- you've identified District  
25 54 in plan H232?

1 A. That's correct.

2 Q. Okay. And you have posed that as a majority minority  
3 district?

4 A. It is a majority minority district.

5 Q. And in your opinion would that be an effective majority  
6 minority district?

7 A. It definitely -- you know, all these districts we have to  
8 see how they behave once they are enacted, but I think it would  
9 be.

10 Q. Okay. Isn't it true that the Spanish surname voter  
11 registration in that district is only 13.1 percent in plan  
12 H232?

13 A. That's a district that has -- involves, as we said  
14 earlier, a multiethnic majority, non-Anglo voters.

15 JUDGE SMITH: Now, answer the question. He just  
16 asked you -- he gave you --

17 THE WITNESS: I'm not aware. I'm not aware. I trust  
18 your reading.

19 BY MR. FREDERICK:

20 Q. And since you're not looking at it, I won't hold you to  
21 the exact numbers.

22 A. Sure.

23 Q. But if I told you that the African-American voting age  
24 population in plan H232's District 34 was only 28.4 percent, do  
25 you have any reason to doubt that?

1 A. No.

2 Q. Okay. And so that gets us to 41 and a half percent if we  
3 add African-American VAP and SSVR so --

4 A. Well, I think if we're going to add, we should do VAP to  
5 VAP, apples and apples. The Anglo VAP is 46.6 percent. It's  
6 less than a majority.

7 Q. Okay. Do you know what the Latino citizen voting age  
8 population is?

9 A. I don't.

10 Q. If I told you 17.5 percent?

11 A. I believe -- I'm sure you're reading it right.

12 Q. So we're still -- but that would be an effective district,  
13 in your opinion?

14 A. I believe that's -- what you describe as a coalition  
15 district, yes, it could be.

16 Q. For whom would it be an effective district?

17 A. For those voters, the minority voters in Bell County.

18 Q. And how do I know, in looking at that district then,  
19 who -- who are those voters that it's an effective district  
20 for?

21 A. How would you know? The same way we've talked about  
22 analyzing other ways, through looking at election returns and  
23 doing an analysis.

24 Q. And how -- what would I look for in election returns to  
25 tell me whether that district was performing effectively?

1 A. Well, one, you'd get someone who actually does regression  
2 and the kind of work that Dr. Kousser did and look and see if  
3 the minority voters' candidate of choice had been winning those  
4 elections.

5 Q. Okay. Well, your opinion that that district would be  
6 effective, you assume that the Latino and African-American  
7 voters will have the same candidates of choice?

8 A. You assume there's cohesion, yes.

9 Q. Moving on from your report, sir, now. Well, actually,  
10 we're not totally moving on. Your report, you don't conclude  
11 that plan H283, the engrossed plan, had a total deviation of  
12 ten percent or more, do you?

13 A. No.

14 Q. And isn't it correct that in your report you didn't  
15 provide any analysis or opinions on the relative population  
16 deviations among districts in plan H283, did you?

17 A. In plan H283?

18 Q. The state's engrossed plan.

19 A. Well, I did in those counties that we discussed and just  
20 went through. We noted the deviation within those counties,  
21 yes.

22 Q. That was in your report?

23 A. Yes. In those charts it has the county -- I mean, such as  
24 Harris County having the 9.74 deviation, Dallas County 8.8.  
25 It's in those charts in the report you were just looking at.

1 Q. But you -- you do not -- I don't -- correct me if I'm  
2 wrong. You didn't offer an opinion that there was any unifying  
3 purpose behind the relative overpopulation or underpopulation  
4 of districts, did you?

5 A. I don't think I wrote a final opinion, no.

6 Q. And you don't contend that one of the goals of the Texas  
7 legislature in creating the house map was to overpopulate  
8 Latino or African-American districts, do you?

9 A. I believe in certain places that was done, as I testified  
10 to earlier.

11 Q. Do you believe that -- do you contend that that was an  
12 expressed goal of the legislature?

13 A. I never heard that stated, if that's what you're asking  
14 me.

15 Q. That is what I'm asking.

16 A. No. I never heard that statement.

17 Q. Did you hear something else that made you think it was an  
18 expressed goal to overpopulate Latino and African-American  
19 districts?

20 A. Just in looking and analyzing the plans, as I testified to  
21 earlier, it certainly had -- the effect indicates there was a  
22 purpose, yes.

23 Q. Okay. So to the extent you identified the purpose, it's  
24 based solely on an inference from effect; is that correct?

25 A. Yeah. I had no firsthand knowledge that anyone -- you're



1 correct.

2 JUDGE GARCIA: I think the inference is based on the  
3 ultimate result?

4 THE WITNESS: Correct.

5 JUDGE GARCIA: All right.

6 BY MR. FREDERICK:

7 Q. And as far as you know, there is no -- start that over.  
8 You're not aware of any -- of any evidence that the legislature  
9 intentionally discriminated against Latinos or  
10 African-Americans or Asians based on their race or ethnicity,  
11 do you?

12 A. What I know is, is that the witnesses who came to testify  
13 in the little time that they were able to come, every minority  
14 witness that I recall in committees, the members of the  
15 legislature who were elected as minority candidates of choice  
16 overwhelmingly opposed this plan. They offered alternatives.  
17 They testified against it. They showed how it was  
18 discriminatory. And the majority in the legislature made a  
19 conscious and willful decision to ignore that testimony, ignore  
20 their opinions and pass a plan that definitely had a  
21 retrogressive effect. So I know that there was a willful  
22 decision made, despite the fact that evidence was presented  
23 that there was discrimination based on race, yes.

24 Q. So then you're saying basically that they intentionally  
25 passed the map, obviously?

1 A. Correct.

2 Q. They meant to do that. And you're saying that because  
3 they knew that someone had told them that it was intentionally  
4 discriminatory, that that somehow makes their action  
5 intentionally discriminatory?

6 A. I know that it wasn't just someone. It was virtually  
7 everyone who represented the interests of Latino and  
8 African-American voters.

9 Q. But you are not aware of the actual motive of anyone in  
10 the legislature in passing this map, are you?

11 A. No one -- I had no first person conversation about that,  
12 no.

13 Q. Do you have any knowledge about that, any direct  
14 knowledge of --

15 A. Any direct -- any direct that's not hearsay? No.

16 Q. All right. Just about finished. Going back to coalition  
17 districts, quickly, you testified that in order to identify a  
18 coalition district, you have to see how it performs in  
19 elections; is that correct?

20 A. That's correct.

21 Q. Okay. Is it your opinion that a coalition district be  
22 effective -- the way you would identify an effective coalition  
23 district would be one that elects the Democratic candidate?

24 A. To the extent that the Democratic candidate is the  
25 candidate of choice of the minority coalition, yes.

1 Q. If we could pull up -- you may have to switch cords to do  
2 this. But if we could pull up Mr. Martin's deposition  
3 transcript, please, to Page -- to the very end of Page 57, line  
4 25. And scroll down a bit to get the line 25 and the rest of  
5 the page, of the next page.

6 VIDEO TECHNICIAN: I have to present a whole page. I  
7 can't produce part of one and part of another.

8 MR. FREDERICK: Fair enough. Can we just have the  
9 next page, please?

10 BY MR. FREDERICK:

11 Q. Now, Mr. Martin, I asked you what a minority coalition  
12 district is in your understanding. And could you -- could you  
13 read, on Page 58, lines 2 through 7, please?

14 A. Okay. Can I read it from here? I can see a little  
15 better.

16 Q. Okay. Of course. Of course. 2 through 9, sure.

17 A. 2 through 9?

18 Well, what I believe, there's a significant  
19 majority, non-Anglo majority in a district that they have shown  
20 the ability to -- they choose -- the minority voters typically  
21 choose to participate in a partisan election in the Democratic  
22 primary or form cohesive coalitions in nonpartisan elections,  
23 which sometimes they do, and consistently vote in the general  
24 election for their candidate of choice.

25 Q. And if they consistency choose to participate in a

1 Democratic primary, then by definition their candidate of  
2 choice in the general would be a Democrat, correct?

3 A. I think that, frankly, the evidence shows that there's  
4 been much greater participation in the Democratic primary by  
5 Latinos and African-Americans. That is an act of forming a  
6 coalition, a political coalition in itself. And then in the  
7 general election they have voted overwhelmingly, as has been  
8 demonstrated earlier in earlier testimony, for the Democratic  
9 candidate. I mean, I think it's an informed choice that  
10 members of that coalition make, just like all voters make.

11 MR. FREDERICK: No further questions. Thank you.

12 JUDGE GARCIA: Mr. Gray?

13 MR. GRAY: No questions, Your Honor.

14 JUDGE GARCIA: Thank you, Mr. Martin. You may step  
15 down.

16 If you'll call your next witness, please.

17 MR. GRAY: At this time, Your Honor, we would call  
18 Ms. Rogene G. Calvert. And I believe she's out waiting in the  
19 hall.

20 JUDGE GARCIA: Okay.

21 MR. GRAY: At least I certainly hope she's out  
22 waiting in the hall.

23 JUDGE GARCIA: And who is she?

24 MR. GRAY: She is a lay witness from the  
25 Alief/Sharpstown area. Her testimony will be very limited to

1 strictly the Asian, Latino, African-American coalition in that  
2 part of the area.

3 JUDGE GARCIA: All right.

4 MR. GRAY: And I have one other witness following  
5 her. With any luck at all I'll be finished by lunch. We'll be  
6 that brief, is my goal.

7 JUDGE GARCIA: Okay.

8 (Witness enters courtroom)

9 THE CLERK: Would you please raise your right hand?

10 (The oath was administered)

11 **ROGENE G. CALVERT, PLAINTIFF'S WITNESS, SWORN**

12 **DIRECT EXAMINATION**

13 BY MR. GRAY:

14 Q. Would you state your name, please, ma'am?

15 A. Rogene G. Calvert.

16 Q. And Ms. Calvert, where do you reside?

17 A. Houston, Texas.

18 Q. And what is your occupation?

19 A. I'm a director at Outreach Strategists, a public  
20 relations, public affairs company.

21 Q. And can you briefly describe for the Court your community  
22 involvement in Harris County and particularly your involvement  
23 on behalf of the Asian community in Harris County?

24 A. Right. I was born and raised in Houston, Harris County.  
25 I've been active in the community for all my life. I cofounded

1 and was the past president of a clinic, co-clinic in the  
2 Asian-American Health Coalition, also cofounder and past  
3 president and advisory committee member of Asian-American  
4 Family Services, a mental health organization. And by the way,  
5 they're both located in the southwest part of Harris County.

6 I'm also active and a cofounder on the Houston  
7 Asian-American Political Action Committee called Houston 80-20.  
8 Also, I'm with the OCA, formerly known as the Organization of  
9 Chinese Americans, both the local Houston chapter and the  
10 national chapter. And I was the president, which was a paid  
11 position, of the Asian Chamber of Commerce, which is also  
12 located in that area.

13 So all my life I've been very active in the Asian  
14 community.

15 Q. And first, tell the Court -- and I'm going to try to go  
16 through your testimony as rapidly as I can. So I apologize if  
17 I talk too fast. Tell the Court the -- what presence the Asian  
18 community has in Texas as a whole compared to other states; and  
19 two, what presence the community has in Harris County compared  
20 to other areas in Texas.

21 A. Okay. In the last census, 2010 census, the Asian  
22 community has grown by 68 percent -- increased 68 percent in  
23 Texas. We are now, Texas, the third largest Asian-American  
24 community in the country, the third largest state. Houston is  
25 probably about the eighth largest city with the Asian-American

1 community in the country.

2 Q. And what's the largest city in Texas for the Asian  
3 community?

4 A. And Houston is also the largest city in Texas. And some  
5 of the areas in Texas with a large Asian-American community, of  
6 course, is Houston, the Dallas area, Austin and San Antonio.

7 Q. Did you have a role with what -- during this past  
8 legislative session during the redistricting process?

9 A. I did.

10 Q. What was that role?

11 A. I was the project director for what's called TAARI, the  
12 Texas Asian-American Redistricting Initiative. It's a project  
13 from the Outreach Strategists. And we were set up to address  
14 the redistricting efforts in the Asian-American community in  
15 the state.

16 Q. In focusing on southwest Harris County, the  
17 Alief/Sharpstown area in general, are you familiar with that  
18 area.

19 A. Yes.

20 Q. The Court has already heard, but I need you to tell it  
21 briefly, is -- does that area contain a substantial Asian  
22 population?

23 A. Yes, it does.

24 Q. Is it the largest Asian population in Harris County?

25 A. I would say the most -- yes, the largest, most populated

1 area.

2 Q. Has that area, and the Asian population within that area,  
3 been able to form coalitions with other minorities in that area  
4 such that the Asian population has been able to have  
5 initiatives in health care, education and then in a political  
6 field as far as electing candidates of their choice?

7 A. I would say yes, we have been able to.

8 Q. Will you briefly elaborate for the Court on why you say  
9 that?

10 A. Well, although the Asian community has grown and is the  
11 fastest growing in the whole, you know, state, the numbers, the  
12 absolute numbers are still small. And so to elect candidates  
13 of our choice alone is almost impossible. We need crossover  
14 appeal and also support. So we have seen Asian-Americans  
15 elected to office and other candidates of our choice due to  
16 that fact that we can coalesce with other groups to elect those  
17 people. Also --

18 Q. Go ahead. I'm sorry.

19 A. Well, I just wanted to also say, besides the political  
20 arena, I said I was a cofounder of a clinic there. We started  
21 that clinic primarily for the Asian-American community because  
22 of the lack of language and cultural competency in other health  
23 care arenas. But we have seen in the clinic in the last ten  
24 years of its existence a very diverse clientele that is served  
25 in that clinic because of where it is located and the people



1 that come, and the staff must also be diverse.

2 Q. The -- when you refer to diverse staff and diverse  
3 patients, the Court's already heard that the -- the minority  
4 population in that area is somewhere in the 75 percent or so  
5 range. Is that accurate?

6 A. That's true.

7 Q. And has that minority population, Asian, African-American  
8 and Latino, been able to form a coalition such that they have,  
9 in fact, elected the candidate of their choice for the last --  
10 since 2004 I believe?

11 A. Yes. At the state level definitely we have been able to  
12 do that. Also, in city elections we've been able to elect the  
13 candidates of our choice and the school board elections.

14 Q. And did during the -- on behalf of the Texas  
15 Asian-American Redistricting Initiative, did you testify before  
16 legislative committees and make known to the legislature the  
17 coalition that we've just been describing and its ability to  
18 elect candidates of its choice with the Asian population  
19 participating actively?

20 A. Absolutely. That was the core -- the crux of my  
21 testimony, that the Asian-American community in that area  
22 particularly has been very concentrated and has demonstrated  
23 its political strength through the election of these candidates  
24 of their choice, and that we didn't want the new redistricting  
25 efforts to divide or to dilute the concentration.

1                   And so I spoke before the committee two or three  
2 times, as well as correspondence sent to them. And as a matter  
3 of fact, we did send a letter on behalf of the three minority  
4 community organizations, MALDEF, NAACP and TAARI, to say that  
5 we didn't want to see our minority coalitions split.

6 Q. Now, have you had a chance to review what the house  
7 actually passed, plan 283, such that you know what happened  
8 under that plan?

9 A. I have.

10 Q. Can you tell the Court what plan 283 does to the coalition  
11 that you've just been describing? What's it do to that  
12 coalition's ability to continue to elect the candidate of their  
13 choice?

14 A. Yeah. In that area particular, southwest Houston or  
15 Harris County, there was a pairing of two districts that were  
16 very representative of the minority coalition we talked about.  
17 One is District 149. One is District 137. And by pairing  
18 them, one of them was going to, obviously, be eliminated.

19                   Then the elimination of the one, the resultant  
20 district split what was left of 149 -- which, by the way,  
21 elected the first Vietnamese American in the legislature. So  
22 that was also an important part that we felt, you know, showed  
23 and demonstrated our political strength -- into four or five  
24 other districts. So the new plan has basically split,  
25 fractured the whole concentration that we had in that area.

1 Q. And last question, under plan 283 how would you  
2 characterize the minority citizens' opportunity to elect the  
3 candidate of their choice in that area having had two districts  
4 that you were able to elect candidates of their choice, after  
5 283, how many districts will you have?

6 A. Well, we're going to be split into four or five districts.  
7 But the number percentage is going to be much, much smaller.  
8 So just from observation of what it looks like now, I don't  
9 know if we'll be able to elect a candidate of our choice for a  
10 while. It took us a while in those other two districts to form  
11 the coalitions and get the political strength to elect  
12 candidates of our choice. So it's going to take us a long  
13 while to do that again. But right now, given the way things  
14 have all fallen out, it's going to be very difficult.

15 MR. GRAY: Thank you, ma'am. I have no further  
16 questions.

17 MR. MATTAX: Nothing, Your Honor.

18 JUDGE GARCIA: All right. Thank you, Ms. Calvert.  
19 You're excused.

20 THE WITNESS: Thank you.

21 JUDGE GARCIA: Thank you, ma'am.

22 Your next witness?

23 MR. GRAY: We'll -- I'd call Ms. Sarah Winkler.

24 JUDGE GARCIA: All right.

25 MR. GRAY: And she should be equally as brief, Your

1 Honor.

2 JUDGE GARCIA: That's fine. Thank you. We  
3 appreciate that.

4 (Witness enters courtroom)

5 THE CLERK: Would you raise your right hand, please?

6 (The oath was administered)

7 SARAH WINKLER, PLAINTIFF'S WITNESS, SWORN

8 DIRECT EXAMINATION

9 BY MR. GRAY:

10 Q. Would you state your name, please, ma'am?

11 A. My name's Sarah Winkler.

12 Q. And where do you reside?

13 A. I live in -- on Palm Desert Lane in Huntington Village in  
14 south -- far southwest Houston, or Alief, as it's known.

15 Q. And as you currently sit, what house district do you  
16 reside within?

17 A. District 149.

18 Q. And your current state representative is Representative  
19 Hubert Vo.

20 A. Yes, it is.

21 Q. How long have you lived in that general area of southwest  
22 Houston?

23 A. Thirty-one years.

24 Q. And have you raised kids, gone through schools -- is that  
25 your home base?

1 A. I have five sons who went through Alief schools.

2 Q. And how are -- are your sons grown, or are they young?

3 A. My youngest is 21, so mostly grown.

4 Q. The -- have you been active in politics in southwest  
5 Houston and particularly the Alief area?

6 A. I'm an elected public official because I serve on the  
7 Alief school board, and I have for 14 years.

8 Q. The -- can you tell the members of the Court how that  
9 area, the general Alief area, southwest Houston, how it has  
10 evolved population wise over the last 30 years, what it was  
11 like when you moved there 30 some odd years ago from an  
12 ethnicity point of view and what it's like today.

13 A. In 1980 it was about 80 percent Anglo and middle class, I  
14 would say. About the mid-'90s it was pretty even. All  
15 the -- there's four major ethnic groups in Alief, and each were  
16 about 25 percent. And now it's majority minority. So it's  
17 changed quite a bit over the years.

18 Q. And as the district has evolved, has -- from your own  
19 personal political experience, has the minority community been  
20 able to form coalitions and successfully elect the candidates  
21 of their choice to school board, state rep., whatever?

22 A. Absolutely. In fact, if you don't get all the groups  
23 together, I don't believe you can get elected in Alief at this  
24 point.

25 Q. And from a -- just a citizen, do you think that's a good

1 idea that we all have to come together and form coalitions and  
2 get along?

3 A. Yes. Alief is known as one of the most diverse areas in  
4 Houston. And we're all very proud of that.

5 Q. Now, the -- as it currently sits in that area -- I want to  
6 focus on the state representative houses. The minority  
7 coalition that is formed from the Alief area, are they able to  
8 elect candidates of choice to the state House of  
9 Representatives of Texas?

10 A. Yes.

11 Q. And how many candidates of choice are they currently able  
12 to elect from that area?

13 A. From District 149 or --

14 Q. Well, no, from the general area.

15 A. Well, I would say -- general area, I would say each area,  
16 it's 149, 137, all those areas have been able to elect  
17 candidates of their choice.

18 Q. And 137, the Court's already heard, is the district  
19 currently represented by Representative Scott Hochberg?

20 A. Correct.

21 Q. 149 is the district that you live in, which is the  
22 district represented by Hubert Vo?

23 A. Right.

24 Q. Now, the coalition that we are talking about, what has --  
25 are you familiar with what happens to that coalition under

1 house bill -- or plan 283?

2 A. Essentially, it's destroyed because we're known as a very  
3 large Asian community. Many of those Asian voters are moved  
4 out of that district. Representative Vo's district, as it  
5 currently sits, only three and a half -- three full precincts  
6 and two partial precincts remain. Mine happens to be one of  
7 them.

8 Q. And the rest of the minority community, when that district  
9 is evaporated or goes away, where does the minority  
10 coalition -- where's it dispersed to?

11 A. Mostly to the majority Anglo districts that are around us,  
12 including 133, for instance, picks up quite a few of the Asian  
13 voters from 149.

14 Q. And in your opinion, as an elected official from that  
15 area, what happens to the voice of the minority community as  
16 they're dispersed into these Anglo districts?

17 A. Well, first of all, there's going to be so much confusion.  
18 As an elected official, I know when you change things in  
19 elections, it takes a very long time for people to understand,  
20 you know, where to vote, how to vote, who their candidates are.  
21 And a change like this is going to set it back years. I don't  
22 know how long it will take for people to be comfortable about  
23 all these changes.

24 Q. And specifically talking about the spreading of the  
25 minority coalition members into adjacent Anglo districts, does

1 that give them a meaningful voice in these Anglo districts, or  
2 is their voice lost?

3 A. I believe their voice will be lost.

4 Q. Now, the -- has your area of town, the general  
5 Alief/southwest Houston area of town, has it been a rapid  
6 growing area in Houston?

7 A. It was. We're kind of out of land at this point.

8 Q. The -- no further -- it's expanded -- over the decade it  
9 has been a fast-growing area?

10 A. Used to be a country area, essentially, and now we're an  
11 urban area. So yes.

12 Q. And has it grown from -- you've lived in Harris County for  
13 at least 30 years because I know you've lived in that area for  
14 30 years. How long you been in Harris County?

15 A. Well, four years before that, because I essentially grew  
16 up here in San Antonio and went to Houston to go to Rice and  
17 have never come home.

18 Q. Has the Alief or that southwest Houston area grown, based  
19 upon your knowledge, faster than many other areas in Houston?

20 A. Yes. It's a very densely populated area, a lot of  
21 multifamily housing in Alief.

22 Q. And yet, a district, a house district from that area is  
23 taken away?

24 A. Correct. It's hard to understand why that would happen.

25 MR. GRAY: Thank you, ma'am. I have no further



1 questions.

2 MR. MATTAX: Just one question. I'm sorry.

3 **CROSS-EXAMINATION**

4 BY MR. MATTAX:

5 Q. Just to clarify, if I may, Ms. Calvert, when you say  
6 the --

7 MR. GRAY: Winkler.

8 BY MR. MATTAX:

9 Q. Winkler? I apologize.

10 Ms. Winkler, when you say the candidate of choice  
11 is being elected by this coalition, is that candidate of  
12 choice, is that based on political affiliation or is that based  
13 on ethnicity?

14 A. I would say not really political affiliation. A lot of  
15 the Asians moved out there -- it's because of Hubert Vo  
16 himself, not because he's Hubert Vo, the Democrat. I think  
17 it's more just interests in common of that area in my opinion.

18 Q. So it's more the different interests of the different  
19 people?

20 A. Yes.

21 MR. MATTAX: Thank you.

22 JUDGE GARCIA: Mr. Gray.

23 MR. GRAY: Nothing further, Your Honor. May she be  
24 excused?

25 JUDGE GARCIA: Thank you. Yes, ma'am, Ms. Winkler.

1           Who's your next -- do you have another witness?

2           MR. GRAY: We have no further witnesses at this time,  
3 Your Honor. In fact, I don't think I'll be presenting any  
4 further witnesses. We have two more on our list, Dr. Murray  
5 and Dr. Lichtman. But they're coming in other plaintiffs'  
6 cases. In order not to have them testify twice, I just agreed  
7 to have them go with other people.

8           JUDGE GARCIA: Ms. Perales, are you going to be next  
9 then?

10          MS. PERALES: Yes. The task force will be next.

11          JUDGE GARCIA: Who's your -- yes, ma'am. Who is your  
12 first witness?

13          MS. PERALES: Dr. Henry Flores.

14          JUDGE GARCIA: And he's going to take some time?

15          MS. PERALES: He will, Your Honor.

16          JUDGE GARCIA: Okay. We will reconvene -- take a  
17 recess, reconvene, till 1:30.

18          (Recess at 11:56 a.m., change of reporters)

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1 JUDGE GARCIA: Ms. Perales, you may begin.

2 MS. PERALES: Thank you, Your Honor. At this time this  
3 Latino Task Force plaintiffs would like to call Dr. Henry Flores.  
4 The Court has with it on the bench Volume 8 where many of the  
5 exhibits are coming from for this examination. In addition --

6 JUDGE GARCIA: Volume 8. I don't have number 8. There  
7 they are. All right.

8 MS. PERALES: In addition, Your Honor, we have shared  
9 with the other side several more exhibits that are also -- that  
10 are already included in Volume 8 and we'd like to move their  
11 admission, Exhibit 392 through 398.

12 MS. JORDAN: No objection, Your Honor.

13 JUDGE GARCIA: All right. Those are admitted.

14 HENRY FLORES,  
15 having been first duly sworn, testified as follows:

16 EXAMINATION

17 BY MS. PERALES:

18 Q. Good afternoon, Dr. Flores.

19 A. Good afternoon.

20 Q. Would you please state and spell your name for the record?

21 A. Henry Flores, F-L-O-R-E-S.

22 Q. Dr. Flores, what is your present occupation?

23 A. I'm dean of the graduate school and professor of political  
24 science at St. Mary's University here in San Antonio.

25 Q. How long have you been employed at St. Mary's?

1 A. I'm in the middle of my 28th year.

2 Q. Do you still teach?

3 A. A couple of times a year.

4 Q. What do you teach?

5 A. I teach research methods and statistics and recently I've  
6 been teaching decisional theory.

7 Q. To undergraduates or gradates?

8 A. Graduate students.

9 Q. Do you do research?

10 A. Yes, I do.

11 Q. And what is the focus of your research?

12 A. Currently my focus is the effects of the Latino vote on the  
13 forthcoming and past electoral college -- electoral college  
14 process.

15 Q. And when and where did you receive your Ph.D.?

16 A. December of 1981 at the University of California at Santa  
17 Barbara.

18 Q. Give me a short overview of your publications.

19 A. I published a number of articles both in peer reviewed  
20 journals that appears chapters in books and everything down to  
21 book reviews, a single author of a book and I coauthored another.

22 Q. And have you testified as an expert witness before?

23 A. Yes, I have.

24 Q. Approximately how many times?

25 A. Over 50 times.

1 Q. Have you ever testified as an expert witness for a political  
2 party?

3 A. Yes, I have.

4 Q. And when was that?

5 A. In the 1991 round of redistricting I testified for the  
6 Republican party.

7 Q. Have you ever testified as an expert aligned with a state  
8 defendant?

9 A. Yes, I have.

10 Q. When and where was that?

11 A. In the 2001 round of redistricting in the state of Arizona.

12 MS. PERALES: Dr. Flores's report and CV contain his  
13 background, his academic background and other information related  
14 to his qualifications. Unless there is a challenge I offer  
15 Dr. Flores as an expert in Latino voting behavior, elections and  
16 statistical analysis.

17 JUDGE GARCIA: Any objection?

18 MS. JORDAN: No objection.

19 JUDGE GARCIA: All right. He's admitted.

20 Q. (BY MS. PERALES) Dr. Flores, let's take a look at your  
21 report which is Joint Exhibit E8.

22 JUDGE GARCIA: What volume number is that?

23 MS. PERALES: That is volume -- binder two of three of  
24 the joint expert exhibit list.

25 JUDGE SMITH: What's our new binder number for that?

1 JUDGE GARCIA: Three.

2 MS. PERALES: I have it as two of three, Your Honor.  
3 I'm sorry. Oh, it's binder three.

4 JUDGE SMITH: Binder three, yeah. It's a new regime.

5 JUDGE GARCIA: I don't have binder three. Oh, I'm  
6 sorry. Right up here, right in front of me. Okay.

7 JUDGE SMITH: And which exhibit?

8 MS. PERALES: E8, the tab E8.

9 Q. (BY MS. PERALES) Dr. Flores, what was your task in this  
10 case?

11 A. I've was asked to look at whether -- whether or not there  
12 was discriminatory racial intent in the redistricting process  
13 both surrounding congressional districts and House districts.

14 Q. And what particular areas did you look at?

15 A. U.S. Congressional Districts 23 and 27 and Texas House  
16 Districts 33 and 78.

17 Q. Did you look at any other areas besides on the House side 33  
18 and 78?

19 A. Yes, I did. I looked at the border area down around the tip  
20 of South Texas, Hidalgo County and Cameron counties.

21 Q. Based on your experience studying Latino voting behavior,  
22 your work in Texas redistricting, what can you tell us about past  
23 Texas redistricting and the impact on racial minorities?

24 A. Well, this is my third round of redistricting, the third  
25 round that I've testified in and there's been a previous round

1 going all the way back to why we register in 1974. And one thing  
2 is very, very consistent throughout that history that race is a  
3 very important issue and specifically the voting rights of  
4 Latinos in Texas.

5 Q. And with respect to the impact of the plans on race, what  
6 have you observed?

7 A. Specifically that there's been at various -- during various  
8 redistricting rounds there's been efforts to either pack Latino  
9 voters into some congressional districts or House districts or  
10 Senate districts depending on the situation. Sometimes the  
11 Latino communities have been split or cracked. In other words,  
12 traditional historical communities have been just separated and  
13 some put in one district and some parts of it put in another  
14 district. And all in all there's been just consistent attempts  
15 by -- by -- during the redistricting process to minimize the  
16 opportunity of Latino communities to elect the candidates of  
17 their choice.

18 Q. Now, did you have the opportunity to observe this most  
19 recent legislative session?

20 A. Yes, I did.

21 Q. In what capacity did you observe it?

22 A. I observed it as a Texan, a citizen of the state of Texas  
23 and as a political scientist, just nothing -- I mean, I wasn't  
24 doing research on it or anything.

25 Q. You mentioned in your report that you found a client. So I

1 wanted to ask you what client did you observe in this most recent  
2 session with respect to racial politics?

3 A. Yeah. To me this particular session, Your Honors, was  
4 probably the most racially acrimonious I have ever seen in my  
5 life. Some of the things that were going on in and around the  
6 state legislature just flabbergasted me really, simply.

7 Q. And what racial groups did you notice being at issue?

8 A. It seemed to me that Hispanics and Spanish speakers  
9 principally were the targets of whatever was going on.

10 Q. Now, there was a lot of debate about immigration and illegal  
11 immigration during this session. Why do you say it was racially  
12 tense?

13 A. Well, there were a lot of -- lot of different types of bills  
14 trying to be passed, but the problem is when you speak about  
15 immigration in Texas you're also -- there's no distinction made  
16 sometimes in the minds of -- of persons between immigrants and  
17 Hispanics. And when you start doing that --

18 MS. JORDAN: Your Honor, I will object to speculation.  
19 He's talking about what he thinks in the minds of other people.

20 JUDGE GARCIA: I'm going to give him some latitude.  
21 Let's see what he knows and on what basis he's claiming that.  
22 We'll stop him at the time it's no longer relevant or important.

23 Q. (BY MS. PERALES) Dr. Flores, if you could observe -- tell  
24 us your observations in terms of what you were hearing, why you  
25 concluded that you felt there was racial tension and especially



1 as distinguished from what was -- immigration would be.

2 A. Well, I saw video, for instance, of one particular  
3 individual trying to give testimony in -- I think it was a state  
4 transportation committee hearing trying to give testimony in  
5 Spanish. He could speak English, his native language was  
6 Spanish, but -- and he brought an interpreter, but he felt that  
7 because Spanish was his first language he felt more comfortable  
8 speaking Spanish. And it seemed to me like the interpreter was  
9 doing an adequate job. That was one thing. And then there was  
10 --

11 JUDGE GARCIA: Do you recall what bill was being heard  
12 by that committee at that time?

13 THE WITNESS: No, Your Honor, I do not.

14 MS. PERALES: Dr. Flores -- I'm sorry. Was Your  
15 Honor --

16 JUDGE GARCIA: Yes. You don't recall the bill?

17 JUDGE SMITH: You say it was the transportation  
18 committee?

19 THE WITNESS: Yes, Your Honor.

20 JUDGE GARCIA: Were you present?

21 THE WITNESS: No, Your Honor. I saw a video.

22 JUDGE GARCIA: All right. Go ahead.

23 Q. (BY MS. PERALES) Dr. Flores, you said that somebody  
24 attempted to testify in Spanish. Why did you conclude it was  
25 racially tense?

1 A. Well, because one of -- one of the committee members  
2 interjected and --

3 MS. JORDAN: Your Honor, at this point I'm going to  
4 object to relevance. He has not established that the bill on the  
5 table at the time was a redistricting bill or any committee  
6 hearing information on the redistricting bill.

7 JUDGE GARCIA: I think he's talking about the  
8 environment and the climate that occurred or was occurring during  
9 the legislative session which does impact everything else, so I'm  
10 going to permit it. Let's go.

11 Q. (BY MS. PERALES) I'm sorry. Did you finish with the -- one  
12 of the members?

13 A. Oh, I'm sorry. Yes. That's right. Thank you. One of the  
14 members interrupted him and told him -- asked him -- well,  
15 frankly he said that it was an insult that the man was speaking  
16 in Spanish, that he was insulting everyone and he couldn't  
17 understand why he couldn't speak in English if he knew how to  
18 speak English. And that's when the man tried to explain that  
19 because Spanish was his second language he felt more comfortable  
20 in Spanish.

21 Q. You mean that Spanish was his first language?

22 A. Spanish was his first language, yes.

23 MS. PERALES: Your Honor, at this time we have a  
24 demonstrative exhibit that is in dispute. So I would like to  
25 describe the exhibit and then provide opposing counsel the

1 opportunity to make her objection.

2 JUDGE GARCIA: All right.

3 MS. PERALES: We have an exhibit that displays a number  
4 of publicly-available clips of either radio or video that include  
5 statements made by legislators or out on the Capitol steps. It  
6 is three minutes long and we would like to show it to support as  
7 a demonstration Dr. Flores's testimony that he believes there was  
8 a climate of racial tension during this session.

9 JUDGE GARCIA: And these are by legislators during this  
10 session?

11 MS. PERALES: All of them except for two clips. One is  
12 from 2009, which is the most recent session. That is a  
13 legislator's comment on --

14 JUDGE GARCIA: The most recent session was 2011.

15 MS. PERALES: I'm sorry. Yes. They're all from 2011  
16 except for two clips. One is from 2009 on the floor of the House  
17 and one is from 2011, but it is from a speaker outside on the  
18 Capitol steps who was sponsored by a member of the legislature.

19 JUDGE GARCIA: And what do they portray or show or say?

20 MS. PERALES: They portray legislators in large part  
21 making comments regarding Spanish people and the Spanish  
22 speaking, Your Honor. This is part of Dr. Flores's testimony  
23 with respect to the Arlington Heights factors.

24 JUDGE GARCIA: Any objection over here?

25 MS. JORDAN: Yes, Your Honor. The State objects on

1 grounds under ^ xaudio rule of evidence 402 that it's irrelevant  
2 and also 403 that the prejudicial effect outweighs the probative  
3 value for the reason --

4 JUDGE GARCIA: Well, we don't have a jury here  
5 so -- and what's the relevance? I'm sorry. I didn't let you  
6 finish your entire objection.

7 MS. JORDAN: Yes. Your Honor, I'm sorry. The --

8 JUDGE GARCIA: I didn't let you finish. One, you're  
9 objecting that it's not relevant and it's prejudicial. Well, we  
10 don't have a jury so we don't have to worry about that.

11 MS. JORDAN: Well, except that this is being monitored  
12 by the press and by --

13 JUDGE GARCIA: It's an open proceeding.

14 MS. JORDAN: Yes, sir.

15 JUDGE GARCIA: These legislature felt they could do  
16 whatever they did publicly.

17 JUDGE RODRIGUEZ: There's two objections, 402 and 403.  
18 Any other?

19 MS. JORDAN: No, sir.

20 JUDGE RODRIGUEZ: Your response?

21 MS. PERALES: With respect to relevance, Your Honor,  
22 Dr. Flores is testifying regarding the circumstantial evidence of  
23 racial intent under Arlington Heights that includes the  
24 circumstances surrounding the passage. These are comments made  
25 by legislators either in one instance in the most recent session

1 or in this session with respect to either Hispanics or Spanish  
2 speakers and it is being offered in that sense.

3 JUDGE GARCIA: We'll give it due appropriate weight, so  
4 go ahead.

5 MS. PERALES: Thank you, Your Honor. If we could dim  
6 the lights, please.

7 (Video played. )

8 JUDGE GARCIA: What's the name of that legislator?

9 MS. PERALES: Senator Chris Harris, Your Honor.

10 JUDGE GARCIA: Okay.

11 MS. PERALES: This is a speaker sponsored by a  
12 legislator for Capital Steps Presentation.

13 (Video played. )

14 JUDGE GARCIA: Okay. And what's the name of that  
15 legislator?

16 MS. PERALES: Bonham.

17 (Video played.)

18 MS. PERALES: That's the end, Your Honor.

19 JUDGE GARCIA: Okay. Thank you.

20 Q. (BY MS. PERALES) Dr. Flores, you mentioned you analyzed  
21 summaries of the activities of the Senate and House redistricting  
22 committees. What conclusions did you draw about the process from  
23 those materials?

24 A. Well, my impression was that the entire process was rushed.  
25 There were actual hearings with no maps, no data. Several

1 senators complained that they didn't have enough time to prepare  
2 or to obtain expertise that would speak to the redistricting  
3 parts of the maps. One senator, specifically one who is a senior  
4 senator who has a lot of prestige in the Senate, asked for a  
5 senatorial courtesy to the committee and they denied it to him,  
6 which is kind of unheard of.

7           And all and all I thought the process was abnormal. It  
8 didn't seem like it was run like a normal legislative hearing  
9 process.

10 Q. And you testified in your deposition that you had looked at  
11 e-mail communications from the congressional staff. And I wanted  
12 to ask you what your observations were with respect to the amount  
13 of communication that you saw from congressional staff for  
14 Congressman Lamar Smith or Representative Smith himself and the  
15 map drawings.

16 A. There was a lot of e-mail communication between members of  
17 the Republican delegation in Washington, D.C. with the  
18 redistricting staffers. The ones that caught my --

19           JUDGE SMITH: I don't mean to interrupt your train of  
20 thought. Are we talking about the regular session or the special  
21 or both?

22           MS. PERALES: I believe these are from the regular  
23 session, Your Honor.

24           JUDGE SMITH: Okay.

25           MS. PERALES: They have been introduced as an exhibit.

1 They are a group of e-mails that were produced in the course  
2 of --

3 JUDGE SMITH: That's fine. I just wanted to make sure  
4 and excuse the interruption.

5 A. And the two that caught my attention  
6 were -- well, one specifically was from Senator -- excuse me,  
7 Congressman Lamar Smith where he identifies the four new  
8 congressional districts that Texas was going to be awarded and he  
9 identifies them individually. The first one is a Republican  
10 district in the eastern part of Texas. Another one is a  
11 Republican district in south Texas. Another one, a Republican  
12 district in central Texas. And then I think those are the areas.  
13 I'd have to go back and look at the memo to identify the areas,  
14 but three very specific Republican party districts.

15 And then the fourth one he identified as a voting  
16 rights district. And that e-mail struck me as kind of funny just  
17 simply because three were identified as Republican party and the  
18 fourth is a voting rights district. Why didn't he identify it as  
19 a Democratic party district?

20 Q. (BY MS. PERALES) Dr. Flores, what contrast do you believe  
21 was being drawn in the use of the term "Republican" and "Voting  
22 Rights Act"?

23 A. It seemed like Congressman Smith was trying to distinguish  
24 between Republicans and Hispanics, Your Honor. That's the  
25 impression I got.

1 Q. From the e-mails what is your understanding of who Lamar  
2 Smith was speaking for?

3 A. From another group of e-mails in that same collection I got  
4 the impression that Congressman Smith was speaking on behalf of  
5 the Republican -- the Texas State Republican Party's  
6 congressional delegation, because it was clear in one e-mail that  
7 he was the only Republican Congressman that could bring, I guess,  
8 some difference of opinion together and speak for one voice.

9 Q. Based on your experience with past redistricting what  
10 deference would typically be afforded the head of the delegation  
11 of the same party and his proposals?

12 A. Well, what was interesting about that first e-mail where he  
13 identified the three Republican districts and the one voting  
14 rights district was that he said that the voting rights district  
15 was in the Dallas/Fort Worth -- could be drawn in the Dallas/Fort  
16 Worth area. And it seemed like the map drawers completely or  
17 whoever the redistricting committee or whoever got that e-mail  
18 completely disregarded his recommendations.

19 Q. You're jumping ahead of me, Dr. Flores.

20 A. Oh, I'm sorry.

21 Q. Before we get to the exhibit, based on your experience with  
22 past Texas redistricting, what deference is typically afforded  
23 the head of the congressional delegation from the same party as  
24 the redistricters?

25 A. Oh, there's a great deal of deference given. The opinion of



1 Congress members and particularly the head of the delegation is  
2 listened to quite intently and more often than not their wishes  
3 are included somewhere within the process, the particular policy.

4 Q. Dr. Flores, in Volume 8 will you turn to tab 311, please,  
5 and tell us what that is?

6 A. The exhibit has seven pages, five of which are maps. One is  
7 a copy of that e-mail from Congressman Smith I was referring to  
8 and the last page -- actually it's really the first page of the  
9 exhibit is a sheet of population numbers for each of the proposed  
10 districts that Congressman Smith is speaking of.

11 Q. Dr. Flores, on the map when you mentioned that there was a  
12 Dallas/Fort Worth district--I can't get this thing to  
13 cooperate--what is the number of the district that you were  
14 looking at there?

15 A. 33.

16 Q. And from the first page what is the Hispanic voting age  
17 population of District 33?

18 A. 61 percent.

19 Q. And is this the District 33, Dr. Flores, right here on the  
20 big screen?

21 A. Yes.

22 MS. PERALES: Your Honor, I was rude not to introduce  
23 my assistant, Sara Stefka and Mr. Matt Garcia, who are trying  
24 very hard to help me with the pointer.

25 JUDGE GARCIA: Okay.

1 Q. (BY MS. PERALES) Turn, Dr. Flores, to Exhibit J-8, Joint  
2 Exhibit 8, which is plan C185. Matt Garcia has handed you the  
3 joint exhibit binder.

4 JUDGE SMITH: What book are we in?

5 MS. PERALES: That's a good question. What book are we  
6 in? One.

7 THE WITNESS: What was the exhibit number?

8 MS. PERALES: J-8, which is plan C185. Plan C185.

9 Q. (BY MS. PERALES) Do you have that in front of you? Oh, I'm  
10 sorry.

11 Dr. Flores, do you see that district in plan C185 that  
12 you were just noticing from the Lamar Smith e-mail? Do you  
13 see --

14 A. No, I do not.

15 Q. What did you conclude generally about the number of Latino  
16 opportunity congressional districts in plan C185?

17 A. That the number of them remained the same as in the  
18 benchmark plan.

19 Q. Now, you mentioned earlier that you looked at the areas  
20 involving Congressional District 23 and 27; is that right?

21 A. That is correct.

22 Q. Let's start with Congressional District 23. In Volume 8 if  
23 you wouldn't mind turning to tab 385 and we'll also put that on  
24 the big screen. 385.

25 JUDGE GARCIA: What number is that again?

1 MS. PERALES: 385 in Volume 8. Now we're back to tabs.  
2 Tab 385 in Volume 8. I promise I'll keep you in Volume 8 now.

3 JUDGE GARCIA: What page on Volume 8?

4 JUDGE SMITH: 385.

5 MS. PERALES: Tab 385.

6 JUDGE GARCIA: Okay.

7 MS. PERALES: And just to explain to the court this is  
8 a demonstrative exhibit of areas that were either drawn into or  
9 drawn out of Congressional District 23 from the benchmark plan to  
10 the state's adopted plan.

11 JUDGE GARCIA: Okay.

12 MS. PERALES: The areas in green coming in, the areas  
13 in orange going out.

14 Q. (BY MS. PERALES) Dr. Flores, what did you observe generally  
15 with the changes in geography to District 23?

16 A. Well, the first thing that jumped out at me was that half of  
17 Maverick County was eliminated, the line was drawn right -- if  
18 you just look at it, it's down at the bottom on the lower  
19 left-hand side is where the number six appears, just was  
20 eliminated from District 23.

21 JUDGE GARCIA: Has Maverick County ever been split in  
22 any adopted congressional plan?

23 THE WITNESS: Not that I remember, Your Honor.

24 JUDGE GARCIA: In other words, it's always been  
25 contained within some district?

1 THE WITNESS: Yes, Your Honor.

2 JUDGE GARCIA: All right.

3 A. And if you go over to Bexar County there, if you look at the  
4 oranges in contrast to the green it was a significant number of  
5 parts of Bexar County removed and then another part of Bexar  
6 County added that originally had been in Congressional District  
7 20.

8 Along the northern border, generally on the other side  
9 of the Pecos River, you'll find a series of counties. If you  
10 look at the population numbers in those counties they're  
11 predominantly Anglo and they've traditionally been in U.S.  
12 Congressional District 11. That's marked with number 3 on it in  
13 a green field, Loving, et cetera, over towards Reagan.

14 And then out on the tip of Texas a significant part of  
15 El Paso County was removed and another part was put in  
16 from -- interchanged from congressional District 16 out there.

17 Q. (BY MS. PERALES) Dr. Flores, will you turn to tab 377,  
18 please. 377. With respect to Bexar County more specifically,  
19 what did you observe in terms of areas coming in and going out?

20 A. This is my home county. I know it fairly well. As a matter  
21 of fact, very well. And large chunks of the south side, the  
22 orange on the lower right-hand side and towards the middle there,  
23 which has historically been in Congressional District 23 were  
24 removed. There's that chunk from Congressional District 20 there  
25 with the number eight on it. The green was added. Drop down and

1 then another chunk of 23 was removed also far west, the northwest  
2 side of Interstate 10 there.

3 Q. Turn to tab 379, please. With respect to your observation  
4 that Maverick County was cut, did you also observe that precincts  
5 were cut in Maverick County?

6 A. Yes. Your Honors, if you'll look, you can see that there  
7 was one, two, three large precinct cuts made with -- it's one of  
8 those precincts, the middle precinct, half of it was put in one  
9 congressional district, the rest in 23, et cetera, as you can see  
10 right there.

11 Q. Turn now, please, to tab 378. With respect to El Paso  
12 County and areas that were removed from 23 and placed into 23,  
13 did you also observe precinct cuts in El Paso County?

14 A. Yes. There are, if you follow the green line, the black  
15 lines being the precinct lines, you can see where the precincts  
16 were cut. There's one, two, three, four, five. And then six  
17 precinct cuts. There's one that -- it's just off the map to the  
18 right there. This appears on the exhibit though.

19 Q. Dr. Flores, turn to tab 236, please.

20 MS. PERALES: I'll represent to the Court that this is  
21 a summary chart of other reports on the two redistricting plans.

22 JUDGE GARCIA: Okay.

23 MS. PERALES: It's at tab 236. It's hard to read on  
24 the big screen but it is in your Volume 8. The green areas are  
25 areas being drawn into 23. Again, the orange areas, areas being

1 drawn out of 23.

2 Q. (BY MS. PERALES) Dr. Flores, what did you observe with  
3 respect to the total number of people drawn in and drawn out of  
4 23 so the total --

5 A. Your Honor, if you'll look up at the blue part of it you'll  
6 see that the side of the congressional district on the second  
7 line is 698,488 and 23 in the benchmark was over-populated. You  
8 can see there it was 847,000 plus, the difference being 149,000,  
9 so in other words, redistricters only needed to remove 149,000  
10 individuals to make District -- to bring District 23 into  
11 conformance.

12 You look at the green and the red though, particularly  
13 dark green and -- the dark orange rather, I'm sorry -- in that  
14 same column and you'll see that more than 600,000 individuals  
15 were moved around in order to achieve the 149,000 reduction. And  
16 to me that seemed to be over-manipulation. That was just too  
17 much. I didn't understand why they had to go to that -- that  
18 extreme purpose just to remove 149,000 individuals.

19 Q. Dr. Flores, does this chart also contain information about  
20 the percent Spanish surname registered voters and turnout in the  
21 general election in the areas drawn in and drawn out of 23?

22 A. Yes. If you'll look at column -- let me see, one, two,  
23 three, four -- the fourth column from the right, Your Honor, and  
24 look at the dark green and the dark orange you'll see that the  
25 percentage of Latino registered voters that were brought into

1 this were 62.55 percent and down at the bottom 54.12 percent were  
2 moved out.

3 Now, that is interesting me on one level because if you  
4 go to the second to last column you'll look at the performance of  
5 those same Hispanic voters or the general turnout. And you'll  
6 see that even though there was a higher percentage of Spanish  
7 surname registered voters put into the district, those particular  
8 areas that they came from generally underperformed to those  
9 particular areas that were taken out.

10 So a suspicion I had was that there was a lot of very  
11 detailed looking around for VTDs that underperformed that had  
12 large numbers of Latino voters in it to be moved into the  
13 district and those areas that -- VTDs that had high numbers of  
14 Hispanic voters that overperformed were removed from  
15 Congressional District 23 just to get it to have the level of  
16 Hispanic voters that it ended up having.

17 Q. Dr. Flores, turn to tab 395, please.

18 MS. PERALES: To the Court I will represent that the  
19 next four maps represent data drawn from a very large voter file  
20 for the 2010 general election, a voter file of those voters who  
21 turned out to vote and whether or not they were Hispanic.

22 A. I'm sorry did you three 395?

23 Q. (BY MS. PERALES) 395.

24 A. Okay.

25 Q. And, Dr. Flores, what do you observe with respect to the

1 Spanish surname turnout rate in these precincts that were moved  
2 into congressional 23?

3 A. Well, they were all 19 percent or lower.

4 Q. And turn to tab 396, please. Dr. Flores, what did you  
5 observe with respect to the Spanish surnamed turnout rate for the  
6 areas Frio, La Salle and Atascosa counties that were moved into  
7 Congressional 23?

8 A. The turnout rates -- well, it seemed like the high was at  
9 about 35 percent plus. It looked like nobody voted in that one  
10 precinct but I --

11 Q. In general, Dr. Flores, what did you observe with respect  
12 to --

13 A. Higher turnout rates.

14 Q. This is higher than the El Paso area, but still in general  
15 what would you say the average is of this area drawn into 23?

16 A. I could only -- I couldn't guess. I mean, it would have to  
17 be the high 20 percents maybe.

18 Q. Okay. With respect to tab 397 now, this is an area taken  
19 out of Congressional District 23. Do you recognize this area  
20 just physically on the map? What is this area?

21 A. This is the south side of Bexar County.

22 Q. What do you observe with respect to the Spanish surname  
23 turnout rate of this area which was removed from 23?

24 A. It's somewhere between -- just eyeballing it, somewhere  
25 between 25 percent, maybe 30 percent, someplace in there.



1 Q. And with respect to tab 398 now?

2 A. Northwest side of Bexar County.

3 Q. What did you observe with respect to the Spanish surnamed  
4 turnout in this area of northwest Bexar County that was removed  
5 from Congressional District 23?

6 A. Very consistently over 30 percent.

7 Q. If you will turn now to tab 200. This is another summary  
8 chart of the changes to Congressional District 23.

9 JUDGE GARCIA: What -- oh, 200?

10 MS. PERALES: Tab 200.

11 THE WITNESS: I've got it.

12 Q. (BY MS. PERALES) Dr. Flores, looking at the information  
13 about the Congressional District 23 --

14 MS. PERALES: Oh, this is in Volume 8, Your Honor.

15 JUDGE GARCIA: I'm sorry?

16 MS. PERALES: We're still in Volume 8.

17 JUDGE GARCIA: Right, volume 8, 200?

18 MS. PERALES: Yes. Tab 200. I'm sorry. Page 5.

19 Q. (BY MS. PERALES) You must flip forward because it begins  
20 with Congressional District 15. So it's as you move forward  
21 through the reports about five pages in behind tab 200 you will  
22 see a summary chart for Congressional District 23.

23 A. Okay. I was on the wrong page too. Okay.

24 Q. Looking at this summary data is it fair to say that the  
25 HCVAP and the Spanish surname voter registration went up in

1 Congressional District 23 from the benchmark to the adopted plan  
2 C185?

3 A. Yes, it did.

4 Q. What did you conclude with respect to the ability of  
5 Congressional District 23 to elect the Latino preferred  
6 candidate?

7 A. In the benchmark or C185?

8 Q. In C185 compared to the benchmark what did you conclude with  
9 respect to the ability of District 23 to elect the Latino  
10 preferred candidate?

11 A. It dropped.

12 Q. What did you conclude with respect to whether these changes  
13 were based on race?

14 A. Well, that's -- I was left to conclude that given the way  
15 that the VTDs were manipulated, moved in and out of CD 23. To me  
16 this is one of the most interesting congressional districts I've  
17 ever seen drawn because you end up with the same Hispanic VAP and  
18 actually a little higher Spanish registered voters. You can see  
19 on the third line right there in the middle, 51.8 percent.

20           But as for performancewise the Hispanics in the new  
21 configuration, their past performance record indicates that they  
22 don't turn out at the same levels that -- that the Hispanics in  
23 the old configuration did. So even though the number SSVR is  
24 higher I don't consider it a Hispanic opportunity district at  
25 all. I think that a Hispanic candidate would find it very

1 difficult to get elected in the new configuration.

2 Q. Dr. Flores, there's been some discussion in this case  
3 regarding Congressional District 23 being a Republican district.  
4 And I'd like to turn now and discuss with you its performance in  
5 the Republican primary. 309, please. What is your conclusion  
6 regarding whether plan C185, the new state's adopted plan, makes  
7 Congressional District 23 safer for the incumbent Mr. Canseco in  
8 a racially-contested primary?

9 A. From -- from just all the years I've been -- I've been  
10 observing elections, Mr. Canseco to me got lucky because he had  
11 four Anglo candidates that split the vote. He only received  
12 32.15 percent of the -- of the total votes cast in the Republican  
13 primary. So if the other four had combined their votes he would  
14 have been beaten two to one easily.

15 Q. Okay. So that's in the benchmark. But with respect to the  
16 changes in the new plan do you think that the district is safer  
17 for Mr. Canseco in a racially contested primary?

18 A. Absolutely not.

19 Q. You've already observed in this --

20 MS. PERALES: What the Court sees on the screen right  
21 now is that in tab 309 Dr. Flores has discussed the Republican  
22 primary in 2010.

23 Q. (BY MS. PERALES) Dr. Flores, please turn to tab 310.

24 A. Okay.

25 Q. This is the Republican primary runoff. What is the margin

1 of victory for Mr. Canseco in the runoff against Mr. Hurd?

2 A. A little less than 800 votes.

3 Q. Turn to tab 350 for me, please. This is a mapped rendition  
4 of precinct returns for Mr. Canseco in the Republican primary.  
5 Where do you observe, Dr. Flores, that Mr. Canseco is getting his  
6 highest votes in the Republican primary run off?

7 A. Bexar County and a little chunk of Zavala.

8 Q. Let's turn now to tab 309.

9 A. 309.

10 Q. There was another Republican running in a statewide election  
11 in the Republican primary of 2010. His name is Mr. Carrillo.  
12 Can you please share with us your observation regarding Mr.  
13 Carrillo's experience in the Republican primary in 2010? This is  
14 at tab 309.

15 A. Yeah.

16 Q. Did Mr. Carrillo win his Republican primary?

17 A. No, he did not.

18 Q. Do you know if he was the incumbent?

19 A. Yes, he was.

20 Q. Turn to tab 381, please. These are the precinct returns for  
21 Mr. Carrillo in the Republican primary of 2010 mapped out in  
22 Congressional District 23. Where do you observe Mr. Carrillo  
23 garnering the greatest votes in the Republican primary?

24 A. Mostly in Bexar County, just a little tad there in Medina.

25 Q. Given these exhibits that we've just gone through, what is

1 your conclusion with respect to the impact of the changes made by  
2 plan C185 on Congressional District 23 with respect to the  
3 likelihood that a Hispanic Republican would be able to win a  
4 racially contested Republican primary?

5 A. In a racially-contested Republican primary I think a  
6 Hispanic candidate could not win. He would have an extremely  
7 difficult time.

8 Q. And with respect to the changes that were made by plan C185,  
9 particularly in Bexar County, what is your observation with  
10 respect to the changes that were made, territory moved in and out  
11 of CD 23 in Bexar County and the chances of a Hispanic Republican  
12 in a racially contested primary?

13 A. It would make it much more difficult than it already is.

14 JUDGE GARCIA: You're talking about District 23 or  
15 statewide?

16 MS. PERALES: District 23, Your Honor.

17 THE WITNESS: District 23, Your Honor.

18 Q. (BY MS. PERALES) Let's turn now to Congressional District  
19 27. With respect to the statewide plan -- do we have C185 map?  
20 No.

21 Do you recall what happened in plan C185 with respect  
22 to Congressional District 27?

23 JUDGE SMITH: You're on 386 now?

24 MS. PERALES: Where am I? 386, Your Honor.

25 THE WITNESS: I have C185.

1 Q. (BY MS. PERALES) You do?

2 A. Yeah.

3 Q. Okay.

4 A. Now, please ask --

5 Q. If you wouldn't mind observing what has happened to  
6 Congressional District 27 in the state's adopted plan C185? What  
7 happens to Congressional District 27?

8 A. It gets completely reconfigured. It used to be anchored in  
9 the north by Nueces County and run down to the tip of Texas down  
10 to Cameron County. And now in the new configuration Nueces  
11 anchors it. Nueces is the southernmost county in District 27,  
12 runs up along the Coastal Bend and then north to Bastrop County  
13 all the way to Travis practically.

14 Q. And District 27 is not a Latino majority district in the  
15 state's plan, is it?

16 A. No.

17 Q. All right. We're looking now at 386 as Judge Smith has  
18 pointed out to me. I'm finally caught up in my outline. But can  
19 you -- I think you just explained now that Nueces County is also  
20 drawn into the new Congressional 27; is that right?

21 A. That's correct.

22 Q. Do you know if Nueces County is majority Hispanic?

23 A. Yes, it is.

24 Q. Traditionally where was Nueces County located in the  
25 congressional configuration?

1 A. Traditionally Nueces in Congressional 27 was a majority  
2 Hispanic district. It was a Latino opportunity district. Now --  
3 Nueces was a significant part of that Latino opportunity  
4 district. Now the way the new configuration is structured Nueces  
5 is -- the Hispanics in that particular District 27 are minority,  
6 numerical minority. And so Nueces finds itself part of a  
7 numerical minority in a new Congressional District.

8 MS. PERALES: Is that 339? I believe that is tab 339.  
9 339.

10 Q. (BY MS. PERALES) Dr. Flores, do you have an opinion on the  
11 effect of removing Nueces County from the South Texas  
12 configuration of Latino opportunity districts with respect to the  
13 ability to draw seven Latino opportunity districts in South  
14 Texas?

15 A. Well, what it does is actually reduce -- reduce the  
16 possibility of drawing additional Latino districts.

17 Q. So is it necessary to include Nueces County in the  
18 configuration of South Texas Congressional Districts in order to  
19 draw seven?

20 A. Absolutely, Your Honor.

21 Q. What did you conclude regarding whether or not there was  
22 racial -- race-based districting with respect to the Nueces  
23 County changes?

24 A. Well, again it appeared to me that -- I didn't understand by  
25 just looking at -- at the reconfiguration of the new

1 Congressional District 27 why Nueces would have been put in there  
2 other than to allow for Latino opportunity districts elsewhere.  
3 But what happened was that they eliminated one Latino opportunity  
4 district which they really didn't need to do.

5 Q. Now, looking at Exhibit 339, which is in front of you in the  
6 binder, and this is plan C190, which is offered by the Task  
7 Force, is it possible to remove at least some of Nueces County to  
8 place the incumbent, Blake Farenthold, in a new CD 27 and still  
9 maintain the bulk of Nueces County's Latino population in the  
10 South Texas configuration of Congressional districts?

11 A. Yes, it is.

12 Q. Let's turn to the house plans now. The benchmark house plan  
13 is H100 and it is in the Court's binder of maps which I believe  
14 is Volume 1.

15 MS. PERALES: Can you put up 341, please?

16 JUDGE GARCIA: All right. What number is Volume 1?

17 MS. PERALES: I think -- what number in Volume 1? It's  
18 the tab for H100. We may need to switch the table so that  
19 -- yes, David -- so that David can show us in the benchmark.  
20 Now, does that include the benchmark or is it just two  
21 comparisons? Go ahead and put it up. The -- Matt Garcia has put  
22 on the easel a larger version of what is behind tab 341 in Volume  
23 8.

24 I'm only going to ask you to do this once, David. It's  
25 not going to become consistent. If you wouldn't mind zooming



1 into Nueces County on the benchmark, H100? Can you bring it in a  
2 little bit so we see the district number for 33?

3 Q. (BY MS. PERALES) Dr. Flores, do you see House District 32  
4 which is the lemon-yellow district reaching into Nueces County --

5 A. Yes, I do.

6 Q. -- on the benchmark?

7 Do you also see a District 34 and 33?

8 A. Yes, I do.

9 Q. And those were Hispanic majority districts in the benchmark,  
10 weren't they?

11 A. Yes, they were.

12 MS. PERALES: Thank you, David.

13 Q. (BY MS. PERALES) Dr. Flores, looking at what is behind tab  
14 341 and also on this large board here, what do you observe with  
15 respect to the districts in the state's adopted House plan in  
16 Nueces County?

17 A. That 33 is eliminated. They eliminated one Latino  
18 opportunity district.

19 Q. And with respect to plan H292, the task force plan, is it  
20 possible to draw two Hispanic districts in Nueces County in the  
21 House plan?

22 A. Clearly it is.

23 Q. Sir, if you could go to 340. Dr. Flores, I'm going to ask  
24 you to turn to tab 340 in Volume 8. Turning to El Paso County  
25 and we're only going to touch on this very lightly because it's

1 already been testified about today, what was your observation  
2 with respect to the number of Latino opportunity plans that were  
3 created in the state's adopted plan in El Paso County in the  
4 House?

5 A. That they -- they only drew four in El Paso County.

6 Q. And is it possible to draw five?

7 A. Yes. In 292, the task force proposed plan, there's five  
8 drawn. Excuse me.

9 Q. Turn to tab 387, please.

10 A. 387?

11 Q. 387. This is color team shading for whether precincts are  
12 above 50 percent Spanish surname voter registration or below 50  
13 percent Spanish surname voter registration. What do you observe,  
14 Dr. Flores, with respect to the configuration of 78 in the  
15 State's adopted plan and its relationship to Spanish surname  
16 voter registration?

17 A. That there were areas of Hispanic voters that were just kind  
18 of jiggled around and left out it seemed like to me.

19 Q. Turning now to tab 342, this compares the State's adopted  
20 plan, page 283. This is tab 342. The state's adopted plan on  
21 the bottom part of the page, page 283, and the task force  
22 proposal.

23 A. Okay.

24 Q. What do you observe about the Cameron/Hidalgo configuration  
25 in the State's adopted map?

1 A. That they could have drawn an additional Latino opportunity  
2 district, but they didn't. There's one in the proposed plan.

3 Q. And with respect to this -- this question of spill --

4 A. Yes.

5 Q. And I'm going to use the pointer. Do you see that in  
6 Hidalgo County -- if we go to the State's adopted map there are  
7 four districts in Hidalgo County and then spill going out in the  
8 direction of Starr County.

9 A. Yes.

10 Q. And do you also see with respect to Cameron County that  
11 there are two districts in Cameron County and spill being pushed  
12 northwards into Willacy and Kennedy?

13 A. Yes, there is.

14 Q. Dr. Flores, is it possible to simply spill the overage --  
15 the overpopulation from Cameron and Hidalgo towards each other to  
16 create an additional Latino opportunity district in this part of  
17 the valley?

18 A. Yes. All you had to do was spill in a different direction  
19 and you end up with the proposed 32.

20 Q. Dr. Flores, what was your conclusion with respect to the  
21 role of racial intent in the House map? We've covered Nueces  
22 County, El Paso County, the lower valley. Overall what is your  
23 conclusion with respect to racial intent?

24 A. It seemed -- it appeared to me, Your Honors, that Hispanic  
25 voters were being moved around. These VTDs with large percentage

1 of Hispanic voters were being moved around to achieve the State  
2 ends of the redistricting plans which ended up C185 and 283.

3 MS. PERALES: Thank you, Dr. Flores. I pass the  
4 witness.

5 EXAMINATION

6 BY MS. JORDAN:

7 Q. Dr. Flores, when you rendered your opinion that you thought  
8 that House District 78 was drawn with racial intent, did you  
9 consider whether or not the fact that the El Paso delegation was  
10 actually responsible for drawing the lines in that area?

11 A. Which delegation?

12 Q. The El Paso delegation.

13 A. No. The congressional delegation, the state House  
14 delegation?

15 Q. In House District 78 in the enacted plan which is H283 --

16 A. Right.

17 Q. -- when you rendered your opinion that you thought that  
18 district was drawn with racial intent, did you consider the fact  
19 that the state legislative El Paso delegation drew those lines?

20 A. I don't know that.

21 Q. Okay. So you didn't take that into consideration?

22 A. I have no knowledge of it.

23 Q. Now, there's a lot of things that you don't know about that  
24 went on when these maps were drawn, correct?

25 A. I can't answer your question. I don't know what you mean by

1 that.

2 Q. Well, you don't know everything about --

3 A. Could you be more precise? I mean, you're just asking me a  
4 general question. A lot? What's a lot? I mean, could you be  
5 more specific and narrow your question down so I can give you an  
6 answer, please?

7 Q. Certainly. You don't know everything about what went into  
8 drawing these maps?

9 A. Absolutely not.

10 JUDGE GARCIA: I don't think there's anybody, not even  
11 the legislature, that knows everything. So I think just be more  
12 precise in your inquiry and if the witness will be precise in his  
13 response we'll get much further down the road.

14 MS. JORDAN: Yes, sir. Can we put up congressional map  
15 C190, please?

16 Q. (BY MS. JORDAN) Let's talk about the enacted congressional  
17 plan. All right. Now, you think -- your opinion is that CD 23  
18 was drawn with racial intent; is that correct?

19 A. That's correct.

20 Q. And CD 23 under the enacted plan is Representative Canseco's  
21 district, correct?

22 A. That's correct.

23 Q. Now, that district runs along the border from El Paso --  
24 from the tip of where El Paso is all the way down close to the  
25 Rio Grande Valley, correct?

1 A. It runs along the Rio Grande Valley. That's right.

2 MS. JORDAN: Okay. Can we look at State's table 4,  
3 please? I'm sorry. State's table 3.

4 JUDGE SMITH: So what volume and tab are we going to?

5 MS. JORDAN: This is actually a demonstrative exhibit.  
6 I did share it with counsel and it's going to be shown on the  
7 screen.

8 Q. (BY MS. JORDAN) Now, Dr. Flores, can you look at the binder  
9 called the congressional maps--that's binder one, please--and  
10 turn to C100?

11 A. Binder one?

12 Q. Yes, sir.

13 A. I don't have that.

14 JUDGE GARCIA: I don't have it either.

15 JUDGE SMITH: Binder one?

16 JUDGE GARCIA: Yeah. Binder one. C100.

17 THE WITNESS: Okay.

18 JUDGE SMITH: What's your first tab there?

19 JUDGE GARCIA: Okay.

20 A. Do you want me at the map?

21 Q. (BY MS. JORDAN) You've got the map in front of you?

22 A. Right.

23 Q. I'm going to be looking at the Hispanic voting age  
24 population within Congressional District 23. And in the  
25 benchmark plan -- the benchmark plan had an HCVAP number of 58.4;

1 is that correct? Does that sound right?

2 MS. PERALES: Your Honor, if counsel could ask  
3 Dr. Flores which page inside the reports because there are  
4 numerous pages and perhaps a specific page he could read the  
5 CVAP.

6 JUDGE GARCIA: Okay. All right.

7 Q. (BY MS. JORDAN) Dr. Flores, did you --

8 A. Yeah, yeah. No, I'm looking at it, but I can't --

9 Q. Did you use this data to render your opinions in this case?

10 A. I -- I looked at this data as part of my overall document.  
11 Of all the documents I looked at, this is one of the documents I  
12 looked at, yes.

13 Q. Is it fair to say that you're familiar with these documents?

14 A. Yes.

15 Q. Okay. Can you look at the American Community survey special  
16 tabulation report that's red 106?

17 A. I've got it. Let me tell you what I've got here. I've  
18 got -- I'm looking at Congressional district plan C100 and I'm  
19 looking at the overall red 100. I've got -- I've got it broken  
20 down by county and portions of county.

21 Q. If you look at the top?

22 A. Red 202.

23 Q. Red 106.

24 A. Okay. I found 106.

25 Q. Okay.

1 A. All right.

2 Q. District 23.

3 A. All right.

4 Q. And the benchmark plan has been Hispanic CVAP number of  
5 58.4, correct?

6 A. Correct.

7 Q. Okay. And then the SSCR number which is located in the red  
8 202 report --

9 A. Okay.

10 Q. District 23 has an SSS -- SSVR of 52.0. Do you see that?

11 A. Yes.

12 Q. And a non-suspense voter registration of 52.6, correct?

13 A. Okay. Yes.

14 Q. Okay. So can we turn to C185 which is the enrolled plan?

15 A. Okay.

16 Q. Now, if you look at the same report for C185, which is red  
17 106, HCVAP for C185 is 58.5, correct?

18 A. That's correct.

19 Q. The SSVR in red 202 is 54.1, correct?

20 A. That's correct.

21 Q. And then the non-suspense SSVR is 54.8, correct?

22 A. That's correct.

23 Q. Now, are you also familiar with the Latino Task Force  
24 proposed plan C190?

25 A. Yes.



1 Q. Okay. Can you turn to that tab in that notebook, please?

2 A. Okay.

3 Q. Now, turning to the same report, the HCVAP in that plan is  
4 75.4, correct?

5 A. That's correct.

6 Q. And the SSVR 70.7?

7 A. Yes.

8 Q. And the non-suspense SSVR is 71.7, correct?

9 A. That's correct.

10 Q. Okay. Now let's turn to State's table four. Okay. So  
11 under these figures it appears that C190 increases the HCVAP  
12 significantly in CD 23; is that right?

13 A. Yes.

14 Q. But in the enacted plan -- wait, go back. While -- now,  
15 C100, those numbers were above 50 percent which made it a  
16 Hispanic majority Latino district, but it was just barely over 50  
17 percent, correct?

18 A. That's correct.

19 Q. Now, the enacted plan didn't go below  
20 50 percent, but it remained pretty much the same, correct?

21 A. More or less, yeah.

22 Q. Okay. And CD 23 was drawn by who under the benchmark plan;  
23 do you recall?

24 A. No, I do not know.

25 Q. Was that -- was that a district that was drawn by the courts

1 in the 2003 redistricting round?

2 A. It was the -- the court asked for it to be redrawn, yes.

3 Q. Okay. And that was the result of that litigation in 2003?

4 A. Yes, it was.

5 Q. The benchmark CD 23 district; is that right?

6 A. That's correct.

7 Q. In this round the state did not go below 50 percent so  
8 it did not violate section 5 of the Voting Rights Act, correct?

9 A. I can't answer that question.

10 MS. PERALES: Objection, Your Honor. It calls for a  
11 legal conclusion.

12 Q. (BY MS. JORDAN) Okay. Do you think that there was some  
13 concern about that district because of the litigation that had  
14 occurred in 2003?

15 A. Could you ask your question more precisely, please?

16 Q. Is it possible for the legislature to have some concern  
17 about CD 23 because of the litigation that occurred in 2003?

18 A. Yes, it is.

19 Q. So they were mindful of the fact that this CD 23 was a  
20 Latino majority district?

21 A. I can't answer that question.

22 Q. Okay. All right. Well, let's go to the next table, page  
23 State's table four. Now, do you agree with me that in the  
24 benchmark plan there were -- I think you did testify to this,  
25 that there were seven Congressional districts that were Latino

1 majority districts; is that correct?

2 A. That's correct.

3 Q. Okay. And in the enacted plan the State contends that there  
4 are eight Latino majority districts. Is that your understanding?

5 A. That's what I understand the state contends, yes.

6 Q. Okay. So comparing the benchmark plan with each of these  
7 districts we'll look at -- and let's look at the map as well.

8 Okay. Now, CD 15 under the enacted plan -- I'm sorry. I don't  
9 have the -- CD 15 here is in the -- is in the Rio Grande Valley,  
10 correct?

11 A. Yes.

12 Q. Okay. And that has remained a high-percentage Latino  
13 majority district at 71 percent under the enacted plan, correct?

14 A. Given those numbers in that State's table, if those numbers  
15 are accurate, yes.

16 Q. Okay. Now, under CD 16, which is the El Paso Congressional  
17 district, that also remains a high-Latino majority Congressional  
18 district for Latinos, correct?

19 A. Correct.

20 Q. Okay. And those are both in the 70 percents, correct? 15  
21 and 16 are in the 70 percent range, correct?

22 A. Well, yeah. HVAP, yes. HCVAP, yes. SSVR, no.

23 Q. SSVR is in the 65 to 66 range?

24 A. That's correct.

25 Q. Okay. So CD 20 --

1 JUDGE GARCIA: It's in Bexar County.

2 Q. (BY MS. JORDAN) It's in Bexar County. And that CD 20  
3 touches CD 23, correct, on the big map?

4 A. They border each other. That's correct.

5 Q. Okay. So CD 20 had -- has an HCVAP of 62.9 on the new map,  
6 correct?

7 A. Correct.

8 Q. Now, when CD 23 was drawn did they include or take away  
9 voters from CD 20; do you recall?

10 A. They took voters from CD 20.

11 Q. Okay. So to create CD 23 they had to draw population from  
12 CD -- I mean when they created 23 in the enacted plan they had to  
13 take population from CD 20, correct?

14 MS. PERALES: Objection, mischaracterizes the  
15 testimony. The witness testified they had to remove population  
16 from one district in order to create another.

17 JUDGE SMITH: I thought he answered yes.

18 MS. JORDAN: I thought he did too.

19 JUDGE GARCIA: Okay. Just go on to your next question.

20 Q. (BY MS. JORDAN) Okay. All right. So CD 20 is also a  
21 Hispanic majority Latino district, correct, under the benchmark  
22 plan and in the enacted plan; is that right?

23 A. That's correct.

24 Q. Okay. So let's go to four, the second page. All right. So  
25 Consec's district, CD 23, we've already talked about, had an

1 HCVAP of 58.4 in the benchmark plan and in the enacted plan it  
2 has 58.5 so it remained pretty much the same just like all the  
3 other districts, correct?

4 A. Well, I mean, it remains relatively the same, yes.

5 Q. But the other three districts that we just talked about also  
6 remained relatively the same, correct?

7 A. Well, the SSVR dropped in all.

8 Q. Okay. But the -- was it a significant difference  
9 between --

10 A. Well, I can't answer that question. I mean, it was  
11 different.

12 Q. Okay. Let's go to CD 27 which is the Farenthold district.  
13 Now, under the benchmark plan HCVAP was 63.8. Under the enacted  
14 plan it went down to 41.1. Do you see that?

15 A. Yes.

16 Q. Okay. So under the enacted plan CD 27 is no longer a Latino  
17 majority district; is that correct?

18 A. That's correct.

19 Q. Okay. So do you know why CD 27 was drawn the way it was?

20 A. No, I do not.

21 Q. So you have no information about what went into the  
22 decision-making with respect to CD 27, correct?

23 A. No, I do not.

24 Q. Okay. So let's go to CD 28, which is Congressman Cuellar's  
25 district. Now, Cuellar's district was HCVAP 68.3 in the

1 benchmark plan and then went to C65.9 in the enacted plan. Now,  
2 did population from CD 28 go into CD 23 when -- in the enacted  
3 plan?

4 A. Yes, there was some.

5 Q. Okay. And as a result some of that population draw -- well,  
6 transfer affects Cuellar's district which is CD 28, right?

7 A. Restate your question.

8 Q. Well, would you agree with me that whenever you're moving  
9 lines you're going to affect all the other districts that are  
10 surrounding that district?

11 A. Oh, yeah. Absolutely. I agree with that.

12 Q. So when they drew CD 23 they affected CD 21 which touches  
13 CD 23. It affected CD 20, which touches 23. It also affected CD  
14 28, which touches 23. And so it had some effect on the HCVAP  
15 numbers of the surrounding districts, correct?

16 A. As well as total population, et cetera, certainly.

17 Q. Correct. Okay. So let's go to the next -- next page. CD  
18 29 is Congressman Green's district which is in the Harris County  
19 area; is that correct?

20 A. That's correct.

21 Q. It had an HCVAP in the benchmark plan of 56 and it increased  
22 to 56.3 in the enacted plan; is that correct?

23 A. That's correct.

24 Q. Okay. It stayed pretty much the same; is that right?

25 A. I guess so. I didn't really look at Green.

1 Q. Okay.

2 A. I wasn't asked to look at 29.

3 Q. And did you notice the total population in C100 versus C185?

4 A. Yes, I see that.

5 Q. The difference in population is not that significant between  
6 the two plans; is that correct?

7 A. C185 has to be that by public law.

8 Q. Yes. But what does that tell you about CD 29 that in the  
9 benchmark plan there was not -- there was only 677,000, close to  
10 what the ideal population should have been for C185?

11 A. Well, there was 20,000 difference.

12 Q. Does it tell you that there was not that much growth in that  
13 area between 2000 and 2010?

14 A. Oh, I mean, there's a 20,000 person difference in there and  
15 I -- I didn't look at that congressional district. I have no  
16 idea who is moving in and out of the district, things of that  
17 nature.

18 JUDGE SMITH: It's a very simple question she's asking  
19 you. It's a small percentage increase between the two, isn't it?

20 THE WITNESS: Your Honor --

21 JUDGE SMITH: She's just asking you about the total  
22 population.

23 THE WITNESS: There's a difference in -- yes, Your  
24 Honor. Her question was growth. She didn't ask me about the  
25 difference in absolute numbers. Your question is the one I can

1 answer. There is a difference in the absolute numbers, yes.

2 Q. (BY MS. JORDAN) So it's a small difference though?

3 A. 20,000 people. That's a lot of people.

4 Q. Well, compared to the differences in the House map, for  
5 example, because in the House map the overpopulation was about  
6 200,000 in many of the districts. In this district there was  
7 only the difference between 20,000 people, so 20,000 compared to  
8 200,000?

9 A. I only looked at four congressional -- two congressional  
10 districts and one area for congressional districts, two House  
11 districts and one area for the House district. Harris County was  
12 not one. I can see the difference in absolute numbers the way  
13 your table displays it and all I can tell you is there's a  
14 difference of 20,000 people. I'm sorry. I really can't go  
15 beyond that.

16 Q. So let's look at CD 34 now. CD 34 is a new district that  
17 was created by the legislature as a Hispanic majority district,  
18 correct?

19 A. I guess so, yeah. I didn't look at that one.

20 Q. You didn't look at them?

21 A. I didn't look at 34.

22 Q. Okay. So the fact that the legislature created an entirely  
23 new majority Latino district didn't go into your opinion that  
24 these maps were drawn -- these districts were drawn with racial  
25 intent; is that correct?



1 A. Like I said, I didn't look at this one. I can't answer  
2 that.

3 Q. Now, if you look at C185 in the map -- look at the same  
4 report for where the Hispanic citizen voting age population is  
5 found, please.

6 A. Okay.

7 Q. So the HCVAP for Congressional District 34 is 71.7; is that  
8 correct?

9 A. Yes.

10 Q. All right. And that's the equivalent or similar to the  
11 HCVAP percentage found in the Latino Task Force proposed map C190  
12 for Congressional District 23; is that correct?

13 A. Congressional District 23?

14 Q. The HCVAP in this case, C185 has it for CD 34, is 71.7. Go  
15 back to table two, please. Now, under the Latino Task Force  
16 proposed map they would like to have the congressional district  
17 at 75.4 Hispanic CVAP, but actually Congressional District 34  
18 provides that. It's a new district and it provides a Hispanic  
19 CVAP of 71, correct?

20 A. Yes.

21 Q. So it's comparable, isn't it?

22 A. Well, they are both over 70 percent.

23 Q. They're over 70 percent. So now let's go back to table  
24 three. Table four. Now, under the enacted plan there's also a  
25 new district called CD 35, Congressional District 35, that is

1 also considered a majority Hispanic citizen voting age district,  
2 correct?

3 A. Yes.

4 Q. And CD 35 is not one that the Latino Task Force is alleging  
5 or is not complaining about in this lawsuit, correct?

6 A. No.

7 Q. In fact, the Latino Task Force likes Congressional District  
8 35, correct?

9 A. I don't know if the task force likes 35, but they're not  
10 complaining about it, no.

11 Q. Okay. All right. So total then we have at least one  
12 entirely new district for Latino -- an entirely new Latino  
13 majority district and then we have an additional Latino district  
14 that everyone believes is going to be able to elect the  
15 candidate -- the Latinos are going to be able to elect the  
16 candidate of their choice, correct?

17 A. Which district are you speaking of on the last one?

18 Q. 35.

19 A. Oh, that's not clear to me. It doesn't have a track record.  
20 I haven't really looked at the -- at the performance indicator of  
21 it so I can't answer your question.

22 Q. Okay. But you've heard -- you've read articles about House  
23 Congressional District 35, correct?

24 A. Yes, I have.

25 Q. And what was your opinion based on about how Hispanic

1 leaders felt about House Congressional District 35?

2 A. Yeah, I really can't answer that question because I really  
3 don't know -- first of all, it's hard to identify who is a  
4 Hispanic leader. There's many of them, but -- and I don't  
5 remember any newspaper article to that effect.

6 JUDGE GARCIA: Unless you need to stay there you can  
7 stay there. Are you going to need the easel?

8 MS. JORDAN: No, it's fine.

9 JUDGE GARCIA: Okay. Fine. Thank you.

10 Q. (BY MS. JORDAN) Now, earlier we looked at a video regarding  
11 some comments that were made during this legislative session.  
12 Were any of the members that were on that video -- were they also  
13 members of either the House Redistricting Committee or the Senate  
14 Redistricting Committee in this session?

15 A. I don't know that.

16 Q. You don't know?

17 A. No.

18 Q. Okay. So when you were rendering your opinion about the  
19 process, that you thought it was racial, motivated by racial  
20 intent, you didn't look at the committee members in the House  
21 Redistricting Committee or the Senate Redistricting Committee?

22 A. I'm not sure how to answer that question so could you be  
23 more precise?

24 Q. Well, did you look at who were the members of the House  
25 Redistricting Committee?

1 A. I did see a list. I didn't memorize their names.

2 Q. Okay. Well, okay. Did you look at the members who were on  
3 the House Redistricting -- I mean the Senate Redistricting  
4 Committee?

5 A. Again, I saw the list of names, but I didn't memorize them.  
6 I know who some of them were.

7 Q. Okay. Do you have any reason to believe that any of the  
8 people on that video were members of the redistricting committees  
9 on -- in either house?

10 A. I don't know that.

11 Q. Okay. And certainly when those comments were made they were  
12 not during any kind of redistricting committee hearing, correct?

13 A. That I don't know.

14 Q. Okay. Did you review that video in anticipation of your  
15 testimony today?

16 A. Yes, I did.

17 Q. Did you review that video when you rendered your opinion  
18 that you thought this was -- these maps were racially motivated?

19 A. Yes. I actually identified some of those videos to be  
20 included certainly.

21 Q. Okay. And so were any of those individuals on that video --  
22 did you see them as participating in the redistricting committees  
23 as members?

24 A. Oh, I don't know that.

25 Q. Okay. Now, you said you were involved in redistricting

1 cases since 1980; is that correct?

2 A. No, that's not correct.

3 Q. Since when?

4 A. 1991.

5 Q. Since 1991. So you've been through -- prior to this one  
6 you've been through redistricting rounds twice before?

7 A. In Texas, yes.

8 Q. Okay. And is it fair to say that you believed that there  
9 was going to be litigation in -- after this redistricting round  
10 even before you saw any of the maps?

11 A. Yes.

12 Q. And, in fact, when you wrote your report saying that you  
13 found that these maps were racially motivated you did not have  
14 any information about why these certain lines were drawn the way  
15 that they were, correct?

16 A. That's correct.

17 Q. And because you didn't have any information about the  
18 reasons that these lines were drawn the way they were, is it  
19 possible that there were non-racial reasons for why they were  
20 drawn that way?

21 A. Yeah, it's possible.

22 Q. On direct examination you were testifying about volume  
23 eight, tab 311, and it was a sheet of population numbers for  
24 proposed districts including Congressional District 33. Can you  
25 turn to that exhibit for me, please?

1 A. Yes, I'm there already.

2 Q. Okay. Do you know who created that population data?

3 A. No. It's just labeled PL311. It came with the e-mail from  
4 Congressman Smith.

5 Q. Right. And so that document was not created by the Texas  
6 legislative council. At least it does not indicate that was  
7 created by the Texas legislative council, correct?

8 A. No.

9 Q. Okay. And so Congressman Lamar Smith did indicate that he  
10 would like to create a majority Latino district, an additional  
11 Latino majority district, but -- and he provided some information  
12 with respect to that, but do you know whether or not that that  
13 information that's contained in that document was actually  
14 confirmed that that was the correct data?

15 A. I can't answer that, no.

16 Q. Okay. You also testified on direct examination that you  
17 thought El Paso was drawn in such a way that you thought it was  
18 racially motivated. Now, do you have any reason to believe or do  
19 you know whether or not Congressman Reyes may have asked that  
20 that district be redrawn the way it was?

21 A. I don't have any information on any communication with  
22 Congressman Reyes.

23 Q. Did you attempt to interview Congressman Reyes to ask  
24 whether or not that was drawn the way it was because that's what  
25 he requested?

1 A. I did not.

2 Q. Okay. Do you agree that the State, when it's drawing maps  
3 for -- during the redistricting process, has to be cognizant that  
4 they do not violate section five of the Voting Rights Act?

5 A. I can't answer that question.

6 Q. Okay. Do you believe that complying with section five of  
7 the Voting Rights Act is a compelling governmental interest?

8 A. You're asking -- I'm not a lawyer or a judge. I can't  
9 answer that question. I'm sorry.

10 Q. On direct examination you testified that Will Hurd -- I  
11 guess it was during the election data analysis that you were  
12 going through with counsel for the plaintiff -- Will Hurd is  
13 actually an African-American, not an Anglo. Is that your  
14 understanding?

15 A. I just saw the last names. I don't know any of those  
16 candidates. The only one I know is Congressman Conesco.

17 Q. Okay. So when you were going through the data, the election  
18 data, you didn't actually verify whether or not the candidates  
19 were Anglo or African-American, correct?

20 A. I did not.

21 MS. JORDAN: Okay. I'll pass the witness, Your Honor.

22 JUDGE GARCIA: Thank you. Counselor.

23 MS. PERALES: Just a couple of questions on redirect,  
24 Your Honor.

25 EXAMINATION

1 BY MS. PERALES:

2 Q. Dr. Flores, turn to tab 377 for me, please. Tab 377, sir.

3 You testified earlier that Congressional District 23 in the  
4 benchmark was overpopulated. Do you recall that?

5 A. Yes, I remember.

6 Q. Do you remember about how many people it was overpopulated?

7 A. Without looking at the data -- my brain is being fried right  
8 now. Without looking at the data sheet I can't really --

9 Q. I'm sorry. Was it about 150,000 people?

10 A. Yes, it was about 150,000. 149 something.

11 Q. Could you please put up 377?

12 Okay. Dr. Flores, is it correct to say that you  
13 observed earlier that there was population moved into  
14 Congressional District 20 from 23?

15 A. Yes.

16 Q. And there was --

17 A. No, no. From --

18 Q. Yes.

19 A. Yeah.

20 Q. Okay. Let me start again, Dr. Flores. Take a look at the  
21 areas going out that are orange. Areas one, two --

22 A. Okay.

23 Q. Is it correct that you testified that areas were moved from  
24 23 into 20?

25 A. Yes.



1 Q. Now, take a look at areas eight and 10. Is it correct to  
2 say that areas were also moved from 20 into 23?

3 A. Yes, that's correct.

4 Q. Turn to tab 236, please. Let me get there with you.

5 Dr. Flores, does this exhibit show with respect to the areas  
6 moved out of congressional 23 that in west Bexar and south Bexar  
7 that approximately 155,000 and 168,000 were moved out of 23?

8 A. Yes. Over 300,000 people.

9 Q. And also about 13,000 from area nine in north Bexar County?

10 A. That's correct.

11 Q. And then with respect to what we were looking at before with  
12 area eight coming from south Bexar coming from 20 into 23, that's  
13 about 45,000 people; is that right?

14 A. Yes, that's correct.

15 Q. And another 14,000 for area 10?

16 A. 60,000 total.

17 Q. So is it your testimony that one had to remove population  
18 from Congressional District 20 in order to create Congressional  
19 District 23?

20 A. No, you do not.

21 Q. Finally, can you show plan C185, sir? And that's in volume  
22 one behind the tab for C185. Okay. Dr. Flores, if I can sum  
23 this up, you testified with Ms. Jordan that 34 is a Latino  
24 majority district, correct?

25 A. That's correct.

1 Q. You testified that 27 is not a Latino majority district?

2 A. That's correct.

3 Q. And you testified that the Latino Task Force has no  
4 complaints about this District 35; is that correct?

5 A. That's correct.

6 Q. And you testified that District 23 was not a Latino  
7 opportunity district in plan C185; is that right?

8 A. That's correct.

9 Q. What is the net gain if you add two and subtract two?

10 A. Zero.

11 MS. PERALES: Thank you.

12 JUDGE GARCIA: Counselor.

13 MS. PERALES: I'll pass the witness.

14 MS. JORDAN: Your Honor, I would just offer into  
15 evidence Defendant's Exhibits 49 and 50. These are not part of  
16 the agreed defense exhibits, but I would offer them into evidence  
17 now.

18 MS. PERALES: We have no objection.

19 JUDGE GARCIA: All right. What are the numbers again?

20 MS. JORDAN: D-49 and D-50.

21 JUDGE GARCIA: Okay. Those are admitted.

22 JUDGE SMITH: You'll get us copies of those.

23 MS. JORDAN: I'm sorry. Yes, we will get you copies.

24 JUDGE GARCIA: Yes, sure. Thank you. Thank you,  
25 Doctor. You're excused.

1 THE WITNESS: Thank you, Your Honor.

2 JUDGE GARCIA: And call your next witness.

3 MS. PERALES: At this time the Latino Task Force  
4 plaintiffs call Dr. Richard Engstrom.

5 **DR. RICHARD ENGSTROM,**

6 having been first duly sworn, testified as follows:

7 EXAMINATION

8 BY MS. PERALES:

9 Q. Good afternoon, Dr. Engstrom.

10 A. Good afternoon.

11 Q. What is your job title, Dr. Engstrom?

12 A. Well, I am currently a visiting research -- visiting  
13 research fellow at the center for the study of race, ethnicity  
14 and gender in the social sciences at Duke University.

15 Q. What does your job entail?

16 A. Basically studying primarily issues of race and ethnicity  
17 and as they relate to electoral arrangements.

18 Q. And what did you do before the job that you hold now?

19 A. Oh, I worked -- I was a professor of political science  
20 starting at assistant level and ending up as a research professor  
21 and an endowed professor at the University of New Orleans. I was  
22 there roughly 35 years.

23 Q. And what is the focus of your research?

24 A. It's still -- today it's the relations -- well, the  
25 interaction of minorities in electoral arrangements.

1 Q. And how many publications do you have relevant to that  
2 subject?

3 A. I -- boy, it's a long time since I've counted them. I think  
4 it's fair to say numerous. They're on my curriculum vita which  
5 was submitted in this case. And most of my research for a long  
6 time has primarily focused on that topic.

7 Q. And has your work been cited by the United States Supreme  
8 Court?

9 A. Yes. There were five references to articles authored or  
10 coauthored by me in Thornburg versus Gingles. There was a  
11 reference to a solely-authored article in a state  
12 legislative -- I think it was state legislated anyway. I believe  
13 the case was Karcher vs. Daggett. I'm not sure. That goes back  
14 a few ways. And then there's another citation in -- it may be  
15 Hall versus Holder--I forget--concerning alternative election  
16 systems.

17 Q. Have you ever served as an advisor to any governmental  
18 bodies engaged in redistricting?

19 A. Well, yes, I have. I've been an advisor to governmental  
20 bodies in the sense that I was a consultant, hired as a  
21 consultant by two redistricting commissions. One time it was in  
22 Illinois. The other time it was in the state of Pennsylvania. I  
23 have also -- this year I served as a consultant to the -- the  
24 title may not be exact, but something like the joint committee on  
25 redistricting for the Mississippi state legislature. That

1 was -- let's see, if the Illinois -- well, for that joint  
2 committee of the Mississippi state legislature. I have also  
3 consulted -- well, at least with the president pro tem of the  
4 South Carolina senate on retrogression issues.

5           In Mississippi I was a consultant on the retrogression  
6 issues as well as dilution issues under section two of the Voting  
7 Rights Act. And then I have -- I know that's not complete.  
8 Mississippi, I did it after the 2000 -- oh. And in Texas, last  
9 go round, at one point -- I forget. There were a couple of  
10 cases. And I forget what sequence this all came in, but I know  
11 for a while I was a consultant to, I believe, the speaker of the  
12 house of the Texas State House of Representatives. I do remember  
13 testifying before a legislative committee. And also then --  
14 again, I don't know what the sequence was, but at the same time  
15 and jointly with their agreement I consulted or advised both  
16 Senator Rodney Ellis, an African-American state senator,  
17 Democrat, and I believe the name was David Sibley, who was a  
18 white Republican state senator. They both employed me at the  
19 same time and agreed to use me together.

20 Q. Have you ever been a court-appointed expert?

21 A. Yes. I was a court-appointed expert in a case involving the  
22 Dallas city council and redistricting.

23           MS. PERALES: I was just going to do two more  
24 questions.

25           MR. SCHENCK: Okay. Sure.

1 MS. PERALES: But he's here now.

2 MR. SCHENCK: That was gracious of her.

3 JUDGE GARCIA: Okay.

4 Q. (BY MS. PERALES) Have you worked in litigation for  
5 plaintiffs and defendants?

6 A. Yes, both.

7 Q. Dr. Engstrom's report and resume contain his background.  
8 It's Exhibit E7, which I think is in volume two? No?

9 MR. SCHENCK: Your Honor, we're prepared to stipulate  
10 to Mr. or Dr. Engstrom's qualifications. And we have one minor  
11 issue which is that we had a supplemental report tendered for  
12 Dr. Engstrom on Friday. We have not had an opportunity fully to  
13 process or respond to that. I believe we have an agreement to  
14 reserve our right to respond to that with an additional report of  
15 our own, which we would tender at least a day before our expert  
16 would testify next week.

17 JUDGE GARCIA: All right. That's agreed by --

18 MS. PERALES: Yes, we have an agreement, Your Honor.

19 JUDGE GARCIA: Okay.

20 MR. SCHENCK: And also we needed, I'm sorry, to add an  
21 additional exhibit, which would be election or election results  
22 of some south Texas counties so we'll come in next week as --

23 JUDGE GARCIA: All right.

24 MS. PERALES: And that is not disputed, Your Honor.

25 JUDGE GARCIA: Okay. Thank you.

1 Q. (BY MS. PERALES) Dr. Engstrom, let's turn for a moment to  
2 the 2003 Congressional redistricting litigation in Texas. Did  
3 you testify as an expert witness in Session v Perry?

4 A. Yes, I did.

5 Q. And what was the subject of your testimony?

6 A. I believe I did some analyses of elections within a couple  
7 of U.S. house district elections. At that particular time also  
8 looked at assessing the relative number of districts in which I  
9 thought -- my opinion provided reasonable opportunities for  
10 Latinos to elect candidates of their choice. I also did -- I  
11 recited compactness scores for various districts.

12 Q. Did you analyze racially polarized voting in 2003?

13 A. Oh, I did, yes, in south Texas.

14 Q. And did the court find in that case -- the district court  
15 find there was racially polarized voting?

16 A. In Texas, yes.

17 Q. Now, let's turn to this case. What was task in this case?

18 A. To -- my task was to analyze the extent to which voting  
19 could likely be racially polarized in seven counties in Texas,  
20 plus a 52-county area identified as south Texas from which these  
21 were all counties in the area from which possible Latino majority  
22 districts could -- could be created. So I did that for the last  
23 three elections, 2010, 2008 and 2006. I've also been asked to  
24 take a look at four particular endogenous elections. By that I  
25 mean there are two congressional districts and there are two

1 state house districts, Texas house districts, again to assess the  
2 extent to which voting in those -- in the 2010 elections in those  
3 districts was racially polarized, if it was, and also to look at  
4 participation differences, or the relative Latino participation  
5 anyway, in those elections. And I was asked to assess the number  
6 of districts that provided in my opinion Latinos with reasonable  
7 opportunities to elect candidates of their choice in, I guess,  
8 what's called the benchmark U.S. house plan, the adopted plan and  
9 the illustrative remedy that I believe your plaintiffs have  
10 provided. And did the same for the adopted plan for the Texas  
11 House of Representatives and your illustrative districts for that  
12 body as well.

13 Q. Can you briefly describe for the court the methodology you  
14 used in examining whether or not there is racially polarized  
15 voting?

16 A. Yes. The methodology I employed -- the statistical routine  
17 is known as ecological regression. I'm sorry. Ecological  
18 inference. I'll relax soon, but ecological inference. This is a  
19 different -- this was not one of the procedures used in Thornburg  
20 versus Gingles back in 1986. This is a procedure that  
21 has -- that was developed subsequently. And one of the purposes  
22 for its development was for the application to racially polarize  
23 voting analysis as an approved methodology. It is used for  
24 other metho -- other purposes as well, but anything involving  
25 inferences concerning group behavior based on aggregate level



1 data such as precincts so vote tabulation districts. So -- and I  
2 applied two versions of that, one a five-area version where the  
3 analysis concerned Latinos, voters, in districts, or in those  
4 geographical units, and the second one was a multi-varied  
5 analysis which involved -- provided estimates for not only  
6 Latinos but also for African-Americans, and then the remaining  
7 voters in the district as well. And I believe those are  
8 predominantly Anglo voters.

9 Q. Why did you choose to use EI, ecological inference?

10 A. Well, I think EI is the superior methodology we have today.  
11 I think it's superior to the ones that were approved by the  
12 court. Well, I shouldn't say approved but were relied upon by  
13 the Supreme Court in Thornberg versus Gingles in 1986.

14 Now, I will -- I will say those were the standard  
15 procedures being relied upon at that time in 1986. And I had  
16 relied upon those myself. But since that time, about the late  
17 1990s, a professor, Gary King at Harvard University, developed an  
18 alternative approach.

19 One reason why Professor King developed this was he was  
20 participating in a voting rights case and expert -- one expert in  
21 the case, I believe for the plaintiffs, had reported ecological  
22 regression results. And that was one of the methods relied upon  
23 in Thornburg versus Gingles. And the expert was reporting  
24 results that said a particular group cast more than 100 percent  
25 of its votes for a particular candidate or a group had cast less

1 than zero percent -- less than zero percent of its votes for a  
2 particular candidate. That had been one of the problems with  
3 regression analysis. So I think this is superior to the other  
4 two.

5           I'll explain quickly. In Thornberg verses Gingles they  
6 relied upon homogenous precinct analysis and ecological  
7 regression analysis. Homogenous precinct analysis only looks at  
8 extreme cases. Like 90 percent or more Latino in a voting  
9 precinct or African-American or non-Latino, non-African-American,  
10 but it takes the extremes. That can provide a good estimate for  
11 a particular unit or jurisdiction if almost everybody lives in a  
12 homogeneous precinct, but it completely ignores everybody that  
13 lives in precincts that are more mixed. So it's not generally a  
14 very good source for implying or suggesting what the jurisdiction  
15 overall -- what the behavior is, although it can be reported  
16 accurately as in these precincts and in these other extreme case  
17 precincts that's the way Latinos or non-Latinos voted.

18           Ecological regression. As I said, one problem was it  
19 had estimates that would exceed a hundred and be lower than zero  
20 for group support for candidates.

21           The other -- the other dimension of it that was widely  
22 criticized was its reliance on a linear assumption. The measure  
23 of a relationship in regression in those applications was in  
24 effect a linear -- a linearly-defined relationship. And what  
25 that entailed was an assumption, in effect, that -- we'll just

1 use the example of Latino voters. That every Latino that -- in  
2 every precinct in the city, no matter where it was, no matter  
3 what its actual group composition, Latinos cast the same percent  
4 of their votes for a particular candidate. Likewise for  
5 African-Americans or non-Latinos or Anglos, whatever the group  
6 may be.

7 That also was one of the reasons that estimates went  
8 above a hundred and below zero, but that was the assumption in  
9 the method. And that was widely criticized.

10 Gary King did two things to improve on ecological --

11 JUDGE SMITH: Excuse me, Doctor. Perhaps I need a  
12 break, but I've lost track of the question.

13 Q. (BY MS. PERALES) Well, Dr. Engstrom, I probably should not  
14 have asked you this question because I was asking why the  
15 ecological inference method is superior then to the other  
16 methods. And Dr. Engstrom loves his subject a great deal, but  
17 perhaps I can just simply move on to the next question, which is  
18 how many years have you been using ecological inference?

19 A. I think the first application was somewhere around the year  
20 2000. It was not long after the book came out. It could have  
21 been 1999. It could have been 2000. I'm not exactly sure. I do  
22 believe I was one of the first. I don't know if I was the first,  
23 but one of the first to use it for this purpose. And I've been  
24 using it ever since.

25 Q. In volume eight would you please turn to Exhibit 392.

1 Dr. Engstrom, is this your rebuttal report?

2 A. Yes, it is.

3 Q. All right. And does it contain or do the tables in your  
4 rebuttal report restate the information from your original report  
5 but all in one place?

6 A. Yes. It adds the year 2006 in terms of the elections. It  
7 rearranges the tables to be like county-specific or for south  
8 Texas rather than the other. And I think -- and it keeps all of  
9 both bivariate and the multi-varied estimates together for each  
10 company. I think it's a better arrangement of the table to  
11 understand what's going on, but yes. And this adds 2006 to the  
12 2008 and 10 results that I reported in my initial report.

13 Q. You mentioned earlier, Dr. Engstrom, that you ran bivariate  
14 and multi-varied analysis in EI. Very briefly can you tell me  
15 how you ran multi-varied analysis in EI?

16 A. Yes. It's a straight forward multi-varied analysis. You  
17 insert information on the relative presence of Latinos in the  
18 precincts and the relative presence of non-Latinos in the  
19 precincts and the relative presence of other voters in the  
20 precincts, so it's a true multi-varied analysis all at one time.

21 Q. And what were your data sources for the elections that you  
22 studied?

23 A. The election data, the actual votes cast data, came from the  
24 Texas legislative council. This would be votes cast for various  
25 candidates in the precincts in these elections. Then there's an

1 independent variable which is the measure of the group  
2 composition of the precinct. Now, for 2010 we were able to  
3 retrieve from the Secretary of State's office voter turnout data  
4 that was flagged for Spanish surnames. So we were able to look  
5 at turnout based on Spanish surname registration and those not  
6 with a Spanish surname for that election. So that's data I used  
7 for the 2010 analysis bivariate. I'll explain why it can't be  
8 used for multi-varied in a minute.

9           Then for 2008 and 2006 I relied upon the Spanish  
10 surname regis -- the Spanish -- the number of voters -- the  
11 number of registered voters with Spanish surnames. That also  
12 came from the Texas legislative council, I believe.

13           For the multi-varied analysis, in which I inserted also  
14 African-Americans into the analysis specifically, we don't have  
15 anything like an African-American surname match or anything  
16 comparable to identify African-Americans from registration lists  
17 or turnout lists. So in that multi-varied analysis I had to rely  
18 on the United States census data. And the specific data can't  
19 come from the -- it is for citizen voting age population and they  
20 come from the 2009 American Community survey that the census  
21 does. And the 2009 survey reports a rolling average for that  
22 number beginning with 19 -- with 2005 through 2009.

23 Q. Did you only look at general elections for your report?

24 A. Oh, no. I looked at primary elections as well.

25 Q. What is the significance of looking at primary elections

1 when you're trying to measure racially polarized voting?

2 A. Well, primary elections are a very critical part of the  
3 electoral process and voting; the primary elections depending on  
4 voting behavior of people in groups and things, but the  
5 representatives of choice of Latino voters can be eliminated from  
6 the competition at the primary phase. So I think you have to  
7 include primaries into these analyses to see the extent to which  
8 racially polarized voting may be hurting Latino candidates in  
9 Democratic primaries.

10 And I also analyzed Republican primaries. They're  
11 weren't many that involved a choice between a Latino and a  
12 non-Latino, but there were two and I analyzed those as well.

13 Q. The tables that start at page 30 near the end of your report  
14 presents your results for the areas that you studied. Can we  
15 turn to that table? And this is tab -- it's tab E8. And can you  
16 confirm for me it's volume one so the court can follow along?  
17 I'm sorry. E7. Is it volume one? Okay. Not the maps.  
18 Dr. Engstrom's reports.

19 MS. PERALES: I'm sorry, Your Honor. I don't know what  
20 the binders have been relabeled, but I know it's joint expert --  
21 binder three, tab --

22 MR. COHEN: Tab --

23 JUDGE RODRIGUEZ: Are you moving away from the rebuttal  
24 report back to the original?

25 MS. PERALES: No. I'm directing you back to the

1 original and that's my fault. We are staying in volume eight,  
2 Your Honor.

3 JUDGE RODRIGUEZ: So if you're in the rebuttal report  
4 we're still at tab 392.

5 MS. PERALES: We are at 392.

6 JUDGE RODRIGUEZ: Toward the end.

7 MS. PERALES: Yes. We're back in volume eight.

8 Q. (BY MS. PERALES) We're just going to stick with volume  
9 eight and not have you look at other volumes. Volume eight, tab  
10 392, all of your results in one place. This starts at page 30.  
11 We'd just like you to explain, please, to the court what the  
12 columns mean before we review your conclusions.

13 A. Yes. There are eight tables, one each for the seven  
14 counties and one for south Texas. Now, some tables contain the  
15 multi-varied analysis. Some don't. The ones that don't are  
16 counties or -- also south Texas in which there are very, very  
17 relatively few African-Americans. I think the percentage in  
18 those counties is around 3 percent of the voting age population.  
19 That's not a good basis for making estimates of African-American  
20 voting age population -- of the voting behavior of African  
21 Americans. So I saved that for the other five units in which  
22 there's a larger presence. It ranges from, I think seven, eight  
23 percent to 20 something percent in the other units. But --  
24 so the first three tables report the analyses that only contain  
25 the bivariate analysis. By that I mean they're going to compare

1 estimates for Latino voters with estimates for non-Latino voters.

2 I see table one is on the screen.

3           Essentially what this reports then is you see in the  
4 first column it identifies the year and type of election, the  
5 year of the election, whether it's a general or a primary,  
6 whether it's a Democratic primary or a Republican primary. It  
7 gives you the office and the name of the Latino candidate in the  
8 election, or in one case at least a Spanish surname candidate.

9           Under Latino voters you'll see in that column the  
10 number -- we'll just take the first one for a lieutenant  
11 gubernatorial candidate Alvarado. Alvarado, I'm sorry. And the  
12 first number under Latino voters is 85.1 percent. That is the  
13 best estimate in a bivariate analysis that ecological inference  
14 produces. All right? That's called a point estimate, but that's  
15 the best estimate. So 85.1 percent, excuse me, is the point  
16 estimate.

17           Below that number you'll see two numbers -- well,  
18 they're not in parentheses but two numbers, 83.7, dash, 86.6.  
19 That is a 95 percent confidence interval and it's, in effect, the  
20 same type of thing when you read the results of a poll. The poll  
21 will say this is the estimate for a candidate, but it could be  
22 this low, it could be this much higher. It gives you a margin of  
23 error or a confidence interval.

24           This confidence interval in effect says we can be 95  
25 percent certain at least statistically. All right? But the



1 probability of the true value, meaning the value we're trying to  
2 estimate, and our best estimate is 85.1 percent. It's 95  
3 percent -- 95 percent confidence that the true value will  
4 actually range somewhere between 8. -- excuse me, 83.7 to 86.6.  
5 In other words, it will fall into that range. So that's a  
6 measure of variation in effect and reliability of the estimate,  
7 but I do want to note that the further you go to the ends of the  
8 confidence interval the less likely that is to be the true value.  
9 The best estimate of the true value is the point estimate, which  
10 is the number that appears ahead -- above it.

11 Q. Dr. Engstrom, with respect to El Paso County can you  
12 summarize your conclusions?

13 A. In what?

14 Q. With respect to El Paso County, which you studied there in  
15 table one, can you summarize your conclusions for me, please?

16 A. Can I -- can I look at my narrative just to --

17 Q. Yes. Please feel free to turn to your narrative?

18 JUDGE GARCIA: Let's take a brief recess. Okay?

19 (Recess.)

20

21

22

23

24

25

1 (Open court, 3:47 p.m.)

2 JUDGE GARCIA: Okay. Y'all may be seated. Thank  
3 you.

4 And, Ms. Perales, you may continue.

5 MS. PERALES: Thank you, Your Honor.

6 BY MS. PERALES:

7 Q. Dr. Engstrom, feel free to refer to the narrative portion  
8 of your rebuttal report. You will look at the tables that are  
9 at the end of your report, and I will ask you now to summarize  
10 your conclusions with respect to El Paso County in Table 1.

11 A. My summary of that part of the report indicates that  
12 Latinos in El Paso were very cohesive in their support of the  
13 Democratic Latinos that -- in both general elections and  
14 Democratic primaries. That means they were very supportive of  
15 Latinos who had Democratic nominations in general elections and  
16 also in the Democratic primaries.

17 Their preference with -- that preference, however,  
18 was shared only once by the non-Latino voters. And I conclude  
19 that that means that there was a polarized voting in both the  
20 general elections and the primary elections in El Paso.

21 Q. Thank you.

22 Moving on to Nueces County in Table 2 -- and that  
23 is right after Table 1 for the Court -- can you please  
24 summarize your conclusions with respect to Nueces County?

25 A. Again, I conclude that Latinos were very cohesive in their

1 support for Latino candidates in both general elections and  
2 Democratic primaries.

3           Again, that preference was shared in only one  
4 general election and not any other primaries by the non-Latino  
5 voters in Nueces, not in any of the Democratic primaries. So  
6 again, I think there's racially -- these reflect racially  
7 polarized voting in Nueces County.

8 Q.   Moving on to Table 3, which is your result -- your results  
9 for south Texas counties, can you tell us generally what south  
10 Texas counties mean?

11 A.   It's a 52-county area that -- I was told that that would  
12 be the area of interest in terms of redistricting and Latino  
13 districts and that type of thing.

14           And I concluded that in south Texas Latinos voters  
15 are, again, highly cohesive in both general elections and  
16 Democratic primaries; and that -- again, that preference was  
17 shared in only one general election and in no Democratic  
18 primary by the non-Latino voters in south Texas.

19 Q.   Now --

20 A.   So again, racially polarized voting.

21 Q.   Thank you.

22           Now, Table 4 looks a little bit different. This  
23 one shows columns for Latino and non-Latino and then  
24 African-Americans and others. And I see that there's a row for  
25 bivariate that shows exponents for Latino and non-Latino

1 through the bivariate analysis, and then there's a row for  
2 multivariate with exponents for Latino, African-American and  
3 others; is that right?

4 A. That's correct. And Tables 4 through 8 are structured in  
5 this way. Where it says Latino and non-Latino, that's  
6 bivariate like we've just talked about in the first three  
7 tables. And the other provides results of the multivariate  
8 analysis, again, point estimates, below them --

9 Q. And tell me about your conclusions with respect to Bexar  
10 County.

11 A. In Bexar County I discovered that there's a high level of  
12 racial polarization in voting. Again, Latinos were very  
13 cohesive in their support for Latino candidates that were their  
14 preference; and that when African-Americans were now added to  
15 the equation, while African-Americans were, again, very  
16 support -- were supportive of Latino candidates in the general  
17 elections with the Democratic nomination, they were the least  
18 likely of the three groups to support Latino candidates in a  
19 Democratic primary.

20 In this instance, in this particular county, the  
21 other voters, meaning non-Latinos, not also non-Latino or  
22 non-Hispanic, African-American, the other remainder of the  
23 electorate did support the Democratic candidate -- excuse me --  
24 the Latino candidate in the Democratic primaries three of the  
25 six times.

1 Q. Now, I'd like to move on to Table 5, which is Dallas  
2 County. And during the break, Dr. Engstrom, you mentioned to  
3 me that you wanted to correct two typos in your rebuttal  
4 report. And why don't you tell me about those now?

5 A. The mistake is I just said that in Bexar County that in  
6 three of the six Democratic primaries the other voters  
7 supported the Latino candidate in that primary. That got  
8 repeated in the -- excuse me -- the Dallas report. And that's  
9 in error. That was my fault. I should have not -- it's -- my  
10 statement in the narrative before that is correct. But in the  
11 conclusion I say half of the time, like I did for Bexar. In  
12 fact, it was only two of the six elections that the other  
13 voters supported Latino candidate in Democratic primary.

14 Q. And is Table 5 correct, the numbers in Table 5?

15 A. The numbers in all the tables are correct.

16 Q. Okay. And then --

17 A. It was my -- only the summary of my narratives, not even  
18 the previous text of the narrative.

19 Q. And is that also true for Harris County?

20 A. Yes.

21 Q. That one part of the summary is incorrect?

22 A. That one part, it says half the time, when in fact it is  
23 one of the six.

24 Q. Okay. And we'll file a corrected rebuttal report just to  
25 clear up those two numbers.

1           Summarize for me, if you will, your Dallas County  
2 analysis.

3 A.   Again, I found that Latinos in the general elections were  
4 very cohesive, and this was also a preference shared by  
5 African-Americans, not shared, however, by the other voters.

6           The Democratic primary Latinos were likewise very  
7 cohesive. African-Americans, however, were, again, I think the  
8 least likely group to support Latinos in a Democratic primary.  
9 And the others voted, as I just said -- supported only two  
10 Latino candidate -- Latino voter two -- Latino candidate, I'm  
11 sorry, in two of the six Democratic primaries. And again,  
12 racially polarized voting.

13 Q.   Let's move to Table 6. And can you tell us about your  
14 analysis -- the results of your analysis in Harris County,  
15 Table 6?

16 A.   Yes. In Table 6, my conclusion was there is racially  
17 polarized voting. The Latinos -- again, voters were very  
18 cohesive in their preference for Latino candidates with the  
19 Democratic party nomination, a preference shared by  
20 African-American voters but not shared by the other voters in  
21 the county.

22           Again, Latinos were cohesive in support for Latino  
23 candidates in the Democratic primaries. African-Americans,  
24 however, did not support Latino voters -- excuse me -- Latino  
25 candidates in the Democratic primaries. And the other voters

1 did only one of the six times.

2 Q. Finally, Table 8. Can you summarize your conclusion with  
3 respect to Travis County?

4 A. I think we skipped 7.

5 Q. I'm sorry.

6 A. Tarrant.

7 Q. Go ahead and do 7, please. I'm sorry. I skipped ahead.

8 A. Okay. Well, my conclusion in Tarrant County is, again,  
9 that the elections are racially polarized. Latinos, again,  
10 very cohesive in their preference with -- for Latino candidates  
11 with the Democratic nomination in general elections, also  
12 Latino candidates in the Democratic primaries.

13 African-Americans, again, supported the Latino  
14 candidate, those same Latino candidates, in the general  
15 elections. However, they were not supportive of Latino  
16 candidates generally in the Democratic primaries. In fact,  
17 they supported only one of the six. And that was true also of  
18 the other voters.

19 Q. Finally, with respect to Table 8, what were -- what is the  
20 conclusion that you drew from looking at the elections in  
21 Travis County?

22 A. In Travis County I, again, conclude that voting has been  
23 racially polarized. It's the same basic pattern, general  
24 elections Latinos have been very cohesive in their preference  
25 for Latino candidates with the Democratic nomination, and also

1 Latino candidates in the Democratic primaries.

2 African-Americans, again, strongly supportive of  
3 Latino candidates in those general elections, but not -- that  
4 support wasn't present for Latino candidates in the Democratic  
5 primary.

6 And other voters, more often than not, cast their  
7 ballots for the opponents of these Latino candidates in those  
8 primaries.

9 Q. Now, before we move to the next portion of your report,  
10 can the Latino preferred candidate be of any race?

11 A. Sure. Of course.

12 Q. Turn now, please, to Page 25 of your rebuttal report.  
13 What additional work did you do in this case?

14 A. Well, in addition, I analyzed the 2010 elections to see  
15 the extent to which voting might have been racially polarized  
16 in Congressional Districts 23 and 27 and Texas House Districts  
17 33 and 78.

18 Q. Now, these --

19 A. And also looking at Latino participation in those.

20 Q. Now, are these the reagggregated statewide elections, or  
21 are these the endogenous elections?

22 A. These are endogenous elections, and they're not  
23 reagggregated in any way. These are the precinct data  
24 concerning presence of groups in the precincts and the vote  
25 cast. Now, in these areas there are very few



1 African-Americans. So I'm back to doing the bivariate  
2 analysis.

3 Q. And what did you conclude with respect to Congressional  
4 District 23 in the 2010 election?

5 A. That voting in that election was racially polarized. My  
6 estimates, as I recall, as I see here, was that the incumbent,  
7 Rodriguez, was supported by 84.7 percent of the votes cast by  
8 Latinos but just 18.1 percent of those cast by non-Latinos. In  
9 district -- did we just do 23 or 27?

10 Q. Just 23. Can you give me your turnout for 23?

11 A. Turnout for 23. Turnout is now expressed as the  
12 percentage of those turning out that was Latino. All right.  
13 And that figure based on the turnout data is 40.7 percent of  
14 the turnout.

15 Q. So does that mean that Spanish surnamed registered voters  
16 were 47 -- approximately 47 percent of the turnout in that  
17 election?

18 A. Well, it means that, among the people turning out, not  
19 registered voters -- among the people actually turning out,  
20 they constituted 40.7 percent. Now, that's not an estimate.  
21 That's a count based on the turnout data from the Secretary  
22 State's office.

23 Q. And now turn with me, if you would, to Congressional  
24 District 27. What did you conclude with respect to the 2010  
25 election in Congressional District 27?

1 A. Again, racially -- voting was racially polarized. The  
2 incumbent, Solomon Ortiz, received an estimated 86.6 percent of  
3 the votes cast by Latinos and only 15.9 percent of the votes  
4 cast by non-Latinos.

5 Q. And can you describe the turnout, please?

6 A. Yes. The turnout count indicated that in CD 27 Latinos  
7 constituted 46.72 percent of the people turning out to vote.

8 Q. With respect to House District 33, what did you conclude  
9 for the 2010 general election?

10 A. In House District 33 the incumbent, Solomon Ortiz, Jr.,  
11 estimated to have -- received 92.3 percent of the Latino vote  
12 and 11.0 percent of the non-Latino vote.

13 Q. And what was the turnout in 33?

14 A. The turnout in that district was 45.08 percent Latino.

15 Q. And finally, House District 78 in El Paso County, what did  
16 you conclude with respect to 78?

17 A. That voting was racially polarized; that -- let's see.  
18 78?

19 Q. Yes.

20 A. I believe this was, again, for an incumbent. But what I  
21 have here is Latino support for that candidate 79.6 percent,  
22 non-Latino support 28.4 percent. And the turnout in that  
23 election was 34.88 percent Latino.

24 Q. Let's turn to the issue of Latino opportunity districts.  
25 What is a Latino opportunity district for you?

1 A. Well, I'm looking for reasonable opportunity, so that's  
2 what I discuss, is a reasonable opportunity, which in my  
3 opinion is better than a 50/50 chance of being able to elect a  
4 candidate of their choice within the district. All right?

5 MR. SCHENCK: Your Honor, I'm going to object to the  
6 extent it calls for a legal conclusion.

7 MS. PERALES: Oh, no. I'm sorry.

8 JUDGE GARCIA: She's asking just for his opinion.

9 MS. PERALES: In response I would say that I'm simply  
10 seeking the opinion of Dr. Engstrom as a political scientist,  
11 without any legal meaning.

12 JUDGE GARCIA: Right. Okay. Go ahead.

13 BY MS. PERALES:

14 Q. You were talking about the opportunity to elect is the  
15 reasonable opportunity to elect in your mind.

16 A. Right. The reasonable opportunity I think has to be above  
17 50/50 but not a guarantee. It's an opportunity that I think  
18 presents itself. One could expect that more often than not  
19 they would be able to elect a candidate of their choice. But  
20 it's short of a guarantee.

21 Q. What information do you look at to determine for yourself  
22 whether a district is a Latino --

23 A. May I correct that statement?

24 Q. Please do.

25 A. I said it's short of a guarantee. It doesn't have to be a

1 guarantee. A guarantee is also a reasonable opportunity. I'm  
2 sorry.

3 Q. Thank you.

4 What information do you look at to determine  
5 whether a district is a Latino opportunity district?

6 A. Well, if it's a -- if the district in which there have  
7 been elections held, I look at what happened within the  
8 district. If there are projected districts that have yet to be  
9 put in place or have elections conducted under them, then one  
10 approach is to look at reaggregated votes from other elections,  
11 to see if people we know were preferred candidates of Latino  
12 voters, and these are people that these elections I studied in  
13 a racially polarized voting analysis. So I know they are, by  
14 and large, the choice of Latino voters. So I -- it's a  
15 reaggregation of the votes in those elections within the  
16 geographical area of the proposed district.

17 And in those I look, again -- the standard would  
18 be more often than not. In other words, more often than not  
19 they win in these reaggregated elections. The Latino that we  
20 know is the candidate of choice wins in these elections, as  
21 we -- that are reaggregated. Sorry.

22 Q. Turning back to your report then, can you share with me  
23 your conclusion regarding the number of Latino opportunity  
24 districts in the current congressional benchmark C100?

25 A. Yes. My conclusion is there are seven.

1 Q. Okay. And can you tell me what they are from your report?

2 A. I could read them in the report. I don't have them  
3 memorized. Sorry.

4 Q. Yes.

5 A. CD -- Congressional Districts 15, 16, 20, 23, 27, 28 and  
6 29.

7 Q. Since you're testifying before Dr. Alford, I'll -- and you  
8 have prepared a rebuttal report in response to Dr. Alford's  
9 report, what is your response to Dr. Alford's conclusion that  
10 CD 23 is not an effective district for Latinos in the  
11 benchmark?

12 A. Well, I don't -- now that I -- now that there's been  
13 deposition testimony, which was after I wrote this, it's clear  
14 that Dr. Alford's concept of an effective district is one that  
15 will elect a Latino, a virtual guarantee.

16 That's not what I'm looking at. I'm looking at  
17 whether they provide a reasonable opportunity. I would not  
18 take, because of the 2010 election outcomes, 23 and 27 out of  
19 the category of a reasonable opportunity to elect a Latino of  
20 choice. Both districts are above 60 percent in citizen voting  
21 age population being Latino. In fact, District 27, I believe,  
22 is 69, almost 70 percent. So there's a strong Latino  
23 concentration within those districts.

24 In addition -- now, District 23 in the composition  
25 of the benchmark plan was adopted by the Court. And the first

1 election under it was 2006. Well, in that election I believe  
2 the Latino candidate of choice defeated the incumbent in that  
3 election, and then that person was reelected again in 2008.  
4 That person did not win in 2010, which Dr. Alford I think  
5 wildly characterizes as not a good Democratic year but -- so  
6 they lost in the last election.

7           Just because they lost the last election I don't  
8 think means the district's no longer -- would provide that  
9 opportunity. And as I've seen, I would say that, given the  
10 turnout and how it was lower than the registration percentage  
11 in 23, that the opportunity was there. They -- the Latino  
12 voters simply didn't seize it.

13 Q. And with respect to 27, why did you conclude that 27 is an  
14 opportunity district in the benchmark?

15 A. Once again, it's still at 69 percent, I believe, as of  
16 2010. It's an -- it's a district that the entire decade had  
17 elected a Latino that was an incumbent. And I suspect is the  
18 Latino candidate of choice there. And the only exception to  
19 that was the last election.

20           So they won, I believe, four of the five elections  
21 contested under that district. "They," being Latino voters,  
22 elected the candidate of their choice in four of the five. It  
23 was simply 2010 that was the exception. I don't think, again,  
24 that that would take this district out of the reasonable  
25 opportunity to elect category.

1 Q. And did you conclude, looking at the endogenous 2010  
2 election in District 27, that Representative Ortiz was the  
3 Latino preferred candidate?

4 A. Yes, he was, as was Rodriguez in Congressional District  
5 23.

6 Q. Can you please turn to -- well, just stay with your  
7 report, please, Dr. Engstrom.

8                   You also go on beyond the benchmark district to  
9 conclude how many Latino opportunity districts are in the  
10 state's adopted plan, C185, and the Latino Task Force  
11 alternative, which is C190. Can you tell me how many Latino  
12 opportunity districts were in your report and which ones they  
13 are?

14 A. Excuse me. In, I think, C185, I'll just call it the  
15 adopted plan, if that's okay? In the adopted plan the number  
16 was seven, as it was in the benchmark. I believe in C190, and  
17 I'll call that the illustrative plan, the number was nine, two  
18 greater than the adopted plan.

19 Q. And with respect to your analysis whether those districts  
20 would be Latino opportunity districts, you used the  
21 reaggregated elections; is that correct?

22 A. That's correct, with a decision rule that said that they  
23 would elect more often than not.

24 Q. Would you say that Congressional District 23 in the  
25 adopted plan is a Latino opportunity district?

1 A. No. The reaggregation of the vote I think identifies it  
2 as Latino -- what we would see as Latino candidate of choice,  
3 based on the racially polarized voting analysis, wins one out  
4 of eight times. And I believe that's it.

5 Q. And with respect to plan C190, the illustrative, is  
6 Congressional District 23 a Latino opportunity district?

7 A. It's -- I think provides a reasonable opportunity to elect  
8 a candidate of choice.

9 Q. With respect to the house plans, and Page 28 of your  
10 rebuttal report, can you tell us which districts you identify  
11 as Latino opportunity districts in the benchmark?

12 A. I didn't do that for the benchmark, not for the Texas  
13 house.

14 Q. Okay. And so tell me how many Latino opportunity  
15 districts you found in the Task Force illustrative versus the  
16 adopted plan.

17 A. What I found in the adopted plan, I think -- well, let me  
18 make sure I have the number correct -- was 30 such districts,  
19 that would provide a reasonable opportunity to elect. In the  
20 illustrative plan the number is 34 districts.

21 MS. PERALES: Thank you, Dr. Engstrom.

22 I pass the witness.

23 **CROSS-EXAMINATION**

24 BY MR. SCHENCK:

25 Q. Good morning -- or good afternoon, Dr. Engstrom. How are



1 you?

2 A. Good afternoon.

3 Q. You only studied the selected counties; is that correct?

4 A. That's correct. And the 52-county area in south Texas.

5 Q. I'm sorry?

6 A. And the 52-county area in south Texas.

7 Q. That's right, which you collectively -- and let's talk  
8 about that a little bit. For the 52 counties you didn't do  
9 each county separately. You totaled up the counties and did  
10 the analysis.

11 A. I did them as a group, yes. I did not do each one  
12 separately.

13 Q. Okay. And who picked the counties and races that you  
14 looked at?

15 A. The counties were picked -- well, it was communicated to  
16 me by the attorney that I've been working under. And the races  
17 were statewide elections. I believe we did this in post-2000  
18 litigation as well. Also using statewide races allowed us to  
19 match candidates of choice to then reaggregated votes, because  
20 we would have elections that included all the people in those  
21 counties or that geographical area.

22 Q. I'm sorry. I think my question was probably unclear.

23 Who chose -- who, as between you and the  
24 plaintiffs' lawyers, chose the races that you would look at to  
25 do your analysis?

1 A. Well, the races were -- within that context the races were  
2 those that involved a choice between a Latino or a non-Latino  
3 candidate.

4 Q. Okay.

5 A. So it's between or among. And that's a decision rule I  
6 work with all the time.

7 JUDGE GARCIA: I think the question was -- I think  
8 the question is, did anyone -- which lawyer told you which  
9 races to look at?

10 THE WITNESS: I would say the choice of statewide  
11 was -- I think that was made by the lawyer, but without my  
12 objection. I believe we did the same thing in post-2000  
13 litigation. But it was also data available from the Texas  
14 Legislative Council. And it also fit the need, as I said, to  
15 identify candidates.

16 JUDGE GARCIA: Ms. Perales.

17 MS. PERALES: Well, Your Honor, only that I think Dr.  
18 Engstrom was in the middle of his answer with respect to his  
19 decisional criteria for the races.

20 JUDGE GARCIA: I understand. But the question was  
21 who gave -- what list of races were you given to look at?

22 BY MR. SCHENCK:

23 Q. Or who gave them to you?

24 A. Okay. The list of races were those identified in the  
25 statewide elections in 2010, 2008 and 2006.

1 Q. And 2006 would be for your supplemental or additional  
2 report?

3 A. Yeah. Okay.

4 Q. And was it --

5 A. And then I got a list of the candidates in those races.  
6 Candidates that I thought were identified as Latino were  
7 marked. But as I understand it now, they were identified by  
8 Spanish surname. And that list was provided to me by the  
9 attorney. It was certainly --

10 JUDGE RODRIGUEZ: Let me stop you, sir. Why don't we  
11 stop there and have another question?

12 BY MR. SCHENCK:

13 Q. Dr. Engstrom, do you know why you didn't look at the 2010  
14 Democratic primary for governor?

15 A. Yes. There's a footnote in my report about it.

16 Q. And what is -- can you remind me what that says?

17 A. Yeah. There were two Latino candidates in that contest,  
18 and they received like two or three percent of the vote apiece.  
19 They were very minor candidates.

20 Q. Okay. So you looked at candidates that were not minor  
21 candidates, in somebody's view on your side of the case?

22 A. Well, I don't think we learn anything by looking at  
23 candidates that get two or three percent of the vote statewide.  
24 I don't think they're viable candidates.

25 Q. Now, with respect to the data that we've been looking at

1 earlier, the racially polarized voting analysis, we can't say  
2 why voters preferred candidates at a given rate, correct?

3 A. That's correct. The analysis is descriptive, not causal.

4 Q. So if we were looking, again, at your El Paso chart where  
5 I think the first data point was 85.1 percent, Latino voters  
6 voting for someone for lieutenant governor --

7 A. Alvarado.

8 Q. -- you wouldn't say we know anything about why those  
9 people voted or 85.1 percent voted for that candidate?

10 A. Well, I think I said that there's no causal analysis  
11 involved. It's descriptive. It tells you what percentage of a  
12 group, a best estimate we can get, voted for a Latino candidate  
13 or for another candidate.

14 Q. So you wouldn't say, for instance, that the Hispanics as a  
15 group are monolithically selecting any Hispanic candidate whose  
16 name appears on the ballot at 85.1 percent in El Paso County?

17 A. Well, I'm not saying they monolithically supported any  
18 Latino candidate that appeared on the ballot, period, because I  
19 think there are -- period. I think there are some that may not  
20 have gotten the support of Latino voters.

21 Q. There is another variable other than race that you  
22 identify in your -- in your analysis, party affiliation,  
23 correct?

24 A. I do say that it's the Latinos in the general election  
25 with the Democratic nomination.

1 Q. And there's a very high correlation between what you  
2 identified as Latino voting preferences and affiliation with  
3 the Democratic party; is that correct?

4 A. In the general elections, primary, Democratic primaries,  
5 Republican -- well, Democratic primaries, totally different  
6 thing.

7 Q. I understand.

8 Let me get -- let me get back for a second. I  
9 believe you've testified that EI, ecological regression, is a  
10 superior method for estimating voter behavior; is that correct?

11 A. Well, EI is ecological inference. I think you made the  
12 same mistake I did earlier.

13 Q. Yes. I'm sorry. EI, in your opinion, is better?

14 A. Yes.

15 Q. Can you tell me what a linear assumption is?

16 A. Yes. It assumes -- well, basically the relationship is  
17 estimated by a straight line that fits all the precincts the  
18 best. And the prediction on that line then is that wherever  
19 you live in the city, whatever the precinct is and whatever the  
20 composition of that precinct, say Latino, non-Latino,  
21 African-American, to use example of Latinos, in every one of  
22 those precincts Latinos voted the same -- gave the same  
23 percentage of their votes to a particular candidate, such as a  
24 Latino candidate.

25 Q. Can you tell me how an exit poll works? Are you familiar

1 with exit polls?

2 A. Yes, I am. I've conducted them.

3 Q. Is -- is that a complicated process?

4 A. I would say more difficult than complicated. I mean, but  
5 exit polls -- well, you have to deal -- one, you generally  
6 can't ask a lot of questions and expect people to hang around  
7 and fill it out.

8           Secondly, exit polls have high nonresponse rates.  
9 They are known to be -- I suspect generally -- I believe  
10 generally they are the worst form of polling in terms of  
11 getting a representative --

12 Q. I'm sorry. That wasn't my question. My question -- and  
13 I'm going to object as nonresponsive and move to strike.

14           JUDGE GARCIA: I think he was answering your  
15 question. But go ahead. Go to your next question.

16 BY MR. SCHENCK:

17 Q. My question was how -- how does a poll worker get an  
18 answer -- not a poll worker. Someone conducting an exit poll  
19 get an answer from someone who just left the polling place?

20 A. Well, it can vary. But I think the best method is to give  
21 them a sample ballot, some replication of the candidates they  
22 had to choose from, and ask them to fill it out, not to tell  
23 the exit pollster but to fill it out themselves so privacy is  
24 kept. And then you put that -- they put that ballot into a  
25 fictional, I guess, ballot box, put into a box. And it isn't

1 looked at then until an analysis occurs. They don't give their  
2 name. They don't identify, you know, who they are, that type  
3 of thing.

4 Q. We're talking about exit polling now?

5 A. Huh?

6 Q. Exit polling?

7 A. Well, I mean, you could simply ask people orally: Who did  
8 you vote for?

9 Q. Right.

10 A. But that has been pretty much discredited. There were  
11 elections before involving black candidates, like David Dinkins  
12 in New York City, I think Governor Wilder in Virginia, where  
13 they found out that, you know, the early reports from exit  
14 polls were saying, oh, they were winning big. And then --

15 JUDGE GARCIA: Pardon me. But in any event, your  
16 question was, how would you best do it? And he's answered it.  
17 Give the voter a sample ballot or whatever so we can assure  
18 secrecy. Go ahead.

19 BY MR. SCHENCK:

20 Q. Well, we'll get into the date in a second. But with  
21 respect to the differences that show up in county to county --  
22 or county to county we do have some substantial differences in  
23 the data that you've identified.

24 A. From county to county, yes. It's not uniform from county  
25 to county or just south Texas. It's quite common in some

1 circumstances. I mean, there are some commonalities. There  
2 are some tendencies. But no, it's not uniform.

3 Q. Okay. Let's just look at an example, if we can. Table  
4 T4.

5 A. Can you tell me the -- I'm not going to be able to see  
6 that. My eyes aren't that good.

7 Q. I'm sorry, sir.

8 A. So if you could tell me where --

9 Q. Yeah, your report, Table T4 -- Table 4. I'm sorry. The  
10 Republican -- 2010 Republican primary contest.

11 A. Yes.

12 Q. It's Page --

13 A. Unfortunately, the tables aren't -- the page number I have  
14 here is actually -- I don't know if it's a Bates stamp, but  
15 it's PL392.

16 Q. Page 40. Page 40.

17 A. Okay. What Bates number is it, because I don't have a  
18 Page 40.

19 JUDGE SMITH: So you're asking about Table 4. Which  
20 primary? The Republican primary for what year?

21 JUDGE GARCIA: Which exhibit number?

22 MR. SCHENCK: I'm on the wrong table. Table 5. It's  
23 your last data point, Page 45.

24 THE WITNESS: Okay. Table 5 was Dallas County?

25 MR. SCHENCK: Yes.



1 THE WITNESS: Is that correct? Yes, in the last --  
2 the last election -- well, there are two in the Republican  
3 primary of 2010. Which one are you --

4 MR. SCHENCK: I'm looking at the support level you  
5 show by multivariate analysis for Victor Carrillo.

6 JUDGE SMITH: It's the very last page of Table 5?

7 MR. SCHENCK: Yes, sir. 41.7.

8 BY MR. SCHENCK:

9 Q. If we flip back -- and I'm sorry. I was looking at Table  
10 4. The table right before it, Bexar County, we see 63.2  
11 percent support for Mr. Carrillo among Latino voters in Bexar  
12 County. So that would be one example of a potentially  
13 significant difference county to county between voter behavior?

14 A. Yes.

15 Q. And since we're there, I'm just going to note, on Table T5  
16 it's interesting, seems to me, that at least in the Republican  
17 primary we have apparently 41.7 percent in Dallas County,  
18 Latino voters supporting Mr. Carrillo, 46.9 percent of  
19 African-Americans and 40.6 percent Anglo voters; is that  
20 correct?

21 A. Well, there -- technically, everybody who is not Latino  
22 and not Hispanic, African-American. I mean, not Latino and not  
23 African-American, so the category is others. It's the other  
24 voters within the electorate, the remaining voters in the  
25 electorate.

1                   I don't call them Anglo, but I do have a footnote  
2 about what percentage of the voting age population in other  
3 voters -- Anglos constitute of the other voter category.

4 Q. Thank you for that clarification.

5 A. Sorry. But I would say it's predominantly Anglo.

6 Q. As I go on, I'll call that other column Anglo, if that's  
7 all right with you.

8 A. That's all right with you. Your expert did, too.

9 Q. For counties and races that you studied, you don't say who  
10 the opponent was in these -- in your report?

11 A. No.

12 Q. Okay. Sometimes there's more than one opponent in these  
13 races, correct?

14 A. Sometimes.

15 Q. Okay. In your -- in your deposition do you recall me  
16 asking you if you agreed with Dr. Lichtman who filed an expert  
17 report in this case that Latinos seemed to prefer Democrats in  
18 general election regardless of the race of the candidate?

19 A. Latinos seem --

20 Q. In a general election Latinos seem to prefer the Democrat  
21 regardless of the race of the candidate.

22 A. Oh, I believe I don't -- I didn't look at races that did  
23 involve a Latino and non-Latino choice. So I probably said I  
24 haven't documented that. I think I may have said that -- I  
25 noticed that the total votes, sort of, or the percentage of the

1 votes seems similar. But I haven't, myself, documented  
2 anything that would indicate what the breakdown is.

3 Q. But you would agree with me the general preference for  
4 Latino voters that you studied in the counties that were  
5 encompassed within your report is simply to prefer the Democrat  
6 in the general election?

7 A. Certainly, I find strong support for Democrats among  
8 Latino voters in general elections, the Democrats that have the  
9 Democratic nomination.

10 Q. You did not, as you just pointed out I think, study any  
11 race in which there was not a Latino named candidate in the  
12 contest, either Democrat or Republican?

13 A. Right. There's one which I identify in this report with  
14 the Spanish surname. And I discovered later that she is not a  
15 Latino. But there's no contest that doesn't provide voters  
16 with a choice then in terms of a candidate with a Spanish  
17 surname and a candidate without a Spanish surname.

18 Q. Did the lawyers you're working with in this case ask you  
19 to make a comparison for a control of, let's say, the highest  
20 rates -- highest election -- highest vote count race in each  
21 one of these election cycles that you were studying so that we  
22 could compare voter behavior with and without Latino named  
23 candidates in your analysis?

24 A. No.

25 Q. Okay. That's disappointing because I asked that you could

1 do that as part of your adding a supplemental report.

2 A. Well, I wasn't asked to do that.

3 MS. PERALES: Your Honor, we -- we did have a  
4 conversation and I did talk to Dr. Engstrom, but I'm not sure  
5 if that's something that we are going to all discuss together  
6 right now.

7 MR. SCHENCK: All right.

8 BY MR. SCHENCK:

9 Q. Let's talk for a little bit about Latino voters in the  
10 general election. I'm looking at the general election data as  
11 you discuss in your report. You end up with quite a range in  
12 terms of Hispanic support for Hispanic surnamed candidates.

13 As I've gone through your charts, and I'm not  
14 making any control for party affiliation, I believe I found a  
15 high of 97.8 Latino support for a candidate named Molina in  
16 Nueces County -- and this is -- and where we have multivariate  
17 analysis, I'm looking only at multivariate data -- and a low of  
18 6.2 percent of Latino support for Eva Guzman, a Republican, in  
19 Travis County. Does that range sound about right to you?

20 A. Well, I think 97 percent, there probably was Latino  
21 support that high in one of the counties. As I recall, Guzman  
22 was not the choice of Latino voters.

23 Q. And that would be true anywhere --

24 A. And I think in the particular instance, like Travis, it  
25 was very, very low support.

1 Q. That's my -- that's the point. And my next question to  
2 you, sir, is was Eva Guzman the only Latino surnamed candidate  
3 that you studied that was a Republican in a contest that had  
4 both a Republican and a Democrat in it?

5 A. I believe there are two.

6 Q. If David -- is David Medina perhaps the other?

7 A. They are identified with an R.

8 Q. I'm talking about in the general election.

9 A. Yeah. Let me see. The table should identify -- okay.  
10 There's Medina in 2006 and Guzman in 2010, I believe.

11 Q. In the general election --

12 A. Those are both general elections.

13 Q. -- was there a Democrat facing Mr. Medina in 2006 or,  
14 perhaps, to refresh your recollection, a Libertarian?

15 A. I believe there was not. I believe the opponent was a  
16 Libertarian. And that's noted in my report as well.

17 Q. Okay. So you have one example in your report of a  
18 Hispanic surnamed Republican, but that you have studied in the  
19 general election, who was facing a Democrat?

20 A. Yes. You are correct on that.

21 Q. And in that race Eva Guzman, you would say she was not a  
22 Latino candidate of choice?

23 A. I would say? Yes, I would. I would say she -- well,  
24 excuse me, Guzman, the one -- Guzman's 2010 that had the  
25 Democratic opponent, right?

1 Q. Correct.

2 A. Okay. Yes. I don't believe she was the Latino candidate  
3 of choice. I don't think I found that in any of the counties  
4 or the south Texas area.

5 Q. And since we were talking about David Medina in 2006, he  
6 did, actually, reasonably well among Hispanics across the  
7 state, didn't he?

8 A. Yes.

9 Q. At least --

10 A. Across the state? I'm sorry.

11 Q. Well --

12 A. I don't remember that. He did in my analysis, yes.

13 Q. In most --

14 A. Not in all. I mean, there's one instance, I think, where  
15 he did not get the Latino vote. But did he do well overall?

16 Q. He got 15 percent of the vote most -- or better in most  
17 places that you studied.

18 A. I don't -- I don't recall. I don't know what he did in  
19 those places.

20 Q. Well, if we looked at your south Texas counties, I think  
21 we'd find he got 67 percent in the south Texas counties. That  
22 sound about right?

23 A. Like I said, I don't know what his total vote would be in  
24 the counties.

25 Q. Let's talk a little bit about Hispanic Republican

1 candidates and non-Latino voters. Okay? Non-Latinos appear to  
2 support Hispanic candidates at rates as high as 75 percent,  
3 according to your report, don't they?

4 A. Non-Latino support Republican candidates?

5 Q. Who happen to be Hispanic, yes.

6 A. Who are also Latino. Okay. And the question is?

7 Q. At rates to about 75 percent?

8 A. At rates of about?

9 Q. Yes.

10 A. You mean across the counties?

11 Q. Well, let's look at Table T1, your first table?

12 A. Table 2?

13 Q. Table 1, El Paso.

14 A. Okay. I have it.

15 Q. It's at Page 30 of your report, your supplemental report.  
16 You see there non-Latino voters support for David Medina in his  
17 Supreme Court race in general election?

18 A. Yes.

19 Q. At 75.7 percent?

20 A. Yes.

21 Q. Now, if we go further down to 2010, we see that  
22 non-Latinos in El Paso appear to support, according to your  
23 analysis, Eva Guzman 73.8 percent with a 90 percent -- 95  
24 percent range of -- range of 71.1 to 76.6.

25 A. Yes.

1 Q. Now, let's look also in the same page at the race for  
2 senator in 2008 general election. The candidate you identify  
3 there is Noriega who is a Democrat, correct?

4 A. Correct.

5 Q. Okay. And is -- I'll represent to you that his opponent  
6 was John Cornyn. Does that sound correct to you?

7 JUDGE GARCIA: It was. Let's go on to the next  
8 question.

9 BY MR. SCHENCK:

10 Q. Who is, I'll represent to you, an Anglo, I hope without  
11 objection.

12 A. I'm familiar with who he is.

13 Q. Do you see the level of support there among non-Latino  
14 voters at 25.5 percent?

15 A. Yes.

16 Q. So is it fair to look at El Paso at least and to say --  
17 and this is going to be a mouthful because I want to get it  
18 exactly right -- that non-Hispanic support for Hispanic  
19 Republicans is not materially different than non-Hispanic  
20 support for Anglo Republican candidates who are running against  
21 Hispanic candidates?

22 A. Anglo Republican candidates running against Anglo  
23 Democratic --

24 Q. Right.

25 A. -- Hispanic candidates?



1 Q. In other words, John Cornyn got 75 percent of the vote in  
2 El Paso County from non-Latino voters --

3 A. Okay.

4 Q. -- which is very similar to, if we can agree, the level of  
5 support that David Medina received, likewise Eva Guzman.

6 A. That receive from non-Latino voters.

7 Q. I'm sorry, sir?

8 A. From non-Latino voters?

9 Q. Yes, non-Latino voters --

10 A. Oh, okay. I see.

11 Q. -- you have supporting Mr. Medina --

12 A. So you're asking Noriega, but I have to subtract that  
13 estimate from a hundred?

14 Q. Right. I assume we come out to a hundred because --

15 A. Yes. You're correct.

16 Q. Okay. Now, we could go through the other charts and do  
17 the same thing. I think they're largely consistent across the  
18 charts. I just picked that because it's your first table. So  
19 the data will speak for themselves as we go forward. And I  
20 want to move on, if I can, and talk about non-Latino voters and  
21 Latino candidates generally, if I can.

22 In the general election, non-Latinos support the  
23 Hispanic Democrats at a variety of rates according to your  
24 tables. Is that fair?

25 A. That non-Latino voters, is that what you said?

1 Q. Yes, support --

2 A. Would support Latino candidates at variable rates?

3 Q. Yes. There's a great range of rate of support in the  
4 general election among non-Latino voters for a Hispanic  
5 Democratic candidate for office.

6 A. In general elections?

7 Q. Yes.

8 A. Well, I'd have to look at that because, as a general  
9 matter, I'm not --

10 Q. Well, let's look at -- let's look at Table T5 -- or I keep  
11 calling it T5. Table 5, Page 41 of your supplemental report.

12 Now, here we have a multivariate analysis. And  
13 I'm looking at, again, others, of which I'm going to call  
14 Anglo. And this is the level of support in the 2006 general  
15 election for lieutenant governor in which the identified  
16 candidate is Alvarado, who I understand -- am I correct in  
17 understanding is a Democrat?

18 A. Yes.

19 Q. Okay. So in the general election by your analysis we have  
20 25.6 percent of other or Anglo voters supporting the Hispanic  
21 surnamed Democratic candidate?

22 A. Correct.

23 Q. Let's jump down to -- we know David Medina is a  
24 Republican. So we'll jump down to Molina for criminal court,  
25 which I assume you mean Court of Criminal Appeals?

1 A. I do.

2 Q. And we have there 28.1 percent support from Anglo or white  
3 voters, correct?

4 A. Correct.

5 Q. And then 29.4, then the race for U.S. Senate went to Mr.  
6 Noriega, apparently, who also is a Democrat, correct?

7 A. Yes.

8 Q. And then Supreme Court Place 8, I believe it's Linda Yanez  
9 who is a Hispanic Democrat, received 29.4 percent of the vote  
10 from white or other voters.

11 A. That's the estimate, yes.

12 Q. And likewise -- well, actually, it's very similar. In  
13 Court of Criminal Appeals Place 4 the candidate is Molina. He  
14 gets almost 30 percent of -- or 28.9 percent of white support.  
15 That's a pretty substantial level of support, don't you think?

16 A. 28.9?

17 Q. Yeah.

18 A. A substantial level of support?

19 Q. In terms of crossover?

20 A. No.

21 Q. Okay.

22 A. And I don't see any variation in what you've just  
23 identified.

24 Q. Actually, I was going to go county by county with you, but  
25 I think it's not worth the time.

1                   Let's look at the Democratic primary. Let's go  
2 back to your first chart in El Paso. It's at Page 30.

3                   JUDGE GARCIA: What page?

4                   MR. SCHENCK: 30. Sorry.

5 BY MR. SCHENCK:

6 Q. Non-Latinos in El Paso seem to be voting at a pretty high  
7 rate for the -- well, they're all Democrats for the Hispanic  
8 surnamed candidates here, aren't they?

9 A. Yes.

10 Q. And we've got nearly a majority in the majority of these  
11 races.

12 A. Nearly a majority in a majority of the races?

13 Q. Okay. Well, let's go through them. 2006 Democratic  
14 primary for lieutenant governor.

15 A. Oh, you're in primaries? I'm sorry.

16 Q. Yeah. I'm sorry.

17 A. I didn't make the switch.

18 Q. We have so many different matrices, it's really hard to  
19 keep track of it. I'm trying to be specific when I speak.

20                   Yes. In a Democratic primary, non-Latino support  
21 for the Hispanic surnamed candidate for the Democratic  
22 nomination seems to be very high. Yes?

23 A. In Democratic primaries?

24 Q. Okay. Let's go through it. 2006, you're with me, the  
25 lieutenant governor race?

1 A. Yes.

2 Q. Sixty-six percent non-Latino voters?

3 A. Well, but that's the primary. That's for two different  
4 Latino candidates.

5 Q. So that's a total?

6 A. Huh?

7 Q. So that's a total? You added them up?

8 A. That's -- no, I didn't add them up. That's running the  
9 vote for the two Latino candidates.

10 Q. Okay. Who were they?

11 A. To me the significant one is the decisive primary, which  
12 is the runoff election.

13 Q. And who were those two candidates? Do we know?

14 A. Well, one, I believe, is -- this is Alvarado, and I --  
15 sorry. I don't recall the surname of the other one.

16 Q. Could it be DeLeon perhaps?

17 A. Yes, I think it could.

18 Q. Okay. And 66 percent of non-Latino voters voted for who?

19 A. Either DeLeon or Alvarado.

20 Q. Okay. So you added them up?

21 A. I didn't add them up. That's the vote for the two  
22 combined. It's a difference than adding them up. It includes  
23 both candidates in the analysis.

24 Q. I see.

25 A. I'm looking at who voted for one or the other.

1 Q. I see.

2 A. It may be functionally the same, but it's technically  
3 different.

4 Q. Thanks.

5 Then we go to the runoff, that same race. 52.4  
6 percent of the other -- or I'm sorry. Now we're non-Latino  
7 voters, support Alvarado as the candidate in that race,  
8 correct?

9 A. Correct. That's the estimate.

10 Q. And if we go down 39.7 for Mr. Noriega; 31.9 for Mr. Cruz,  
11 who if memory serves is running against Sam Houston; 44.7 for  
12 Ms. Yanez; 62.6 percent for Chavez-Thompson; and 32.2 for Land  
13 Commissioner Uribe.

14 A. Is there a question?

15 Q. Yeah. That's it.

16 A. I'm sorry. I didn't get the question.

17 Q. Did I read those numbers correctly?

18 A. Oh, I believe you read the numbers correctly, yes.

19 Q. Would you agree with me that in the Democratic primary  
20 that black voters are not cohesive and in many case don't  
21 prefer the Hispanic candidate?

22 A. Well, I'm going to say that they are not cohesive in  
23 support of Hispanic candidates.

24 Q. And when we say cohesive --

25 A. I can't say that they're not cohesive. It's just not in

1 support of the Latino candidates. Did I misspeak? I'm sorry.

2 Q. No. I think -- I want to clarify and get this question  
3 very clear.

4 A. Okay.

5 Q. When we say not cohesive, not cohesive with Latino voters  
6 and Latino voters' preference for the Latino surnamed  
7 candidate?

8 A. That's correct. They do not share that preference  
9 generally.

10 Q. And do you recall in your deposition telling me that in  
11 many cases they do not prefer the Hispanic surnamed candidates?

12 A. Yes. The analysis would show that, I believe.

13 Q. Do you remember me asking you about the Latino voting  
14 patterns in the Republican primary during your deposition?

15 A. Not really.

16 Q. Okay. Would you agree with me from your data that Latinos  
17 do not appear as to be as cohesive in the Republican primary?

18 A. In terms of the Latino candidate?

19 Q. Yes. Well, that's all you studied, right?

20 A. Well, that -- you know, okay. Which group? Non-Latinos?

21 Q. I'm sorry. Latino voters in the Republican primary --

22 A. Okay.

23 Q. -- are much less cohesive than Latino voters in the  
24 Democratic primary in their support for the Latino surnamed  
25 candidate?

1 A. I think that's generally true, yes.

2 Q. Now, you didn't do any statewide analysis, correct?

3 A. In terms of racially polarized voting across the entire  
4 state?

5 Q. Right.

6 A. No, I did not.

7 Q. You did only the counties that the attorneys in this case  
8 asked you to look at, correct?

9 A. Yes. They are counties I understand that are at issue in  
10 terms of -- creating majority minority districts.

11 Q. And are you familiar with the voting propensities within  
12 each one of the counties that you looked at?

13 A. Voting propensities in what sense?

14 Q. In terms of a preference for a Democratic or a Republican  
15 candidate in countywide elections?

16 A. No.

17 Q. Are you familiar with the general election results in  
18 statewide offices in the State of Texas?

19 A. It's not something I took a specific look at, no.

20 Q. I'm going to refer to Exhibit D35. Do you know whether or  
21 not John McCain defeated Barack Obama for President in Texas?

22 A. I believe he did.

23 Q. Are you aware that in the last election in 2010, the  
24 general election, we had contests for governor, lieutenant  
25 governor, Attorney General, all of which were statewide



1 contests?

2 A. I know you had statewide contests in 2010. I'm not sure I  
3 can tell you now that those were the offices at issue or not.  
4 I'll take your word for it.

5 Q. If I represent to you that in Texas statewide races in  
6 2010 generally we saw the Republicans win by substantial  
7 margins, let's say 60 -- as high as 64 to 45, would that  
8 surprise you?

9 MS. PERALES: Your Honor, I just have to object.  
10 We've gone way outside the scope of direct, and I believe the  
11 witness has testified he didn't look at the elections. We've  
12 stipulated to the admissibility of the election returns  
13 themselves. If the state wants to cite to them in its  
14 findings --

15 MR. SCHENCK: I have one more -- one more question.

16 JUDGE GARCIA: Okay.

17 BY MR. SCHENCK:

18 Q. If Texas is overwhelmingly, on a statewide basis, voting  
19 Republican, and the counties that you were asked to look at, El  
20 Paso, Nueces, Dallas, Travis, Bexar, Tarrant and 52 counties in  
21 south Texas are overwhelmingly voting, in countywide races at  
22 least, to elect Democrats, wouldn't that make the population  
23 you are looking at disproportionately different from the state  
24 as a whole in terms of this propensity to vote for a Democratic  
25 candidate?

1 MS. PERALES: Objection, assumes facts not in  
2 evidence.

3 JUDGE GARCIA: Well, you can come back on cross.  
4 BY MR. SCHENCK:

5 Q. Assume that's true, sir. Assume that the counties that  
6 you were asked to look at, El Paso, Nueces, Bexar, Dallas,  
7 Travis, and 52 counties across south Texas where you confined  
8 your analysis are voting very differently from the rest of the  
9 state and are voting overwhelmingly Democrat in a state that's  
10 voting overwhelmingly Republican, that would make your analysis  
11 difficult to apply on a statewide basis, wouldn't it?

12 A. I made no attempt to apply my analysis to a statewide  
13 basis.

14 Q. And if somebody else did, they would be making a linear  
15 assumption, wouldn't they?

16 A. If they were inferring that my results apply statewide?

17 Q. Yeah, or if they were trying to?

18 A. Well, I don't know -- I don't know if I'd call it linear.  
19 I'd call it extrapolating. And, I mean, I couldn't support it.

20 Q. Okay. And from a pool of information, if my assumption's  
21 correct, that you were looking at the most Democratic-leaning  
22 parts of the state to do your analysis, in a state that's  
23 voting overwhelmingly Republican, then we would see that  
24 that -- the reliability of the assumption would be called into  
25 question?

1 A. The reliability of which assumption?

2 Q. That the statewide numbers could be consistent with your  
3 countywide numbers?

4 A. Oh, I can't -- I can't support that. I don't know that  
5 they are.

6 Q. I agree with you. That's fine.

7 Now, let's talk about individual districts. You  
8 said that you did do some analysis in your supplemental report  
9 of Friday afternoon -- or I'm sorry -- Friday morning, to be  
10 fair, of CDs, Congressional Districts 23 and 27 and House  
11 Districts 33 and 78?

12 A. Correct.

13 Q. Is that correct?

14 A. Correct.

15 Q. And you did do EI analysis with respect to those  
16 districts?

17 A. I did.

18 Q. Other than those districts, you have not done racially  
19 polarized voting analysis for any districts in this state,  
20 correct?

21 A. For districts? No, I have not.

22 Q. And I'm not sure I understood your testimony, and I  
23 apologize. It's not because it wasn't clear.

24 But with respect to your conclusions in your  
25 supplemental report about the number of performing districts in

1 Texas, you say the current map C185, we have seven; is that  
2 correct?

3 A. I make no conclusions about performing districts.

4 Q. You make a conclusion about opportunities?

5 A. Reasonable opportunities to elect.

6 Q. Okay. And you do not include District 23 as a district in  
7 which there was a reasonable opportunity to elect on plan C185?

8 A. The adopted plan?

9 Q. Yes.

10 A. Correct. I do not conclude that CD 23 in the adopted plan  
11 provides a reasonable opportunity.

12 Q. But you conclude that on a benchmark, the earlier plan,  
13 there was an opportunity to elect a Hispanic candidate of  
14 choice?

15 A. In CD 23 in that plan?

16 Q. Yes, sir.

17 A. Yes. I would say there was a reasonable opportunity to  
18 elect.

19 Q. Okay. Do you -- are you aware of whether the proportion  
20 in terms of percent of overall voter age population increases  
21 for the Hispanic population of CD 23 from the earlier map to  
22 C185 --

23 A. On the benchmark?

24 Q. Yeah.

25 A. I do not know. I know it's a majority citizen voting age

1 population. I don't know what the comparison is.

2 Q. Okay. If there was an opportunity to elect, as you  
3 understand it, in CD 23, and it elected a Republican, what  
4 happened?

5 A. Okay. If there was an opportunity to elect --

6 Q. Uh-huh.

7 A. -- a Latino Republican?

8 Q. Well, let me ask it this way. We had a federal court here  
9 once before. It configured CD 23 with high concentrations of  
10 Hispanic voters in order to provide an opportunity to elect a  
11 minority candidate of choice.

12 A. I understand that.

13 Q. And we just had an election, and it didn't do it. And we  
14 just increased the Hispanic population in the district, and  
15 you're telling me that that's not an opportunity district?

16 A. Yes. And I've already told you why, because of the  
17 reaggregation of the votes in that district, the Latino  
18 candidate wins, I think, one of eight or something like that.

19 Q. In the current configuration?

20 A. No, the new configuration -- in the current configuration?

21 Q. Yeah, under the new configuration, sir.

22 A. Like I said, that had elections for U.S. House in it. Why  
23 do I have to look at reaggregated votes? We're not projecting  
24 on the old CD 23. We had it. We have results of it.

25 Q. So in your analysis the new C185 elects a Hispanic

1 candidate of choice one out of eight times?

2 A. I believe the reaggregation of the vote indicated that.

3 Q. What did it indicate with respect to the benchmark, if I  
4 might ask? C100.

5 A. The reaggregated vote?

6 Q. Yeah.

7 A. Oh, I --

8 Q. Was it more?

9 A. I don't know. I'm not interested in looking at  
10 projections for a district that's been in place and has  
11 elections in it.

12 Q. Okay. Well, was it more than four out of eight times?

13 A. I don't know.

14 Q. You can't tell me if it was, as it was configured before,  
15 whether it would have constituted a minority -- a minority  
16 opportunity district if it had been -- if its boundaries hadn't  
17 been moved at all?

18 A. I'm sorry. I've already said that I think it creates a  
19 reasonable opportunity -- the District 23 in the benchmark plan  
20 provided a reasonable opportunity to elect. I base that on the  
21 fact that it is over 60 percent citizen voting age population  
22 Latino and the fact that it has already elected twice the  
23 Latino candidate of choice. Now, I don't care about  
24 reaggregated votes in other elections when I have votes in CD  
25 23.

1 Q. But to do a valid reagggregated election analysis, wouldn't  
2 you look at more than just the two congressional elections?  
3 Wouldn't you look at the presidential elections in that  
4 district?

5 A. Well, I'm not reagggregating votes in CD 23.

6 Q. Did you testify earlier that CD 23 was effective because  
7 the Latino preferred candidate had won four out of five  
8 elections?

9 A. In CD 27 I believe it was.

10 Q. CD 27. Okay. Which elections were those -- were won by  
11 Latino candidates of choice?

12 A. I believe in 2002, 2004, 2006, 2008.

13 Q. And you're talking just about congressional elections?

14 A. In that -- in CD 27, yes.

15 Q. Can you tell me what's happened to Texas' Hispanic  
16 population over the last decade?

17 A. It's grown.

18 Q. And despite the growth in 2010, both of those districts  
19 voted for Republican?

20 A. Well, I don't know about -- you said Hispanic growth in  
21 Texas, which I understand accounts for roughly two-thirds of  
22 the total growth in Texas. I don't know anything about the  
23 growth -- I mean, the particular districts. I don't know how  
24 they changed from 2000 to 2010. I know that CD 23 and CD  
25 twenty -- I know -- and 27, I know what they were in 2010.

1 Q. And can you remind me, again, the four out of five  
2 elections that you said CD 27 performed for the minority  
3 candidate of choice? 2002, 2004?

4 A. 2004, 2006, 2008.

5 Q. Okay. Did you do any analysis in your racially polarized  
6 voting analysis here to determine who was a minority candidate  
7 of choice in 2002 or 2004?

8 A. Well, I had -- I know that the incumbent was there in --  
9 was the choice in 2010. I know that this had been a long-term  
10 incumbent. I did not do a specific analysis, although I did  
11 study south Texas in the previous case so -- and I think I  
12 said -- I mean, I think this candidate was a candidate of  
13 choice. I have not documented that with a racially polarized  
14 voting analysis each of those years.

15 Q. Thank you, Dr. Engstrom. I appreciate it.

16 Thank you.

17 JUDGE GARCIA: Ms. Perales?

18 MS. PERALES: No redirect, Your Honor.

19 JUDGE GARCIA: Okay. Thank you, Doctor. You're  
20 excused.

21 If you'll call your next witness.

22 MS. PERALES: Your Honor, we need to switch up the  
23 order a little bit and call one of our lay witnesses who's been  
24 outside all day.

25 JUDGE GARCIA: That's fine.



1 MS. PERALES: And I think I've probably gone to hell  
2 for making my next lay witness stay outside in the hallway all  
3 day.

4 JUDGE GARCIA: All right.

5 MS. PERALES: Latino Task Force plaintiffs call Joe  
6 Bernal.

7 (Witness enters)

8 THE CLERK: Would you please raise your right hand,  
9 sir?

10 (The oath was administered)

11 **JOE BERNAL, PLAINTIFF'S WITNESS, SWORN**

12 **DIRECT EXAMINATION**

13 BY MS. PERALES:

14 Q. Good afternoon, Senator Bernal.

15 A. Good afternoon.

16 Q. Could you please state your name for the record?

17 A. Joe J. Bernal.

18 Q. And where do you live?

19 A. In San Antonio, Texas.

20 Q. And how long have you lived in San Antonio?

21 A. Eighty-four years.

22 Q. Where were you born?

23 A. In San Antonio.

24 Q. And so you've spent your whole life in San Antonio?

25 A. Something like that, yeah.

1 Q. Very quickly. Tell me a little bit about your background,  
2 or what neighborhood did you grow up in?

3 A. Deep west side San Antonio on South Patricio. It doesn't  
4 exist anymore.

5 Q. What sort of house did you live in, let's say, during your  
6 early teen years?

7 A. Three, four-room house, frame house.

8 Q. And what was the housing like on your block?

9 A. Substandard by everything that I've read.

10 Q. What was the racial composition of the schools that you  
11 attended?

12 A. J.T. Brackenridge on Brazos and Guadalupe, a hundred  
13 percent Mexicano, Lanier High School, junior high school,  
14 likewise about 98 percent pure -- pure Mexican.

15 Q. What high school did you go to?

16 A. Lanier, Sidney Lanier.

17 Q. What did your parents do for a living?

18 A. My father was a laborer with the railroads when he lived.  
19 He died when I was 11.

20 Q. And did you work when you were a young kid?

21 A. Oh, yeah.

22 Q. What did you do?

23 A. Shined shoes, unload trucks coming to the market, sold  
24 candy in a neighborhood -- Progreso Theater.

25 Q. And after high school, what did you do?

1 A. I got a scholarship under the federal program, went to  
2 Texas Tech for a semester and to New Mexico for a semester. I  
3 was supposed to be an engineer. And then I came home and  
4 registered to go into World War II in 1940 -- '44 or '45, '45.

5 Q. And so did you go overseas with the military?

6 A. Yes. I spent most of my time overseas.

7 Q. What was it like when you returned?

8 A. Same as when I left, unfortunately, as far as I didn't see  
9 much change. But within a couple of months I was registered to  
10 go to college.

11 Q. And tell me very briefly, what was the treatment of  
12 Mexican-Americans when you were growing up and when you were a  
13 young person?

14 A. Well, in San Antonio, south -- the south side had a hot  
15 springs swimming pool, and we weren't allowed there. I  
16 remember going and saying -- there were about five of us that  
17 went, and I never forgot it. You and you can come in, but not  
18 you and you and you. And they were basically pointing out skin  
19 color. The lighter ones could come in, but the darker ones  
20 couldn't.

21 And then if we went to the north side of San  
22 Antonio, which was Woodlawn at that time, and I'm talking about  
23 1940s, there was no reason that you couldn't go in, except that  
24 there was a lot of name calling and you could be assured of  
25 getting into a fight, that they would pick on you because they

1 didn't want you back in there.

2 Q. Did you see segregated restaurants when you were a young  
3 person?

4 A. Not in San Antonio, no.

5 I worked -- I worked at Guadalupe Community Center  
6 with kids for some time during the time that I was going to  
7 college. And I guess the worst experience that I ever had was  
8 taking some kids to Landa Park in New Braunfels and walking  
9 into a restaurant. And all these kids, I'd say about 20 of  
10 them that I was taking, asked me, are we being discriminated?  
11 Because we couldn't eat in the front of the restaurant. And I  
12 said yes, you are. Do you want to leave? We can't eat here.  
13 But they offered us food in the back. And this is in New  
14 Braunfels in 1945, '46. And they said, are we being  
15 discriminated? I said, yes, you are.

16 And when I was at Tech in this special program  
17 that I went to, Roy Barrera and George San Miguel and myself  
18 were swimming with a group of students that we were enrolled in  
19 Texas Tech. And we were an unusual group, but we went swimming  
20 at the swimming pool that was city owned in Lubbock. And it  
21 had a fence all the way around.

22 And we were swimming, and some guys reached over  
23 and said, in Spanish, you speak Spanish? Oh, yeah, yeah. How  
24 come they let you in? I said, what do you mean, why come they  
25 let you in? They let us in. He says, we're not supposed to

1 come in except on Thursday. And it really -- I wasn't stupid,  
2 but naive maybe. I says, why Thursday? He said, that's when  
3 they open -- that's when -- after you swim on Thursday, that's  
4 when they empty the pools and clean it out for the weekend. I  
5 never forgot that.

6 Q. When you were at Lanier, tell me about the ribbons they  
7 would hand out.

8 A. Oh, every Monday, I said that -- I've often said that I  
9 was with the La Pelache Corps because we were the cops on the  
10 beat for the student council. And we would issue ribbons to  
11 all the students. And the ribbons said, I'm an American, I  
12 speak English. And being part of the student council, if you  
13 caught people speaking Spanish, you were to take his ribbon  
14 away from him. So we were the cops on the beat. And we would  
15 do that. We weren't liked for it. But if you caught somebody  
16 speaking Spanish, you could take the ribbon away from them,  
17 turn it into their English teacher, and they would get demerits  
18 for speaking Spanish on the grounds. It was under the no  
19 Spanish rule.

20 Q. Did you complete college?

21 A. Oh, yes.

22 Q. What other degrees did you get?

23 A. Minor graduate at Trinity, my masters degree at Our Lady  
24 of the Lake, and my Ph.D. at the University of Texas in Austin.

25 Q. And were you elected to office?

1 A. Yes. I was elected to office in 1960 -- '64. A group of  
2 businessmen from the west side in San Antonio asked me to run  
3 with a -- with a group of people that were running. I had no  
4 reason to want to run. I have always -- I had always enjoyed  
5 reading about politics and being involved at the local level  
6 and political things that interested me. But I never saw  
7 myself as a candidate. And they asked me to run. And I said,  
8 I don't have any money, and I don't have any reason to want to  
9 run. He says, but we need you.

10 So I ran on the ticket with five other people --  
11 six other people, two Hispanics and five Anglos. And I was the  
12 only one that won. And that threw me into the public area, and  
13 I became a state representative in '64.

14 In '65, after -- after the one man, one vote and  
15 all that kind of stuff that happened, we ended up with two  
16 senate districts in Bexar County, one on the west side and one  
17 on the east side. Prior to that, we only had one senator cover  
18 the entire county. And I ran on a -- what was the west side  
19 district, District 26, which is District 26 now. And I won.

20 (Change of reporters at 5:11 p.m.)

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Q. And did you ever pay a poll tax?

A. Oh, yes. Yes. That was '75, sure. I grew up with that. Well, after I became 21, that I could vote, yeah. We paid \$1.75 for it, and one of the -- one of the bills that I had -- and this is before the feds did the job, I had introduced a bill to do away with the poll tax, but the federal level took care of that, and the Senate gave me the opportunity -- well, I mean, at that time, I was in the Senate. They gave me the opportunity to run a resolution to endorse the federal change.

Q. And do you recall ever engaging in annual reregistration for voters?

A. Well, that was one way of keeping people from voting, I felt, and we went through that change when I was in the -- I didn't create that change. I didn't propose that change, but we acted on it and voted on it to change the yearly registration.

I did have one, one bill that helped on that, but, basically, we would register every year. No poll tax, but we would have to register every year to be able to vote, no permanent voter registration. And there were a lot of organizations that were pushing for permanent voter registration and the legislature was able to pass it.

Q. Now, is the west side of San Antonio still Latino?

A. Very much so, yes.

1 Q. And is the south side of San Antonio still Latino?

2 A. It wasn't then. Not during my time in high school, in  
3 junior high school. We had more fights in sports with  
4 southsiders than we had with the northsiders, but they used to  
5 call us all kinds of names, because we used to beat them in  
6 basketball all the time. I didn't play basketball, but --

7 Q. But today, how is the south side?

8 A. Today, we have expanded our west side into the southwest  
9 side, the northwest side and the west side.

10 Q. How would you compare the west side and the south side to  
11 Alamo Heights?

12 A. I made a comparison between Edgewood in a paper for my  
13 master's degree, comparing the income supporting Edgewood, and  
14 the income, because it is based -- locally, it is based on  
15 property values.

16 Locally, it is based on -- if you want to support  
17 your school district, it is how much money you can get from  
18 taxing your local -- your local property owners, besides what  
19 the State offers, and the comparison was just awful.

20 I mean, I won't go into any details, except that  
21 there was a big difference between how much money, when you  
22 raised taxes in Edgewood, the small amount of money compared  
23 to the amount of money that you could raise for raising the  
24 tax in Alamo Heights. The difference was just great.

25 Q. And who had the financial advantage there?



1 A. Alamo Heights, certainly, because they had more expensive  
2 homes, more expensive businesses. Edgewood didn't have a lot  
3 of businesses and their homes averaged out at about \$20,000 at  
4 that time. You could buy a house in Edgewood for 20,000. You  
5 couldn't buy a house in Alamo Heights for \$20,000. It would  
6 be 120,000.

7 Q. And just for the record, you said you lived on the west  
8 side?

9 A. It is part of the -- when they had urban renewal in San  
10 Antonio downtown, a lot of the people were pushed towards the  
11 west, and it created -- it created what used to be -- Edgewood  
12 wasn't a Mexicano district. It was more for the farmers who  
13 lived out there, but because of the urban -- used to call it  
14 urban removal. A lot of the poor people that lived close to  
15 downtown were removed, and they ended up out in Edgewood, and  
16 they built low-income housing, and that became Edgewood.

17 Q. How well do you know the southeast Austin area?

18 A. Well, I lived in Austin for eight years that I served in  
19 the legislature, and I have known a lot of people. That  
20 doesn't mean out of Austin. There are a lot of comparable  
21 things that I would notice going to Austin and living there  
22 and eating there and staying and going to different functions  
23 in east Austin with some of my friends, elected officials from  
24 the Austin area. There are a lot of similarities.

25 Q. Were there similarities in the quality of housing?

1 A. Perhaps not as bad, because I was able to see in San  
2 Antonio and to live in the type of housing in San Antonio  
3 during my lifetime. But, yes, you know, just looking at it,  
4 from an outsider's viewpoint, from traveling around east  
5 Austin, the similarities, no yards in the front, big fences,  
6 enclosures, and plants in the front, no yard, no green grass  
7 that you could mow. Yes, those similarities, they were  
8 obvious.

9 Q. And what about in terms of people's economic situation?  
10 Would you see similarities between southeast Austin and the  
11 south side, west side of San Antonio in their economic  
12 situation?

13 A. Well, just knowing and talking to people in Austin, I  
14 would say that they have the same problems we had. Whatever  
15 jobs they could get were the jobs that paid less, because they  
16 were not as educated, just like we were in San Antonio. We  
17 didn't have the educational level that other communities had,  
18 where they could get a better job because they were better  
19 educated, whatever.

20 Q. Now, I don't know if you can see the map very well there.  
21 That is a portion of a congressional proposed district, with a  
22 district that runs from the south side, west side of San  
23 Antonio to southeast Austin.

24 Would you say that those two areas have enough in  
25 common to be combined in a congressional district?

1 A. Well, what I know about Austin is what I know about west  
2 side San Antonio, south side San Antonio. There is a lot of  
3 commonality of interests, yes. Yes, very definitely.

4 Q. And in terms of Alamo Heights, which we discussed a moment  
5 ago -- can you put C-185 up for me, please, in the same area?  
6 With respect to Alamo Heights, which is in the State's adopted  
7 congressional plan, connected in congressional District 21 to  
8 the Barton Springs area of Austin, on the west side of I-35,  
9 would you say that people on the south side and west side of  
10 San Antonio have more in common with people in Southeast  
11 Austin than they do with people in Alamo Heights?

12 A. Sure. In fact, one of the things that got me out of  
13 office was the fact that they wanted to stick Alamo Heights in  
14 my district, and in that same area that I recognize very well,  
15 it doesn't fit the west side or the east side, as far as  
16 commonality of interests with what I see in Austin, on the  
17 east side of Austin.

18 MS. PERALES: Thank you. I pass the witness.

19 MR. MATTAX: No questions.

20 JUDGE GARCIA: Okay. Thank you, Senator. You are  
21 excused.

22 THE WITNESS: Thank you, sir. Thank you, Judge.

23 JUDGE GARCIA: Your next witness.

24 MS. PERALES: The Latino Task Force plaintiffs call  
25 Dr. Andres Tijerina.

1           Your Honor, we need to call another lay witness,  
2 because he is from out of town.

3           JUDGE GARCIA: That's fine.

4           MS. PERALES: I am sorry. The Task Force plaintiffs  
5 call Alex Jimenez.

6           JUDGE GARCIA: Okay.

7           COURTROOM DEPUTY: Would you raise your right hand,  
8 please.

9           (Oath administered to the witness.)

10          COURTROOM DEPUTY: You may have a seat. Thank you.

11          MS. BONO: Good afternoon, Your Honor. Marisa Bono  
12 on behalf of the Latino Task Force plaintiffs.

13                               \*-\*-\*-\*-\*-\*-\*-\*

14                               DIRECT EXAMINATION

15          BY MS. BONO:

16          Q. Good afternoon, sir. Can you state your name for the  
17 record, please.

18          A. My name is Alex Jimenez.

19          Q. And can you please tell the court where you live, Mr.  
20 Jimenez?

21          A. I live at 245 Willow Ridge Road in Fort Worth, Texas.

22          Q. What county is that in, sir?

23          A. It is Tarrant County.

24          Q. And how long have you lived in Tarrant County?

25          A. In Tarrant County, I have lived probably since '83, so

1 that is about 28 years. That is about how long I lived in  
2 that house.

3 Q. And what is your current occupation?

4 A. I am kind of semiretired.

5 Q. And before you were retired, how were you employed?

6 A. I worked for TXU. I was there -- TXU is a former electric  
7 company, and it is diverse -- it sold off, but I was there 34  
8 years.

9 Q. I would like to talk a little bit about your background,  
10 Mr. Jimenez. Where were you born?

11 A. Just outside of Marshall. It is a little town called  
12 Jonesville. I don't think it is there anymore. Actually, I  
13 lived -- I was born on a railroad boxcar, and my dad worked  
14 for the railroad, Texas Pacific Railroad. And the men's  
15 families lived on the boxcars, and they traveled from El Paso  
16 to -- almost to Shreveport, just back and forth, wherever the  
17 workers needed.

18 So on July 27th, 1952, we were parked, that train  
19 was parked right outside of Marshall, Texas. We probably  
20 weren't there very long, because that train moved a lot. I  
21 mean, you can imagine that you could be in Big Spring one day  
22 and something happened in Abilene, and when everybody got  
23 home, the train moved at night, and you would wake up in  
24 another town. So I am assuming that I wasn't there very long.

25 Q. If you were moving around during your childhood, where did

1 you attend school?

2 A. Well, I got to -- well, it is always hard for me to say  
3 this, because I lived on that boxcar for six years. My oldest  
4 brother, for example, went to 52 different public schools, and  
5 he is 14 years older than me, so he was going to school before  
6 I was born. My father was killed in an automobile accident  
7 when I was six. We wound up in Eastland, Texas, near Abilene.

8 Q. You said that Eastland is near Abilene?

9 A. Abilene.

10 Q. And did you attend public school in Eastland?

11 A. Yes. I started actually the first grade at Fort Worth,  
12 but after my dad died, we moved to Eastland, and I went to  
13 Eastland schools from first grade through twelfth grade.

14 Q. And did you work as a child?

15 A. No. I didn't have to work as a child. After my dad died,  
16 everybody else in my family had to work. I was one of the  
17 youngest. I was, you know, six years old. I had a younger  
18 brother, a younger sister, so we all -- all my older brothers  
19 and sisters -- and I have got eight sisters and five brothers.  
20 They all had to work, and they worked hard.

21 I remember after we first moved to Eastland that  
22 things were different, if you will. And if you are in a  
23 boxcar environment, and you have the same people year-round,  
24 you are not exposed to the world, if you will.

25 Moving to Eastland, my first recollection of

1 Eastland, in growing up there, was everybody got up early one  
2 morning to go pick cotton. Of course, I was too young, so I  
3 couldn't pick cotton, so I played at it, but I really didn't  
4 work.

5 But I have sisters that were 12 and 13 years old,  
6 and they picked cotton all day long. And I don't know if  
7 anybody has ever picked cotton, but you don't want to do it.  
8 And they did it. And at the end of the day, it was almost  
9 dark, my oldest brother, who became the man of the family,  
10 after my dad died, went to go pick up the money, and he  
11 counted it, and he said: This isn't all the people that  
12 worked. We had more people working than this.

13 And the guy -- and, again, I won't ever forget this.  
14 He had khaki pants on, a khaki shirt, a hat and a cigar, and  
15 he said: We don't pay little girls to work.

16 And my brother turned around, walked away. You  
17 know, got the money and walked back to the car. And I asked  
18 him: How come you didn't beat that guy up? Because he could  
19 have.

20 And he said, because we wouldn't be able to work  
21 tomorrow, because he came back and worked the next day. So I  
22 learned then that this was going to be a different place to  
23 live and grow up.

24 Q. What was it like growing up as a Latino in Eastland?

25 A. Well, it was different, because there were only six

1 Hispanic families. I didn't have the culture, obviously, of  
2 San Antonio. It was only six Hispanic families. So in first  
3 grade, my friends were cowboys, and probably -- I get a lot of  
4 teasing about my accent, you know. My friends were cowboys  
5 and ranchers.

6 I grew up with them from first grade through high  
7 school. But it was different, because when I went to first  
8 grade, I was introduced as Alex "Jim-"enez, so my name was  
9 "Jim-"enez, until I left Eastland, when I graduated from high  
10 school.

11 And what was funny about that, I was an all-state  
12 football player, so on my senior year, the principal of the  
13 high school announced football games, and he would say: On  
14 attack was number 52, Alex Jimenez.

15 And then the people in town -- there are 3,500  
16 people in Eastland -- would say: Why don't you tell Mr.  
17 Marshall how to pronounce your name correctly?

18 And I would go: Okay, I will. And he was the only  
19 one in the whole 3,500 that pronounced it right. But when I  
20 left Eastland, I introduced myself as Alex Jimenez.

21 Q. And let's talk a little bit about life after you left  
22 Eastland. Did you attend college?

23 A. Yeah. Actually, I went to work -- I graduated from high  
24 school on a Friday, and I went to work for the TXU Monday  
25 morning, and I was 17 years old. My first job was digging the



1 holes you put the poles in.

2 And, again, even then -- and these were nice people,  
3 but the foreman on the truck I worked on, I was a helper, and  
4 I dug holes, but the foreman would always call me Pepper  
5 belly. Pepper belly, go get this. Pepper belly, go get that.  
6 Well, you just bite your tongue and you go get this and you go  
7 get that and you do the work.

8 But that was always -- in a town like Eastland,  
9 where, obviously, there was a small Hispanic community, that  
10 was something that you just learned to look the other way when  
11 people said things like that.

12 Q. You mentioned a problem that your brother had with his  
13 paycheck when you were growing up. Did you have any problems  
14 like that when you became a professional?

15 A. Oh, yeah. As I started working for the company, and then  
16 I saw other folks have office jobs, I asked: How did they get  
17 that job? They said: Well, they are going to college.

18 Well, two weeks later, I was a freshman at UTA. And  
19 I went there, and they had a program where you worked a  
20 semester and then you went to school a semester, so I finished  
21 the two-year program, and they transferred me to Snyder. And  
22 as you move from town to town, you open checking accounts from  
23 place to place, and it was -- I learned real quick that if I  
24 went in person and if they saw me that I was treated  
25 differently than if I called on the phone, because when I call

1 you on the phone, you don't sound -- I don't sound like I  
2 look, and -- but when I went in person, I would have to wait,  
3 and then it was like a real ordeal to open a banking account.

4 I mean, if you had a check from TXU, it was still  
5 hard, because they wanted all kinds of information and they  
6 weren't very customer friendly. Okay? But if I called ahead  
7 of time and I talked to them on the phone, I said, "I need to  
8 open a checking account. Here is where I live. Here is who I  
9 work for. Here is how much I make," that it was easier to do  
10 it that way than it was to go in person.

11 Q. Well, how do you know not everyone is treated that way?

12 A. Well, because, you know, I would -- for example, when I  
13 worked in Snyder, after I had been there about a year, we  
14 hired a guy just out of high school. And when he first got  
15 paid, we went to the bank, and he was ahead of me to cash our  
16 checks.

17 They cashed his check with no problem. I went next.  
18 It was more money. You know, I had been there longer. I had  
19 been to that bank before, and they wanted to see my ID before  
20 they cashed it, but they didn't check his ID. And it was  
21 just -- just things like that that make you feel like you are  
22 going to be treated a little bit different.

23 Q. Did you continue working for TXU?

24 A. Yes.

25 Q. And how far did you go with the company?

1 A. For the last twelve years, I was a vice president for the  
2 company. They moved me around quite a bit. And just a couple  
3 of stories about that, about kind of the way you are treated a  
4 little bit differently.

5 When I moved to Snyder initially, you know, I  
6 finished -- I had an associates degree. I got there. The guy  
7 that I was working with had the same degree, had the same  
8 two-year degree. We had the same title. I was now an  
9 engineering assistant, and he was too.

10 But for the first six months -- and this is a guy  
11 who is a real good friend of mine -- he would call me his  
12 helper. He would introduce me: This is Alex. He is new. He  
13 is my helper. He is my helper.

14 And after about six months, I said: Frank, we have  
15 got the same degree. We have the same job title. Why am I  
16 your helper?

17 I mean, I was a helper when I got out of high  
18 school. And he said: You know what? You are right. I  
19 apologize. I shouldn't -- you are an engineering assistant.

20 I think he just thought that I was not at the same  
21 level that he was. When I -- and you would think that that  
22 would not -- eventually, you outgrow that, but after I made  
23 vice president, I mean, I was very -- I mean, that is a great  
24 day.

25 The first week, I got tons of phone calls from

1 people throughout the system, because we were in a third of  
2 the state of Texas, and I worked in a lot of different cities,  
3 so I was getting a lot of phone calls saying:

4 Congratulations. We need to do it. We are happy for you.

5 But during that week, twelve of those calls, because  
6 I counted them, were from someone saying: You know, I talked  
7 to so and so -- and it was always an Anglo manager in the  
8 company. And he said: I talked to so and so, and he said  
9 that he was supposed to get that vice president job, but they  
10 needed a Mexican to be a vice president.

11 And I was the first Hispanic vice president of the  
12 company. So the last one, I said: Well, you know, I am going  
13 to talk to my CEO about getting a raise.

14 He goes: Why?

15 Because I must be doing the job of twelve men,  
16 because they all think they deserved this job. And that is  
17 the kind of way you learn to accept things like that, that  
18 there is going to be something that you can't touch, you can't  
19 really identify, but you know it is there.

20 Q. Are you politically involved in your community --

21 A. Yes. I have always been involved politically. By my  
22 early twenties, I started working the political campaigns. I  
23 followed -- I don't know. I have lost count on how many. I  
24 worked school board races, city council races, county  
25 commissioners, judges, senators, governors, a lot of different

1 races.

2 Q. And have you worked on races for both parties?

3 A. Yes.

4 Q. And have you contributed to races as well?

5 A. Yes.

6 Q. Do you typically contribute to races for both parties?

7 A. Yes.

8 Q. Do you donate to candidates?

9 A. Yes.

10 Q. Do you donate to candidates for both parties?

11 A. Yes.

12 Q. In your experience, what makes you want to support a  
13 political candidate?

14 A. I meet the candidate every time. You know, initially, I  
15 would go to a fund raiser. I would go to a meeting to meet  
16 the candidate, find out what their issues were. And I guess I  
17 always went by, why is this person running for office? Are  
18 they running for the right reasons?

19 And if they fit my values, yeah, I will help them.  
20 If they don't, I won't help them.

21 Q. Have you worked to support the Latino community?

22 A. Oh, yes.

23 Q. And can you describe your work briefly for the Court?

24 A. I have always been involved civically and politically in  
25 the areas I worked. Again, I have worked in Eastland, Big

1 Spring, Snyder, different areas of the company. So everywhere  
2 I have ever been, I volunteered, Rotary Clubs, United Way,  
3 whatever it was.

4 When I moved to Fort Worth, I was asked to be part  
5 of the Fort Worth Hispanic Chamber, and then when I was made  
6 vice president, and then worked in Dallas, I was elected to be  
7 the chairman of the Dallas Hispanic Chamber, so I am the only  
8 person that has ever been the chairman of the Fort Worth  
9 Hispanic Chamber and the Dallas Hispanic Chamber.

10 And my whole goal was, in my opinion, was to help  
11 Hispanic businesses. And I feel like if we help Hispanic  
12 businesses, it is helping really everybody, because there are  
13 500,000 Hispanic businesses in Texas. 98 percent of them are  
14 really small businesses, so if I can influence legislation or  
15 if I can help find a way, a program to help Hispanic  
16 businesses, it can apply to any small business, whether it is  
17 Anglo, Asian, African-American, woman-owned.

18 Q. Are there any other issues that are sort of near and dear  
19 to you in terms of your advocacy work in the Latino community?

20 A. Yes. You know, the first speech I ever gave is when I was  
21 elected to chairman of the Fort Worth Hispanic Chamber, and I  
22 have given this speech a lot. In fact, the last time I gave  
23 it was about three weeks ago.

24 But I call it my 3 E speech. And 3 Es, I think  
25 everybody grew up talking about the 3 Rs. But the 3 Es are

1 economic development, education, and everybody. And without  
2 those three, if you will think of them as the legs of a  
3 three-legged stool. If all three are not in place, you don't  
4 have a very strong community. Because if you have a strong  
5 economy, but a very weak education system, what you are going  
6 to have is a lot of jobs and no one able to take those jobs.  
7 And if you have a strong education system and a very weak  
8 economy, what you are going to do is have a lot of smart  
9 people out of work.

10 Q. Sir, can you pull up 363, please. You mentioned earlier  
11 that you supported candidates from both parties, Mr. Jimenez.  
12 Can you name some of the recent candidates that you supported  
13 either by working on their campaigns --

14 A. The last one I helped was the mayor of Fort Worth. She is  
15 the former tax assessor in Tarrant County, and she is a  
16 Republican. And before that, a young lady who I have known a  
17 long time decided to run for county clerk. Her name is Mary  
18 Louise Garcia, and she ran as a Republican, and I helped her  
19 campaign, and she got elected.

20 Q. Thank you. I am showing you what has been marked and  
21 admitted as Exhibit 363.

22 MS. BONO: And, Your Honor, this is 363 in Volume 8,  
23 if you are interested in looking at it a little bit closer.

24 BY MS. BONO:

25 Q. Can you see that all right, Mr. Jimenez? Or do you want

1 to look at a copy of your own?

2 A. I think I can see it.

3 Q. Okay.

4 MS. BONO: Your Honor, may I approach to give him a  
5 pointer?

6 JUDGE GARCIA: Yes.

7 THE WITNESS: Is there a cat in the room?

8 BY MS. BONO:

9 Q. So, Mr. Jimenez, this is congressional District 6 in the  
10 Latino Task Force plaintiffs' proposed plan.

11 Are you familiar with the geographical areas  
12 represented in this district?

13 A. Yes, ma'am.

14 Q. And how are you familiar with the communities represented  
15 in this district?

16 A. Well, in Fort Worth, this area here, I, obviously, worked  
17 there for TXU, and I was the chairman of the Fort Worth  
18 Hispanic Chamber, and I served on several boards, United Way,  
19 the Fort Worth Visitors Bureau, a lot of different boards from  
20 '83 to '92.

21 '92, the company put me on a task force in the  
22 headquarters in Dallas, and then they kept -- promoted me to  
23 vice president, and I stayed over there from '92 to 2005 and  
24 knew the area well, and I got -- I was chairman of the Dallas  
25 Hispanic Chamber.



1 I was on a leadership council. I chaired the  
2 alumnae association. Believe it or not, I was on the advisory  
3 board of the Junior League of Dallas. I don't know why, but I  
4 was. And so I am real familiar with these areas.

5 And the reason I point that out is that as chairman  
6 of the Hispanic Chamber, I was trying to help Hispanic  
7 businesses, and there are really areas here, in this area in  
8 here that are very similar to some of these in Fort Worth.

9 In fact, right here, where you see the red dot, that  
10 is -- I think that is Fort Worth downtown, and just south of  
11 there is a mall, and it was in an area at one time that was it  
12 was thriving, a very popular mall, but over time it declined.  
13 A lot of Hispanic families lived in this area.

14 A group out of California came in and they looked at  
15 it. They did a study. I remember, I was in a meeting. They  
16 were making a presentation. They claimed that there was  
17 about, they said a billion dollars of disposable income in a  
18 five-mile radius around that mall. That's the reason they  
19 bought it.

20 But their market showed that the consumer was  
21 Hispanic, so they converted that mall, and out went JC Penney  
22 and out went all of your typical mall anchors, and they  
23 brought in retail, restaurants, anything that would target the  
24 Hispanic consumer.

25 There is a Fiesta store. There is a theatre that

1 shows movies in Spanish, furniture stores. There are all  
2 kinds of retail there. One thing that is real interesting,  
3 the guys built a house, a 1,500-square-foot model home, fully  
4 decked out, except the only difference is that the exterior  
5 walls are made out of glass or plexiglass, so when you walk  
6 in, you see the furniture inside, and then right next door to  
7 it, they have a little mortgage company, and they were selling  
8 twelve houses a week to folks that would come in. Because the  
9 folks that come here, if you go here now on Friday, Saturday,  
10 Sunday, I mean, it is a traffic jam.

11 I mean, there is hardly -- you can't find a place to  
12 park. There are just thousands of people there, and it gives  
13 them an opportunity to own their own home and they would buy.  
14 Over here, if you go down to the Oak Cliff area and along --  
15 if you drive down Jefferson Boulevard, as close to -- imagine  
16 being in a little Mexican village, because, again, it is  
17 retail, clothing. Everything is catered toward the Hispanic  
18 consumer.

19 And if you go there on a weekend, it is -- again, it  
20 is a traffic jam, same way. So I am real familiar with both  
21 of these areas.

22 Q. So from your testimony, it sounds like the business and  
23 consumer bases in those two areas are fairly similar?

24 A. Very similar.

25 Q. What about the religious worship in those areas?

1 A. Oh, besides the business aspect, if you were to take the  
2 folks that live in this -- and the reason I am going to say  
3 this, if you were to do a focus group and you were to take 50  
4 individuals from this area, and the same thing from this area,  
5 and you did focus groups independent of each other and you  
6 asked the same questions, you would get the same results.

7 Q. And for the record, you are pointing to the Fort Worth  
8 area --

9 A. Fort Worth --

10 Q. -- district?

11 A. -- and this is the Jefferson, Oak Cliff area.

12 Q. And what other -- you were just talking about a  
13 hypothetical survey. What other types of similarities would  
14 you see between those two communities?

15 A. Well, having, you know, visited the mall, having talked to  
16 people there, and also in Dallas, again, it is almost like the  
17 same six families in Eastland. It is very family oriented,  
18 churchgoing. I mean, they are going to be going to church on  
19 Sunday. As I said, family oriented. They save their money.  
20 They work very hard. They play very hard. Very centered on  
21 their kids.

22 If there is some kind of soccer program or athletic  
23 program, more than likely, their kids are going to be in it.  
24 I mean, you can just move families back and forth, and you are  
25 going to find that is true on both sides of the Trinity.

1 Q. You also live in this district, correct?

2 A. Yes.

3 Q. And where in the district do you live?

4 A. I don't know if I have that steady of a hand, but I will  
5 try.

6 Q. Do you live in the --

7 A. Do you see this place? It looks like the state of Texas  
8 almost. But right there, I guess where Houston would be is  
9 where I live.

10 Q. Okay. Thank you. And for the record, you pointed to the  
11 Fort Worth side of --

12 A. Yes, Fort Worth.

13 Q. -- the district. Based on your experience, what do you  
14 think is the likelihood of voters from these communities  
15 supporting the same candidate?

16 A. Oh, I think they would. I think the main thing would  
17 be -- I have heard some early testimony, but I think the main  
18 thing is going to be what that person stands for, what that  
19 person represents.

20 If the person gets up and says, "Look, I am over  
21 here. I am going to look out for you, and the first thing I  
22 look for is how to help this economy, how to create jobs.  
23 Then I am going to be sure that your kids are educated, and  
24 then I want you to know I care about you." And I don't care  
25 who you are, Democrat or Republican, if you stop there, they

1 are going to support you.

2 But if you want to take it further and say, "Go back  
3 to Mexico," they are not going to support you ever. I think  
4 that is what happens in a lot of the things that I have seen,  
5 is that they want to support people that they feel value them,  
6 and I think that is a human nature characteristic, but the  
7 rhetoric that comes -- unfortunately, the rhetoric, the  
8 anti-immigration is really -- the perception is that is all  
9 coming from the Republican party, and having worked with  
10 Republicans in elections, I know that it is not all  
11 Republicans that feel that way, but, unfortunately, I think  
12 that is the perception.

13 Q. And so do you think that residents in these communities  
14 would support a Republican if their values were in line with  
15 theirs?

16 A. Oh, absolutely.

17 MS. BONO: I have no further questions. Thank you  
18 for your time. I pass the witness.

19 JUDGE GARCIA: Anything else?

20 MR. MATTAX: No questions.

21 JUDGE GARCIA: Thank you, Mr. Jimenez. You are  
22 excused.

23 THE WITNESS: Thank you.

24 JUDGE GARCIA: If you will call your next witness.

25 MS. PERALES: The Latino Task Force plaintiffs

1 called Dr. Andres Tijerina.

2 COURTROOM DEPUTY: Would you raise your right hand,  
3 please.

4 (Oath administered to the witness.)

5 COURTROOM DEPUTY: You may have a seat.

6 MS. PERALES: So the Court can follow along, the  
7 exhibit is E-10, and we are locating the binder number.

8 MR. MATTAX: 310?

9 MS. PERALES: Exhibit E-10 in binder --

10 MR. MATTAX: Binder 3.

11 MS. PERALES: -- 3.

12 JUDGE GARCIA: Binder 3.

13 MR. COHEN: Tab 10.

14 MS. PERALES: Tab 10.

15 JUDGE GARCIA: What?

16 MS. PERALES: Tab 10, binder 3.

17 JUDGE GARCIA: Binder 3. Okay.

18 MS. PERALES: Thank you.

19 \*-\*-\*-\*-\*-\*-\*-\*

20 DIRECT EXAMINATION

21 BY MS. PERALES:

22 Q. Good afternoon, Dr. Tijerina.

23 A. Good afternoon.

24 Q. Could you please state and spell your name for the record?

25 A. Andres Tijerina. A-n-d-r-e-s T-i-j-e-r-i-n-a.

1 Q. And when did you receive your doctorate, Dr. Tijerina?

2 A. 1977.

3 Q. And from what institution?

4 A. University of Texas at Austin.

5 Q. And what did you get your Ph.D. in?

6 A. In American history.

7 Q. And within the area of American history, do you have an  
8 area in which you specialize?

9 A. I specialize in Texas history, and I have published  
10 probably mostly in Mexican-American; probably half of that in  
11 19th century Mexican-American.

12 Q. And what is your current occupation?

13 A. I am a professor of history at Austin Community College.

14 Q. And do you conduct research in your area of  
15 specialization?

16 A. I conduct extensive research on a regular basis, primarily  
17 in the archives of the University of Texas at the Briscoe  
18 Center for American History, the Nettie Lee Benson Library and  
19 Archives, and also have conducted consistently for decades;  
20 and other universities, University of California, San Diego,  
21 National Archives of Mexico and Mexico City, National Archives  
22 at the Library of Congress in Washington, D.C., and in other  
23 places as well.

24 Q. And have you been appointed to any state commissions  
25 related to history?

1 A. I am a member of, been appointed as a member by Governor  
2 Perry of the Review Board for the National Register of  
3 Historic Places with the Texas Historical Commission, and  
4 Governor Perry also appointed me to the Commission on the  
5 Historical Presentation for the State of Texas.

6 Q. Before you entered academia, what sort of jobs did you  
7 have?

8 A. Right after I received my Ph.D. at the University of Texas  
9 in Austin, I was appointed as a State agency executive  
10 director for the State of Texas, the Texas Good Neighbor  
11 Commission, which dealt in protocol and exchange programs with  
12 Mexico and Latin-American countries and Texas.

13 Q. And following that, did you also hold positions in the  
14 corporate sector?

15 A. I did that for a few years, and then I went into corporate  
16 sector. I consulted first for a while, and then I was  
17 employed by Motorola, Incorporated in Austin, and I was  
18 promoted up to division director for Motorola Semiconductor.

19 Q. What did you do right after college?

20 A. Right after my bachelor's degree, I graduated from Texas  
21 A & M University with a contract, ROTC contract in 1967, and I  
22 went in within two weeks into the U.S. Air Force, became an  
23 Air Force pilot, and I served in the Air Force as a pilot for  
24 five years.

25 Q. And was that in the Vietnam War?



1 A. I did see -- for 18 months, I was in Vietnam, and I flew  
2 150 combat missions, primarily in Vietnam. And then after  
3 five years, I left active duty.

4 Q. Have you testified as an expert in any previous  
5 redistricting lawsuits?

6 A. Yes. Twice.

7 MS. PERALES: Your Honor, unless there is any  
8 further inquiry, we offer Dr. Tijerina as an expert in Texas  
9 history and the history of discrimination against  
10 Mexican-Americans in Texas.

11 MR. COHEN: Your Honor, we have no objection, but we  
12 would ask that Dr. Tijerina speak up

13 JUDGE GARCIA: Okay.

14 MR. COHEN: Thank you, Your Honor.

15 JUDGE GARCIA: Thank you. Okay.

16 BY MS. PERALES:

17 Q. Dr. Tijerina, did you offer a report in this case?

18 A. Yes, I did. I submitted it -- I think it was on  
19 August 8th I submitted it.

20 Q. And what were you asked to address in that report?

21 A. I was asked to address Mexican-American history in Texas,  
22 specifically with regard to voting rights and discrimination.

23 Q. What general conclusions did you draw in your assessment  
24 of historical discrimination against Mexican-Americans in  
25 Texas?

1 A. My major conclusion is that discrimination, racial  
2 discrimination, segregation against Mexican-Americans has been  
3 a constant. It has been consistent and pervasive against  
4 Mexican-Americans in Texas since the 1840s.

5 Q. And what are some of the areas in which you have found  
6 Mexican-Americans in Texas faced historical discrimination?

7 A. Traditionally, and since the 1840s, economically,  
8 Mexican-Americans were discriminated against, not only in the  
9 dispossession of their lands, which were some of the most  
10 valuable lands in Texas, but also in education and employment,  
11 labor, fair employment, and access to business and to  
12 professional fields and also, primarily, access to government,  
13 either in running for office or simply in voting or  
14 participation in the democratic process.

15 Q. Did you find there was discrimination in the area of  
16 public accommodations?

17 A. Systemically, until -- until the 1970s.

18 Q. And in the area of housing, did you find there was  
19 discrimination?

20 A. Housing is an area in which Mexican-Americans have been  
21 excluded from fair access. The structure of Texas is such  
22 that as Texas was urbanizing, not only were the  
23 Mexican-Americans denied entry into some cities and required  
24 to have their own cities, strictly as a labor control process,  
25 but in those cities that they were allowed into, very often,

1 they were restricted to a part of town that was less  
2 desirable, and so because Texas was urbanizing during that  
3 time and in that way, Texas established a structure that  
4 persists today of segregated housing.

5 Q. And with respect to education, can you give me some  
6 examples of how historical discrimination against  
7 Mexican-Americans manifested itself in the area of education?

8 A. Ever since the formation of the Texas Republic and then  
9 the annexation of Texas to the United States, there have been  
10 laws, provisions in the Constitution that allow for  
11 segregation, specifically, that were either specifically  
12 targeting the Mexican-American or that were interpreted to  
13 target the Mexican-American, that led to either no education  
14 for Mexican-American citizens in Texas by the 1890s or  
15 segregated or minimal education.

16 So by the turn of the century, Mexican-Americans  
17 were allowed only in segregated schools, usually called  
18 Mexican schools throughout the state, receiving either little  
19 or no funding from the regular independent school district  
20 funding.

21 They were segregated into separate districts in  
22 cities like San Antonio, Del Rio, or other cities across the  
23 state where there would be a Mexican-American school district  
24 contiguous to an Anglo-American school district, or if they  
25 were within the same school district, they were segregated to

1 one gerrymandered area, where all of the schools were in the  
2 Mexican-American part of town and they would be only  
3 Mexican-American students.

4 Or if they were in the same schools, then  
5 Mexican-Americans would be segregated within the school or  
6 even within the classroom until the 1960s and 1970s, under one  
7 rationale or another. So segregation is pervasive, and it is  
8 a constant against Mexican-Americans in Texas.

9 Q. Dr. Tijerina, what is the picture that is on the screen?  
10 Can you describe it for me?

11 A. That is an example of what I am talking about. That is  
12 the Mexican school in Cotulla, and that photograph is  
13 well-known, because that's the one that LBJ taught in when he  
14 was a young teacher.

15 He taught in the dilapidated school. He taught  
16 students. That is the full extent of the Mexican-American  
17 student body of Cotulla, Texas. Now, that is  
18 disproportionately low. There should have been probably a few  
19 hundred students there.

20 But typically, Mexican-Americans were allowed to go  
21 to school only a half day, and only to the sixth grade. And  
22 so this is a typical school. Lyndon B. Johnson had the  
23 opportunity to teach Mexican-American children in Cotulla, and  
24 that's the photograph of it.

25 Q. Now, these exhibits are included in Volume 8, but I just

1 wanted to go to the next one. All right. Well, we will do it  
2 by exhibits, because we are not on schools anymore.

3 Can you explain to me what this is, Dr. Tijerina?

4 A. This is a sign that was taken by a -- it is a photograph  
5 of a sign that was taken by a LULAC member who passed through  
6 Brady, Texas. Brady, Texas is right -- they call themselves  
7 the heart of Texas, so they are right in the geographic center  
8 of Texas.

9 And I use it in my writings as an example, not so  
10 much of the fact that Mexican-Americans and African-Americans  
11 were not allowed public services in Texas across the state, as  
12 an example of the fact that for decades after this sign was  
13 taken down, they no longer used it anyway, either because the  
14 Anglo-Americans did not expect them to, didn't allow them to,  
15 or because they simply never felt comfortable going to that  
16 park again. So to me, it is an example of the lingering  
17 effects of the de jure segregation.

18 Q. Now, with respect to education, what do you observe as  
19 lingering effects of discrimination against Mexican-Americans  
20 in the area of education?

21 A. Primarily, the effects are the current statistics that we  
22 have in Texas, that not only does Texas occupy one of the very  
23 lowest out of 50 states, but like 47th or 48th out of the  
24 states in literacy and high school dropout, but that  
25 Mexican-Americans are actually lower than African-Americans

1 throughout most of the state.

2 Mexican-Americans have the lowest educational  
3 statistics in the state of Texas, and that is the lowest in  
4 the nation. Dropout rates, the literacy, a lack of access to  
5 college, a lack of access to professional fields, those are  
6 the impacts; the lack of equal representation or  
7 representativeness in the teaching field; the fact that our  
8 teachers in South Texas, Mexican-American teachers have  
9 struggled to pass the ExCET teacher certification test, so  
10 they have the worst statistics, the lowest passing statistics  
11 in all of the schools south of San Antonio.

12 The fact that the school administrators,  
13 superintendents and principals are disproportionately low,  
14 Mexican-American representatives are disproportionately low.  
15 Those are just a few of the statistics and examples that are  
16 the impact of the segregation and the low funding and the  
17 discrimination against Mexican-Americans in Texas, since,  
18 well, for over a hundred years.

19 MS. PERALES: Sarah, show the county pass.

20 BY MS. PERALES:

21 Q. Dr. Tijerina, you mentioned earlier labor controls, and I  
22 wanted to ask you to identify this document. What is this  
23 document?

24 A. This document is called a county pass. I use it as an  
25 example of my general conclusion, which you asked a while ago

1 about my conclusions. One of my other general conclusions is  
2 that it has not just been racist discrimination, segregation,  
3 but the fact that it has been done under color of law.

4 When people discriminated, brutalized  
5 Mexican-Americans, they did it under color of law. It was  
6 either law enforcement officials doing it or it was civilians  
7 doing it under color of law as deputized people, or it was the  
8 government itself officially segregating and controlling them.

9 This is called a county pass, because it is an  
10 example of one of the many labor control devices that Texas  
11 used. I think many people are familiar with the  
12 reconstruction, Black Codes that were used against  
13 African-American freed slaves.

14 What people don't know is that Mexican-Americans  
15 underwent very much the same sort of labor control that  
16 African-Americans did after the Civil War.

17 This is a pass signed by the sheriff of Hidalgo  
18 County, A.Y. Baker, who was the chairman of the Democratic  
19 party in that county, stating that a Mexican-American,  
20 Abelardo Balli, had authority to go from one county to the  
21 next county.

22 South Texas counties had rules and had laws,  
23 ordinances that prohibited Mexican-Americans from going from  
24 one county to another to seek a better job or higher wages.  
25 The irony of this is that Balli just about 50 years earlier

1 was one of the largest landowners in the state of Texas.

2 And I use this not only as an example of a labor  
3 control device, but the transfer of lands that was taken. One  
4 of his relatives was beaten with a bull whip, spread eagle  
5 tied to a wagon wheel until he agreed to sell. The other  
6 relatives that didn't sell were murdered.

7 Balli, in this case, was now under a controlled  
8 labor system where he could not even go from one county to the  
9 other to seek higher wages.

10 Q. And you mentioned that the document was signed by the  
11 sheriff of Hidalgo County, and you mentioned that he played a  
12 role in politics.

13 Did you have any observations with respect to an  
14 incident involving that sheriff?

15 A. Yes. That A.Y. Baker sheriff is the -- like I said, he  
16 was the chairman of the Democratic party, but he also  
17 participated as the leader in what is called the Hidalgo  
18 Rebellion in 1913, where Anglo Americans explicitly prevented  
19 Mexican-Americans from voting, in those places where they did  
20 try to vote.

21 And in the Hidalgo Rebellion of that year, three to  
22 four thousand Anglo-Americans amassed and rioted outside a  
23 Weslaco voting booth where Mexican-Americans still voted,  
24 after many controls were used to keep them from voting, that  
25 the Mexican-Americans tried to vote in Weslaco, and a mob of



1 3,000 or 4,000 Anglo-Americans rioted and shouting: Don't let  
2 the Mexicans vote. They lynched several of the  
3 Mexican-American citizens and then brutalized the others and  
4 kept them from voting in Weslaco. Baker was the man who led  
5 the riots.

6 Baker was also a Texas Ranger, and he played an  
7 active role, along with other Texas Rangers, in assassinating  
8 thousands of U.S. citizens about two years after this,  
9 Mexican-Americans, almost all of the large landowners of  
10 Texas. That played a major role in the transfer of the  
11 wealthiest lands in Texas from Mexican-American hands to Anglo  
12 hands. So Baker was a key individual.

13 Q. Can you describe this exhibit?

14 A. This is an exhibit of the barrio in Austin, Texas.  
15 Mexican-Americans who owned some of the wealthiest lands in  
16 Austin as well were driven out in the 1850s by Anglo-American  
17 vigilante groups that the city council organized, the Austin  
18 city council organized to drive them out and take their lands.

19 When they were recruited back in as laborers,  
20 impoverished laborers, they were allowed to live only in the  
21 city dump, which was at the end of Congress, where Congress  
22 met the Colorado River before the bridge was built. These  
23 children are playing.

24 That is the city dump there. The city dumped the  
25 garbage over the Cliff into the Colorado River right at the

1 end of Congress, and that is the only place that the  
2 Mexican-Americans were allowed to live, in the city dump.

3 Reports from the 1913 period indicate that the dump  
4 was finally moved, because it was so offensive. The stench of  
5 dead animals and rotting carcasses and vegetable matter and  
6 other garbage was so offensive to the Anglo-Americans that  
7 they moved the county -- city dump, and yet they required  
8 Mexican-Americans to live only there. And those children were  
9 reported in a survey, and that photograph was taken. And that  
10 is what it is about.

11 Q. And can you describe for me how the southeast side came  
12 into being? That is not the same place --

13 A. No. What happened was that Austin hired a survey  
14 conducted by professional -- urban professionals from New  
15 York, who came and conducted a study in 1920 and recommended  
16 that because the bridge was now being built across Congress,  
17 they had ironically given the Mexican-Americans prime real  
18 estate now.

19 The Mexican-Americans living in the city dump now  
20 lived on prime real estate, and the reports said this is going  
21 to be the most valuable real estate in Austin, Congress at the  
22 river, which it is now, of course. That's where the banks  
23 are.

24 And that the city, they recommended that the city  
25 find a constitutional way to move the Negroes and the

1 Mexican-Americans out of the city dump and go ahead and  
2 convert that into prime real estate.

3 In order to do that, then, the city got funding from  
4 the federal government through Lyndon B. Johnson, who used and  
5 created what became the first housing project in the nation,  
6 specifically as an incentive to give Mexican-Americans and  
7 African-Americans free housing, to move them out of this real  
8 estate and to put them into what became east Austin.

9 So the city of Austin, in conjunction with the  
10 state, the federal government and a newly created housing  
11 authority actually created the barrio in east Austin.

12 Q. Do you mean that the housing developments that were made  
13 were segregated?

14 A. There was an -- this photograph is a photograph taken from  
15 a housing authority, and while it is boasting about the fact  
16 that the Austin blighted areas went from the areas that you  
17 see at the top photographs of the ghetto and the dilapidated  
18 housing to the bottom picture, that shows a new housing  
19 project, they are boasting about the fact that they were  
20 helping the blacks and the Mexican-Americans move into new  
21 housing.

22 What they are not bragging about is that there were  
23 three housing projects, segregated, one for Anglo-Americans,  
24 one for Mexican-Americans, and one for African-Americans, and  
25 the fact that they were, in fact, creating a barrio under

1 urban planning. The barrio in Austin was created by Austin.

2 Q. And when you say "the barrio," are you referring to the  
3 southeast portion of Austin?

4 A. It is what is called east Austin, and it is still the  
5 poorest part of town, and it stands today as a legacy of urban  
6 planning. And like I say, this is the first urban planning,  
7 because Austin has the distinction of creating the nation's  
8 housing project.

9 Q. With respect to political participation, you mentioned the  
10 Hidalgo County rebellion. Can you discuss in the twentieth  
11 century some of the items that you have identified as  
12 discriminatory against Mexican-Americans in the area of  
13 political participation?

14 A. Anglo-Americans call themselves Anglo Saxons at the turn  
15 of the century and right around the 1920 period, when they  
16 called themselves Progressives. They established what they  
17 called good government leagues to, in other words, to clean up  
18 government.

19 The candidates at that time for political office,  
20 the governors, the senators of Texas campaigned using explicit  
21 terms that they were going to, quote, kill the Mexican vote,  
22 absolutely dominate the Mexican, keep the Mexicans from  
23 voting.

24 That's how they won their political campaigns, by  
25 campaigning that. In order to do that, they established a

1 series of devices to keep the Mexican-American citizens from  
2 voting, the white man's primary, which was a -- is called  
3 White Man's Primary Association. That was affiliated with the  
4 Democratic party in Texas, since Texas was a one-party state,  
5 and the only real election was the primary, because the  
6 primary preempted the general election, since there was no  
7 other political party.

8           Whoever won the primary would automatically be the  
9 winner of the general election. And to take -- to vote in the  
10 primary, a person had to vote through the Democratic party and  
11 take an oath that said, quote: I am a white man and I am a  
12 Democrat, unquote. And so in that way, they used the White  
13 Man's Association to prevent minorities from voting.

14           They also used the poll tax. They established the  
15 poll tax specifically to keep Texas poor people, primarily,  
16 African-Americans and Mexican-Americans, from voting. The  
17 reason that they made it so cheap, only \$1.25, is that the  
18 only people who could not afford \$1.75 or \$1.50, whatever it  
19 was initially, was very, very poor people, who made -- they  
20 set that figure by first determining, what does a  
21 Mexican-American earn in a week?

22           A Mexican-American earns \$1.75. That's what they  
23 set the poll tax at, because they knew that that was the only  
24 people it would prevent from voting. The White Man's Primary,  
25 the poll tax, brutality, intimidation, threats of citizenship

1 and an implicit literacy clause.

2           The literacy clause, as we know from Reconstruction  
3 days, was the requirement that in order for a minority to  
4 vote, they had to be able to prove that they could read. In  
5 Texas, there was a de facto literacy clause. Texas Rangers  
6 were sent through all of the barrios at election time to  
7 intimidate the Mexican-Americans with the claim that any  
8 Mexican-American who was found voting and who could not read  
9 would automatically be sent to prison.

10           Sociologists and historians have documented those  
11 threats, Texas Rangers knowingly going through the barrios at  
12 election time, but also standing at the election poll with  
13 their pistols very visible, preventing Mexican-Americans from  
14 voting.

15           So it was not only the devices, it was the  
16 intimidation. And as I said, in 1915, Texas Rangers literally  
17 assassinating any Mexican-American who would try to vote or  
18 organize any kind of a participation in elections.

19 Q. In your opinion, does the past discrimination in political  
20 participation that you described have continuing effects  
21 today?

22 A. The devices that I talk about were elaborated, they were  
23 developed into much more sophisticated devices, like  
24 corralling, where they would literally -- they would literally  
25 corral Mexican-American voters, and Anglo-American political

1 bosses developed a system of paying their poll tax for them,  
2 and then literally putting -- the King Ranch would put them in  
3 a corral on Friday night and not let them out of the corral  
4 until Saturday morning, then they would file them out one at a  
5 time and Mexican-Americans would then vote for the candidate  
6 that the political boss wanted.

7           Corralling, slating of votes. In San Antonio, the  
8 Callahan political machine, the Parr machine in Duval County,  
9 the major cities. Dallas had a major political machine. The  
10 citizens of the charter committee would slate the candidates.

11           Between 1930 and 1970, not a single minority was  
12 ever elected, because they were never slated by the CCA of  
13 Dallas for any of the state -- many of the state  
14 representative positions, several State senator positions,  
15 about six congressional districts, not a single one of them  
16 ever slated a Mexican-American.

17           But those were devices that after the 1970s, judges,  
18 Civil Rights Commission reports, education reports all  
19 concluded, as did San Antonio's own Willy Velasquez, in 1974  
20 that these devices for so many decades hinder today and left a  
21 legacy that hinders and has prevented Mexican-Americans from  
22 feeling comfortable and feeling any trust in the electoral  
23 system.

24 Q. Do you believe that voter registration rates and turnout  
25 rates are influenced by the discrimination in the past that

1 you have described?

2 A. I'm sorry. According to the statistics, yes, it is voter  
3 registration. It is not only voter registration and turnout.  
4 It is also being able to organize a campaign, to run for  
5 office, or even to feel comfortable in voting. All of these  
6 things are -- that discomfort, the distrust of the government  
7 system, and a distrust and fear of voting are legacies that we  
8 have today in Texas.

9 MS. PERALES: Thank you. I pass the witness.

10 MR. COHEN: Your Honor, my understanding is we  
11 weren't going to go past 6:30, and I certainly don't think my  
12 examination of Dr. Tijerina will take that long

13 JUDGE GARCIA: Okay. That will be fine.

14 \*-\*-\*-\*-\*-\*-\*

15 CROSS EXAMINATION

16 BY MR. COHEN:

17 Q. Dr. Tijerina, it is very good to see you again. I just  
18 have a few questions about some of the things that you  
19 discussed.

20 Now, by and large, much of the discrimination that  
21 you've described, whether it is the creation of specific  
22 housing projects in Austin, or the White Man's Primary, those  
23 were legal actions taken against Mexican-Americans; is that a  
24 fair statement?

25 A. Yes.



1 Q. That is to say -- you even used the term de jure  
2 discrimination, right?

3 A. Yes.

4 Q. Would you agree with me that de jure discrimination of  
5 that sort is no longer either lawful or acceptable in Texas?

6 A. Yes.

7 Q. Now, you also talked a great deal about the 19th century  
8 and the early 20th century, sir, and you will agree with that.  
9 Your expertise is Tejano history; is that right?

10 A. I've published in Tejano history.

11 Q. Sure. Define for the Court, sir, Tejano in this context,  
12 please.

13 A. Yes. Tejano is the Spanish word for Texan.

14 Q. Okay. So are we talking, when we talk about Tejano and  
15 your expertise in Tejano history, are we talking about sort of  
16 generations of intergenerational Texans who have lived here  
17 for a long time, as well as immigrants to Texas?

18 A. Tejano is used by historians to refer primarily to the  
19 original Texans, those who established Texas for 150 years  
20 before Stephen F. Austin and the Anglo-Americans ever arrived,  
21 and who gave Texas its government and its distinctive laws and  
22 its cattle industry and its distinctive lifestyle, the  
23 clothing, the diet, the pride of being Texan.

24 Q. Sure.

25 A. All of these that were adopted by Anglo-Americans, who now

1 claim to have, we be Texans and ride Mustangs and have  
2 longhorns, et cetera, so Tejanos are the native Texans.

3 Q. Understood, sir, that the origins of much of what we call  
4 Texan culture is firmly rooted in Tejano culture. I think  
5 that is what I just understood you to say?

6 A. Yes, and they are the natives of Texas that were here  
7 since the 1750s.

8 Q. Sure, they are, but they are also now, I guess you would  
9 say, a much smaller percentage of the total Latino culture?  
10 Can we agree with that?

11 A. That is true. They are a smaller percentage of the large  
12 Latino culture of Texas, although they still have the  
13 distinction of being the largest group of American citizens in  
14 the United States today who still occupy their ancestral lands  
15 and cities.

16 Q. Now, I guess the same is true about the nonLatino culture.  
17 You talked about some very bad people and some very bad things  
18 that were done in the 19th, early 20th century, Sheriff Baker  
19 and the county pass, being but one example. You also talked,  
20 I think, about the King Ranch, didn't you?

21 A. Yes.

22 Q. And the corralling?

23 A. Yes.

24 Q. But the Texans of today, the nonLatino Texans of today,  
25 aren't simply -- the Klebergs, the Kennedys, the Sheriff

1 Bakers and the Kings, they have changed also, haven't they?

2 A. Many of the vestiges are still present today. The King  
3 Ranch still has the same sort of economic control and  
4 political influence, not only over the city of Kingsville  
5 today, but they have their own school district on the ranch,  
6 and the Mexican-Americans -- by the way, the employee force of  
7 the King Ranch is 100-percent Mexican-American.

8 Those people live on the ranch. They buy everything  
9 on the ranch, and their kids go to school in the school  
10 district, which is in the ranch. So even though, as you say,  
11 the brutal bigotry and assassinations is no longer present,  
12 there are very, very strong vestiges of labor control and  
13 social control that are still present.

14 Q. Well, you talked, for example, about the Citizens Charter  
15 Council in the metroplex, well, in the Dallas area, and I  
16 think there was a similar organization here in San Antonio,  
17 that slated candidates, right?

18 A. Yes.

19 Q. And that was a tool that was pretty effectively used to  
20 limit the number of nonAnglos from positions of authority,  
21 right?

22 A. It was used across the state of Texas. I cited a couple  
23 of big ones. Texas had the biggest and most powerful  
24 political bosses, the Callahans here in San Antonio and the  
25 ones in Dallas were not the most powerful. The most powerful

1 were down in South Texas by George Parr, Jim Wells, the ones  
2 that the counties are named after, Kennedy, Wells, Parr and  
3 those others.

4           They were used to control the Mexican-American vote,  
5 but they also were used, as specifically in the case of the  
6 Dallas CCA, that -- they not only kept Mexican-Americans from  
7 ever holding an office, and ironically making  
8 Mexican-Americans vote for the Anglo-Americans that they did  
9 have on the slate --

10 Q. Yes, sir.

11 A. -- but they also prevented Anglo-Americans from running  
12 equitably in those positions, because unless an Anglo-American  
13 can be slated, he had no hope of being voted into office  
14 either.

15 Q. Sure. One of the principal tools -- strike that. Would  
16 you agree with me that one of the principal mechanisms that  
17 allow all of your tools to work was the fact that there was  
18 really just one party in Texas?

19 A. I would not. The principal driving control that they had  
20 was violence. Historians have agreed with what award-winning  
21 historian David Montejano wrote in his book, a nationally  
22 award-winning book, that Mexican-Americans by the end of  
23 the -- by the turn of the century, 1900, had established what  
24 he called a peace structure, by which Mexican-Americans  
25 conceded their control, equitable control of political process

1 in government to the Anglo-Americans in places like Dallas and  
2 San Antonio and Austin in exchange for security. That is, an  
3 Anglo-American basically said, like George Parr did to his  
4 Mexican-Americans: I will not let the Texas Rangers kill you  
5 if you will always vote for my man.

6 And so it was not so much the Democratic party being  
7 the only party in Texas, as it was protection from the  
8 violence of the Texas Rangers and the local constabulary that  
9 forced the Mexican-Americans to vote for the political bosses  
10 of choice.

11 Q. And the sort of -- I didn't mean to interrupt, but the  
12 sort of violence you are talking about is perhaps best  
13 typified by the Hidalgo Rebellion, right? Or is typified  
14 by --

15 A. Well, it was -- in fact, the Hidalgo Rebellion was rare.  
16 Usually, the violence was selectively either lynching until  
17 the 1930s and 1940s.

18 Q. Okay. Here is a problem with asking a historian to talk  
19 about these things. When did the violence stop? In the  
20 fifties? In the sixties? In the early seventies?

21 A. Specifically in preventing Mexican-Americans from voting,  
22 voting --

23 Q. Yes, sir.

24 A. -- the violence stopped in about the 1930s, 1940s.

25 Q. Okay. At a time when the White Man's Primary was on its

1 way out because of federal court intervention, right?

2 A. Yes.

3 Q. But there was still a one-party system?

4 A. Yes.

5 Q. And that one-party system lasted in our state really until  
6 about 25 years ago? Is that a fair statement?

7 A. The 1970s.

8 Q. Okay. So there is a history of violence that you have  
9 chronicled, but the violence stopped half a century ago,  
10 right?

11 A. As I answered your question, your previous question, the  
12 violence specifically for voting stopped in the '40s.

13 Q. Sure.

14 A. Violence by law enforcement officials was very, very  
15 present in the minds of Mexican-Americans through examples  
16 like the --

17 Q. Santos Rodriguez?

18 A. The assassination of -- the killing of a twelve-year-old  
19 Mexican-American boy in Dallas in 1972, and other very high  
20 profile cases that occurred in Houston and in other major  
21 cities, that were not specifically for voting, but very  
22 present on the minds of Mexican-Americans.

23 Q. Let's bring it back to voting. As I understand the  
24 lingering effect criteria that you mentioned to me, that you  
25 mentioned just a short time ago, one of the -- you said the

1 highest indicators of the educational problem among the Latino  
2 community is low scores in South Texas for Latino teachers on  
3 the ExCET test, right?

4 A. I mentioned that as an example, yes.

5 Q. Okay. Now, would you agree with me that the solution to  
6 shortcomings among teachers is more properly focused as a  
7 function of education, rather than specifically redistricting  
8 of electoral districts?

9 A. I have never really professionally studied solutions for  
10 education problems. I'm sorry. I cannot answer that.

11 Q. Okay. Well, what about voter registration participation?  
12 You mentioned those also. Would you agree with me that voter  
13 registration problems are best addressed through voter  
14 registration and education drives rather than, say, changing  
15 lines on a map?

16 A. I would be hesitant to prescribe a solution for voting  
17 turnout or registration.

18 Q. One more question. We talked just a short time ago about  
19 the change in the demographics of Texas, both the change in  
20 the demographics on the Latino side and the nonLatino side.

21 Would you agree with me that at least some of these  
22 educational shortcomings, the lack of access to college, poor  
23 scores, problems on the teacher certification exams, are at  
24 least as indicative of an enormous influx of other peoples and  
25 other cultures and not merely a vestige of the discriminatory

1 acts that Mexican-Americans faced in the 19th or 20th century?

2 A. I would not say "not merely." Certainly, there are other  
3 factors.

4 MR. COHEN: That's all, Your Honor.

5 JUDGE GARCIA: Thank you, Counselor. Anything else?

6 MS. PERALES: No redirect, Your Honor.

7 JUDGE GARCIA: Okay. Thank you, Dr. Tijerina, for  
8 being here.

9 THE WITNESS: Thank you, sir.

10 JUDGE GARCIA: Counselors, we are going to adjourn  
11 for the day. I need to know two things. Who is proceeding  
12 tomorrow? You are still presenting witnesses?

13 MS. PERALES: We have one last lay witness.

14 JUDGE GARCIA: And who is it?

15 MS. PERALES: Following our promise only to present  
16 three of the original twelve.

17 JUDGE GARCIA: Okay.

18 MS. PERALES: But we may take him out of order,  
19 because he is coming up from the Valley.

20 JUDGE GARCIA: That's fine.

21 MS. PERALES: But we have one person remaining.

22 JUDGE GARCIA: Okay. So who is proceeding, then,  
23 after --

24 MR. VERA: LULAC will proceed, Your Honor, and we  
25 will have three witnesses.



1 JUDGE GARCIA: And who are they?

2 MR. VERA: George Korbelt --

3 JUDGE GARCIA: Are they lay witnesses or --

4 MR. VERA: The three witnesses will be George  
5 Korbelt, Congressman Ciro Rodriguez and County Judge David  
6 Saucedo.

7 JUDGE GARCIA: Okay.

8 MR. VERA: We have been allotted 30 minutes for the  
9 Congressman --

10 JUDGE GARCIA: And then after that, who is  
11 proceeding?

12 MR. VERA: I'm sorry?

13 JUDGE GARCIA: After you, who is next?

14 MR. RIGGS: NAACP.

15 MR. VERA: The NAACP.

16 JUDGE GARCIA: Okay. And how many witnesses will  
17 you have, ma'am?

18 MS. RIGGS: We have ten that we want to put on,  
19 three expert and the rest lay.

20 JUDGE GARCIA: Okay. We will examine that tomorrow,  
21 then.

22 MR. MATTAX: If I can --

23 MR. BLEDSOE: If I might say, that is ten, subject  
24 to -- we had other, a number of other lay witnesses, the same  
25 as what the Task Force did.

1 JUDGE GARCIA: You have ten lay witnesses? Why are  
2 ten necessary?

3 MR. BLEDSOE: We have three Congresspersons --

4 JUDGE GARCIA: Oh. Okay.

5 MR. BLEDSOE: -- with the Congressional Black  
6 Caucus, so we are not considering them experts.

7 MR. RIGGS: And we have culled our list down. We  
8 have 13 offers of proof.

9 JUDGE GARCIA: Okay.

10 JUDGE SMITH: So seven witnesses, plus 13 offers of  
11 proof?

12 MR. RIGGS: Yes. But that is the two parties.

13 JUDGE GARCIA: Who are the seven lay witnesses?

14 MR. RIGGS: Three Congresspersons --

15 JUDGE GARCIA: Okay. Obviously. And who else?

16 MR. RIGGS: And Theresa Guerra, Representative  
17 Sylvester Turner, Charlie Chin, Howard Jefferson.

18 JUDGE GARCIA: Okay. Each of those are less than  
19 five minutes, right?

20 MR. RIGGS: Probably not Sylvester Turner, but the  
21 others are brief.

22 JUDGE GARCIA: By "brief," you mean less than five  
23 minutes?

24 MR. BLEDSOE: I wouldn't say less than five minutes,  
25 Your Honor, but they are not going to be lengthy.

1 JUDGE GARCIA: Well, okay. We will deal with it  
2 tomorrow. Okay. We are going to --

3 MR. BLEDSOE: Similar to the witnesses this  
4 afternoon.

5 JUDGE GARCIA: Okay. All right. We will convene at  
6 8:00 a.m. We have put in nine hours today, which I know it  
7 has been a very long day, and then -- oh, yes. I'm sorry.

8 MR. MATTAX: Yes. Getting back to Bryan Downton,  
9 who is not going to be available next week, what I would  
10 suggest, he is available tomorrow. I can have him on call. I  
11 would suggest we try to squeeze him in after LULAC.

12 JUDGE GARCIA: Okay. Let's do that.

13 MR. MATTAX: My redirect will be to pinpoint just  
14 the districts. He has been deposed.

15 JUDGE GARCIA: Let's do that.

16 MR. MATTAX: Allow him to have the Courts ask him  
17 questions.

18 MR. RIGGS: I'm sorry. I misspoke.

19 JUDGE GARCIA: That's fine.

20 MR. MATTAX: I will have him prepared to be here  
21 after LULAC.

22 JUDGE GARCIA: And tomorrow --

23 JUDGE SMITH: I assume that has been agreed to, to  
24 take him out of order?

25 MS. PERALES: No, Your Honor. I believe our

1 position is that because we have people coming in from out of  
2 town, and we have to meet their flight and travel schedules,  
3 we are trying to figure out at this point who is up, who is  
4 traveling and what is going on tomorrow, and that will enable  
5 us, I think, to understand what is going on with Mr. Downton.

6 JUDGE GARCIA: Bring him tomorrow.

7 MR. MATTAX: He will be here tomorrow.

8 JUDGE GARCIA: And how many minutes do you need him?

9 MR. MATTAX: Well, I would like, I would say, 45  
10 minutes to an hour, to go through the targeted districts that  
11 he drew, so the Court can understand how these districts were  
12 drawn.

13 JUDGE GARCIA: Okay.

14 MR. MATTAX: We heard speculation about how. I  
15 think it is important for the map teller to tell you how --

16 JUDGE GARCIA: Yes, it is. Okay. Bring him  
17 tomorrow.

18 JUDGE SMITH: So maybe the plaintiffs could just  
19 make some kind of agreement, knowing he is going to testify  
20 tomorrow, make some agreement among yourselves as to what you  
21 think would be the best place for him to be slotted in. Would  
22 that be fair?

23 JUDGE GARCIA: Yes.

24 MR. MATTAX: I will have him here at 10:00 in the  
25 morning, all day.

1 JUDGE GARCIA: Okay.

2 MR. BLEDSOE: And, Your Honor, I would like to  
3 clarify. I think you probably recall this, but the  
4 Congresspersons are going to be here on Monday.

5 JUDGE GARCIA: Monday.

6 MR. BLEDSOE: All four.

7 JUDGE GARCIA: Right. Exactly. Okay. Yes.

8 MR. HICKS: Your Honor, County Judge Biscoe, Travis  
9 County is coming and another witness from Travis County. I am  
10 really saying this in front of you all to see if I am correct  
11 in saying it appears that those two witnesses will possibly  
12 get on and go Friday.

13 JUDGE GARCIA: Right. I don't see how you can get  
14 them here tomorrow.

15 MR. HICKS: We will have our expert here, who will  
16 be our first witness anyway, for tomorrow afternoon, in case  
17 we go faster.

18 JUDGE GARCIA: Just have him here.

19 MR. HICKS: I can tell Judge Briscoe -- I mean,  
20 obviously --

21 JUDGE GARCIA: I don't think we will get to the  
22 judge tomorrow, so don't waste his time.

23 MR. HICKS: Okay. Thank you.

24 JUDGE GARCIA: Have him here Friday. Okay. We need  
25 to know tomorrow morning if we are going to need to work here

1 Saturday. And if we do, it will be to 1:30. What kind of  
2 progress do you think you all are making in terms of moving  
3 this case along? Or do you think Saturday may be necessary?  
4 Or do you want to think about it this evening and let us know  
5 in the morning?

6 MR. BLEDSOE: Think about it.

7 MR. HEBERT: I think we probably ought to think  
8 about it, Judge.

9 JUDGE GARCIA: Think about it.

10 MR. HEBERT: If I could just raise one other  
11 logistical witness issue.

12 JUDGE GARCIA: Yes.

13 MR. HEBERT: I am last to go. The only witness I  
14 have is coming from Washington, D.C. He is an expert witness.  
15 And what I want to avoid is bringing him here for Friday to  
16 testify, but not being able to get him on and then not having  
17 a Saturday session, so I would have to keep him here until  
18 Monday.

19 I know we can try to work out our schedule and  
20 everything, but I may need to call him out of turn, I guess,  
21 is what I am saying.

22 JUDGE GARCIA: Well, if you have to do that, that  
23 would be fine.

24 MR. HEBERT: Okay. Thank you.

25 JUDGE GARCIA: Okay. All right. We will reconvene

1 at 8:00 in the morning. Thank you.

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3 UNITED STATES DISTRICT COURT )

4 WESTERN DISTRICT OF TEXAS )

5 I certify that the foregoing is a correct transcript  
6 from the record of proceedings in the above-entitled matter.

7 I further certify that the transcript fees and format comply  
8 with those prescribed by the Court and the Judicial Conference  
9 of the United States.

10 Date signed: September 7, 2011.

11

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