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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 9, 2011  
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VOLUME 4

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 9, 2011.)

2 JUDGE GARCIA: Ready? Where is Mr. Bledsoe?

3 MR. HICKS: Mr. Who?

4 JUDGE GARCIA: Mr. Bledsoe, Mr. Rios, Mr. Garza?

5 MR. HEBERT: Mr. Rios is here.

6 JUDGE GARCIA: Oh, I didn't see you, Mr. Rios. I  
7 just wanted to make sure the main team is here.

8 MR. GARZA: (Indicating.)

9 JUDGE GARCIA: Okay. Good.

10 MR. HICKS: Your Honor, Renea Hicks for the  
11 Rodriguez plaintiffs. We have got one exhibit to move the  
12 admission on. I believe we want to get that out of the way at  
13 the beginning, so we can proceed.

14 We move for the admission of Plaintiff's Exhibit  
15 901.

16 MR. MATTAX: No objection.

17 JUDGE GARCIA: Okay.

18 MS. PERALES: Also, the Latino Task Force plaintiffs  
19 have corrected one of their summary chart exhibits and placed  
20 them into the Court's binders at tab 200. And they are now  
21 marked PL-200 corrected, and I believe also -- 201? And 201.

22 JUDGE GARCIA: Okay.

23 MR. MATTAX: Good morning, Your Honor. Pursuant to  
24 the stipulation of the parties, we are going to take Mr. Ryan  
25 Downton out of turn this morning. Mr. Downton is not going to

1 testify about absolutely everything that was done in the  
2 session.

3 We are going to try to streamline that testimony,  
4 because he has been deposed, and the parties have agreed that  
5 his depositions can be introduced and relied upon in this  
6 case.

7 Secondly, the depositions identify certain  
8 legislators who had conversations with Mr. Downton; also,  
9 other witnesses have been deposed that identified legislators.  
10 Mrs. Perales had indicated she was going to introduce those  
11 exhibits.

12 We have contacted those legislators and indicated  
13 that their names they be revealed. I have heard no objections  
14 from those legislators. I have seen nothing filed with this  
15 Court from those legislators, so I believe there is not going  
16 to be an assertion of legislative privilege with respect to  
17 those depositions in this matter.

18 Accordingly, we have no objection to the  
19 introduction of the exhibits -- the depositions that Mrs.  
20 Perales has provided to the Court. So if she would like to  
21 move for the admission of those, I have no objection.

22 MS. PERALES: We believe that we have provided at  
23 the Court's request a flash drive with copies of all of the  
24 exhibits. That was from last Thursday.

25 JUDGE GARCIA: Okay.

1 MS. PERALES: That was at the request of the Court.  
2 I am not sure if we are planning to move the admission of all  
3 of the depositions, but we did provide them to the Court, and  
4 I guess we will come up with a decision about which ones we  
5 want to move into the record.

6 JUDGE GARCIA: Okay.

7 MS. PERALES: So we don't have to make it too  
8 unwieldy.

9 MR. MATTAX: Very good.

10 JUDGE GARCIA: Okay. Who -- you are presenting this  
11 witness?

12 MR. MATTAX: Yes.

13 JUDGE GARCIA: And who else? And then what is next?

14 MR. GRAY: We will go back to Mr. Bledsoe and  
15 complete Dr. Murray, who was on the stand, Your Honor, and the  
16 NAACP and their witnesses will be taken forward.

17 JUDGE GARCIA: Okay.

18 MR. MATTAX: May I proceed, Your Honor?

19 JUDGE GARCIA: Yes.

20 COURTROOM DEPUTY: May I swear in the witness, Your  
21 Honor?

22 Will you raise your right hand?

23 (Oath administered to the witness.)

24 COURTROOM DEPUTY: Thank you.

25 \*-\*-\*-\*-\*-\*-\*-\*

## 1 DIRECT EXAMINATION

2 BY MR. MATTAX:

3 Q. Please state your name.

4 A. Ryan Downton.

5 Q. What was your role in the 2011 redistricting process?

6 A. I was general counsel to the Texas House Committee on  
7 Redistricting.8 Q. And in that capacity, did you have a role in drawing  
9 either the congressional or the House map?10 A. I did. I had two roles. One was to provide legal advice  
11 to the committee and its chairman, and the other was to assist  
12 in drawing the maps.13 Q. Did Texas increase the number of congressional districts  
14 it was allowed to have after the 2010 census?

15 A. Yes. We had 32 and we moved to 36.

16 Q. Could I direct your attention to Defendant's Exhibit  
17 No. 43, which is displayed on the screen?

18 A. Yes, sir.

19 Q. This is a demonstrative exhibit showing the population  
20 growth in the state between 2000 and 2010, and the darker the  
21 green areas, the more the population grew.22 In determining where to draw these four new  
23 districts, was it important to determine where the population  
24 growth was?

25 A. Yes.



1 Q. I am looking at north Texas, where it has a deep green.  
2 Was a decision made to draw a district in north Texas?

3 A. Yes.

4 Q. Likewise, I see a lot of green in central Texas?

5 A. Yes.

6 Q. And also around the Houston area?

7 A. That is correct.

8 Q. And in determining how to draw these districts, what  
9 resources did you use or what -- excuse me. We can switch  
10 that over now.

11 Were you responsible for combining, if you will, or  
12 providing the first map on the congressional side?

13 A. Yes. In drawing the first map, I had received maps -- the  
14 committee had received maps from various people. We had a map  
15 from Congressman Lamar Smith, we had a map from Congressman  
16 Joe Barton, we had a map from MALDEF --

17 (Mr. Hanna walking in front of the witness.)

18 THE REPORTER: I'm sorry.

19 MR. MATTAX: Speak more slowly, please.

20 THE REPORTER: The name again? After Barton.

21 THE WITNESS: After Barton, MALDEF.

22 JUDGE SMITH: Why don't you spell that for him.

23 THE WITNESS: M-A-L-D-E-F.

24 BY MR. MATTAX:

25 Q. Is that an acronym?

1 A. It is. I believe it is the Mexican-American Legal --

2 JUDGE SMITH: -- Defense and Education Fund.

3 JUDGE GARCIA: Right.

4 BY MR. MATTAX:

5 Q. Anyone else besides the two Congressmen and MALDEF?

6 A. I believe we had received one from MALC, the  
7 Mexican-American Legislative Caucus, although I don't remember  
8 the timing of when we got that. We had received a map from  
9 GRIT. And I'm sorry. I don't know the acronym.

10 Q. So was it your job, then, to try to amalgamate these and  
11 create a first proposed map?

12 A. Yes.

13 Q. Would you pull up --

14 MR. MATTAX: And I will let Mr. Downton pull up the  
15 maps on the screen, to expedite matters as much as possible.

16 BY MR. MATTAX:

17 Q. Would you pull up C-125, please.

18 A. Yes.

19 Q. If we can enlarge that a little.

20 MR. MATTAX: Now, Your Honors, we have provided at  
21 the end of the defendants, which is number 14, D-52 and 53.  
22 These are additional interim maps that were drawn in the  
23 process that we are going to be discussing today. So what we  
24 are referring to here with map C-125 is D-52, the first map.  
25 And that is on the screen.

1 BY MR. MATTAX:

2 Q. Could you tell us what C-125 is?

3 A. Yes. This is titled the Solomons-Seliger congressional  
4 proposal, and this was the first map that was publicly  
5 released.

6 Q. Did this map try to draw a district in north Texas?

7 A. It did.

8 Q. You mentioned that Lamar Smith had provided you a map.  
9 Does this map include the map proposed by Lamar Smith?

10 A. It includes some aspects of his proposal. North Texas is  
11 not one of them.

12 Q. Why was north Texas not included?

13 A. He attempted to draw a Hispanic majority, Democratic-  
14 leaning district in north Texas. In looking at both his  
15 version of the map and maps proposed by other groups, and  
16 trying to draw one myself, we weren't able to draw a district  
17 in north Texas that had an HCVAP above 50 percent.

18 Given that the House had 101 Republicans, there  
19 wasn't the will to put a Democrat-leaning district, a new one  
20 in north Texas, unless it was going to be mandatory to comply  
21 with the Voting Rights Act. Because we couldn't, among other  
22 reasons, that we couldn't draw a 50-percent HCVAP district, we  
23 did not believe it was mandatory to draw one there.

24 JUDGE RODRIGUEZ: Could you explain why you couldn't  
25 draw one?

1           THE WITNESS: Sure. The Hispanic population in  
2 Dallas-Fort Worth, it did grow, but I think it grew in areas  
3 that weren't necessarily concentrated. So an area might have  
4 grown from zero-percent Hispanic to 25-percent Hispanic, but  
5 you couldn't take those areas and create a majority Hispanic  
6 district.

7           Also, the DFW metroplex has a lot of noncitizen  
8 Hispanics. I think if you look at -- the overall percentage  
9 of Hispanics in DFW is relatively high, but I think if you  
10 look at the Hispanic citizen voting age population, I think it  
11 is around 18 percent. You also have a lot of Hispanics who  
12 are under 18 in that region.

13          JUDGE RODRIGUEZ: So what was the fallacy in  
14 Congressman Smith's drawing? Did he not take HCVAP into  
15 consideration, or what was the mistake he allegedly made?

16          THE WITNESS: I don't know that he made any mistake  
17 in it. I don't think his district was a required district.  
18 It may have been a permissible district, but there wasn't the  
19 legislative will to pass that district, unless it was a  
20 required district.

21          JUDGE RODRIGUEZ: So maybe I was under a  
22 misunderstanding. I thought Congressman Smith was under the  
23 impression he had created a district that was able to get that  
24 50-plus percentage in.

25          THE WITNESS: I don't -- I don't think so. I am not

1 sure. I didn't have a conversation with him about it, but  
2 that district wasn't 50 percent. I think he just created a  
3 district that was as Hispanic as he could in that region.

4 JUDGE RODRIGUEZ: I'm sorry, Counsel.

5 MR. MATTAX: That's fine.

6 BY MR. MATTAX:

7 Q. You mentioned other groups trying to draw maps as well  
8 that you couldn't accomplish achieving a 50-percent Hispanic  
9 citizen voting age --

10 THE REPORTER: Counsel --

11 MR. MATTAX: I'm sorry. I just realized I was  
12 speaking too fast. Let me try to slow down.

13 BY MR. MATTAX:

14 Q. You indicated that other groups had tried to draw a map in  
15 northern Texas with a greater than 50-percent HCVAP and were  
16 unable to do so; is that correct?

17 A. That is correct.

18 Q. Could you tell us who some of those groups were?

19 A. MALDEF, MALC. I believe Representative Veasey tried to  
20 draw one. I know there are others. I looked at a bunch of  
21 maps that attempted to draw a north Texas Hispanic district,  
22 and I tried to draw one myself, and none of those maps were  
23 able to reach that 50-percent threshold, even going down to  
24 the block level, not just precincts.

25 Q. Thank you. Let me direct your attention, and maybe you

1 can blow up the Dallas-Tarrant County area. We are going to  
2 focus on District 26.

3 Now, in District 26, you can see this -- let's call  
4 it an arm, or you can use whatever term you like, protruding  
5 south into District 12.

6 A. Yes.

7 Q. Was this a feature that you came up with?

8 A. No. There was -- in C-100, our baseline plan, there is an  
9 arm that comes down from District 26 into Tarrant County.  
10 This is a variation on that.

11 Q. So what variations were made from C-100 to this arm and  
12 why? Well, let's just start with what changes, and then we  
13 will go to why.

14 A. Okay. The arm changed location a little bit. In C-100,  
15 it came down through this area. There is a city here -- let  
16 me put it up. So you see North Richland Hills and Haltom City  
17 and Keller.

18 Congresswoman Granger in District 12 had asked for  
19 North Richland Hills to be included in her district. To  
20 accommodate that request, we would shift the arm left a little  
21 bit. And this, I don't remember the name of this little city,  
22 but we kept it whole, and then we were trying to balance the  
23 Republican nature, for lack of a better word, up in north  
24 Texas districts.

25 Denton County is a very Republican area. And so in

1 doing that balancing, we needed to find Democrats -- not find  
2 Democrats, but we needed to include some democratic areas  
3 within District 26 to help balance District 26 and District  
4 12, from a political perspective. So this area down here, I  
5 think, was already included in District 26, because the old  
6 line came down this way, so we kept that in, and we added this  
7 area here. And I believe all of these areas are fairly  
8 democratic in nature.

9 Q. Now, you testified you were trying to balance political  
10 Democrats versus Republicans. When you first drew this map,  
11 did you have the shading for political races turned on to make  
12 that determination?

13 A. Yes. I would have looked at various political races on  
14 the congressional map. The focus was on the John McCain-  
15 Barack Obama race. You can shade the map -- this doesn't have  
16 the feature, but in Red Appl, you can shade the map by  
17 precinct, and the darker the red, the more Republican the  
18 district. The darker the blue, the more Democratic the  
19 district, based on any individual race that you chose to look  
20 at.

21 Q. So when you were making this initial change to District  
22 26, and you had the political shading on, is there also an  
23 ability to have an ethnicity shading on?

24 A. There is.

25 Q. Did you have that on when you were drawing this?

1 A. Not at that time, no.

2 Q. This map that we have been discussing, C-125, was not the  
3 final map, was it?

4 A. No, it was not.

5 Q. Why don't we pull up C-136, which I believe was the map  
6 that reported out of committee.

7 Can you describe what C-136 is? And this is next in  
8 sequence in 52.

9 A. C-136 is the plan that the Senate passed out of the Senate  
10 committee. And in north Texas, it was identical to the  
11 original map. On the display, the red lines represent the new  
12 map, as we are moving forward. If there is a discrepancy, you  
13 will see the black lines from the old map as well. In this  
14 case, this region had no changes.

15 Q. And was this the plan that was finally adopted?

16 A. It was not.

17 Q. Would you please pull up map C-144? This is next in the  
18 sequence in 52. Could you zoom out? Okay. Before you do  
19 that, perhaps we should keep it there, because maybe we need  
20 to talk about Dallas.

21 What was C-144?

22 A. C-144 was Representative Solomons' proposal to the House  
23 committee after the Senate passed their version of the map.

24 Q. And could you briefly describe what the changes are  
25 between the Solomons plan and the Senate plan?



1 A. Yes. In reviewing the plan that we initially put forward  
2 and that the Senate passed for this region, people made us  
3 aware that we had split the Hispanic community in Tarrant  
4 County, that there is a north Fort Worth Hispanic community  
5 here and also a south Fort Worth Hispanic community here, and  
6 we had put them in different districts.

7           Once we became aware of that, we decided to make a  
8 change to try to put them in the same district. So it is hard  
9 to tell from the overlays, so I am going to switch to just the  
10 new version.

11           JUDGE RODRIGUEZ: Well, at what point did you turn  
12 on the race feature again or the ethnicity feature? Because  
13 you did 136, and that gets passed by the Senate, so now we are  
14 looking at the House consideration.

15           At any point, did you turn the ethnicity or race  
16 feature on to see whether or not you would be in compliance  
17 with the Voting Rights Act?

18           THE WITNESS: Yes.

19           JUDGE RODRIGUEZ: And at what point did you turn the  
20 feature back on?

21           THE WITNESS: Well, as far as the feature, we were  
22 always -- we were conscious of the numbers, and so we would  
23 look at them throughout the process before moving forward with  
24 the map. When we initially put the first map out, our  
25 analysis wasn't complete.

1           We were under some fairly intense time deadlines.  
2           The regular session either was about to end or had just ended  
3           and the special session had been called, and we knew that we  
4           had a very short window to get it passed, so we wanted to get  
5           a map out publicly, knowing that at that point we would get  
6           more comments and make more changes, so some things slipped  
7           through the cracks initially.

8           In north Texas, we had looked at drawing that  
9           Hispanic district, so we used Hispanic shading to try to  
10          figure that out. Once we weren't able to do that, then it was  
11          back to the political function of how to balance the  
12          districts.

13          And we didn't -- honestly didn't think about ethnic  
14          shading at that point, because it was a political decision.  
15          After that map was released and we started -- we got some  
16          comments saying, "Hey, you split the Hispanic population,"  
17          then we pulled up the shading and saw, yes, they are right.  
18          We did split the Hispanic population. Can we put it back  
19          together? And so that is what we did with 144.

20          BY MR. MATTAX:

21          Q. And just to go a little out of sequence, this is a general  
22          proposition. Before any map is finally proposed, with respect  
23          to those areas of the state that had districts protected by  
24          the Voting Rights Act, there were checks done to see if there  
25          had been a reduction in, for example, citizen voting age

1 population in those districts, things of that nature?

2 A. Yes. We tried to make sure we were maintaining levels of  
3 HCVAP in the Hispanic districts and black voting age  
4 population in the black districts.

5 Q. And --

6 JUDGE SMITH: Back to your earlier testimony, I just  
7 want to be sure, I think I understand, but when you were  
8 initially doing the balancing, you said to put more Democratic  
9 voters into 26.

10 At that time, you weren't looking at racial or  
11 ethnic makeup, but only at, what, the presidential results?

12 THE WITNESS: We also looked at --

13 JUDGE SMITH: Is that right or --

14 THE WITNESS: Yes. We also looked at other races.  
15 It wasn't just presidential, but a lot of the Congressmen  
16 expressed that they felt the key metric was that Obama-McCain  
17 race.

18 So they wanted to know, they all wanted to be above  
19 50 percent in John McCain vote in their district.

20 JUDGE SMITH: All right. But it was the political  
21 balance by Republican, Democrat, not, at that point, anything  
22 racial?

23 THE WITNESS: That is correct. So in making this  
24 change, and I can't do the racial shading, but we took out  
25 this area essentially and replaced it with this area. And

1 that -- that was in response to the comment that we had split  
2 that Hispanic population.

3 Now, it got a little more complicated, because this  
4 area in here is the Trinity River Project in downtown Fort  
5 Worth. There aren't many people that live in there, but there  
6 is a river that winds its way through, and Congresswoman  
7 Granger felt it was very important to keep that project, as  
8 much of it as possible, within her district, so we tried to  
9 draw the line in a way that left as much of the Trinity River  
10 Project in her neighborhood.

11 This area has very few people in it, but it does  
12 create a very strange shape. This area down here is somewhat  
13 similar to the State House district, District 90 in Tarrant  
14 County. And then there were further changes. That is  
15 everything on this map.

16 BY MR. MATTAX:

17 Q. Why don't you expand that, and let's focus on District 35.  
18 Now, you testified earlier that in looking at the growth,  
19 where the growth was in the state, that there was sufficient  
20 growth in central Texas that a new district would have to be  
21 drawn; is that correct?

22 A. Yes.

23 Q. And is this an attempt to create a new district in central  
24 Texas?

25 A. Yes, it is.

1 Q. And was this your idea?

2 A. No. We took this idea from the map that MALDEF submitted  
3 to us.

4 Q. And what was your understanding of the map that MALDEF  
5 submitted? What was it trying to accomplish?

6 A. It was trying to create a Hispanic majority district in  
7 central Texas.

8 Q. And was it your understanding that one of the objectives  
9 of the legislature was to try to create a new citizen voting  
10 age population majority district for Hispanics in Texas?

11 A. Yes. I was directed to do that.

12 Q. And when you couldn't draw one in north Texas, is this  
13 what you focused on?

14 A. Yes. It wasn't really an either/or. We looked at both of  
15 them at the same time. This one, we could get over  
16 50 percent, so then this is the one that we focused on after  
17 that.

18 Q. Now, did -- was this the original configuration in C-144  
19 of C-35?

20 A. No. You can see that there are changes in the southern  
21 region between C-125 and C-144, as reflected by the red lines.

22 Q. Did you make those changes or were they requested?

23 A. I made those changes at the request of, in this case,  
24 Representative Villarreal and Representative Castro. They  
25 liked the idea of 35 and having the new -- a new district, a

1 new Hispanic district in central Texas.

2           Their concern was that they wanted it to be a Bexar  
3 County-based district, and they wanted to make sure that the  
4 district was sufficiently weighted towards Bexar County, as  
5 opposed to Travis County, and so we made both initial changes  
6 and additional changes later on in the process to try to  
7 weight it towards Bexar County.

8           JUDGE SMITH: Are they Republicans or Democrats  
9 or --

10           THE WITNESS: I'm sorry. They are both Democrats.

11 BY MR. MATTAX:

12 Q. And are they both Hispanic?

13 A. Yes.

14 Q. Was C-144 the map that was finally adopted?

15 A. No, it was not.

16 Q. Please pull up C-149, the next in sequence. And could you  
17 describe what this is, please?

18 A. C-149 is the plan passed out of the House committee.

19 Q. And was this the final map adopted by the legislature?

20 A. It was not.

21 Q. Let's pull up the final map adopted by the legislature and  
22 try to close off the congressional part.

23 A. Okay. That is C-185.

24 Q. What changes were made between C-149, passed by the  
25 committee, and C-185, finally enacted by the legislature?

1 A. In this region, the southern and southwestern part of the  
2 state, there were a lot of changes. They started with  
3 District 20 in Bexar County. When we drew the map originally,  
4 we were focused on getting District 35 above 50 percent of  
5 HCVAP.

6 District 20, we felt like, as long as we kept it  
7 above 50 percent HCVAP, it was going to be complying, and it  
8 ended up dropping, I think, eight or nine points in HCVAP in  
9 the initial configuration.

10 We got a number of complaints and criticisms about  
11 doing that. Also, with respect to -- District 20  
12 Representative Menendez testified that there was a particular  
13 school district that had been taken out of District 20 that he  
14 wanted back into District 20, along with some areas of central  
15 San Antonio. So we tried to work on raising the HCVAP in  
16 response to those goals, and also addressing some of  
17 Representative Menendez's concerns.

18 JUDGE SMITH: When you mention the name of a  
19 representative, it would be helpful, at least to me, if you  
20 would say what party.

21 THE WITNESS: I will try to do that. Representative  
22 Menendez is a Democrat.

23 And then we also had -- Representative Castro and  
24 Representative Villarreal had identified parts of central San  
25 Antonio that they really wanted in the new District 35. So we

1 had those tensions as to how to address some of Representative  
2 Menendez's concerns, while also addressing Representative  
3 Villarreal and Representative Castro's concerns.

4 District 20 -- to raise District 20's HCVAP up, we  
5 had to take Hispanics out of the neighboring districts. This  
6 area of Bexar County that District 28 has is not a Hispanic  
7 area, so the only -- and this area of District 21 is not  
8 really either.

9 So the only places in Bexar County that we can get  
10 Hispanics for District 20 were from District 23 or District  
11 35. District 35, we felt that it was essential to keep it  
12 over 50 percent, and we were also trying to shift the  
13 weighting down to Bexar County.

14 So with that, we took this area of Guadalupe  
15 County -- Representative Kuempel, who is a Republican, lives  
16 in Guadalupe. He asked that we keep as much of Guadalupe  
17 whole as possible.

18 And so we took this area that we had initially put  
19 in District 35 and put it in District 15, so Guadalupe could  
20 be whole. That also allowed us to add more residents from  
21 Bexar County into District 35 to increase its weighting, as  
22 compared with Travis County.

23 So then District 20, this area here went back into  
24 District 20 that had been taken out, and all of this area went  
25 back into District 20. And that did have the effect of



1 increasing the HCVAP of District 20 fairly close to where it  
2 was originally.

3 That also had the corresponding effect of decreasing  
4 the HCVAP of District 23. I believe District 23 was still  
5 above 50 percent at that point, and that was the baseline we  
6 used. If a district was over 50-percent HCVAP, then it was a  
7 Hispanic majority district and, therefore, there would be an  
8 opportunity for the Hispanic population to elect the candidate  
9 of its choice.

10 But we were also conscious of a legal challenge that  
11 was coming, and so we also looked at the baseline levels of  
12 Hispanic population, and we wanted to keep District 23 at or  
13 above its HCVAP, SSVR that it had been initially.

14 So in making the changes within San Antonio, we  
15 reduced the HCVAP of 23 and we needed to increase it  
16 elsewhere. So one of the things we did was out in El Paso --  
17 initially, the El Paso map had these two fingers coming from  
18 23 into 16.

19 Representative Pickett, who is a Democrat from El  
20 Paso, expressed concern about those, after conversations with  
21 his Congressman, Congressman Reyes. We worked with  
22 Representative Pickett on an amendment to El Paso to get rid  
23 of those, and he told us he was satisfied with it and was  
24 going to offer it, but then after discussions with his  
25 Congressman, he decided not to offer it.

1           We ended up deciding to make changes to El Paso  
2 anyway, because we did not want the map to be challenged on  
3 that basis, and we needed to increase the Hispanic population  
4 of District 23, so we ended up drawing a fairly thin line  
5 across El Paso County, with the lower part being in District  
6 23 and the upper part in District 16.

7           23, the HCVAP was still lower than it had been in  
8 the baseline map, and so that is when we got to the changes  
9 over here, where we took Dimmit, Zavala and part of Maverick  
10 County and put them into 23. And in making all of those  
11 changes collectively, we were able to keep the HCVAP at the  
12 level it had been under the baseline map.

13 Q. So it would be fair to say, then, that as a result of some  
14 requests and some concerns to increase the citizen voting age  
15 population in CD-20, that is where that counterclockwise  
16 effect around the map requiring you to move further south in  
17 CD-23?

18 A. That is correct.

19 Q. And C -- and map C-185 was the map finally adopted by the  
20 legislature?

21 A. Yes.

22 Q. Let's move to the Texas House of Representatives. The  
23 maps we will be referring to for the Texas House are under  
24 D-53.

25           JUDGE SMITH: Which volume are we in?

1 MR. MATTAX: I'm sorry. Volume 14.

2 JUDGE SMITH: And which exhibit? Which tab?

3 MR. MATTAX: D-53.

4 JUDGE SMITH: Okay.

5 BY MR. MATTAX:

6 Q. Go ahead and pull up H-113. Would you describe what H-113  
7 is?

8 A. H-113 is the first House map released to the public by  
9 Representative Solomons.

10 Q. How was this map developed?

11 A. Representative Solomons wanted the House map, really, all  
12 of the maps to be a member-driven process. The House map was  
13 very personal to the House members, because it was the  
14 creation of the districts they would be running in for the  
15 next election.

16 So he asked each of the members to draw a district  
17 and give us multiple variations, to give us an ideal district,  
18 a good district, an okay district, and if there was anything  
19 they really didn't want in their district to let us know.

20 With respect to counties, we called certain counties  
21 drop-in counties, and those were really an interplay between  
22 the county line rule and one-person, one-vote, that if you  
23 could draw a number of districts within a county and not have  
24 any spillover and still be within the deviation to comply with  
25 one-person, one-vote, then we would do that and there would be

1 no spillover.

2 So, for instance, El Paso was at the low end. El  
3 Paso had just enough population to have five districts at the  
4 very low end of the, plus or minus five percent, from the  
5 ideal district size that we were looking at. So we told the  
6 El Paso delegation: Draw your five districts. You can't come  
7 outside.

8 The same thing is true for a number of other  
9 counties around the state, so Denton County, Collin County,  
10 Tarrant County, Dallas County, Travis County, Bexar County,  
11 Harris County, and Nueces County.

12 All of those counties you could draw a fixed number  
13 of districts within the county and have no spillover. So all  
14 of those county delegations were asked to try to work together  
15 on a county-wide plan. Some of those counties were able to  
16 reach agreement and some of them were not.

17 Q. Let's start with El Paso, since you mentioned it first.  
18 Was El Paso, was that, as you described it, a drop-in?

19 A. Yes.

20 Q. And who proposed that?

21 A. Representative Pickett, who is a Democrat. He was on the  
22 committee, and he worked with the El Paso delegation, and this  
23 is what he presented to the committee for the El Paso map.

24 Q. And was Bexar County a drop-in?

25 A. Yes.

1 Q. And let's move to Dallas. Was Dallas a drop-in?

2 A. Dallas was a drop-in, but it is one of the ones where  
3 there was not agreement between the representatives.

4 Q. Well, let's pull up Dallas County, and explain how that  
5 got drawn.

6 If there was not agreement between the delegation,  
7 who was tasked with trying to create a map that would work in  
8 a particular county?

9 A. For Dallas County, I was.

10 Q. And describe, with respect to this map, what you did.  
11 Let's start sort of in the center with 103, I think, and then  
12 sort of move counterclockwise.

13 A. Sure. Well, in Dallas County, I got proposals from, I  
14 think, every representative for their own district, except for  
15 Representative Alonzo, who is a Democrat. He was also on the  
16 committee.

17 He didn't submit a map for his district, but I  
18 believe all other 15 members of the Dallas County delegation  
19 did. A couple of the Republicans submitted county-wide  
20 proposals, but they did not have the support of all of the  
21 other members.

22 I believe that Representative Davis submitted a  
23 proposal for all of the Democrat districts, but she did not  
24 have the signoff of the other Democratic members for those  
25 districts. We did -- I did end up starting and trying to

1 combine them with District 103.

2 Q. Why did you start with 103?

3 A. Well, Dallas was hard to draw, because it had 16 districts  
4 and it was going down to 14. And it was likely that the two  
5 districts that would be lost would both be Republican  
6 districts, and so you would have two sets of two pairings and  
7 four people would end up being paired in Dallas County.

8           District 103 is represented -- is a Democrat. If  
9 SSVR was in the mid 30s -- I am going to talk about SSVR in  
10 the House map, instead of HCVAP, because we didn't have HCVAP  
11 available when we were drawing it, so we were looking at SSVR,  
12 as far as determining whether a district was a Hispanic  
13 majority district or not.

14 Q. Let me interrupt you briefly. For the record, what is  
15 SSVR?

16 A. Spanish surname voter registration.

17 Q. And why did you use that? Why do you think that is a  
18 reliable measure?

19 A. It has been used historically by courts as a good proxy  
20 for Hispanic citizen voting age population, because if someone  
21 is a registered voter, they are presumably a citizen, so it  
22 is -- I believe there is data that they correlate fairly  
23 closely. HCVAP is always going to be slightly above SSVR.

24 Q. Please continue with that, how you drew and why you drew  
25 103 and the configuration in this map.

1 A. So 103 was around 36, I think, percent, 36, 38 percent  
2 SSVR. We looked to see if there was a way to get it above the  
3 50-percent threshold, while also keeping 104, the other  
4 Hispanic district in Dallas, above 50 percent, and there  
5 wasn't.

6 And, again, that goes to the same factors we had  
7 with the congressional district, the assimilation of Hispanics  
8 around the county, the number of Hispanics under 18 years of  
9 age, and the number of noncitizen Hispanics in that region.

10 So once we determined we couldn't get 103 and 104  
11 both above 50 percent, we wanted to keep 104 above 50 and keep  
12 103 as close to where it started as possible. That was also  
13 difficult, because 103 was the most underpopulated district in  
14 the state when we started.

15 It needed 50,000 more people. And so we worked with  
16 Representative Anchia to come up with a configuration that he  
17 was satisfied with and that kept his SSVR where it was, and we  
18 were able to do that.

19 Then we also worked with Representative Johnson, who  
20 is a Democratic. He represents District 100, which is this  
21 blue one here. And we got a configuration that he was also  
22 happy with for that district.

23 We worked on balancing the Republican districts,  
24 which generally go across the top.

25 Everyone always asks about 105 and this finger

1 coming down. Representative Rodney Anderson, who is a  
2 Republican, lives down here. He represented a district that  
3 no longer exists in Dallas County.

4 The Chairman felt that we should be pairing  
5 Republicans with Republicans, when we could, and Democrats  
6 with Democrats, so we wanted to make sure that we didn't leave  
7 Representative Anderson in a heavily democratic 111 or 104, so  
8 we tried to draw him into 105.

9 We did that by looking at the political shading, and  
10 this area was the most Republican area down here, and so we  
11 pulled it up into 105.

12 Q. And I'm sorry. For the record, when you say "this area,"  
13 are you referring to the lower part of 105?

14 A. Yes. The part of 105 below the highway. I think it might  
15 be Highway 20, up at the part that sticks down into District  
16 104.

17 Q. Okay. And so, then --

18 JUDGE SMITH: That would be Highway 30, wouldn't it?  
19 It is Interstate 30?

20 THE WITNESS: Yes. You are right. It's 30 up  
21 there. I think 20 is down there. Thank you.

22 BY MR. MATTAX:

23 Q. So with respect to 105, having drawn that to have two  
24 Republicans paired, why does 104 sort of wrap around the  
25 bottom of 105?



1 A. Well, after -- there are a number of factors that went  
2 into it. One of them has to do with the city of Grand  
3 Prairie. It is hard to tell with this shading, but it is this  
4 yellow area, and it crosses the county line.

5 So people in Grand Prairie were very upset with the  
6 number of different districts their city was broken into.  
7 Some of it is the nature of being on a county line; you are  
8 going to be split. They were split into a number of  
9 districts, so we were looking at trying to not put them into  
10 the maximum number of districts possible.

11 So as a result, we had to figure out where to put  
12 this section of Grand Prairie. District 111 was a black  
13 majority district that we got to be just over the 50-percent  
14 threshold of black voting age population.

15 If we had given this section of Grand Prairie to  
16 District 111, it would have dropped below that 50-percent  
17 threshold.

18 District 104, we were able to keep just over the  
19 50-percent threshold for SSVR. This area over here, on the  
20 western side of District 104, is a Hispanic area. If we took  
21 it out of District 104 and replaced it with any -- any of the  
22 areas other than parts of District 103, it would have dropped  
23 104 below the 50-percent threshold, and we couldn't take from  
24 103, because 103 was already in the 30s.

25 So, eventually, we decided that to accomplish the

1 goal of getting Representative Anderson into 105 while  
2 avoiding violating the Voting Rights Act by dropping 104 or  
3 111 below 50, we end up with this unusual-looking  
4 configuration.

5 Q. So it would be fair to say that the two considerations in  
6 drawing Dallas County were pairing two Republicans and  
7 complying with the Voting Rights Act?

8 A. Yes.

9 Q. Okay. Let's move to the left and look at Tarrant County.  
10 Was this an agreed-upon plan by the members of the Tarrant  
11 County delegation?

12 A. The original plan, this 113, was an agreed-upon plan.  
13 Later, it changed and was no longer an agreed-upon plan. Oh.  
14 And the delegation in Tarrant County includes -- I think it  
15 was eight Republicans and two Democrats.

16 Q. And shall we move to plan H-153 to talk about Tarrant  
17 County? This would be next in line in D-53. I think it is  
18 D-53-2, I believe is how it is --

19 Does this reflect the change that resulted in a  
20 Tarrant County congressional -- House delegation not agreeing  
21 to the county map?

22 A. Yes. This plan H-153 is the plan that was eventually  
23 voted out of the House committee. In committee testimony,  
24 MALDEF testified that it was their belief that certain  
25 districts around the state, including District 90 in Tarrant

1 County, should be above the 50-percent threshold in SSVR, and  
2 they weren't in our initial proposal.

3 So in response to that concern, and the way they had  
4 drawn it in their map, we made changes to District 90 to get  
5 it above the 50-percent SSVR.

6 Representative Burnam, who is an Anglo Democrat, he  
7 represents District 90, was unhappy with those changes.  
8 Representative Veasey, who is a black Democrat in Tarrant  
9 County, was also unhappy with those changes, and so at that  
10 point, they withdrew their support for the Tarrant County map.

11 Q. Let's move down to Harris County. Could you describe how  
12 the Houston configuration in H-153 was arrived at?

13 A. Sure. Well, I will start with the Houston configuration  
14 in H-113, the initial committee proposal. We didn't know  
15 initially if Houston was going to have 24 or 25 seats. When  
16 you take the total population of Harris County and divide it  
17 by the ideal population of a district, you get 24.41 seats.  
18 Eventually, the legal decision was made that 24.41 is closer  
19 to 24 than 25.

20 JUDGE RODRIGUEZ: That was a legal decision?

21 THE WITNESS: Yeah.

22 BY MR. MATTAX:

23 Q. It wasn't an arithmetic decision?

24 A. The State Constitution says you have got to draw the  
25 districts within the counties, I believe the language is "as

1 closely as may be." So legally, the recommendation was made  
2 that 24 is closer to 24.41.

3 JUDGE GARCIA: A recommendation by whom?

4 THE WITNESS: I made that recommendation -- I  
5 believe the Texas Legislative Council made that  
6 recommendation, and I believe there were other attorneys that  
7 made it as well.

8 JUDGE GARCIA: Did any other attorney -- did anyone  
9 disagree or come to a different conclusion?

10 THE WITNESS: I know that the Democrats in Harris  
11 County wanted it to be 25.

12 JUDGE GARCIA: Are among those lawyers?

13 THE WITNESS: Yes.

14 JUDGE GARCIA: Okay. Go ahead.

15 BY MR. MATTAX:

16 Q. So after the decision was made to draw out 24 districts in  
17 Harris County, how was this configuration arrived at?

18 A. Well, initially, we had requested maps for Harris County  
19 with either 24 or 25, and the Republican delegation in Harris  
20 County gave us a map for each. We did not receive any -- I  
21 don't believe any countywide maps from the Democratic  
22 delegation.

23 We took what the Republican delegation gave us for  
24 their 24-map for the Republican districts. They hadn't paid  
25 very much attention to the Democratic districts, as far as

1 Voting Rights Act compliance, so then I made some changes to  
2 those districts to attempt to comply with the Voting Rights  
3 Act, and that resulted in this first version of Harris County  
4 in map H-113.

5 Q. When you say you made changes to the plan proposed by the  
6 Republican delegation to comply with the Voting Rights Act,  
7 exactly how did you do that?

8 A. I looked at the numbers, essentially, the SSVR, and the  
9 black voting age population, and compared them to the baseline  
10 plan, and tried to keep the numbers relatively the same.

11 Q. Okay. So your goal was to make sure that the numbers did  
12 not decrease in those districts?

13 A. That is correct.

14 Q. Okay. So after the Republicans had proposed this plan and  
15 you had made modifications to it, what happened next?

16 A. So then we had the hearings on it. And District 148 in  
17 Harris County is another one of the districts that MALDEF  
18 testified should be over 50 percent SSVR. So after that  
19 hearing, we made that change to increase 148, and you can  
20 see the -- the red lines are the changes.

21 Q. So let's -- so we are clear on this, you are talking about  
22 a change between 113, H-113 and H-153?

23 A. Yes.

24 Q. And the change you made was at the request of MALDEF?

25 A. Yes. And so with the changes to 148, they necessitated

1 minor changes to the surrounding districts as well.

2 Q. After 153 --

3 JUDGE SMITH: Whose district is 148?

4 THE WITNESS: 148 is representative Jessica Farrar's  
5 district. She is a Democrat.

6 BY MR. MATTAX:

7 Q. And H-153, then, with the changes requested by MALDEF, was  
8 passed out of committee?

9 A. Yes.

10 Q. And let's pull up now map H-271. And could you describe  
11 what this map is?

12 A. So after we passed H-153 out of committee, we went to  
13 floor debate on the map. At that point, the Harris County  
14 Democrats said they were not happy with the way the Democratic  
15 districts within Harris County had been drawn.

16 At that point, we stopped the floor debate for about  
17 three hours for people to meet with the Harris County  
18 Democrats and try to get their input. They were told, leave  
19 the Republican districts alone, and here are some parameters  
20 that we think are important legally, that you need to not drop  
21 your SSVR or black voting age population of the respective  
22 districts. You need to keep 148 above 50 percent.

23 Within those guidelines, you guys draw your  
24 districts however you think is best for your constituents, and  
25 we will adopt it that way.

1           And so they spent several hours working on that and  
2 then came up with a plan they were satisfied with, and that is  
3 plan 271, which was submitted by -- it says Representative  
4 Coleman, et al. Representative Coleman is a Democrat. And it  
5 is my recollection it was submitted by all of the Democrats in  
6 Harris County, and that was adopted by the House as a whole  
7 unanimously.

8           So the changes that they put in, a bunch downtown,  
9 and so that is where kind of the borders between the districts  
10 got narrowed, as a result of that.

11           JUDGE SMITH: Representative Turner was voting in  
12 favor of that as well?

13           THE WITNESS: I believe the entire House of  
14 Representatives, including Representative Turner, voted in  
15 favor of it.

16           JUDGE RODRIGUEZ: I want to make sure I understand.  
17 The instructions that the Democrats received, if I heard you  
18 correctly, they were told they could not touch the Republican  
19 districts?

20           THE WITNESS: That is correct.

21           JUDGE RODRIGUEZ: Now, yesterday, we heard testimony  
22 that four Anglo Republicans on the east side of Houston,  
23 populationwise, it would appear that those districts should  
24 have gone from four to three, but that it remained at four and  
25 population was shifted from minority population along the west

1 part and moved into the eastern part. Am I correct?

2 THE WITNESS: I don't know. I am not familiar with  
3 that testimony. I don't remember anyone --

4 JUDGE RODRIGUEZ: Well, besides the testimony, am I  
5 correct factually? Is that what took place?

6 THE WITNESS: I don't think so. I don't remember  
7 any discussions at the time or anyone raising any concerns  
8 about that. Certainly, all of the districts shifted. You are  
9 talking about on the east side of the county?

10 JUDGE RODRIGUEZ: Well, what I am curious about is,  
11 your testimony makes it seem like there was acquiescence by  
12 the Democrats to this, and what I am trying to understand is,  
13 was there acquiescence or was there acquiescence after the  
14 instruction that they couldn't tamper with the Republican  
15 lines?

16 THE WITNESS: There was acquiescence after the  
17 instruction.

18 BY MR. MATTAX:

19 Q. So in looking at 145, I think you mentioned District 145,  
20 that this was a narrowing, that I think that had been raised  
21 before, and the adjustments here to narrow that stretch of  
22 road, that was done at the request of Democrats?

23 A. Yes.

24 Q. And was 271 the final map passed?

25 A. It was not.



1 Q. Let's go to 281. I think we need to look at some changes  
2 in 281. Please describe to the Court what changes were made  
3 between 271 and 281 and why.

4 A. So 271 was adopted towards the end of the night debate on  
5 the map. The debate continued the next day. Some time after  
6 271 was adopted, Representative Thompson, who is a Democrat,  
7 noticed for the first time that her district was not drawn the  
8 way she had initially submitted it to the committee.

9 She had been under the mistaken belief during the  
10 entire process that her district was going to be drawn exactly  
11 as she submitted it without changes and had, I guess, missed  
12 out on the large conversation with the rest of the delegation  
13 on revising all of Harris County.

14 She ended up supporting that, but then afterwards,  
15 she said she just -- she just was unaware that her district  
16 wasn't the way she wanted it. So throughout the overnight and  
17 early the next morning, the delegation, both Republicans and  
18 the Democrats, worked with Representative Thompson to make  
19 changes to her District 141 that she would be happy with.

20 Using this map, 126, 150, 127, 142, 128, those were  
21 all Republican districts around Representative Thompson's  
22 district that changed in order to accommodate her request, but  
23 eventually, she was happy with her district, and it ended up  
24 above 50-percent black voting age population, which made it  
25 the third such district in the state. That plan was adopted

1 the next morning.

2 Q. Was there a final change to this plan?

3 A. Yes. There was one more change. In drawing their  
4 districts the night before, Representative Allen, who is a  
5 Democrat, she had inadvertently left her district office out  
6 of her district.

7 Q. Is this a change --

8 A. Yes. And so this debate happened literally at the last  
9 minute. We were on the floor about to do final passage, and  
10 she said: We have got to get my district office back in. Can  
11 we do that really quickly?

12 And we went to a computer at the front of the floor  
13 and just tried to draw a line with as little population as  
14 possible to connect her District 131 to her district office.  
15 And so that is where we got this little jut here.

16 Q. So that little piece of 131 in the middle of 146 was to  
17 get the legislator's office in her district?

18 A. Yes, sir.

19 JUDGE SMITH: Representative Turner testified about  
20 many things yesterday, one of which was that he was unhappy  
21 that his district was extended so far north and west to the  
22 Highway 290 area and also up toward and even north of, I  
23 believe, the Beltway 8, which he was describing as more  
24 Republican areas, that he seemed not to wish to be  
25 representing, and it was at the expense of an area formerly, I

1 believe, in, more or less, the northeast corner of his  
2 district that had been taken away.

3 Do you recall anything about the adjustments that  
4 were made there or whether he raised any kind of a protest or  
5 disagreement about that?

6 THE WITNESS: I remember initially he was very  
7 unhappy with the Harris County map as a whole. It is my  
8 understanding that he was, within the parameters given, he was  
9 satisfied with the map, as drawn.

10 Certainly, there was no desire to give him more  
11 Republicans. That was never a consideration. I don't know  
12 the specific area he was talking about or whose district he  
13 ended up going into.

14 BY MR. MATTAX:

15 Q. Could you pull up his district?

16 A. Yes. I think his district here is 140. If he is talking  
17 about this area that ended up in District 148 --

18 JUDGE GARCIA: Isn't it 149?

19 THE WITNESS: I'm sorry. 139?

20 JUDGE GARCIA: Or 139.

21 JUDGE SMITH: Yes. So he was --

22 THE WITNESS: He did not want this area.

23 JUDGE SMITH: He did not want that area, the area  
24 that crosses 290 and the area toward and north of 45 and  
25 Beltway 8, and he also said that he had lost that area in the

1 southwest corner of 140, as I recall his testimony.

2 THE WITNESS: Yes. I recall him being unhappy with  
3 different parts of that. I don't remember what his black  
4 voting age population was, but we were concerned with a  
5 retrogression challenge if we reduced that number. So we told  
6 him that even though there are other areas you would like  
7 better for you personally, we can't make changes to the  
8 district for you that would result in a legal challenge based  
9 on a perceived harm to the residents of that district.

10 So I think, if I remember correctly, there were some  
11 Hispanic areas that he had good relationships with and he  
12 wanted to keep in that -- in his district. But in getting 148  
13 above the 50-percent threshold, and in keeping 140 where it  
14 was, we weren't able to accommodate his goals to keep those  
15 people.

16 If we hadn't been worried about a legal challenge  
17 based on numbers, then I think there was a good chance he  
18 would have been accommodated.

19 Q. I promised everyone I would do this for an hour, so I  
20 think I have got three minutes left, so let's just quickly  
21 move down to Hidalgo County. I will just ask you a couple of  
22 questions, and then I will rely on your deposition testimony  
23 to further elucidate on the drawing of these maps.

24 Were there any hearings held -- well, let me let you  
25 pull the map up for Hidalgo County that was finally passed.

1 Were there any hearings held on this map? And, specifically,  
2 this portion of the map?

3 A. Yes, there were.

4 Q. And we have heard testimony about people disagreeing with  
5 it. Did everyone disagree with this map?

6 A. No. We received testimony from Representative Pena, who  
7 is a Republican, Representative Guillen, who is a Democrat,  
8 both in support, and Representative Guillen represents  
9 District 31, which goes into Hidalgo County. Both of them  
10 were in favor of this map. Additionally, MALDEF testified at  
11 the hearing that there were no legal problems with the Hidalgo  
12 County map.

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

14 MS. PERALES: I am trying to promise to be done in  
15 an hour too, but, Mr. Downton, that will require your  
16 cooperation. I do need the computer to go back to Mr. Hanna,  
17 if you don't mind, but keep the pointer.

18 David, I would like to start quickly with C-122,  
19 when you get the district viewer up.

20 MR. HANNA: 122?

21 MS. PERALES: C-122.

22 \*-\*-\*-\*-\*-\*-\*-\*

23 CROSS EXAMINATION

24 BY MS. PERALES:

25 Q. Good morning, Mr. Downton.

1 A. Good morning.

2 Q. I am going to start very lightly and quickly with the  
3 metroplex area and then we will start moving south.

4 Can you move into the Dallas-Fort Worth in C-122,  
5 please?

6 Do you recall during the session plan C-122 being  
7 publicly sponsored and offered by the Texas Latino Task Force?

8 A. I do. I recall it coming from MALDEF, and I know MALDEF  
9 is part of the Task Force.

10 Q. And you mentioned that you had seen an attempt to draw a  
11 Latino majority district in the -- here it is in C-122?

12 A. Yes.

13 Q. You and I talked about this in your deposition, and do you  
14 recall saying that you remember it was approximately  
15 45-percent Hispanic citizen voting age population?

16 A. That sounds correct.

17 Q. And do you recall it being primarily built out of whole  
18 precincts?

19 A. I don't recall that specifically, but I know we talked  
20 about it, and I have no reason to dispute that.

21 Q. But it is still your testimony that when looking at a map  
22 that was created primarily of whole precincts and at  
23 45-percent Hispanic citizen voting age population, even going  
24 down to the block level, you couldn't get it to 50; that is  
25 your testimony?

1 A. Yeah. Can I say it is 100-percent impossible? No. There  
2 are other people that have experience drawing maps, but I was  
3 never able to draw one and no one ever presented me with one.

4 Q. During the session?

5 A. Correct.

6 Q. Okay. I would like to move now to Sarah's computer, if I  
7 could. And we are going to look just for one minute at the  
8 Tarrant County CD-12, CD-26 finger, incursion. I don't know  
9 what you call it exactly.

10 Okay. Now, this is the -- in the benchmark, this is  
11 the old boundary, where the finger comes down from 26 and then  
12 goes back up into Denton County; is that right?

13 A. Yes. The red outline on the right.

14 Q. And that area that used to be scooped out, that was not  
15 predominantly Hispanic, was it?

16 A. No, it was not.

17 MS. PERALES: The next one, please, Sarah.

18 BY MS. PERALES:

19 Q. And you can see there, that is the overlay with the  
20 Hispanic population, and it is primarily not Hispanic  
21 population. The next one, please. Is that it? That's the  
22 one? Okay.

23 But in the new area, you testified that you went  
24 down and you united Latino communities. You moved the scoop  
25 over towards the west and then captured these Latino areas?

1 A. Yeah. We got this Latino area down and this Latino area.

2 Q. Okay. And that area is -- what that does, though, is it  
3 only increases the Hispanic citizen voting age population in  
4 26, which is that Denton County district, to still less than  
5 15 percent; isn't that right?

6 A. I think that is probably correct.

7 Q. Okay. Thank you. Now, I would like to move down towards  
8 Austin and San Antonio, District 35, but not actually District  
9 35, but its neighbor, District 21. I wanted to clarify some  
10 testimony that was given yesterday.

11 In plan C-185, the one that you worked on,  
12 Congressional District 21 includes both portions of San  
13 Antonio and Austin; isn't that right?

14 A. Yes.

15 Q. And that district is represented by Mr. Lamar Smith; is  
16 that correct?

17 A. Yes.

18 Q. And it includes neighborhoods in San Antonio, like Alamo  
19 Heights; is that right? Do you remember that?

20 A. Yes.

21 Q. And then up in the Austin end, neighborhoods that are on  
22 the west side of I-35, like Barton, Barton Springs or Barton  
23 Creek. It starts with Barton. I know there are many things  
24 that start with Barton on that side of I-35.

25 Do you remember those neighborhoods over there on



1 the west side of I-35; is that right?

2 A. Neighborhoods west of I-35, yes.

3 Q. Exhibit 305, please, sir. Now, just looking back  
4 historically at the map used for the 1996 special and general  
5 elections and the 1998, 2000 elections, San Antonio and  
6 Williamson County are connected in Congressional District 21;  
7 is that right?

8 A. Is 21 -- 21 is in red? So it goes from there up and  
9 around?

10 Q. Yes.

11 A. Yes.

12 Q. And then in the court-ordered map that was used for the  
13 2002 elections -- that is Exhibit 306, Sarah -- San Antonio  
14 and Austin are also united in Congressional District 21,  
15 aren't they?

16 A. Yes.

17 MS. PERALES: And then the new exhibit, Sarah.

18 BY MS. PERALES:

19 Q. In the legislatively drawn map that was used for the 2004  
20 elections and the 2006 primaries, San Antonio and Austin are  
21 also united in Congressional District 21; isn't that right?

22 A. Yes.

23 MS. PERALES: And since we have these up, if you  
24 could go to 304, Sarah.

25

1 BY MS. PERALES:

2 Q. Just to keep it short, I will skip down a little bit  
3 further south for you. You observed that Webb County is in  
4 Congressional District 23, the big West Texas district in the  
5 map that was used in 1992 to 1994 and the 1996 primary; is  
6 that right?

7 A. Yes.

8 Q. And then 305, please. And then in the court-drawn --  
9 oops. Okay. And then in the map that was used for the 1996  
10 special and general and 1998 to 2000 elections, Webb County is  
11 also in big West Texas 23; is that right?

12 A. Yes.

13 Q. And then 306, please. Again, for the 2002 elections,  
14 which was the court-drawn map, do you see Webb County and big  
15 West Texas 23; is that right?

16 A. Yes.

17 Q. Okay. Now, going back to San Antonio -- we don't need to  
18 look at those anymore. Just a few questions quickly about San  
19 Antonio and your testimony about Congressional District 20,  
20 which is inside San Antonio. It is represented by Charlie  
21 Gonzalez.

22 CD-20 and the benchmark was only overpopulated by  
23 13,400 people; isn't that right?

24 A. That sounds right.

25 Q. And it is a fairly urban district, yes?

1 A. Yes.

2 Q. And so you agree with me that in order to bring  
3 Congressional District 20 into one-person, one-vote  
4 compliance, just looking at 20, that you would only have to  
5 draw out several precincts; isn't that right?

6 A. Yes. We had this conversation in the deposition, and  
7 we have, I guess, a fundamental disagreement about how we are  
8 drawing districts. I looked at it that we were drawing 36  
9 districts, as opposed to taking an existing district and  
10 merely adding or subtracting people from that district.

11 Q. Yes. And you had a conversation this morning with Mr.  
12 Mattox where I think sometimes it was phrased as adding  
13 territories to districts or taking away territory, so I am  
14 following in that vein.

15 You would agree with me, however, that if one just  
16 wanted to fix 20, in terms of bringing it into constitutional  
17 compliance, maybe three or four precincts would have done the  
18 job; isn't that right?

19 A. You could have done that, yes.

20 MS. PERALES: Okay. Now, Sarah, can you please put  
21 up the C-190 South Texas zoom for me, and put up the  
22 demonstrative as well.

23 BY MS. PERALES:

24 Q. Now, Mr. Downton, if you will recall in your deposition,  
25 we went through some demographic statistics for the Latino

1 Task Force proposed remedy, plan C-190.

2 MS. PERALES: It is also on the screen.

3 MR. MATTAX: Oh, I'm sorry.

4 MS. PERALES: We are doing the multimedia version of  
5 this.

6 BY MS. PERALES:

7 Q. You testified that in the Task Force proposal, District 16  
8 in El Paso, starting from the west, with a Spanish surname  
9 voter registration of 65.7 percent, was a Latino opportunity  
10 district, correct.

11 A. Yes.

12 Q. And you testified that Congressional District 23 in plan  
13 C-190, with a Spanish surname voter registration of  
14 70.7 percent, is an opportunity district, correct?

15 A. Yes.

16 Q. And you testified that Congressional District 20 in plan  
17 C-190, with a Spanish surname voter registration of 60.2  
18 percent, is an opportunity district, correct?

19 A. Yes.

20 Q. And you testified that Congressional District 28 in plan  
21 C-190, with a Spanish surname voter registration of  
22 62.3 percent, is an opportunity district, correct?

23 A. Yes.

24 Q. And you testified that Congressional District 15 in plan  
25 C-190, with a Spanish surname voter registration of

1 60.5 percent, is an opportunity district, correct?

2 A. Yes.

3 Q. And you testified that Congressional District 34 in plan  
4 C-190, with a Spanish surname voter registration of 68.53, is  
5 an opportunity district, correct?

6 A. Yes.

7 Q. And then finally, with respect to District 35 in plan  
8 C-190, which is the same as the District 35 that is in the map  
9 that you drew, C-185, you testified that that district is also  
10 an opportunity district, correct?

11 A. Yes.

12 Q. And you looked at maps during the legislative process that  
13 created seven Latino majority districts in south and central  
14 Texas that would elect a Latino-preferred candidate more than  
15 half the time, didn't you?

16 A. Yes. I believe that is accurate.

17 Q. C-122, please. All right. Now, this is the C-122 which  
18 you saw during the session; is that right?

19 A. Yes.

20 Q. And that was during the regular session?

21 A. I believe so, yes.

22 Q. And it doesn't include the whole map, though, does it? It  
23 is just that -- it is the Latino majority districts that you  
24 see right there; is that right?

25 A. Yes. It does include two districts out of the south

1 region that we are talking about, but within the south region,  
2 I believe they are all Latino majority districts.

3 Q. Can you zoom in to 35, please? And this was the early  
4 version of 35, which I believe was the inspiration for the 35  
5 and C-185; is that right?

6 A. That is correct.

7 MS. PERALES: And going back out just to South  
8 Texas, David.

9 BY MS. PERALES:

10 Q. You had mentioned earlier about some rotating  
11 redistricting changes that you had made with respect to  
12 creating the new 35 and its cascading impact on 20 and then  
13 23, and the need to sort of make sure that each of them had a  
14 majority of Hispanic citizen voting age population; do you  
15 remember that?

16 A. Kind of the reverse. After we created 35 and had drawn  
17 the initial map, there were concerns raised about 20. It was  
18 already over 50 percent.

19 Q. Yes.

20 A. But there were concerns to raise it higher, and that  
21 necessitated changes.

22 Q. But you certainly had the ability to consider including  
23 Nueces County's Latino population in the South Texas  
24 configuration of congressional districts in order to provide  
25 sufficient population that you would not have felt pressure

1 between creating the new 35 and maintaining benchmark levels  
2 in CD-20 and 23; isn't that right?

3 A. We could have included Nueces and it was considered.

4 MS. PERALES: David, can you put up C-185, please.

5 BY MS. PERALES:

6 Q. Okay. Here is the adopted map. It is your position that  
7 the adopted map C-185 is legally compliant, because seven  
8 districts in south and central Texas have over 50-percent  
9 Hispanic citizen voting age population; that's right?

10 A. I don't know that we needed seven, but it is my position  
11 there are seven Latino opportunity districts in south and  
12 central Texas, because the HCVAP is over 50 percent in each  
13 district.

14 Q. And even though you admit that one of these districts,  
15 West Texas 23, elects the Latino-preferred candidate in only  
16 one out of ten elections; isn't that right?

17 A. That is correct.

18 Q. And it is your position that C-185 and a map like C-190  
19 both create seven opportunity districts, that they are both  
20 legal, but the difference is a political choice in C-185 to  
21 accomplish political goals; is that correct?

22 A. Yes.

23 Q. And you believe while mapping that if the congressional  
24 plan you created did not have an additional Section 2 district  
25 in south and central Texas that a court could have a problem

1 with that, and that there was some legal risk if there wasn't  
2 an increase; isn't that right?

3 A. We thought there was a potential risk, yes.

4 MS. PERALES: I think, Sarah, if you can get back  
5 the computer.

6 BY MS. PERALES:

7 Q. So while you were working on the congressional map, you  
8 communicated with Mr. Opiela; is that right?

9 A. That is correct.

10 Q. And you understood that Mr. Opiela, from Mr. Opiela, that  
11 he was speaking on behalf of the Republican congressmen from  
12 Texas, with the exception of Representative Barton; is that  
13 right?

14 A. That is correct.

15 Q. And he submitted plans to you, and some of his ideas were  
16 incorporated, yes?

17 A. Yes.

18 Q. And he expressed the following concern to you about  
19 Congressional District 23, that there was a newly elected  
20 Republican congressman who wanted to have a chance to be  
21 reelected, as did the other congressman?

22 A. I think that is fair, yes.

23 Q. And you attempted to accommodate Mr. Opiela's concerns on  
24 behalf of the delegation about the 23rd district, yes?

25 A. Yes.



1 Q. While still creating what you thought of as a legal map?

2 A. Yes.

3 Q. And one of your goals in drawing CD-23 was to allow  
4 Congressman Canseco to have the opportunity to be reelected?

5 A. Yes.

6 Q. In fact, you phrased it as giving Mr. Canseco his best  
7 chance to be reelected, while maintaining or increasing the  
8 Hispanic percentages, total population Hispanic voting age,  
9 Hispanic citizen voting age, and Spanish surname voter  
10 registration, correct?

11 A. Yes. We wanted to make sure that we complied with the  
12 Voting Rights Act and felt that that needed to be done to  
13 comply.

14 Q. And you also wanted to draw Mr. Canseco's house into  
15 Congressional District 23, yes?

16 A. Yes. He requested that and we were able to accommodate  
17 him.

18 Q. So as you were drawing CD-23, through the amendments and  
19 to its final version, you were comparing the political  
20 performance of the evolving 23 to how it had been in the  
21 benchmark, correct?

22 A. I am not sure about that. We were definitely looking at  
23 the political performance of 23 with respect to specific races  
24 and also a weighted average of races.

25 Q. Go ahead and grab your deposition, volume 1, page 39.

1 Take a look at lines 15 through 23, where we talked about what  
2 you were looking at while 23 was evolving, as you were  
3 crafting it.

4 Do you see there you were watching it and its  
5 political performance compared to how it had been in the  
6 benchmark; is that right?

7 A. Yeah. That is how I answered your question. I think that  
8 what I said today is probably more accurate about the  
9 comparisons.

10 Q. And when you were drawing the new Congressional District  
11 23, you would track the changes with a running table in Red  
12 Appl of various statistics for the district, including total  
13 population, deviation, Spanish surname voter registration; is  
14 that correct?

15 A. As we were drawing it -- we kept lots of statistics,  
16 including some of those and, at times, all of those.

17 Q. And I understand that when you are in Red Appl, you can  
18 have both a running table that appears on the screen, as you  
19 are making the changes, and that table is updating itself in  
20 the moment, and then there are also reports that you can send  
21 to map somewhere and get some reports back; is that right?

22 A. Yes. Some statistics are available to us all the time,  
23 and we keep a lot of them on the screen all the time, but  
24 HCVAP was not available to us. We had to request that report  
25 from leg. counsel.

1 Q. And also the aggregated elections; that's right?

2 A. That is also -- well, no. I could -- I could do those  
3 myself.

4 Q. And, in fact, you testified you would typically keep a  
5 running table of the McCain-Obama results while you were  
6 mapping, and you were watching the changes in the district;  
7 that's right?

8 A. For congressional districts, yes.

9 Q. Yes, for congressional. So you testified that as you were  
10 drawing the new Congressional 23, you were simultaneously  
11 seeking to make it an improved district for Mr. Canseco's  
12 reelection and also seeking to maintain or increase the  
13 Hispanic percentages in the district; that's right?

14 A. Yes.

15 Q. And while you were drawing the new CD-23, you would shade  
16 the precincts by election results; is that correct?

17 A. Yes.

18 Q. And with respect to the McCain election, you testified  
19 that that was an important election, in terms of evaluating  
20 what you were trying to accomplish politically for the 23rd;  
21 is that right?

22 A. That is the one that the Republican congressmen were most  
23 concerned with, so, yes, it was important.

24 Q. And you didn't use any running data for any political  
25 races that you thought of as indicative of whether a district

1 could elect a Latino-preferred candidate, correct?

2 A. I did not.

3 Q. And you accomplished the goal of making the district safer  
4 for Mr. Canseco and at least maintaining the Latino  
5 percentages by moving precincts in and out; is that correct?

6 A. Yes.

7 Q. And you were looking at the political performance of the  
8 precincts as you were deciding whether to move them in and out  
9 and accomplish your dual goals of making the district safer  
10 for Mr. Canseco, but more Hispanic at the same time?

11 A. Yes.

12 Q. And when you were drawing Congressional District 23, you  
13 didn't have any data showing you which voters in a precinct  
14 were both Hispanic and Republican, correct?

15 A. That is correct.

16 Q. And because we don't register by party in Texas, you can't  
17 identify people who are both Spanish surname registered voters  
18 and registered Republicans, correct?

19 A. That is also correct.

20 Q. And you didn't have any information showing whether the  
21 majority of Hispanics that you were selecting for inclusion in  
22 each precinct that you were selecting for inclusion in 23  
23 preferred Republican candidates, did you?

24 A. That data was not available.

25 Q. So what you had for the precinct was the percent Spanish

1 surname registered voters, for example, and the percent of  
2 votes for the Republican candidate, correct?

3 A. Correct.

4 Q. And so -- and we talked about this in your deposition.  
5 When you were deciding between two precincts, both 60 percent  
6 Spanish surname voter registration, in terms of which precinct  
7 to include in the boundaries of 23, you would select a  
8 precinct with the greater percentage of Republican votes,  
9 correct?

10 A. Correct.

11 Q. And you knew, didn't you, that a precinct with a majority  
12 of Spanish surname registered voters could have a higher  
13 number of votes for McCain, because McCain was the preferred  
14 candidate of Anglo voters and they were turning out at a  
15 higher rate than the Hispanic voters in that precinct,  
16 correct?

17 A. Well, I didn't think about it at the time, but during our  
18 deposition, we discussed that, and I agreed with you that that  
19 is possible.

20 Q. Okay. That was the other one. Go to page 77 of your  
21 deposition. Look at lines 10 through 15. You testified then  
22 that you were aware that a precinct with a majority of Spanish  
23 surname registered voters could have a higher number for  
24 McCain, because McCain was the preferred candidate of Anglo  
25 voters and the Anglos were turning out at a higher rate than

1 Hispanics, correct?

2 A. Yes. I said: Is it possible? Yes.

3 Q. And then you also considered -- and you considered the  
4 possibility, if you look further down in the deposition, but  
5 you didn't do anything about it, because precinct level  
6 election results were all you had, correct?

7 A. That is correct.

8 Q. Okay. Now, stay with me. And you also agree that it is  
9 possible that a precinct could have a majority of Spanish  
10 surname registered voters but the vote count for McCain could  
11 be higher because there is a greater degree of racial  
12 polarization in the candidate preferences in that precinct,  
13 correct?

14 A. Yes, I said I didn't -- wasn't sure I understood and asked  
15 you to explain.

16 THE REPORTER: One more time, please.

17 THE WITNESS: I told you I wasn't sure I understood  
18 your question and asked you to explain, and after you further  
19 explained, then I agreed that that was possible.

20 BY MS. PERALES:

21 Q. And you testified in your deposition that you didn't think  
22 of that, but it wouldn't have made a difference, because this  
23 is all the data you had to go on, right?

24 A. That is correct.

25 Q. Exhibit 293, please. You would look at reports, as you

1 created draft plans, that showed the results of elections you  
2 thought of as indicative of whether a Latino-preferred  
3 candidate could be elected; is that correct?

4 A. Yes. It wasn't -- yes and no. I didn't identify those  
5 elections. I was given certain elections where I was told  
6 there was a Latino-preferred candidate of choice, and I looked  
7 at those selections.

8 Q. That's right. And so what you are seeing on the screen  
9 right now is Exhibit 293, in volume 8. It is behind tab 293  
10 in volume 8.

11 And this is the sort of report that was generated  
12 for you when you would look to see if plans -- how they were  
13 performing for Latino-preferred candidates; is that right?

14 A. The sort of report, yes, but the elections there, I don't  
15 recognize some of them, so I don't believe I have ever seen --  
16 this was not a report I was provided, I don't believe.

17 Q. Okay. But you did testify in your deposition that there  
18 were a number of races, that you could recall races with  
19 Yanez, races with Noriega, Sanchez, Chavez-Thompson?

20 Do you remember in your deposition you were telling  
21 me about some of the races you could remember?

22 A. Yes.

23 Q. And do you see some of those races there, let's say listed  
24 under District 23? Sanchez --

25 A. Sanchez, Perry.

1 Q. Uh-huh.

2 A. I believe Chavez-Thompson and Dewhurst, Bailey and Guzman,  
3 who was -- I know that at one of the depositions, people  
4 identified multiple Yanez races.

5 Q. We will get there.

6 A. I only looked at one, so I don't know if it is this one.

7 Q. Okay. But I will represent to you that this did come from  
8 the Attorney General's Office and it was produced to us, so --  
9 and I also don't want you to get distracted by the last  
10 column, because, obviously, this is a report on some kind of  
11 draft plan, and I am not going to ask you about that draft  
12 plan, because I can't match it up.

13 But I will ask you to look at the second-to-last  
14 column, where it says plan C-100 prevailing. And with the  
15 blue and the white rows there, it appears that it identifies  
16 three races in which the Latino-preferred candidate prevails,  
17 right? Sanchez, Noriega and Yanez?

18 A. Yes.

19 Q. And then in blue, it identifies one, two, three, four,  
20 five six, seven races where the Latino candidate is not  
21 prevailing; is that right?

22 A. That is correct.

23 Q. Okay. And you did testify in your deposition that you  
24 looked at the aggregated election results for ten racially-  
25 contested elections, yes?



1 A. Yes.

2 Q. Okay. And I believe you testified in your deposition that  
3 was 2002 general for Governor, 2004 general for Railroad  
4 Commissioner, 2004 general for Court of Criminal Appeals.  
5 These are the ones that we see. Do you recall that, when you  
6 were looking at this piece of paper?

7 A. Yes.

8 Q. Okay. And you identified this document as the kind of  
9 report you would look at, yes?

10 A. Yes.

11 Q. Now, this analysis does omit the 2008 Court of Criminal  
12 Appeals race in which Mr. Molina won a majority of votes in  
13 the benchmark 23.

14 Do you remember us going over that in your  
15 deposition?

16 A. I do.

17 Q. Okay. And it also omits the Yanez race in 2000, in which  
18 Ms. Yanez won a majority of votes in the benchmark 23; do you  
19 recall that?

20 A. I recall that from the deposition.

21 Q. Okay. And do you also recall from your deposition that  
22 the analysis omits the Molina race for the Court of Criminal  
23 Appeals in 2002, in which Mr. Molina won a majority of votes  
24 in the benchmark 23, yes?

25 A. I recall that from the deposition as well.

1 Q. And do you recall we agreed in the deposition that if you  
2 had included those races in your analysis of the benchmark 23,  
3 you would have expanded the set from ten to thirteen and the  
4 win-loss record for the Latino-preferred candidates would have  
5 gone from only three out of ten to six out of thirteen; is  
6 that right?

7 A. Using only those three elections, yes, that would be  
8 correct.

9 Q. Well, adding those three elections.

10 A. Yes. Adding those three, and there may be others that  
11 could have been added. I don't know.

12 Q. Well, hopefully, we found them all. But if the study is  
13 thirteen, then the win-loss record would be six out of  
14 thirteen, yes?

15 A. That is correct.

16 Q. Okay. And you are aware that in the existing benchmark  
17 23, in 2006 and 2008, Congressman Ciro Rodriguez was elected?

18 A. Yes.

19 Q. And then in 2010, Congressman Canseco was elected?

20 A. Yes.

21 Q. Let's look at the overpopulation in the benchmark 23 and  
22 its neighbor, 16.

23 Congressional District 16 in El Paso is kind of in  
24 the pointy corner of the state, isn't it?

25 A. Yes.

1 Q. So when it is overpopulated, it is going to have to -- and  
2 I know you hate this term -- shed population into 23, because  
3 it can't lose population into New Mexico or into Mexico; is  
4 that right?

5 A. That is correct.

6 Q. All right. And then CD-23 itself was overpopulated by  
7 149,163, yes?

8 A. Yes.

9 Q. So in order to draw Congressional District 23 at the  
10 ideal, you needed to include about 210,000 fewer people in it,  
11 when compared to the benchmark, yes?

12 A. Looking at it in isolation and assuming you leave District  
13 16 wholly within El Paso County, yes.

14 Q. Yes. And assuming those two things, you could have simply  
15 pulled the boundaries of District 23 south and west towards  
16 the border to reach the ideal population, correct?

17 A. You could have done that.

18 Q. Now, in the Congressional District 23 that you drew in  
19 plan C-185, it picks up about 33,000 people from the old  
20 Congressional District 11 north of the Pecos River,  
21 specifically, Loving, Winkler, Ward, Crane, Upton, Reagan,  
22 Schleicher and part of Sutton County; is that right?

23 A. I believe that is correct.

24 Q. And in your deposition, you told me you couldn't explain  
25 why any of those counties specifically were included in 23; is

1 that right?

2 A. Yes.

3 Q. And you also testified in your deposition that you could  
4 not remember whether you included Frio, Lasalle and Atascosa  
5 Counties into 23 to bring up the Spanish surname voter  
6 registration; is that correct?

7 A. That is correct.

8 Q. And you recall when I asked you why Congressional District  
9 23 in the proposed plan C-185 contained half of Maverick  
10 County, and only half, since it had the whole thing before,  
11 you replied: Maverick County does not have a particularly  
12 good record of voting in high numbers for Republicans.

13 Is that right?

14 A. Yes. I believe that is correct.

15 JUDGE GARCIA: And is that a valid consideration?

16 THE WITNESS: As to the makeup of a congressional  
17 district?

18 JUDGE GARCIA: Well, if we are not concerned about  
19 party, why would it make a difference whether Maverick County,  
20 Frio County, whatever, Sutton County -- who told you that it  
21 doesn't have a good record? Which, by the way, it doesn't,  
22 but --

23 THE WITNESS: I pulled up the election results, but  
24 I will say that we were considering party in drawing District  
25 23. That was very much a concern.

1 JUDGE GARCIA: Did Congressman Canseco ask you to  
2 eliminate half of Maverick County?

3 THE WITNESS: No. In the initial map that we drew,  
4 District 23 did not include any of Maverick County.

5 JUDGE GARCIA: Well, I understand that, but did the  
6 Congressman ask you to eliminate half of Maverick County?

7 THE WITNESS: No.

8 JUDGE GARCIA: Did anyone else?

9 THE WITNESS: No.

10 JUDGE GARCIA: Okay. Go ahead.

11 MS. PERALES: Thank you, Your Honor.

12 BY MS. PERALES:

13 Q. Mr. Downton, you further testified in your deposition that  
14 the political part of the goal was to make 23 a stronger  
15 district for Congressman Canseco, and that if Maverick County  
16 was going to make it less Republican, then it was less likely  
17 you were going to choose to include Maverick County when  
18 drawing 23; is that right?

19 A. Yes.

20 Q. And when you were working on the early draft of the  
21 congressional map in plan C-125, you testified that you made  
22 an attempt when drawing 23 to include portions of El Paso  
23 County that would increase Mr. Canseco's reelection chances,  
24 yes?

25 A. Yes.

1 Q. And it is correct to say that the areas that you chose not  
2 to include in Congressional 23 in plan C-185 that were  
3 majority Hispanic tended to be less likely to prefer Mr.  
4 Canseco?

5 A. I am sorry. You lost me on that one.

6 Q. I know. Well, it was a convoluted conversation we were  
7 having, but if you turn to page 92 of your deposition,  
8 starting at the last line, 25, and flowing on to page 93, line  
9 4, when I said: Isn't it correct to say that the areas you  
10 chose not to include in 23, so let's say the areas you chose  
11 to exclude from 23 in plan C-185 that were majority Hispanic  
12 tended to be less likely to prefer Mr. Canseco? Yes?

13 A. It is hard with the negatives. I think it is fair to say  
14 that if a majority Hispanic area was more Republican, we  
15 tended to include it. If a majority Hispanic area was more  
16 Democratic, we would be more likely to exclude it.

17 Q. Well, let's be precise. What you really mean is that if a  
18 majority Hispanic area tended to have more votes in those  
19 precincts for the Republican candidate, you would be more  
20 likely to include it?

21 A. Yes.

22 Q. Is that correct?

23 A. That is correct.

24 Q. And you are aware that Maverick County is over 80-percent  
25 Hispanic, yes?

1 A. I know it is a very highly Hispanic county. I don't know  
2 the percentages.

3 Q. Now, you don't believe Congressman Canseco is the Latino-  
4 preferred candidate in 2010, do you?

5 A. I believe I was told that he was not.

6 Q. And it is your position that Congressional District 23 in  
7 the adopted plan C-185 is a Latino opportunity district  
8 because the Hispanic citizen voting age population is  
9 approaching 60 percent, yes?

10 A. Yes. I believe that any district where the Hispanic  
11 citizen voting age population exceeds 50 percent, it is, by  
12 definition, a Hispanic opportunity district.

13 Q. Even after your analysis of the reaggregated elections on  
14 the District 23 that you crafted showed that the Hispanic  
15 candidate of choice is successful in only one out of ten  
16 elections, yes?

17 A. Yes. It is my understanding that the Voting Rights Act  
18 requires an opportunity, not a guarantee of performance,  
19 success.

20 Q. I'm sorry. And you believe that if the majority of the  
21 citizen voting age population in the district is Latino, it  
22 is, by definition, a Latino opportunity district, regardless  
23 of whether it elects zero or 100 percent of the time; is that  
24 right?

25 A. I do.

1 Q. And when you finished drawing Congressional district 23,  
2 it did have a higher Spanish surname voter registration and a  
3 higher percentage of voters voting for John McCain; is that  
4 right?

5 A. That is correct.

6 Q. And you do agree a Latino opportunity district doesn't  
7 have to elect a Latino-preferred candidate 100 percent of the  
8 time?

9 A. Yes.

10 Q. Now, when you were drawing Congressional District 23, you  
11 did not look at any primary elections; that is correct?

12 A. That is correct.

13 Q. And when you were drawing Congressional District 23, you  
14 didn't check to see, at least numerically, whether Latinos in  
15 the district could elect their preferred candidate in the  
16 Republican primary, did you?

17 A. I did not look at that, no.

18 Q. And when you were drawing Congressional District 23, you  
19 didn't have any evidence regarding the degree to which voters  
20 in the Republican primary supported Latino candidates in the  
21 area that -- in areas that were getting included in the new  
22 23, from the outside?

23 A. That is correct. I did not have that data.

24 Q. And also, when you were drawing Congressional 23, you  
25 didn't have any evidence regarding the degree to which voters



1 in the Republican primary supported Latino candidates in the  
2 areas that were in the benchmark but that were now going  
3 outside Congressional 23?

4 A. That is also correct.

5 Q. And when you were drawing the new 23, you didn't know  
6 whether voters in the areas that you were excluding from 23  
7 may have given more votes to Latino Republicans in the primary  
8 when compared to the areas that you were bringing in, correct?

9 A. That is correct.

10 MS. PERALES: Sarah, can you put up 385, please?

11 BY MS. PERALES:

12 Q. Let's look at Mr. Carrillo's 2010 Republican primary for  
13 Railroad Commissioner. And in your second deposition volume,  
14 which is the smaller one, you have an Exhibit C-12, so I just  
15 wanted you to have that in front of you, and the tab is marked  
16 C-12.

17 This is a map similar to the one that we discussed  
18 in your deposition, with areas in green or areas that were  
19 drawn into 23, areas in orange, areas that were drawn out of  
20 23, but you and I are just going to talk about Mr. Carrillo's  
21 statewide performance.

22 If you look at the exhibit from your deposition, you  
23 agreed with me then, and hopefully you have the numbers in  
24 front of you, that Mr. Carrillo's statewide performance in  
25 that primary was 39.27, yes?

1 A. Yes.

2 Q. And in areas 9, 2 and 1 of the map, areas that were  
3 removed from Congressional District 23, Mr. Carrillo is  
4 outperforming, compared to the parts of CD-23 that remained in  
5 the plan, correct?

6 A. Well, he is underperforming compared to that 39 percent.  
7 You said statewide.

8 Q. In the area that was unchanged, correct? But look at the  
9 areas that are coming out. And turn with me, if you will --

10 A. Yes. It's --

11 Q. -- to page 44 of that volume, lines 14 through 17.

12 A. I'm sorry. What lines?

13 Q. Page 44, lines 14 through 17. You and I were talking  
14 about Mr. Carrillo's performance in areas that were being  
15 shifted into 23 and areas that were being shifted out.

16 And do you recall testifying, after we looked at  
17 these numbers for a while, that in areas 9, 2 and 1 of the  
18 map, areas that are being removed from 23, that Mr. Carrillo is  
19 outperforming, compared to the areas of CD-23 that remained in  
20 the district?

21 A. I remember being confused about this at the deposition.  
22 Looking at the numbers of the exhibit, Mr. Carrillo got 39  
23 percent statewide. District 29, that was taken out, he got  
24 37 percent, so he underperformed with respect to that section.

25 District 2, he got 44 percent, so he overperformed

1 for that one. And in District 9, he got 33 percent, so he  
2 underperformed for that one.

3 Q. But how many votes did he get?

4 A. In District 1, he got -- where he underperformed, he got  
5 2,116 votes, and that was taken out. And District 2, where he  
6 overperformed, he got 888 votes, and that was taken out. And  
7 then District 9, where he underperformed, he got 327 votes,  
8 and that was taken out.

9 Q. Now, let's compare that to the areas that go in. And I  
10 believe it is just a little bit further down in your  
11 deposition, if you could walk the Court through it.

12 In area 4, which comes in, Mr. Carrillo only gets  
13 120 votes in that primary; isn't that right?

14 A. That is correct. But he also got 59 percent of the vote  
15 there, so that would be overperformed, and an additional 121  
16 votes went in.

17 Q. But 120 is a relatively smaller number compared to the  
18 areas that were going out, right?

19 A. Yes.

20 Q. And I think that's all I have on Congressional District  
21 23, and I would like to move quickly with you to Congressional  
22 District 27.

23 You would agree with me that in the benchmark plan  
24 C-100, Congressional District 27 is a majority Hispanic  
25 district, isn't it?

1 A. Yes.

2 Q. And under the adopted map, C-185, CD-27 is no longer a  
3 Hispanic majority district, is it?

4 A. That is correct.

5 Q. And you agree that the old and the new Congressional  
6 District 27 have an overlap of Nueces County and part of San  
7 Patricio County, but other than that, the geography is totally  
8 different, yes?

9 A. Yes.

10 Q. And your goal in creating the new 27 was to draw  
11 Mr. Farenthold and his county into a Republican district; is  
12 that right?

13 A. That was one of the two goals in that area.

14 Q. And you consider Congressional District 34 a swap for  
15 Congressional District 27; isn't that correct?

16 A. With respect to the Voting Rights Act.

17 Q. And you mean specifically that under Section 5, the  
18 nonretrogression rule, CD-34 is a replacement for CD-27, yes?

19 A. Yes.

20 Q. And you testified in your deposition that CD-27 in the  
21 adopted plan is not a Latino opportunity district, correct?

22 A. Correct.

23 Q. And as we went over it in your second deposition, you  
24 agreed that Nueces County's registered voters in the benchmark  
25 Congressional District 27 make up just over 50 percent of the

1 total registered voters in that district, correct?

2 A. Yes.

3 Q. And you agree with me in your deposition that now that  
4 Nueces County has been configured into the new 27, its  
5 registered voters are no longer the majority of the total  
6 registered voters in District 27, correct?

7 A. Yes.

8 Q. And you agree with me that since Congressional District 27  
9 and the benchmark is overpopulated, and if one were simply  
10 trying to bring Congressional District 27 and the benchmark  
11 into one-person, one-vote compliance, one would have had to  
12 reduce the district's population by about 43,500 people and  
13 have a constitutional district, yes?

14 A. It is an accurate statement, but it really doesn't apply  
15 in that region of the state, because we are putting a new  
16 district there.

17 Q. But putting aside the new district, CD-27 was going to  
18 have to have less people in it when redrawn, because it was  
19 overpopulated, right?

20 A. Yes.

21 Q. And that number was 43,500, yes?

22 A. Yes.

23 Q. And you could have, although you didn't, left CD-27 the  
24 way it was, Nueces County or most of it at the top and Cameron  
25 County or most of it at the bottom and just reduced the

1 district by 43,500 people, yes?

2 A. In a vacuum, that is true, but if we had done that with  
3 every district in the state, then, no, that would not have  
4 been possible, because the four new districts wouldn't be  
5 contiguous.

6 Q. Sure. But you could have done it the way it was in C-190,  
7 couldn't you?

8 A. Yes.

9 Q. Now, you agree that with a change -- a small change, just  
10 to take the 43,500 people out of the benchmark 27, that with a  
11 change like that, it is likely District 27 would have still  
12 been majority Hispanic, yes?

13 A. Yes.

14 Q. And are you aware that Mr. Farenthold's margin of victory  
15 in 2010 was very close, less than 800 votes?

16 A. I know it was close. I don't know the number.

17 Q. And you testified in your deposition that you considered  
18 leaving Nueces County in Congressional District 27, that would  
19 go south to Cameron County, in order to comply with the Voting  
20 Rights Act, but the decision was made to do something  
21 different, yes?

22 A. Yes, because it was not necessary to comply with the  
23 Voting Rights Act.

24 MS. PERALES: Thank you, Mr. Downton. I have no  
25 more questions. May God bless you on your mission trip.

1 THE WITNESS: Thank you.

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

3 CROSS EXAMINATION

4 BY MR. HICKS:

5 Q. Mr. Downton, Rene Hicks. Is it true that you view the  
6 issue of compactness and the issue of oddly-shaped parts of  
7 districts, not the whole districts, as different matters,  
8 different concerns?

9 A. You have to look at the compactness of the entire  
10 district, so, yes. I think it is fair to say those are two  
11 different things.

12 Q. And this is putting aside the question of zeroing out the  
13 population. That sometimes is going to create, no matter who  
14 does it, for what purpose, it is going to create oddly-looking  
15 pieces of districts, correct?

16 A. Yes.

17 Q. So I don't want to talk about the zeroing-out issue.

18 MR. HICKS: David, would you call up C-185, please?  
19 And would you go to the Dallas-Fort Worth, Tarrant County,  
20 CD-26 and the Tarrant County area. Thank you.

21 BY MR. HICKS:

22 Q. Now, as I understand it, Congressman Smith came to you  
23 with his proposal for a Dallas-Fort Worth Hispanic opportunity  
24 district fairly early in the process, right, during the  
25 regular session?

1 A. Yes. During the regular session.

2 Q. And as I understand it, you began to look at the  
3 possibility of whether you thought there was a possibility of  
4 creating a 50-percent Hispanic CVAP district in that area not  
5 long after he came to you, correct?

6 A. He came to us while we were still working on the House  
7 map, until the House -- the Texas House map. Until the Texas  
8 House map was finally passed, I didn't do any work on  
9 congressional districts.

10 Q. Okay. When did you turn to working on the Dallas-Fort  
11 Worth issue with respect to Congressman Smith's effort?

12 A. After the Texas House map was finally passed, which I  
13 believe was some time in April.

14 Q. So mid to late April, you began?

15 A. I believe that is correct.

16 Q. And it is your opinion that you took a serious look at  
17 whether you could create such a Hispanic opportunity district  
18 there that met -- we will call it the Bartlett vs. Strickland  
19 standard, for lack of a better term.

20 A. I have read the Court case, but I --

21 Q. All right. Let's just -- that you could get to 50-percent  
22 CVAP?

23 A. Yes.

24 Q. Which I understand it isn't exactly the Bartlett vs.  
25 Strickland standard -- and to do that, you had to look in



1 Dallas and in Fort Worth for areas of Hispanic population,  
2 didn't you?

3 A. Yes.

4 Q. And you looked pretty hard at it, didn't you?

5 A. I looked at all of the demonstration or suggested maps we  
6 were provided with, and I also looked on my own. I mean, you  
7 keep saying "very hard." I spent some time looking at it.

8 Q. You gave it serious consideration?

9 A. Yes.

10 Q. And so you looked at Hispanic population on Red Appl in  
11 the Dallas-Fort Worth area and studied it, didn't you?

12 Concentrations of Hispanic population?

13 A. I pulled up the shading that would show me that.

14 Q. Because you couldn't undertake this effort otherwise,  
15 could you?

16 A. That's correct.

17 Q. And it is your testimony, I believe, that you just didn't  
18 find a way that you could get there?

19 A. Yes.

20 Q. Is it because you couldn't get there and have a pretty  
21 district, I guess you could call it, or a compact district, or  
22 that you just couldn't get there at all?

23 A. I didn't -- I didn't find a way to get there at all. When  
24 I was looking at that and trying to draw it, I wasn't looking  
25 for pretty or even looking for compact. I was just trying to

1 see if I could get to that 50-percent threshold, without  
2 regard to other issues.

3 Q. But you see maps that do get there, don't you?

4 A. No, I haven't.

5 Q. You don't think the district, I think it is in C-190, the  
6 Dallas-Fort Worth area, you don't think that has over  
7 50-percent Hispanic CVAP?

8 A. No. I think we talked about it being around 45 percent.

9 Q. All right. So when did you put the arm coming down into  
10 Tarrant County and Fort Worth from District 26, and Denton?

11 A. When we went through the iterations in the earlier  
12 testimony --

13 Q. Right. I heard the testimony. When did that happen? In  
14 the special -- during the special session?

15 A. Well, there was an arm coming down in the baseline map.

16 Q. Yes.

17 A. There was an arm coming down in the map that was initially  
18 released, which was either right at the end of the regular  
19 session or right at the beginning of the special session.

20 Q. You did it after you had looked at Congressman Smith's  
21 effort to create a district there, right?

22 A. Yes.

23 Q. So regardless of whether you turned on the racial profile  
24 for that area, you knew where the Hispanic population was in  
25 Dallas-Fort Worth during that time, didn't you, if you had

1 taken a serious look at this question only a month before?

2 A. Yeah. I had some awareness of that --

3 Q. You couldn't help but know, could you?

4 A. I think it is fair to say I had some awareness of that.

5 Q. You had a lot of awareness of it, didn't you?

6 MR. MATTAX: Objection. Argumentative.

7 JUDGE GARCIA: I'll sustain that. Let's move on.

8 BY MR. HICKS:

9 Q. Now, just zeroing in on that arm, if you would, that comes  
10 down, do you agree with me that has fairly convoluted lines in  
11 the Dallas-Fort Worth area?

12 A. I do.

13 Q. And let's just assume for a second, I know it isn't so,  
14 but let's just assume that this is actually a congressional  
15 district, that it has enough population to be a congressional  
16 district, and so you could look at the Dallas-Fort -- I mean,  
17 the Tarrant County arm of District 26 as an independent  
18 district, for compactness purposes.

19 Would you, if you were trying to draw this, would  
20 you consider that to be compact?

21 A. I believe I would.

22 Q. And can you give us a little hint of what it is that makes  
23 that seem compact to you?

24 A. Well, part of it, it is all within one county. The  
25 distance from the top of that to the bottom of that is

1 relatively small, so when I am thinking generally of the term  
2 "compactness" and how long it takes you to get from one side  
3 to the other, you can get around that district pretty quickly.  
4 But there are so many different ways you can look at  
5 compactness that I think, to some extent, compactness is in  
6 the eye of the beholder.

7 MR. HICKS: If we can zoom back out, David, to  
8 get -- go over to CD-6, Ellis County and the Dallas part of  
9 Ellis County -- I mean, the Dallas part of CD-6.

10 And I am not very good at pointing, but I am going  
11 to ask you to look at -- I think I will miss. My hand usually  
12 shakes when I do it. So do you see -- ah, where is it?  
13 There.

14 So do you see CD-6 that starts down here, fairly  
15 clean lines down in Ellis County?

16 A. I think it has all of Ellis County.

17 Q. And then you see it comes up and -- it comes up through  
18 Grand Prairie, correct?

19 A. Yes.

20 Q. All right. And one part goes over a long -- into Tarrant  
21 County along the southern part, correct?

22 A. Yes.

23 Q. And then the other part goes up -- it is in this metroplex  
24 area and goes up into Dallas County, correct?

25 A. Yes.

1 Q. And in this area up here, you knew at the time you drew  
2 this line that this was fairly heavy Hispanic population  
3 concentrations, didn't you, in this area?

4 A. I am not sure that the -- let's see. Part of that area,  
5 the eastern --

6 Q. If you -- you are a better pointer than I am.

7 A. Sure. Let's see. So if I remember correctly, I think  
8 this area here, including parts of 30 and parts of 6, are  
9 fairly heavily Hispanic.

10 Q. Up in the -- this area over here, Grand Prairie, I think  
11 is a mix.

12 Q. Well, it has a section of Grand Prairie that has a heavy  
13 Hispanic population, correct? Concentration.

14 A. I am not sure that -- I am trying to remember if there is  
15 any section of Grand Prairie that is really heavily Hispanic.  
16 There are some areas of Grand Prairie that have Hispanic  
17 population in them.

18 Q. But in any event, up in the upper right-hand part in  
19 Dallas County, of CD-6, the northern part, you testified that  
20 there is a fairly concentrated Hispanic population, right?

21 A. I think so. It is hard without an overlay on it, but I  
22 think that is correct.

23 Q. And this too was drawn after you had tried to -- the  
24 effort with, what you testified to be your effort with respect  
25 to creating a Hispanic opportunity district in Dallas-Fort

1 Worth?

2 A. This one is actually a little different. This District 24  
3 is Representative Marchant's district. He is the Congressman  
4 who represents Chairman Solomons, so this was actually one of  
5 the first districts that --

6 Q. I am asking about 6.

7 A. Right. But the border between 6 and 24, it was because of  
8 24 and its border is what it was because it was the Chairman's  
9 congressman.

10 Q. Now, in looking at the effort to create, what you  
11 testified to be your effort to create a Hispanic citizen  
12 voting age population, 50-percent Hispanic opportunity  
13 district in the Dallas-Fort Worth area, you just used the data  
14 from the ACS 2005, 2009 survey, seeing if CVAP was met; is  
15 that correct?

16 A. Yes. I couldn't run a CVAP report myself, so on Red Appl,  
17 I would be looking at SSVR, and then I would have -- I don't  
18 remember if it was leg. counsel or the Attorney General's  
19 Office that would run the CVAP report. I believe that is the  
20 data they used, but I am not the one who ran those reports.

21 Q. But in making your determination, you relied on those  
22 reports, right, with respect to 50-percent CVAP? That's what  
23 you looked at, right?

24 A. Yes.

25 Q. And you didn't even consider whether the data in the ACS

1 survey was lagging data with respect to citizen voting age  
2 population of Hispanics in Texas, did you? You knew it was  
3 lagging, didn't you?

4 A. I would say it is fair to say I didn't consider it. The  
5 SSVR, we couldn't get to 50 percent either.

6 Q. Well --

7 A. And I think that is based on census.

8 Q. Are you trying to get the SSVR or 50-percent Hispanic  
9 citizen voting age population?

10 A. Well, if we could have gotten the SSVR there, we would  
11 have -- HCVAP tracks higher than SSVR, so when we couldn't get  
12 SSVR there, it is okay. CVAP is going to be higher, if you  
13 get CVAP there. The same thing with District 35. We didn't  
14 get the SSVR there. We got the HCVAP there.

15 Q. But in your evaluation with respect to CVAP, you never  
16 considered the lagging nature of the ACS survey, did you?

17 A. That's fair to say.

18 Q. And do you understand that the citizen voting age --  
19 Hispanic citizen voting age population in the Dallas-Fort  
20 Worth area is upward every year, correct?

21 A. I --

22 Q. -- in recent years, you never looked at that?

23 A. I don't have -- I didn't have that data.

24 Q. Now, let's go --

25 JUDGE SMITH: Mr. Hicks, we haven't heard much about

1 the term "lagging." I know he already answered your question,  
2 but I mean, what is your interpretation of the word "lagging,"  
3 as you ask the question? Do you mean it is old, out of  
4 date --

5 MR. HICKS: Yes.

6 JUDGE SMITH: -- or what?

7 MR. HICKS: Just briefly -- we will have expert  
8 testimony on this.

9 JUDGE SMITH: All right.

10 MR. HICKS: But just briefly, the ACS survey has  
11 changed since 2000. I'm sorry to testify, but this will just  
12 explain it.

13 JUDGE SMITH: Well, no. I asked you the question.  
14 That's okay.

15 MR. HICKS: The way citizenship population is  
16 determined is -- has changed since the year 2000. In the year  
17 2000, it was on the long form census. Since then, the Census  
18 Bureau, for various reasons, has switched to a new way of  
19 doing it, which is something called the American Community  
20 Survey. And they do five-year increments, I guess you can  
21 say --

22 JUDGE SMITH: Right. And we did hear about that.  
23 We just didn't hear the term "lagging."

24 MR. HICKS: Right.

25 JUDGE SMITH: At least as I recall.



1 MR. HICKS: The data that is in the Texas  
2 Legislative Council's database is from the 2005, 2009 time  
3 period. The next time period -- so -- and so it covers, the  
4 average is 2007. And, of course, the census data we are  
5 working off of comes out of 2010, so it is lagging at least  
6 three years.

7 JUDGE SMITH: All right. That explains it.

8 MR. HICKS: That's what I mean.

9 JUDGE SMITH: Thank you for that help.

10 BY MR. HICKS:

11 Q. Let's now go down to District 35. And let's go down to  
12 the Bexar County part of District 35. In fact, just Baylor  
13 County would be a good way to do it.

14 JUDGE RODRIGUEZ: Mr. Hicks, I'm sorry, but now that  
15 I am thinking about it, the SSVR is derived from where?

16 MR. HICKS: It is taken off the Texas Secretary of  
17 State's database.

18 JUDGE RODRIGUEZ: So there is no lagging problem  
19 there, is there?

20 MR. HICKS: I don't think so.

21 JUDGE RODRIGUEZ: The thought just hit me. Thank  
22 you.

23 MR. HICKS: If I need to be corrected by somebody,  
24 but I don't think it is lagging.

25

1 BY MR. HICKS:

2 Q. In south San Antonio, if I can direct your attention  
3 there, is it fair to say that, in moving the lines around,  
4 down in south San Antonio, with respect to drawing districts,  
5 you were really working kind of a trio of districts when you  
6 were moving those lines around, right? District 23, District  
7 20 and District 35?

8 A. Yes.

9 Q. Correct? So one move here would be, it might be a  
10 tradeoff with another move in another district? You take a  
11 precinct out here, and it goes into one of the two adjoining  
12 districts, correct?

13 A. Yes. In making the changes from the initial map to the  
14 final map, there were also some changes to District 21 and to  
15 District 28.

16 Q. I understand. I understand that there is always some  
17 connection to every other district, practically, when you do  
18 anything, but the main tradeoffs were in those three  
19 districts, right, in south San Antonio?

20 A. I think that -- oh. In south San Antonio? Yes.

21 Q. Okay. And you testified that State Representative  
22 Villarreal and State Representative Castro came to you and  
23 asked to move more of District 35 into the south San Antonio  
24 area, correct?

25 A. Into Bexar County, and then into specific areas of San

1 Antonio, to the extent possible. I would say central San  
2 Antonio.

3 Q. Okay. In downtown?

4 A. Yes.

5 Q. This courthouse?

6 A. That is probably correct. I'm sorry. I am not that  
7 familiar with San Antonio geography.

8 Q. And you acceded to their requests?

9 A. Yes.

10 Q. Do you know who Congressman Charlie Gonzalez is?

11 A. I have heard his name. I have not met him personally.

12 Q. Do you understand that he is the chair of the Hispanic  
13 Congressional Caucus in Washington?

14 A. I was not aware of that.

15 Q. Do you have any reason to doubt that?

16 A. No, I don't.

17 Q. Did you consult with -- you consulted with, indirectly or  
18 directly, with Republican members of Congress. Did you ever  
19 ask Congressman Gonzalez or his staff or people that worked  
20 with him: Gee, would you like to move downtown San Antonio,  
21 to oversimplify it, out of your district in order to get more  
22 population into District 35?

23 A. I didn't call any congressman, Republican or Democrat.

24 When Representative Menendez testified about District 20, I  
25 believe he said he had consulted with Representative

1 Gonzalez --

2 Q. But that was about a different point. What about --

3 MR. MATTAX: I'm sorry, Your Honor. He is not  
4 letting the witness answer.

5 MR. HICKS: I apologize.

6 JUDGE GARCIA: Let him finish. Go ahead.

7 THE WITNESS: I believe that when Representative  
8 Menendez testified in hearing about District 20, he mentioned  
9 that he had consulted with Representative Gonzalez and was  
10 expressing his request, as well as his own.

11 BY MR. HICKS:

12 Q. But that was with respect to one particular school, right?

13 A. No. It was also about the region; he wanted more of San  
14 Antonio, the city of San Antonio in District 20.

15 Q. Oh. Okay.

16 MR. HICKS: Now, let's go to the length, if you  
17 would, David, of 35.

18 BY MR. HICKS:

19 Q. Now, it was your view that there was no legal obligation,  
20 as far as you know and were concerned, under Section 2 of the  
21 Voting Rights Act to create District 35, right?

22 A. We weren't sure. There were some people who would argue  
23 that it was required and some people that would argue that it  
24 was not required. In my personal view, I wasn't sure if it  
25 was required.

1 Q. And during your deposition that was taken on August 12,  
2 you're welcome to look at it, at page 114, do you recall we  
3 discussed this, and at the end of the conversation -- I don't  
4 have the line in front of me, frankly. Just turn to 114.

5 At the end, you said you didn't think it was legally  
6 obligated?

7 A. Yes. I said I believe all the other districts -- talking  
8 about the south Texas Latino districts. I believe all the  
9 districts, except 35, we are required to have. I don't think  
10 we need 35 for Section 5 at all. For Section 2, I think it is  
11 an open question. I think it is possible that the Court could  
12 have concluded we had to create that district. I think it is  
13 possible that a court could have concluded, no, we didn't have  
14 to create it.

15 Q. And with respect to the compactness issue of the district,  
16 do you recall testifying that it is on the borderline in terms  
17 of compactness?

18 A. That's my opinion.

19 Q. You kind of smiled when you said it?

20 A. I don't recall my facial expressions, but, yes, I agreed  
21 with that.

22 Q. Now, let's go to the north end of the district. I am  
23 going to go in on the northern part of District 35, up to the  
24 little squiggle area. All right. Come back a little bit.

25 Thank you.

1           Let's look at -- I am calling it the squiggle. It  
2 is the area just past two-nine -- that area.

3 A. This area?

4 Q. You did that so you could get additional Hispanic  
5 population there, correct?

6 A. I think it is fair to say that that is probably a Hispanic  
7 area and almost definitely a Democratic area.

8 Q. But do you recall testifying in your deposition that you  
9 did that in order to get additional Hispanic population?

10 A. I don't recall, but that is possible.

11 Q. You don't have any reason to disagree with it, with that  
12 proposition?

13 A. If that is a Hispanic area, and I think it is likely that  
14 it is, then, yes, it would have been included in District 35  
15 as we were trying to create a Hispanic majority district.

16 Q. And that would not be considered southeast Travis County  
17 or southeast Austin, would it?

18 A. No, it would not.

19 Q. It is kind of north central Austin, isn't it?

20 A. Yes.

21 Q. Now, let's go back down to San Marcos and down to San  
22 Antonio. Take it so that you can see where it goes to San  
23 Antonio, if you would, please.

24           Do you see that strip that begins on the northeast  
25 side of the district -- end of the district where it narrows

1 down?

2 A. Yes. At the border of Guadalupe County.

3 Q. Right. And it is also right around the city of San  
4 Marcos, correct?

5 A. I am not sure where the city of San Marcos is, but I know  
6 it is in Hays.

7 Q. Thank you.

8 A. Thank you. Is this San Marcos?

9 Q. Yes.

10 A. So, then, yes, it is near San Marcos.

11 Q. And follow that strip with me down, if you would, all the  
12 way down into Bexar County.

13 A. Sure. Well, it runs the border of Guadalupe County until  
14 you get to the Bexar County line, and then it goes within  
15 Bexar County to that --

16 Q. And where is the spot where it widens out there into the  
17 broader area?

18 A. It widens out a little bit there and then it widens out  
19 further here. I'm sorry. I don't -- as far as getting this  
20 on the record, I don't know how to describe it.

21 Q. That's okay. That's okay. It goes into San Antonio and  
22 Bexar County quite a bit before it widens into that broader  
23 area, correct?

24 A. It widens a lit bit when you initially enter Bexar County  
25 and then it widens further further into Bexar County.

1 Q. And would you agree with me that the narrow part of that  
2 strip is about running from San Marcos to, say -- let's just  
3 say the Bexar County line? It's 40 -- is it about 40 to  
4 50 miles?

5 Do you have any reason --

6 A. I don't know -- however long Guadalupe County is is how  
7 long that strip is.

8 Q. And it is about three miles wide, isn't it?

9 A. I wouldn't doubt that, if that is what you represent to  
10 me.

11 Q. And that was done to connect the south part of the  
12 district with the Travis County and Hays County part of the  
13 district, correct?

14 A. Well, we were drawing a district from San Antonio to  
15 Travis County. In the initial configurations, you had a lot  
16 more of Guadalupe County in it, so this area was wider. But  
17 the combined request of Representative Kuempel to keep  
18 Guadalupe County whole and the request of the San Antonio  
19 representative to have more of the district in San Antonio  
20 resulted in the narrowing of that strip.

21 Q. But I mean, it seems fairly obvious, but I am not -- I am  
22 pretty good at stating the obvious sometimes. Given the way  
23 you actually ended up drawing the map, you had to have that  
24 strip to connect the northern part of Hays County and Travis  
25 County with the San Antonio part of the district, right? You



1       couldn't get there and have it contiguous otherwise?

2       A.   Yes.  If you wanted a district that included part of San  
3       Antonio and part of Travis, you had to connect them somewhere.

4                 MR. HICKS:  Thank you.  I don't have any further  
5       questions.

6                 JUDGE GARCIA:  Let's take a break.

7                 (Brief recess.)

8                 (Change of court reporters.)

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1 MR. GRAY: May I proceed, Your Honor?

2 JUDGE GARCIA: Yes.

3 EXAMINATION

4 BY MR. GRAY:

5 Q. Good morning, Mr. Downton.

6 A. Morning.

7 Q. It's Rick Gray. I read in the Austin American Statesman  
8 yesterday in Jason Emory's blog that you were contemplating  
9 running for the Texas House. Are you prepared to make an  
10 announcement today?

11 A. No.

12 Q. But that is -- you were contemplating being a candidate for  
13 the House on the lines that you just recently drew, correct?

14 A. Not in any district that I was involved with drawing, no.

15 Q. District 47 is what you're contemplating running in?

16 A. I am contemplating that.

17 Q. And that would be in the Republican primary as a Republican  
18 candidate for the Texas House?

19 A. That is correct.

20 Q. Now, would you generally agree with me that in the state of  
21 Texas as we currently sit, Anglos overwhelmingly vote for the  
22 Republican candidates and minorities overwhelmingly vote for  
23 Democratic candidates?

24 A. I don't know that data for sure.

25 Q. When you and others were drawing the Texas House map, the

1 map for the Texas House of Representatives, on the issue of one  
2 person/one vote, am I correct in understanding that you took the  
3 state population of some 25 million and some odd people and  
4 divided it by 150 to get the ideal district?

5 A. Yes.

6 Q. And then am I correct in understanding that you proceeded to  
7 put the map together assuming that you had a 10 percent deviation  
8 leeway meaning that you could have districts five percent below  
9 the ideal or five percent above or four and a half below and five  
10 and a half above, but as long as the total number was 10 percent  
11 or less you felt you were in a safe haven?

12 A. For House districts.

13 Q. For House districts.

14 A. Yes, those are the numbers we used.

15 Q. And, in fact, the House map that is before this Court, plan  
16 283, you-all were able to come in just barely below that 10  
17 percent deviation at 9.92 percent, correct?

18 A. That sounds right.

19 Q. And in your major urban areas you have deviations within  
20 those counties that approximate 9 and 10 percent, correct?

21 A. I think that's correct.

22 Q. I mean, for example, the deviation within the 24 seats  
23 wholly contained in Harris County is 9.74 percent. Are you aware  
24 of that?

25 A. I'm not specifically aware of it, but I'm sure that's

1 correct.

2 Q. And in Dallas County it's 8.88 percent. Are you aware of  
3 that?

4 A. The same thing. I wasn't aware of it, but I'm sure it's  
5 correct.

6 Q. In Bexar County, the 10 seats wholly contained here within  
7 Bexar County, it's 9.36 percent. Are you aware of that?

8 A. In Bexar -- I actually know nothing about the House  
9 districts in Bexar other than all of the House members in Bexar  
10 agreed on those districts.

11 Q. And then even going to a smaller significant county, Hidalgo  
12 County, there's four seats wholly contained within Hidalgo  
13 County, correct?

14 A. There's four seats wholly contained, one that is partially.

15 Q. And the deviation within those four seats wholly contained  
16 in Hidalgo County exceeds 9 percent. Are you aware of that?

17 A. Not specifically aware, but I'm sure that's the case.

18 Q. Okay. Now, two, am I correct in understanding that you and  
19 the other map drawers for the Texas House were drawing under the  
20 instructions of Chairman Solomons?

21 A. That's correct.

22 Q. And one of the instructions he gave to you-all was to draw  
23 districts that would reelect as many Republicans to the Texas  
24 House of Representatives as possible?

25 A. No. I don't think that specific statement is fair. I think

1 there was definitely a goal to reelect Republicans, but he wanted  
2 us to primarily draw the districts based on member input and how  
3 the members wanted them drawn.

4 JUDGE RODRIGUEZ: And how many members are there that  
5 are Republican and how many members are Democrat?

6 THE WITNESS: 101 that were Republican and 49 that were  
7 Democrat.

8 Q. (BY MR. GRAY) Well, let's be clear. Your deposition was  
9 taken and I had the opportunity to question you on August 31 of  
10 2011 just a couple of weeks ago, correct?

11 A. Yes.

12 Q. Will you turn to page 85 of that deposition? And  
13 specifically on the bottom page I asked you starting on line 20  
14 when -- this is the second of your depositions. Your first  
15 deposition was taken on August 12th and I didn't have a chance to  
16 ask any questions at that deposition, correct?

17 A. I don't -- yeah, I don't recall if you were there or not but  
18 I don't recall your questions.

19 Q. I was there but we ran out of time, you had to leave and we  
20 agreed to resume so I didn't get the chance to ask you questions.  
21 But if you see on line 20 where I asked you at your first version  
22 of your deposition or before we had to take a break for your work  
23 schedule, as I recall you were saying that you and the other map  
24 drawers were under directions where a goal of yours was to  
25 provide for the reelection for as many Republican members of the

1 Texas House as possible. Is that correct?

2 A. Yes.

3 Q. Do you see that question?

4 A. Yes, and that is correct.

5 Q. And then the next question -- and give the Court your  
6 answer, please, sir.

7 A. I said that's probably fair.

8 Q. Okay. So, in fact, you were drawing maps with the goal to  
9 reelect as many members -- Republican members to the Texas House  
10 as possible?

11 A. Yes. I may have misheard. I thought your initial question,  
12 goal to elect as many Republicans.

13 Q. I said reelect.

14 A. Then yes, that is correct.

15 Q. Now, if we were to take a map of Texas and have the House  
16 districts and the areas you draw for House districts on that map  
17 and shade it for political reasons, Obama, McCain, Governor  
18 Perry, Bill White, those areas that came up bright blue would be  
19 what party?

20 A. You can set the shadings how you choose, but in the software  
21 I was using the default shading was bright blue for Democrats and  
22 bright red for Republicans.

23 Q. And conversely if we were to overlay that shading with Anglo  
24 and minority shading, you would see an almost 100 percent  
25 correlation. Bright blue would also be heavy -- heavy minority,

1 bright red would also be heavy Anglo, correct?

2 A. I never did that but that's possible.

3 Q. Now, if you will, I want to ask you a few questions about  
4 House District 105, which is our Exhibit 105 as a matter of fact.  
5 Now, you testified and you have -- the point of this pointer may  
6 not work as well, but I think you testified that if you cut off  
7 the arm right here before you start the long arm going south that  
8 everything south of that is primarily Anglo population; is that  
9 correct?

10 A. No, I'm not sure of that. I think that arm coming down is  
11 predominantly Republican population. It's certainly to some  
12 extent Anglo. I think it's majority Anglo.

13 Q. And the -- this line cuts literally in half the city of  
14 Grand Prairie, correct?

15 A. No, I wouldn't agree with that. Grand Prairie is cut into  
16 five or six pieces.

17 Q. Well, what I'm saying is the line runs right through the  
18 city of Grand Prairie?

19 A. It may be the outer border. I'm not sure. If we  
20 could -- if you want we can put up the shading.

21 Q. That's okay. Likewise -- and you drew this arm, you have  
22 testified, to pick up a Republican member of the Texas House,  
23 Representative Anderson, who lives somewhere down here?

24 A. That's correct.

25 Q. On the far south end of the map?

1 A. Correct.

2 Q. And you drew the -- were you the one who drew the finger  
3 into the area of 105?

4 A. Yeah, I worked with Representative Anchia on drawing 103.

5 Q. And were you aware that what you were extracting from 105 at  
6 the time you were drawing the incursion or the fingers--whatever  
7 you want to call them--in, you were extracting heavy Hispanic  
8 population out of what otherwise would be in the center of 105?

9 A. Yeah, we were concerned with 103, that -- we wanted to try  
10 to maintain its SSVR level and it needed 50,000 additional  
11 people.

12 Q. So as to 105 there's no question that a -- two arms or  
13 whatever goes in to extract Hispanic population out of what  
14 otherwise would be in the core of 105?

15 A. It depends somewhat how you look at it. I started with 103.  
16 So I drew 103. And then I guess you could look at it if 115 had  
17 come down here and 105 had come up there then that would be an  
18 arm sticking into 105 so --

19 Q. Well, let me ask it this way.

20 JUDGE SMITH: Let's let him finish his answer.

21 MR. GRAY: I'm sorry.

22 A. So I didn't think of this in drawing 105 that I was drawing  
23 an arm into 105. I drew 103 and then was drawing other districts  
24 around it.

25 Q. (BY MR. GRAY) 105, as it existed prior to your drawing the



1 map, the population that is in these two fingers that is no  
2 longer in -- well, the population of the two fingers that you put  
3 in 103, that population was in 105, was it not?

4 A. I believe that's correct.

5 Q. Now, if you will, let's shift gears to Hidalgo County. You  
6 testified about Hidalgo County. And go to Exhibit 116, please.  
7 First, Hidalgo County has four districts wholly contained within  
8 that county, correct?

9 A. Yes.

10 Q. And of the four districts wholly contained in the county --  
11 three of which are substantially overpopulated, are they not?

12 A. I'm not sure, but that's certainly possible.

13 Q. But do you have any of the data in front of you? And I  
14 don't want to belabor this point because it's in the record. And  
15 if it's not quick I don't --

16 JUDGE GARCIA: Just tell him what it is. Just tell him  
17 what it is.

18 Q. (BY MR. GRAY) If you will, look at District 36 and it is  
19 4,368 people overpopulated.

20 A. Okay.

21 Q. District 39, 7,746 people overpopulated. District 40, 5,856  
22 people overpopulated. And what about District 41; do you know  
23 what its numbers are?

24 A. I believe it's underpopulated.

25 Q. District 41 underpopulated by 7,399 people. Why did you

1 underpopulate District 41 by 7,399 people?

2 A. Well, I can't tell you the specific number, but the goal in  
3 District 41 was to give the residents of Hidalgo County a choice  
4 between a Republican and a Democratic candidate. Historically  
5 Hidalgo County has elected exclusively Democrats. District 41 is  
6 a balanced political district between Republicans and Democrats  
7 where a Republican could win that district. If you increase the  
8 population higher then you're shifting it to a Democratic  
9 district and it will be back where Hidalgo is only electing one  
10 party.

11 Q. So what you're saying is if you just -- just hit deviation,  
12 if you just hit the number that's called for, purely one  
13 person/one vote and put 7,399 people back in District 41, you  
14 would not be reelecting Representative Pena, correct?

15 A. Well, no, you can't say that for certain because  
16 Representative Pena has been in Hidalgo County -- has been  
17 elected for a long time as a Democrat. So I think there's a good  
18 chance he's going to get some crossover vote of people who  
19 normally vote for Democrats will probably vote for him.

20           There are some Republican areas of Hidalgo County that  
21 are not included in District 41. You could draw those areas in.  
22 You would also draw in some Democratic areas, so I --

23 Q. Is it fair to say you made the decision to underpopulate  
24 District 41 thinking that that would enhance the reelection  
25 opportunities for Representative Pena?

1 A. I worked on District 41 with Representative Pena as far as  
2 making changes to it after the initial draft. And he knows that  
3 area really well and he would identify specific neighborhoods and  
4 say, "I know the people here, I think they're likely to support  
5 me, can you put them into my district."

6 Q. My question is why is it 7,399 people short?

7 A. It's just the way it ended up. I mean, I was sitting  
8 working with Representative Pena and adding the neighborhoods  
9 that he wanted added and moving out neighborhoods he did not want  
10 included and it was within the acceptable range.

11 JUDGE RODRIGUEZ: Do citizens select legislators or do  
12 legislators select their constituents?

13 A. Well, that's always the question in redistricting. I think  
14 there's a balance -- a necessary balance of the two in the  
15 redistricting process. You can't pass a map that doesn't have  
16 the support of the majority of the legislators. I think their  
17 role in the process is to represent their constituents and  
18 constituents have their biggest impact on redistricting through  
19 their representatives. Did that answer the --

20 JUDGE RODRIGUEZ: No. Go ahead.

21 MR. GRAY: Thank you, Your Honor.

22 Q. (BY MR. GRAY) At what point in time did you cut on this  
23 V-map for District 41 to determine how many Anglos that you had  
24 put in District 41 and how many Hispanic or Latinos you put in  
25 District 41?

1 A. I don't think we ever did that. District 41 is still a  
2 majority Hispanic population by a significant margin, so I don't  
3 recall ever looking at Hispanic shading for that district.

4 Q. Have you seen the expert report of Dr. Morgan Kousser?

5 A. No.

6 Q. And is it your testimony then that it's just coincidental  
7 that every major Anglo neighborhood in Hidalgo County is in  
8 District 41? Right at 50 percent of the entire Anglo population  
9 in Hidalgo County is in District 41; is that coincidental?

10 A. Well, I don't know that it's coincidental. The district was  
11 drawn looking at Republican election results. If those  
12 neighborhoods voted for Republicans in large numbers they would  
13 have been included in that district.

14 Q. And so that's back to where we were before. You knew at the  
15 time you're drawing this if it's a Republican area it's an Anglo  
16 area?

17 A. No, that's not fair to say particularly in Hidalgo County  
18 where I have almost no familiarity and was relying on input from  
19 the people that live there.

20 Q. Next let's switch to El Paso County briefly. As I  
21 understand it, both in El Paso County and other areas you would  
22 from time to time tweak the maps?

23 A. Yes.

24 Q. And oftentimes you would tweak the maps to make a particular  
25 district more Republican or safer for a Republican candidate?

1 A. Sometimes. In El Paso County the tweaking had to do with  
2 trying to make sure we were complying with the Voting Rights Act,  
3 not political results.

4 Q. If you will, let's go to 120 in El Paso County. As I  
5 understand it from your testimony, you did not draw these fingers  
6 on the -- out of District 77 that goes into District 78?

7 A. That's correct.

8 Q. At what point in time, if ever, have you looked at the  
9 ethnicity to determine what is the ethnicity in -- how heavy the  
10 ethnicity is of the population that is being pulled out of what  
11 otherwise would be -- fit within the normal geography of District  
12 78 and put in District 77?

13 A. I don't have a specific recollection, but I would have -- I  
14 would have looked at that in this case at some point because when  
15 Representative Pickett submitted the El Paso map--and he was a  
16 Democrat--he had reduced the Hispanic population of -- I believe  
17 it's District 78, the one Republican district in El Paso, below  
18 it's benchmark level.

19 So I did look at the Hispanic population to try to  
20 raise that back up and did raise it back up. That's the tweak I  
21 made there. So I didn't specifically look at the arms, but I  
22 looked at that.

23 JUDGE SMITH: Excuse me, Mr. Gray, but are you familiar  
24 with the topography in El Paso at all?

25 THE WITNESS: No. Well, a little bit. I know there's

1 a mountain.

2 JUDGE SMITH: Well, my understanding, but correct me if  
3 I'm wrong, or if you don't know just tell us you don't know, but  
4 my understanding is that those arms wrap around the mountain. In  
5 other words, that that area south of the squiggly highway -- is  
6 that Highway 54? I can't quite see what the number is there.  
7 Between there and 77 it is largely just roughly mountain terrain  
8 and not heavily populated. Is that --

9 THE WITNESS: That's possible. I know there's a  
10 mountain up there. I know the population is segmented on the  
11 east and west sides of the mountain.

12 JUDGE SMITH: Because that highway runs right through  
13 the mountain as I recall, so you're not talking about very much  
14 population south of the highway between there and 77 I don't  
15 think.

16 THE WITNESS: I think that's accurate.

17 Q. (BY MR. GRAY) Mr. Downton, my question is: Do you know or  
18 are you in a position to dispute the testimony this Court has  
19 always heard -- already heard that heavy turnout Hispanic  
20 population in this area on the right-hand side of the arm and the  
21 same on the left-hand side of the arm is taken out of 78 and  
22 placed in 77?

23 A. I'm not in a position to dispute or comment on turnout  
24 anywhere in the map. I didn't look at turnout.

25 Q. Now, do you know as we sit here today that district

1 75 -- well, you know El Paso County is well over 80 percent  
2 Hispanic population?

3 A. I know it is a Hispanic county. I don't know the  
4 percentage.

5 Q. Okay. Do you know that District 75 -- and I'm not even  
6 seeing it here, but I'm going --

7 A. It may be the one in blue.

8 Q. That's right. That's right. It is the one in blue. Is  
9 91.8 Hispanic voting age population; District 76, 87.3 Hispanic  
10 voting population; District 77, 78.4 Hispanic voting age  
11 population; District 79, 79.9 percent voting age -- Hispanic  
12 voting age population. And then when you get to District 78 it's  
13 reduced to 62.6 percent Hispanic voting age population. Is that  
14 in your opinion an effort to help reelect a Republican candidate  
15 from El Paso in District 78?

16 A. All of those numbers sound significantly more than  
17 50 percent Hispanic so at that point, yeah, it's a political  
18 decision as to how to draw the districts. And I think an effort  
19 was made to give the Republican representative a chance to be  
20 reelected.

21 Q. Now, do you know Mr. Jeffrey Archer --

22 A. Yes.

23 Q. -- with the Legislative Council?

24 A. Yes.

25 Q. And he is one of the redistricting experts with the Texas

1 Legislative Council, is he not?

2 A. Yes.

3 Q. Have you read his deposition in this matter?

4 A. I have not.

5 Q. So you're not in a position to dispute or not anything that  
6 he has opined in his deposition testimony about deviations about  
7 the drawing of the map or anything of that sort?

8 A. If you ask me a specific question about something he said I  
9 may --

10 Q. It's not fair for me to ask you something that you haven't  
11 read and I'm not going to. So I just wanted to make sure  
12 you don't -- one, you recognize him as an expert on  
13 redistricting?

14 A. I do.

15 Q. Two, he is probably the -- one of the top two experts on  
16 redistricting in the state of Texas hired by the state of Texas?

17 A. I don't know. I've never tried to rank people. He's  
18 someone -- we respected his opinion, but there were certainly  
19 times that we disagreed with him and did something different than  
20 what he would have suggested.

21 Q. And lastly before I sit down, the -- in Harris County you  
22 knew at the time of Plan 283 was passed that District 149 was  
23 electing a minority member to the Texas House of Representatives,  
24 correct, Representative Hubert Vo?

25 A. Was electing a minority candidate?



1 Q. Yes.

2 A. It elected Mr. Vo, yes.

3 Q. And at the time you and others drew House Plan 283, you knew  
4 that Mr. Vo was being elected by a coalition of Asian Americans,  
5 Hispanic Americans and African Americans, correct?

6 A. I wouldn't agree with that terminology, no.

7 Q. Who was electing Mr. Vo -- the constituents of Mr. Vo's were  
8 electing him, correct?

9 A. Yes.

10 Q. And you knew at the time you drew that that the 75 percent  
11 or so of his constituents were minority citizens, correct?

12 A. Including HCVAP as your measure that sounds high to me.

13 Q. What's considered right to you considering HCVAP?

14 A. I'm sorry. Could you repeat it?

15 Q. What number do you consider then using HCVAP?

16 A. Well, his district wasn't more than 50 percent Hispanic  
17 based on HCVAP. It wasn't more than 50 percent black based on  
18 black voting age population and it wasn't more than 50 percent  
19 Asian.

20 Q. Right. But the combined total of those three minority  
21 groups was well in excess of 50 percent citizen voting age  
22 population because they, in fact, were electing him and had  
23 elected him and had reelected him and had reelected him, correct?

24 A. Well, I'm not sure they're well in excess of 50 percent and  
25 I'm not sure he was elected solely by those groups. Anglos may

1 have voted for him as well.

2 Q. The Court has already heard some testimony, so I won't go  
3 into that with you. But nevertheless at the time you and other  
4 map drawers were drawing Plan 283 for Harris County you knew that  
5 District 149 was, in fact, currently electing a minority member  
6 to the Texas House of Representatives?

7 A. Yes.

8 Q. And you knew that that district had, in fact, elected a  
9 minority member to the Texas House of Representatives for the  
10 last three or four --

11 JUDGE SMITH: That's already been asked and answered,  
12 Mr. Gray.

13 MR. GRAY: I'll move on, Your Honor.

14 Q. (BY MR. GRAY) Despite knowing that, why was District 149  
15 dismantled?

16 A. District 149 was not a minority majority district.

17 Q. So despite the fact that it had been electing a minority  
18 member, despite the fact that it had returned a minority member,  
19 it was your determination or someone's determination that it was  
20 not a district that you needed to worry about and you were free  
21 to dismantle it?

22 A. Yeah, it was not a minority majority district. I don't  
23 think anyone disputes that.

24 MR. GRAY: Thank you. I have no further questions.

25 JUDGE SMITH: Now, as to El Paso didn't you tell us

1 earlier -- I just wanted to be sure I didn't misunderstand, but  
2 my notes indicate that you told us that the whole delegation  
3 agreed upon the El Paso map?

4 THE WITNESS: I don't -- I don't know that.

5 JUDGE SMITH: You don't know that. All right.

6 THE WITNESS: Representative Pickett submitted it and I  
7 know he consulted with members of the delegation, but I didn't  
8 hear from them directly.

9 JUDGE SMITH: All right. So you didn't hear one way or  
10 the other from the delegation. Right.

11 EXAMINATION

12 BY MR. RIOS:

13 Q. Rolando Rios appearing for Congressman Cuellar. I just have  
14 a few questions on the Dallas district that apparently you  
15 received reflecting Congressman Smith's desires to try and create  
16 a minority district in Dallas. Okay?

17 A. Okay.

18 Q. When you were given instructions to analyze that district  
19 did anybody tell you that there's some law up there that allows  
20 you to combine Hispanics and African Americans to create a  
21 minority opportunity district?

22 A. I'm familiar with some case law on that, but I -- we haven't  
23 spoken before. I think we'd probably read that case law  
24 differently.

25 Q. But you weren't told, hey, listen, let's see if we can

1 create some minority opportunity districts insofar as CVAP is  
2 concerned?

3 A. Insofar as HCVAP, yes, we will do that.

4 Q. And you testified that in the Dallas district that Lamar  
5 Smith, Congressman Smith, suggested there was about 45 percent  
6 Hispanic CVAP?

7 A. No. That's the district that MALDEF suggested. I don't  
8 recall the percent in the district from Congressman Smith.

9 Q. Okay. Would you agree with me that if we added the African  
10 Americans to that district the likelihood that we'd have over  
11 a 50 percent CVAP district is pretty high?

12 A. Yes.

13 BY MR. RIOS: Thank you.

14 MR. HEBERT: I have one question.

15 JUDGE GARCIA: Yes.

16 MR. HEBERT: And it won't be repetitive.

17 EXAMINATION

18 BY MR. HEBERT:

19 Q. Did you ever attempt to create the district that Mr. Rios  
20 just asked you about combining African American and Latino  
21 population in the Dallas/Fort Worth region to create a heavily  
22 minority opportunity district?

23 A. I don't remember working on that personally.

24 Q. You do --

25 A. I do remember seeing maps -- I remember seeing maps from

1 MALDEF that may have done that.

2 Q. But you did not?

3 A. Did I personally try to draft my own? No.

4 MR. HEBERT: Thank you.

5 EXAMINATION

6 BY MS. RIGGS:

7 Q. Hi. We haven't met before. I'm Allison Riggs.

8 You testified that when looking to draw a new  
9 African American opportunity district you're looking at  
10 50 percent black voting age population?

11 A. I was always looking at 50 percent threshold for either  
12 black or Hispanic. I have heard that courts use a lower  
13 threshold for black voting age population. In reviewing the map  
14 after we -- you're talking about the state House map or the  
15 congressional map?

16 Q. Both.

17 A. In reviewing the state House map after it was completed we  
18 compared the number of districts with at least 40 percent black  
19 voting age, at least 45 percent black voting age and at least  
20 50 percent black voting age. And I think they all either stayed  
21 the same or went up. I know 50 percent went up.

22 Q. Okay. So you're not testifying that 50 percent voting age  
23 population is necessary for an effective performing voting rights  
24 district for African Americans?

25 A. I don't know the answer to that.

1 Q. Okay. Are you aware of any evidence that 50 percent is a  
2 necessary number for a district to be performing for African  
3 Americans?

4 A. Not performing. I've always struggled with the term  
5 "performing." In this I've always looked at just is there an  
6 opportunity. And it's my understanding from some case law -- I  
7 don't remember the case, but Supreme Court case law that the  
8 standard is 50 percent of a particular minority group.

9 Q. Okay. Are you aware of any instances in Texas where a  
10 district that is more than 35 percent black voting age population  
11 has not elected a candidate supported by African American voters  
12 or is the choice of African American voters?

13 A. I'm not sure.

14 Q. Was this your first redistricting cycle here in Texas?

15 A. Let's see, I lived here during the last several, but it's my  
16 first time working on it.

17 Q. Okay. Were you aware of a practice used in prior  
18 redistricting cycles to maintain -- when examining a protected  
19 district not just examining the numbers but maintaining the core  
20 and the integrity of that district?

21 A. That is one of the redistricting -- traditional  
22 redistricting principles that we looked at was cores of existing  
23 districts. One of many.

24 Q. But you looked -- you prioritized the numbers of the  
25 district over the core of the district?

1 A. No, I don't think that's fair to say. We looked at both.

2 Q. When you were talking earlier about Representative Turner's  
3 district and the changes that he wanted to make you said you  
4 couldn't accommodate them because of the need to maintain the  
5 numbers; is that correct?

6 A. Yes.

7 Q. The plan that was voted out of committee in the House, is it  
8 your testimony that it maintained the numbers of the black voting  
9 age population in that district?

10 A. I don't remember if it did.

11 Q. Would you -- would you -- do you remember the changes  
12 that -- specifically the changes that Representative Turner asked  
13 you to make to that district?

14 A. No. He -- actually Representative Turner and I never spoke  
15 directly. I know he spoke to Representative Harless who spoke to  
16 me at one point. I don't know that he asked her to do that but  
17 she did tell me Representative Turner has expressed a concern,  
18 can we help, and we looked at it and I think we were able to help  
19 somewhat, but I know we did not meet all of his goals.

20 Q. Would it surprise you or would you disagree that of the plan  
21 that came out of committee, the black voting age population in  
22 his district was increased by suggestions made by caucus --  
23 legislative black caucus members?

24 A. That's certainly possible.

25 Q. I just want to talk about the Harris delegation for one

1 minute. And you had represented earlier that they were given --  
2 the Democratic members of the delegation were given the  
3 instruction don't touch Republican districts but then do what you  
4 will?

5 A. That's my understanding. That wasn't a meeting that I was  
6 there for, so that's what I heard afterward. But if people that  
7 were actually in the meeting would have a different recollection  
8 I would defer to them since I wasn't there.

9 Q. And you testified earlier that they then signed off on a  
10 plan with your -- under your understanding of their instructions  
11 they signed off on the plan?

12 A. My understanding is that Representative Coleman offered a  
13 Harris County amendment that they all supported and all voted  
14 for.

15 Q. You believe that every member of the delegation supported  
16 that plan?

17 A. My understanding is that every member of the delegation and  
18 the Texas House as a whole voted in favor of that plan.

19 Q. Do you -- but you wouldn't testify that everyone, every  
20 member of the delegation, was in on the meeting when they took  
21 that break to go meet about the delegation -- to meet about how  
22 to redesign the Democratic --

23 A. I don't know the answer to that.

24 Q. Okay. Were you present for House floor debate on Wednesday,  
25 April 27th?



1 A. I don't remember the dates, but I was present for the House  
2 floor debate, all of it on both the House map and the  
3 congressional map.

4 Q. Do you remember Representative Walle testifying on the floor  
5 about the pairing of Representative Hochberg and  
6 Representative Vo?

7 A. Specifically no.

8 Q. Would you -- would you mind, to refresh your memory, if I  
9 read to you his testimony from the floor?

10 A. Sure.

11 Q. If he said -- "And for us we take that very personally  
12 because, one, you are eliminating Representative Hubert Vo and  
13 pairing him with Representative Hochberg." If I represent to you  
14 that that's what he testified to on the floor would you accept  
15 that?

16 A. Yes.

17 Q. You were aware that the Texas legislative black caucus  
18 submitted congressional and State House plans?

19 A. That would be legislative black cautious submitted -- yes, I  
20 know Representative Veasey submitted plans for both of those on  
21 behalf of the black caucus.

22 Q. I believe Representative Turner submitted several plans. Do  
23 you remember plans filed by Representative Turner?

24 A. Yes.

25 Q. Okay. Specifically do you remember House Plans 202 and 214?

1 A. I don't specifically. If you've got a map -- I'm sure I saw  
2 them.

3 Q. So you believe you considered them?

4 A. Yes.

5 Q. Did you look at a district that would have created a  
6 new -- in those plans did you look at a new opportunity district  
7 created by those plans in Dallas County?

8 A. And this is for House or congressional?

9 Q. House.

10 A. I don't believe it was possible to create a new minority  
11 district in Dallas County while maintaining the existing ones.

12 Q. Okay. But you do believe you looked at them?

13 A. If they submitted a plan I looked at it.

14 Q. Were you aware that the NAACP submitted a congressional  
15 district plan for a new Dallas/Fort Worth opportunity district on  
16 the Senate side?

17 A. I believe I am aware of that.

18 Q. So you would have reviewed those maps as well?

19 A. If the map was submitted only to the Senate and not to the  
20 House I'm not sure if I would have reviewed it or not. I don't  
21 have a specific recollection of that map. If you showed it to me  
22 I might be able to tell you if I saw it. It's possible I saw it.  
23 If it was only submitted to the Senate it's possible I didn't.

24 Q. So there was no sharing of sole submissions on either side?

25 A. We talked -- I talk with Doug Davis fairly regularly and we

1 talked about ideas. I don't recall Doug ever showing me any  
2 maps. And before the map was eventually initially publicly  
3 released I don't recall showing him maps. We were each working  
4 independently but sharing trains of thought.

5 Q. I'm sorry to be jumping around a bit, but I'm going back to  
6 the House plan. You testified earlier that you talked with  
7 Representatives Anchia and [coughing in background] Johnson about  
8 changes to their districts, but I noticed you didn't mention  
9 talking with Representative Barbara Carraway. Did you speak with  
10 her?

11 A. Yes.

12 Q. Did she complain about her district?

13 A. I spoke with her and she gave me some suggestions for her  
14 district. I also spoke with Representative Davis giving  
15 suggestions for her district and Representative Davis submitted  
16 some suggestions for her district.

17 Q. Do you recall did Representative Carraway complain about the  
18 Hispanic numbers in her district being dramatically increased?

19 A. Not to me that I recall.

20 Q. I'm going to go back to Congressman -- and we'll be done  
21 with that. Did you review plans submitted by Congresswoman Eddie  
22 Bernice Johnson, congressional plans?

23 A. I believe I did.

24 Q. Do you remember reviewing a congressional Latino opportunity  
25 district in Dallas/Fort Worth that she submitted?

1 A. I recall seeing several different proposed districts for  
2 Dallas/Fort Worth.

3 Q. You don't remember one being a Latino opportunity district?

4 A. Well, no. I recall several proposed Latino opportunity  
5 districts. I don't recall ever seeing one that crossed the  
6 50 percent threshold.

7 Q. Okay. Did you review proposed changes she had for her own  
8 district in Dallas/Fort Worth?

9 A. As part of her overall map, yes.

10 Q. Did you hear concerns from other African American  
11 representatives in Congress about their districts?

12 A. I believe we heard concerns from Representative Green.

13 Q. Isn't it true that you didn't incorporate many of those  
14 concerns?

15 A. Well, with respect to Representative Johnson I don't recall  
16 any -- hearing from her at all with any concerns after we got out  
17 the first map. She submitted her idea. We released a public map  
18 and then, no, I don't recall any concerns from her after that.  
19 Representative Green asked, I believe, if we could get his  
20 district office into his district.

21 JUDGE SMITH: This is Al Green, I assume? Al Green or  
22 Gene Green?

23 MS. RIGGS: Al Green.

24 THE WITNESS: Honestly I'm not sure. I know they're --

25 JUDGE SMITH: They're both Harris County.

1           THE WITNESS: Yeah. I know there are two Congressmen  
2 Greens. They're both in Harris County. I never spoke to either  
3 one directly. I remember that one of them asked for a change to  
4 get the district office moved. And I remember we looked at it  
5 and his existing district office in the new district was a  
6 significant distance away and we couldn't get it done. I  
7 remember looking at that. I don't remember which of them it was  
8 for and I remember that we couldn't do it.

9 Q.     (BY MS. RIGGS) So you don't remember if it was from an  
10 African American member of Congress?

11 A.    I don't. But to answer your question, I don't remember any  
12 other concerns raised by any other congressmen after we put out  
13 the initial map. We've talked about Representative Reyes's  
14 concern, Representative Green's and Representative Gonzalez's.

15 Q.    It's true, isn't it, that Representative Eddie Bernice  
16 Johnson's district office was drawn out of her district?

17 A.    I was not aware of that until -- if -- if you're saying that  
18 happened then it may have, but no one made us aware of that until  
19 now.

20 Q.    And Representative -- and you're not sure, but  
21 Representative Alexander Green's district office was drawn out of  
22 his district too?

23 A.    We didn't have -- Red Appl doesn't have a diagram for  
24 district offices. So unless a congressman called us after the  
25 first map was publicly released and said, hey, here's the address

1 of my district office, can you get it back in the district, that  
2 would have been the only time we looked at that.

3 Q. At any time -- were you made aware anytime someone called  
4 your office even if they didn't get to directly talk to you with  
5 concerns?

6 A. My office, yes.

7 MS. RIGGS: No further questions.

8 JUDGE GARCIA: Anybody else over here on the  
9 plaintiff's side?

10 MR. GRAY: I don't believe so, Your Honor.

11 JUDGE GARCIA: Okay.

12 MR. MATTAX: Very briefly, I guess this is a question  
13 for Mr. Hanna. Is there a topographic feature you can overlay on  
14 top of the maps to show this map, yes or no?

15 MR. HANNA: (Shakes head).

16 MR. MATTAX: No? Very good. Sorry about that. We'll  
17 probably -- we'll try to create a demonstrative exhibit for the  
18 Court that combines the geographical features.

19 JUDGE GARCIA: Sure.

20 EXAMINATION

21 BY MR. MATTAX:

22 Q. When Ms. Perales was questioning you she was talking  
23 about -- focus your attention on Congressional District 27. I  
24 believe you testified there were two goals with regards to that  
25 district, but I only heard one goal discussed. What was the

1 other goal?

2 A. The other goal was to create a new district anchored in  
3 Cameron County. The old District 27 kind of had twin anchors,  
4 Cameron and Nueces, but both the current congressman and I  
5 believe the one before that, who had been there a long time, were  
6 from Nueces County. So it was my understanding that the  
7 representatives and senators in Texas from Cameron County wanted  
8 a district that was anchored in Cameron where Cameron would elect  
9 their candidate of choice.

10 So our dual goals with 27 and 34 were to create that  
11 district, anchor it in Cameron--that was controlled by Cameron,  
12 not Nueces--and also to create a district for Congressman  
13 Farenthold who lived in Nueces where he would be elected as a  
14 Republican.

15 Q. And those senators and representatives who wanted to create  
16 a district anchored in Cameron County, were they Democrat?

17 A. Yeah. Senator Lucio -- Representative Lucio and  
18 Representative Oliveira, and they're all Democrats.

19 MR. MATTAX: Thank you. No further questions.

20 MS. PERALES: One question, please. David, are you  
21 connected to the projector? Can you show C 190, please? Maybe I  
22 have it on the demonstrative. Let's go low tech, Mr. Downton.

23 EXAMINATION

24 BY MS. PERALES:

25 Q. Is it possible and is it demonstrated in C 190 to have a

1 district, in this case Number 34, that keeps, in fact, Cameron  
2 County whole, which it is not in the benchmark, and run up to  
3 include at least the Hispanic portions of Nueces County in one  
4 congressional district?

5 A. Is it possible to do that? Yes.

6 Q. And it's also possible to have Mr. Farenthold in a district  
7 to the north that would be a Republican district because this is  
8 not all of Nueces County, correct?

9 A. Yes, that would be possible.

10 MS. PERALES: Thank you.

11 JUDGE GARCIA: Anything else over here on the  
12 plaintiff's side?

13 MR. GRAY: No, Your Honor.

14 JUDGE GARCIA: Okay. All right. Thank you. The  
15 witness is excused. Have a good day.

16 Mr. Bledsoe, I believe we're going to follow up with  
17 you again.

18 MR. BLEDSOE: Yes, Your Honor.

19 JUDGE GARCIA: Okay.

20 JUDGE SMITH: Can you refer us back to which volumes  
21 we're going to be using just so we can get all that situated  
22 without any interruption?

23 MR. BLEDSOE: Yes. Your Honor, we're going to use 10-1  
24 and we're going to be looking at Exhibit 1 there, or the Joint  
25 Exhibit 1 of 3, Exhibit Number 4.



1 JUDGE SMITH: Thank you.

2 MR. BLEDSOE: Thank you, Your Honor.

3 RICHARD MURRAY,

4 having been previously sworn, testified as follows:

5 CONTINUING EXAMINATION

6 BY MR. BLEDSOE:

7 Q. Dr. Murray, I wanted to continue on with the discussion we  
8 were having in reference to African American and Latino  
9 coalitions and I wanted to --

10 MR. BLEDSOE: Are you up yet? If you'll show Exhibit  
11 Number or table 11 in Dr. Murray's report and that is on page 32.  
12 On page 32.

13 Q. (BY MR. BLEDSOE) Doctor, could you explain to us what  
14 you've done in Exhibit 32 and what Exhibit 32 means?

15 JUDGE SMITH: It's what? Table 10, right?

16 MR. BLEDSOE: Excuse me. Table 10 on page 32, yeah.

17 A. This is a continuation of the homogenous precinct analysis  
18 that we discussed earlier in this case, I believe, if I could  
19 find it. Looking at -- well, this is not -- on table 10 --

20 MR. BLEDSOE: Table 11. Table 11.

21 JUDGE SMITH: On which page?

22 MR. BLEDSOE: 32. 33. 33.

23 JUDGE SMITH: 33. Okay. Yeah. The label for table 11  
24 is at the bottom of page 32.

25 A. This is looking at homogenous precincts in the -- in Dallas

1 County in very heavily African American precincts, predominantly  
2 Hispanic precincts, predominantly Anglo precincts. And looking  
3 at a couple of recent countywide elections, the election in 2008  
4 for Lupe Valdez for sheriff of Dallas County and in 2010 Craig  
5 Watkins' race for district attorney in Dallas County.

6 Q. And for the record, Lupe Valdez is a Hispanic?

7 A. That is our understanding.

8 Q. Okay. And Craig Watkins is African American?

9 A. Yes.

10 Q. Okay. And do these figures show any kind of vote cohesion  
11 between African Americans and Latinos?

12 A. I think they clearly show strong vote cohesion. African  
13 American voters voting overwhelmingly for Ms. Valdez in 2008 and  
14 for Craig Watkins in 2010. Latino voters voting very strongly  
15 for sheriff candidate Valdez, also strongly supporting Craig  
16 Watkins in 2010. Anglos not so supportive.

17 The mix -- well, let me get to the bottom of the table  
18 there in the report here. We get in the predominantly Anglo  
19 precincts. Lupe Valdez did very poorly, a support of 24 percent  
20 and Craig Watkins even lower, only 22 percent in the 2010  
21 election.

22 So the table shows two clear patterns, that there's  
23 strong racial polarization voting in Dallas County and that  
24 African Americans and Hispanics are supporting the same  
25 candidates in both of these instances. And one is an

1 African American candidate and one is a Latino.

2 Q. Now, if we turn over to Exhibit 12 that is on 36, but I  
3 guess the table, as I mentioned, is on page 35. And could you  
4 explain to the court what this table shows?

5 A. To me, being a long time resident of Texas living in  
6 Houston, it's fascinating to watch the changes in Dallas County.  
7 When I got to Texas in the '60s it was a very conservative  
8 Anglo-dominated county voting for conservative white Democrats  
9 and Republicans.

10 It's clearly changed enormously in the 21st century so  
11 I wanted to go back and look at the pattern of voting in Dallas  
12 County from 2000 to 2010 and connect it to population shifts in  
13 the county, which I think explain what has happened in the  
14 county.

15 The county has been growing moderately, but the Anglo  
16 percentage in the county has been dropping sharply. So we can  
17 calculate looking at 2000 and 2010 the approximate number of  
18 Anglos in the county, voting age Anglos, and match that up with  
19 the approximate number of voting age blacks and Hispanics and  
20 then look at the election results that are happening in the  
21 countywide contested contests in this important county.

22 Not many Democrats ran in Dallas County at the  
23 beginning of the 21st century or in 2000 more accurately. In  
24 fact, there were only seven contested races countywide including  
25 the President of the United States, the Bush/Gore contest. One

1 of the reasons Democrats didn't win is -- didn't run is they  
2 didn't think they had any chance of winning. All the Democratic  
3 countywide candidates lost in Dallas County in 2000.

4 In 2004 -- or 2002 rather, when Tony Sanchez was a  
5 candidate for governor and Ron Kirk, the former mayor of Dallas,  
6 was running for the Senate, 50 Democrats were on the countywide  
7 ballot. I think the combination of the Kirk/Sanchez being at the  
8 top of the ticket encouraged a lot of candidates. They didn't do  
9 very well. Ron Kirk narrowly carried the county, but only three  
10 other Democrats. So four out of 50 led in Dallas County.

11 In 2004 --

12 Q. Excuse me. If I might, so the judges will understand, those  
13 figures at the top, they're not quite lined up correctly. Could  
14 you explain that so they would be able to look and see because  
15 you have the black and Hispanic percentage at that particular  
16 year.

17 A. Right. I think the driving force here is the ratio of  
18 combined black and Hispanic VAP or voting age population to  
19 Anglos since I think it's mostly racial ethnic voting that's  
20 driving this result.

21 In 2000 the combined black and Hispanic VAP was less  
22 than the white VAP in the county. 93 percent combined minority.  
23 In 2002 it was 103 percent. So for the first time there were  
24 more black and Hispanic voting age residents of Dallas County  
25 than Anglos. And by 2004 it was up to 114 percent. By 2006 my

1 estimate is 124 percent. By 2008, 136. And the census tells us  
2 in 2010 now there are 144 percent Hispanic compared to Anglos so  
3 there are almost 50 percent more, now, minority voters. And as  
4 those percentages go up the election results change dramatically  
5 in the county.

6           Again, in 2004 where now the -- there are more  
7 African American and Hispanic VAP population, the county is  
8 split. There are 12 contested races. President Bush carries the  
9 county narrowly as do five other Republicans, but six Democrats  
10 supported by minority voters win.

11           In 2006 you had 56 contested countywide races as many  
12 candidates now filed as Democrats against very often incumbent  
13 Republican judges and most of them won. In the 2006 election  
14 only four Republicans carried the vote in Dallas County.

15           In 2008, the year that John McCain and Barack Obama  
16 faced off, every Republican on the countywide ballot lost by wide  
17 margins in Dallas County. So of the 19 contested races between  
18 Democrats and Republicans there were no Republican countywide  
19 winners.

20           2010 we discussed earlier. A great year for  
21 Republicans generally. The Tea Party phenomena was in full force  
22 but not in Dallas County. One candidate not supported by black  
23 and Hispanic voters, Lieutenant Governor David Dewhurst, narrowly  
24 carried the county. Every other candidate supported by black and  
25 Hispanic voters won or led in Dallas County.

1           So it's -- just having two variables move together  
2 doesn't necessarily mean that one is causing the other, but I  
3 think in this instance it is the changing racial ethnic makeup of  
4 the Dallas County electorate that clearly explains the very, very  
5 different political results that we're seeing.

6           And I like using the Dallas County case. You know,  
7 again, it's a perfect square candidate county. Nobody's tinkered  
8 with its boundaries since 1846 when it was created so I think  
9 it's kind of a great test case what happens in Texas if we vary  
10 the composition of the district by its racial ethnic base --

11           JUDGE SMITH: Can we proceed on Q&A?

12 A.    -- in the 21st Century.

13 Q.    (BY MR. BLEDSOE) Thank you. Okay. Now, in terms of what  
14 we've seen here, would you say that's an effective coalition?

15 A.    That's a very effective coalition.

16 Q.    Okay. And have you done an analysis of Dallas and Tarrant  
17 Counties compared with Harris and Fort Bend to determine whether  
18 or not there should be a different treatment of Dallas and  
19 Tarrant Counties in terms of minority representation in the  
20 Congressional delegation?

21 A.    I have looked at both these two sets.

22 Q.    Okay. In fact, you have the table 10 on page 32, do you  
23 not, where you actually look at that and perform an analysis; is  
24 that correct?

25 A.    That is correct.

1 Q. Okay. And could you tell the Court what exhibit -- or table  
2 10. Excuse me, table 10 shows us on page 32?

3 A. It shows these two sets of urban counties are quite similar  
4 in total population. Now quite similar in the racial ethnic  
5 makeup. If you combine Tarrant and Dallas County on the one hand  
6 and Fort Bend and Harris County on the other, they're very  
7 similar now.

8 Q. Okay. And did you arrive at any kind of an opinion about  
9 whether or not there could be, based on those numbers, a fairer  
10 treatment for minorities in reference to congressional  
11 representation in this area?

12 A. Looking at voting patterns in these two metro areas they're  
13 remarkably similar. The African American voters in Dallas and  
14 Tarrant County vote almost exactly the same as Harris County and  
15 Fort Bend County. African Americans -- the same is true with  
16 Hispanic residents of both metropolitan areas. The smaller Asian  
17 populations are not as easily analyzed, but all the evidence  
18 suggests their voting patterns are similar. And I don't see any  
19 difference in the non-Hispanic whites or the Anglo voting. So I  
20 think voters in the two areas, the Metroplex and the Houston  
21 metro area, are very similar in their recent voting behaviors.

22 Q. Okay. Now, if you could look at the Joint Exhibit 4, the  
23 maps, and look at Plan C 193. Doctor, I want to ask you if that  
24 was the NAACP plan that you evaluated?

25 A. It appears to be, yes.

1 Q. Okay. And if you look behind that table you will find -- or  
2 the map there you'll find an analysis of the breakdown, the  
3 demographic breakdown of each one of those districts. Do you see  
4 that?

5 A. Yes, I have it.

6 Q. Okay. Now, first of all, in reference to that there is a  
7 discussion of the ACS data that I think you've heard discussion  
8 of this morning in terms of what's actually being used by the  
9 state to determine whether or not to draw a district; is that  
10 correct?

11 A. Yes, I recall that.

12 Q. Now, could you explain to the court if there are some  
13 concerns with using ACS data and what has changed since  
14 2000 -- since 2000 that would make it problematic to use that  
15 data?

16 A. I think this question of the American Community Survey data  
17 is a very serious one for the national redistricting cycle. In  
18 2000, again to reiterate, we have the citizenship question on the  
19 long form of the census. So we had good data down to small areas  
20 that was from the same time that our other census data was taken.

21 We don't have that in this cycle. Instead we're  
22 relying on this American Community Survey, a far, far smaller  
23 sample, and we have to merge those data into five-year segments  
24 to get enough information to take it down to try to get some  
25 guesses about citizenship levels in particular jurisdictions.



1           It's also a concern that I don't think has been  
2 expressed properly to the Court about this American Community  
3 Survey data using the time frame 2005 to 2009. In the middle of  
4 that time frame we had a dramatic shift in in-migration to the  
5 United States.

6           And we have more recent estimates from folks like the  
7 Pugh Hispanic Center and government estimates that since 2008 we  
8 have had a net out-migration of more than a million persons from  
9 the United States, most of whom are not citizens. They were not  
10 here in April 2010 when the regular census was taken, but we have  
11 data in the Community Survey from 2005, '6 and '7 before this  
12 out-migration began.

13           There is a serious bias in the CVAP -- the citizen VAP  
14 data that overstates the number of non-citizens among Hispanics.  
15 So if you take those data and apply it to the Hispanic resident  
16 population that was counted by the regular census in 2010 I think  
17 there is a serious biasing effect, that we now have a higher  
18 proportion of citizen Hispanics that were actually counted by the  
19 census than this other set of data it's giving us for our  
20 estimates that are presented before this Court.

21           So as George Korb and others have pointed out, this  
22 is shaky stuff for a lot of reasons, but it's particularly  
23 troublesome to use these data because we saw a dramatic shift in  
24 in- and out-migration patterns after the great recession started  
25 in 2008.

1 Q. And in that regard the Constitution, you understand, talks  
2 about using the census to redraw the district lines; is that  
3 correct?

4 A. That's why we have a census. The framers said in 1787 we're  
5 going to have a House of Representatives, it's going to be based  
6 on the counts of persons, not citizens, and we've got to count  
7 the people. So we started counting in 1790 and we've done it  
8 every 10 years since, but the American Community Survey is not  
9 part of that census.

10 Q. And could you discuss with the Court the methodology that's  
11 used to reach the figures in the ACS?

12 A. Well, the Citizen's Bureau conducts the survey. They have  
13 some wonderful statisticians, but they've been starved for money.  
14 That's why they dropped the long form of the census. They didn't  
15 have the funds to carry it out. So they implemented the American  
16 Community Survey to get this more substantive data since we're  
17 not asking it anymore in the regular census. But they have  
18 to -- for economy they have to limit the number of interviews  
19 that's done. And so they're continually interviewing and then  
20 they aggregate the data into an annual release and then they take  
21 five years together and that gives them the opportunity to break  
22 it down.

23 But there are all the problems we've heard discussed  
24 about sampling in other regards with the census and it's -- you  
25 know, it's something that's done partly for economic reasons but

1 it's got some serious methodological problems particularly when  
2 you try to apply it down to small areas because we don't have  
3 that many interviews in -- certainly down, say, to the voter  
4 precinct level or the House district level. So -- and some of  
5 the data just frankly looked really fishy. Like Tarrant County.  
6 The whole county data looked to me like they're wildly offbase  
7 for this CVAP. But -- you know, so it's made a lot more sense to  
8 use the data in the last cycle when we had good data for CVAP  
9 than it does in 2011 when we've got pretty shaky data.

10 Q. So let me understand that. How many -- how many total  
11 persons were sampled in Texas?

12 A. Well, probably about 5,000 interviews a year. I would guess  
13 five, maybe 10,000 maximum in a state of 25 million people.  
14 That's pretty good for estimating statewide averages, but when  
15 you break it down to 36 congressional districts, a 150 state  
16 House districts, I don't have a lot of confidence in these data  
17 and I think they should be taken with a serious amount of  
18 caution.

19 Q. And back at the time when it was first required by a court  
20 directive that one use citizenship data, was the methodology  
21 utilized substantially different and more accurate?

22 A. Well, we had the census data, a regular census that included  
23 the citizenship question on the long form which was, I think,  
24 administered to 15 percent of all households in America. So  
25 we're talking about 40 million households getting those

1 questions. Not 40 million. There are 140 million households so  
2 15 percent of a 140 million, whatever that is. Over 20 million  
3 interviews. There's nothing like that in the American Community  
4 Survey and database. It's a smaller sample.

5 Q. Okay. And with that as a backdrop you looked at the  
6 districts that are on -- the districts on that partial map, 9,  
7 18, 25, 28, 30, 34 and 35. But I'm going to ask you -- I'm going  
8 to ask about 9, 18, 30, 34 and 35. And I'm going to start out  
9 with 34 and 35 and ask if you had an opportunity to look at the  
10 data and the configuration of those districts and make a  
11 determination if they were effective districts where minorities  
12 may be able to elect a candidate of their choice?

13 A. I have looked at these data for Districts 34 and 35 in this  
14 proposed Plan C 193. These districts are in Dallas and Tarrant  
15 County. And based on the pattern of voting we've seen in those  
16 counties I think they would be effective districts in the sense  
17 of giving minority voters, black and Hispanic voters, the  
18 opportunity to elect candidates of their choice if such districts  
19 were created.

20 JUDGE SMITH: Those are from which plans, excuse me,  
21 Mr. Bledsoe?

22 MR. BLEDSOE: Your Honor, C 193. I'm sorry.

23 JUDGE SMITH: C 193. Thank you.

24 MR. BLEDSOE: C 193. And he's looking at 34 and 35.

25 JUDGE SMITH: It's confusing because we talk about 35

1 in the Austin/San Antonio corridor so I wanted to be sure you  
2 were talking about the other 35.

3 MR. BLEDSOE: Thank you, Your Honor. I'll try to  
4 remember. I know I asked him to turn to that plan and I forgot  
5 to mention it again. I'll try to be more careful.

6 JUDGE SMITH: That's okay.

7 Q. (BY MR. BLEDSOE) And so 34 is the proposed new  
8 African American district; is that correct?

9 A. It's a district that in my judgment African American voters  
10 would have a very great likelihood of supporting candidates of  
11 their choice. It would be an effective district for African  
12 American voters.

13 Q. Do you think it would be a majority -- a minority  
14 opportunity district under the Voting Rights Act?

15 A. I think it would be a clear case of a majority minority  
16 opportunity district like Dallas County as a whole has become an  
17 effective majority minority district.

18 Q. And what about District 35?

19 A. This district is substantially more Hispanic in population  
20 and it looks like almost 70 percent Hispanic in population, but  
21 it has an important African American minority. And the  
22 combination of those two in my judgment would yield a district  
23 that would be an effective opportunity district for Latino voters  
24 in Dallas and Tarrant Counties.

25 Q. In that regard have you actually done methodology -- I know

1 in terms of if there is an African American opportunity district  
2 on one hand and a Latino opportunity district on the other hand  
3 and they're working in cooperation with the other group to -- to  
4 perform in that district, have you actually done an analysis that  
5 it indicates to you at what level the African American district  
6 is likely to perform in terms of a percentage of African American  
7 voters in the district and have you done the same for Latinos?

8 A. A lot of it depends on the relative weights of the two  
9 minority groups in urban Texas where our populations are quite  
10 diverse. In urban Texas any district that is much above  
11 30 percent African American VAP is likely to be a district that  
12 African American voters are going to be effective in. They might  
13 possibly be effective in electing not necessarily an  
14 African American but they're likely to be voting for the winner  
15 in any district above 30 percent. At 35 percent you're moving  
16 into -- almost certainly now you're going to get a candidate that  
17 the African American community supports elected.

18 With Latino percentages a lot depends upon who the  
19 others are. An ideal Latino district could be down as low as,  
20 say, 60 percent in population if it's got maybe 15 percent  
21 African American in the same district so that the combined  
22 populations are 65 or 70 percent. Latino voters would likely be  
23 successful in the primary and in combination with African  
24 Americans in the effective election the general election would be  
25 able to support a candidate of their choice successfully.

1 Q. Now, if this Court were not to use the ACS data,  
2 what -- what thoughts or suggestions would you have to this Court  
3 in terms of making a determination -- how do you determine that  
4 something is or is not a majority minority district?

5 A. Well, I'd start by looking at the total population. That's  
6 what we're basing these districts on to begin with, then looking  
7 at the voting age population. And I think it is -- you know, as  
8 a social scientist I think we ought to look at the behavior of  
9 folks: Are districts -- are similar districts performing  
10 effectively. We shouldn't let the facts stand in the way of  
11 making judgments. I mean, we have a lot of data now from America  
12 about these mixed districts and which ones are effective in the  
13 sense of the objective of the Voting Rights Act of giving  
14 minority voters an opportunity to be effective participants. And  
15 so I would urge the court to -- courts to look at the election  
16 results. It sounds like the map drawers certainly were in  
17 drafting these districts.

18 JUDGE RODRIGUEZ: You didn't mention the SSVR. Is  
19 there a reason for that?

20 THE WITNESS: I have not mentioned Spanish surname  
21 registered voters. I think that's a good indicator. I wouldn't  
22 take it as the sole indicator, but I think it's a good indicator.  
23 It's certainly a lot more objective than CVAP. You know, there  
24 are problems with the programs that identify such voters and a  
25 lot of Hispanics, like my niece who is Hispanic to be sure, her

1 father was of Hispanic origin, but she's married an Anglo so  
2 she's not counted.

3 But those are good data. But there's no one size fits  
4 all. In South Texas I think you need a much higher SSRV than you  
5 need in Dallas or Harris County because in South Texas it's  
6 pretty much Anglos and Latinos and they don't vote for the same  
7 candidates these days. So you better have a high Spanish surname  
8 registered vote total. And that's not true in Harris or Dallas  
9 County where you've got a bunch more mixed other population.

10 And a significantly lower percentage of SSRV Hispanics  
11 can be quite effective as in District 148 of the state House.  
12 Jessica Farrar has had a very effective performing district. She  
13 didn't need to boost its SSRV numbers and the proof is the  
14 evidence. She was elected and reelected and reelected in a  
15 district with quite an easy time.

16 Q. Why don't you discuss what her district actually looks like  
17 and how it's performed for the Latino community.

18 A. Well, the old district was sort of downtown Houston up to  
19 the northwest. It included some gentrifying neighborhoods that  
20 had previously been Hispanic like The Heights in Houston. It had  
21 some newer suburban areas that were substantially Hispanic but  
22 it's Spanish surname registered voter population was down around  
23 40 percent. But her district included some African Americans,  
24 inner-city Anglos that didn't have much of a history of  
25 polarization against Hispanic candidates. And it's a very



1 effective district under the base plan that we started with for  
2 the Texas House.

3 Q. And you actually discuss her district, don't you, in your  
4 H 283 report?

5 A. I briefly discussed her district in -- as one of four, I  
6 believe, in Harris County in the report on House Plan 283.

7 Q. Okay. Now, if we take a look --

8 MR. BLEDSOE: David, could you please put up C 185?  
9 And could we take a look at CD 30 -- if we could tune in on  
10 CD 30. And could you do a B and H shade?

11 MR. HANNA: Not real quickly.

12 Q. (BY MR. BLEDSOE) And, Doctor, I think if you could turn  
13 over to the numbers so I can discuss those with you. It's map  
14 C 185, but I want to go back over here in a second, but C 185.

15 Could you take a look at C 185 and tell the Court what  
16 is the percentage of African Americans and Hispanics in the  
17 newly-created district for Congressman Eddie Bernice Johnson?

18 A. In the C 185 enacted map the black population is about 45.6  
19 and the Hispanic population is 40.3. So the combined black  
20 population -- black and Hispanic population is 85.2 percent.

21 Q. Okay.

22 A. Black and Hispanic.

23 Q. Okay. And so looking at that map there there's not a whole  
24 lot that's not African American or Hispanic that's in that  
25 district, is there?

1 A. I think quite literally you try to put every minority  
2 precinct -- minority precinct into this single district to make  
3 sure they don't have any influence anywhere else.

4 Q. Okay. And so the evidence is it's probably packing, do you  
5 think?

6 A. A very packed district. Very efficiently done.

7 Q. Okay. And let's talk about that if we might. When you  
8 pack -- because the numbers of African Americans and Latinos that  
9 were put in that district were both over 40?

10 A. Yes.

11 Q. Okay. So what potential consequences might that have in  
12 reference to the coalition that has been created in Dallas County  
13 and does that create any tension?

14 A. Well, in terms of long-term -- putting so many minorities  
15 together in a single district that are about equally divided  
16 particularly over a 10-year period it seems to me to create some  
17 real stressful issues that especially since there are no other  
18 districts around that minority voters are going to have much of  
19 an opportunity to elect anybody of their choice.

20 In the Dallas/Fort Worth area the -- you know, you get  
21 sort of general election overkill. You win a district by 85  
22 percent, but then you create over time, I think, some growing  
23 problems by putting so many folks of these two different groups  
24 that are allied in the general election but are now fighting over  
25 the scraps that are left and that you don't have very many total

1 districts.

2 Q. Okay. And what -- do you think that creating a district in  
3 that manner is consistent with your understanding of the Voting  
4 Rights Act?

5 A. In my opinion it is not consistent.

6 Q. And why is that?

7 A. Because packing minimizes the overall influence of the  
8 combined minority groups; in this case quite dramatically. In  
9 the Harris and Fort Bend Counties with extremely similar  
10 populations we have three performing districts that clearly give  
11 minority voters--in two instances, African American voters; in  
12 the third instance, Latino voters--the opportunity to elect  
13 candidates of their choice. In Dallas/Fort -- Tarrant County,  
14 one district. Very similar populations.

15 Q. Okay. And has CD 30 been an effective district for African  
16 Americans?

17 A. It has been an effective district for African Americans.

18 Q. And would 9 and 18 have been the same?

19 A. 9 and 18 in Harris County and Fort Bend County have been the  
20 same.

21 Q. Now, in looking at CD 30 were there some problems you  
22 identified in how it was configured that you mentioned in your  
23 report?

24 A. Could you repeat that?

25 Q. You discussed CD 30 in your report, did you not?

1 A. I did.

2 Q. And you discussed some particular problems that you noticed  
3 in its configuration or what was cut in or left out or what have  
4 you?

5 A. Well, it certainly meets the compactness standard compared  
6 to lots of other districts that we've seen, but in the cutting  
7 and slicing and dicing, traditional principles of redistricting  
8 weren't paid a lot of attention to like the incumbent's desires  
9 in a district that didn't need huge modifications, areas that --  
10 communities of interest were removed or split. Again, the  
11 congress member had little impact or input that was effective.  
12 She got new constituents like prison units. You know,  
13 populations that are not really relevant to voting. A lot of  
14 unnecessary changes made to the detriment of the existing member  
15 and her service constituency relationships which are an important  
16 traditional principle in drawing maps.

17 MR. BLEDSOE: Now, David, if we could, if we could zone  
18 out and show the Dallas County area in the -- if we back off of  
19 this, go back to the regular map and show the congressional  
20 districts that come into Dallas County.

21 MR. HANNA: Further out?

22 MR. BLEDSOE: Yeah.

23 Q. (BY MR. BLEDSOE) Dr. Murray, we see how Dallas County is  
24 treated here in reference to how the districts are drawn that  
25 represent Dallas County. Is the way these districts were drawn,

1 do they have a potential meaning in terms of the ability to  
2 provide a fair representation to minorities?

3 A. Well, you started with District 30 in maximizing within the  
4 698,000 plus ideal for a district putting as many of the minority  
5 populations into that single district as possible and then  
6 effectively frustrating the ability of the remaining million and  
7 a half minority residents of the Dallas/Tarrant County area to be  
8 effective in electing a member by splitting them up among a half  
9 dozen other districts in none of which they can be an effective  
10 voting collision.

11 Q. And is it of any consequence where the districts extend to  
12 that come into Dallas County?

13 A. Nothing new with this strategy in the Dallas/Fort Worth  
14 area. We saw some of that practiced by Democrats in the past of  
15 running into the core areas ago to protect white Democrats. Now  
16 we're seeing it done to protect white Republicans, in both cases  
17 at the expense of minority voters because you're linking up a lot  
18 of these inner-city neighborhoods with folks way out, mostly  
19 Anglo folks with a history of polarized voting against minorities  
20 and high turnout that are going to overwhelm the minority voters  
21 in these inner-city neighborhoods. Even though the minority  
22 voters are growing in number, for the life of this plan,  
23 10 years, if it stands they're going to be in my judgment unable  
24 to extend their influence outside of the single 30th  
25 Congressional District.

1 Q. Okay. Now, that problem, would you say that that's the same  
2 problem that would be reflected in CD 25 that takes the  
3 African American community in Travis County and takes them up all  
4 the way to Tarrant County?

5 A. The African American community in Travis County is pretty  
6 effectively neutered by the state map by connecting them up again  
7 with folks they share little with in another metropolitan area.

8 Q. Now, if we could take a look at the Harris County area.  
9 Now, the -- and you've analyzed 9 and 18 and how they were  
10 treated in C 185, have you not?

11 A. I have.

12 Q. And Congressman Alexander Green represents the constituents  
13 in CD 9 and Congresswoman Sheila Jackson-Lee represents the  
14 constituents in CD 18; is that correct?

15 A. That's correct.

16 Q. Okay. And how is CD 9 treated in this process?

17 A. Well, CD 9 is one of those districts, I believe, similar to  
18 what was mentioned earlier, almost exactly has the right  
19 population as a district. Was reasonably compact. An effective  
20 performing district. It was about 34,000 overpopulated, so could  
21 easily have been adjusted for voting rights and practical  
22 political traditional redistricting principles with very modest  
23 modification. Removal of a half dozen precincts, particularly,  
24 say, to the 29th district which was a little underpopulated right  
25 next door.

1           Instead, the state map pretty much dismantles the  
2 district and rebuilds it, moving a couple of hundred thousand  
3 people around, taking out the core of the center, including  
4 Congressman Al Green's office, as was mentioned in earlier  
5 testimony, but also removing important assets like the Medical  
6 Center that he has an important constituent relationship with.  
7 It's the largest employer in the city of Houston and in his  
8 district.

9           And again these changes were obviously not made in  
10 terms sort of usual considerations of congressional redistricting  
11 where you start with the existing districts and if they don't  
12 need much modification, usually that's the way it plays out.

13           But the 9th District was very substantially changed and  
14 a lot of new suburban and not yet fully developed areas were  
15 added to it, which creates a big question mark in that you're  
16 changing a district that's pretty mature in terms of its  
17 neighborhood, age and population composition and the one that's  
18 likely to see substantial new growth and unpredictable growth in  
19 the Houston metropolitan area.

20 Q.   Okay. And also was this created in a way to be designed as  
21 a tension district as well like CD 30?

22 A.   I think this District 30 has -- certainly has great  
23 potential to move in that direction because it's got so much  
24 undeveloped land out on the south side. It's not here that  
25 you're linking up the district with a bunch of outer Anglos.

1 These areas are largely unpopulated. But given the growth  
2 patterns of Houston we have every reason to think that will  
3 change over the next 10 years.

4 Q. And CD 18. Could you --

5 JUDGE SMITH: Well, now, as to District 9 let me just  
6 ask you, Dr. Murray, you know this much better than I do, but the  
7 area in Fort Bend that's in 9 now that adjoins Harris, isn't the  
8 growth in that area largely black and Asian or at least largely  
9 minority over the past few years?

10 THE WITNESS: The existing 9th district has a slice of  
11 Fort Bend County. That part of the county has become very  
12 substantially African American, but the new parts that were added  
13 more than doubling the Fort Bend part of the county are much less  
14 African American and much more Asian and Hispanic. There's very  
15 rapid new Hispanic growth now moving into Fort Bend County and  
16 the -- there's some African American growth to be sure, but it's  
17 creating a potentially very different district than the -- the  
18 existing 9th District under the base plan C 100.

19 Q. (BY MR. BLEDSOE) In reference to that, to Judge Smith's  
20 point there, one thing you put in your report was that it was  
21 possible to draw an additional opportunity seat for Latinos in  
22 Harris County; is that correct?

23 A. It is possible in my judgment to draw a second district in  
24 Harris County that would be an effective district for Hispanic  
25 voters.



1 Q. And we did do that and that's in C 194, but I don't want to  
2 go over that right now. The point is the -- I think if Latino  
3 voters clearly deserve an opportunity district and you don't  
4 provide them one, and you put additional Latino voters into  
5 Congressman Green's district, does that have a consequence?

6 A. Well, sure. Particularly if you put in some of the middle  
7 class Hispanic areas with high citizenship and high voting  
8 potential, that necessarily reduces the opportunities to create  
9 an additional district in the metropolitan area.

10 Q. And if you can look at C 195 and look at the population in  
11 C 195 and tell the Court what's the difference in the population  
12 of the African Americans and Latinos in CD 9 -- in C 185. C 185.

13 A. Oh, 185.

14 Q. Yes. I'm sorry.

15 A. In the enacted plan District 9's population would be 38.3  
16 percent black, 38.8 percent Hispanic. So taking out the overlap,  
17 a percent or two more Hispanic in population than African  
18 American, again, if you exclude the overlap and count as  
19 Hispanics. And that will increase almost certainly over the next  
20 10 years in the enacted district.

21 Q. Okay. Will it create any potential tension?

22 A. I think it has a lot of potential, particularly if there's  
23 no other opportunity district for Hispanics in the Houston  
24 metropolitan area. Given the explosive growth in the area that's  
25 going to likely be reflected in the 9th district if the enacted

1 map remains in effect.

2 Q. Okay. And if you'd look at C 193 with the proposed NAACP  
3 plan and tell the court what the numbers are in that plan.

4 A. In C 193 the proposed map would be -- I'm looking at the  
5 citizenship data. The population data for C 193 would be 40.3  
6 percent black, 37.3 percent Hispanic, so it would restore a black  
7 plurality. And the African American VAP would be about 5.6  
8 percent higher than the Hispanic VAP, but the district also would  
9 not include so much of the growth potential areas. They're  
10 likely to change over the next decade.

11 Q. Okay. And is the map proposed in C 193 substantially more  
12 likely than C 185 to ensure the maintenance of an  
13 African American opportunity district in CD 9?

14 A. Yes.

15 Q. And was the way the state constructed CD 9, is that  
16 consistent with the requirements of the Voting Rights Act in your  
17 opinion?

18 A. In my opinion, yes.

19 Q. The way the state constructed CD 9 in terms of the tension  
20 that's provided between the groups in not providing an  
21 opportunity seat for Latinos, is that consistent with the Voting  
22 Rights Act?

23 A. The C 195 substantially reduces the potential for tension  
24 between the two.

25 JUDGE SMITH: I think he misunderstood your question.

1 You were asking about the enacted plan, weren't you?

2 Q. (BY MR. BLEDSOE) I was talking about the enacted plan  
3 C 185, if it did provide for the additional Latino opportunity  
4 district.

5 A. No.

6 Q. And it -- it creates a number situation in CD 9 and I wanted  
7 you to speak to that in terms of whether that's consistent with  
8 the Voting Rights Act.

9 A. Would you repeat the last part of your question?

10 Q. Okay. Are tension districts the way that you described,  
11 like in CD 30, is that consistent with the Voting Rights Act?

12 A. I really don't have an opinion on that issue.

13 Q. Okay. Okay. But you do think that CD 9 may have problems  
14 sustaining itself down the road in terms of being an  
15 African American opportunity district the way it's configured in  
16 the adopted plan?

17 A. I think there are -- there's a lot of potential for future  
18 tension if the enacted plan remains in effect.

19 Q. Okay. And is the possibility it could lose its character as  
20 an African American opportunity district?

21 A. Yes.

22 Q. Okay. Let's turn the focus to CD 18.

23 A. Yes.

24 Q. Okay. And could you tell the Court if you've analyzed CD  
25 18, if there are problems or concerns with CD 18 the way it's

1 configured in the -- in the adopted plan?

2 A. The base plan district was a little overpopulated by 24,000.  
3 So again very minor changes were required for the equal  
4 population standard, but major changes were made in the district,  
5 splitting of traditional important neighborhoods in Houston like  
6 the Third Ward MacGregor area which is home to many of the  
7 African American opinion leaders in our city, divided between now  
8 the 9th and the 18th district. That community had been in the  
9 18th district since it was created. Removal of really important  
10 areas like downtown Houston which have been in this district  
11 since Barbara Jordan represented it in the 1970s now removed.  
12 Extending the district into -- southwest areas that had no  
13 history or connection to the existing district. So major  
14 unnecessary surgery obviously for other reasons I've stated that  
15 negatively impacted the 18th district and the member constituent  
16 relationships there.

17 Q. Okay. And both, I think, CD 9 and CD 18 with their  
18 populations, they just didn't need the major surgery, did they?

19 A. Oh, they were very close to ideal and a little overpopulated  
20 which is normally a really easy pattern to fix to shed a few  
21 folks. Adding is somewhat more difficult in traditional  
22 redistricting.

23 Q. And would you agree that the plan tendered by the NAACP does  
24 just that?

25 A. It restores the original district with only minor

1 modifications.

2 Q. Now, if we look at -- I'm going to ask you a couple of  
3 questions about the House seats in terms of -- I think you  
4 already talked yesterday in reference to Harris County. What  
5 concerns did you have in reference to the state House in regards  
6 to the -- the House seats that are included in the adopted plan  
7 out of El Paso?

8 A. In which?

9 Q. In El Paso.

10 A. In El Paso. I looked at the District 78 configuration. And  
11 with the state seemingly so eager to stick to this SRV 50 percent  
12 plus area you have in El Paso County, because of the  
13 concentration of Hispanic populations and registered voters you  
14 could easily create five districts there that have robust  
15 Hispanic populations and SSRVs, but you'd notably drop  
16 District 78 way down. The average could easily be created and  
17 unnecessarily so diminishing significantly the opportunity for  
18 Hispanic voters in District 78 to be an effective performing  
19 population in terms of electing candidates of their choice.

20 Q. And did you have concerns in reference to the House plan in  
21 Tarrant County?

22 A. In?

23 Q. Tarrant.

24 A. Tarrant County. Yes. Again, it's a plan that absolutely  
25 creates the minimal opportunities for minority voters. Tarrant

1 County gained a seat as 10 members under the base plan, 11 under  
2 the enacted plan. It's had very substantial minority growth,  
3 but -- and has many as four districts where minorities in  
4 combination with coalitions have been able to elect candidates.  
5 Now only two -- two of the districts are very close, were going  
6 to lock in a two/nine delegation in my judgment with Plan 283  
7 leaving, again, for a decade just two districts in Tarrant County  
8 where black and Hispanic voters will have an opportunity -- an  
9 opportunity to elect candidates of their choice despite the fact  
10 that there by far the fastest growing segment of the county  
11 population.

12 Q. And the -- in Dallas County?

13 A. Dallas County lost two seats. It dropped from 16 to 14.  
14 You have six districts that are arguably protected voting rights  
15 districts. It would be difficult to change those numbers. Since  
16 Republicans won all five of the swing districts it necessitated  
17 the pairing of two Republicans. There's no way to avoid that.  
18 If you tried to protect 10 Republican members you'd probably wipe  
19 out most of the Republican delegation in the next -- the next  
20 presidential election because you spread the voters too thin.

21 So the Dallas map yields an 8/6 delegation going  
22 forward, eight districts dominated by Anglo voters, who now in  
23 terms of citizen or voting age population are dropping rapidly  
24 below 40 percent but would get nearly 57 percent or so of the  
25 seats, and the growing minority voters countywide are dominant,

1 would get six seats out of 14.

2 Q. Now, I think you've indicated something in reference to in  
3 your interpretation of how the overall House map was drawn, what  
4 that indicated about the map drawers.

5 A. They are very skilled at minimizing statewide opportunities  
6 for minority voters by a variety of techniques that vary somewhat  
7 across the state, but generally are quite effective at securing  
8 the long-term purposes to restrict opportunities for Hispanic and  
9 African American voters to have districts where they'll be of  
10 substantial influence or an effective voting block.

11 Q. And is that true of the congressional map as well?

12 A. Absolutely.

13 Q. Okay. And if you were to provide fair representation to  
14 African Americans and Latinos in the -- on the congressional side  
15 out of 36 seats, what would be a fair number?

16 A. If we enacted something like Senator Whitworth from  
17 San Antonio has suggested, a non-partisan plan that would try to  
18 use some more objective criteria, I think we would end up with  
19 our present population, 36 districts for Congress, with about  
20 14 to 16 districts in the state that would be effective districts  
21 for minority voters. Alone in some instances, in combination  
22 with others. And you'd have something in the range of 20  
23 districts. Given our population and political patterns it would  
24 be dominated by Anglo voters, 20 or 21 seats. We don't have  
25 that, of course, with the enacted now.

1 Q. And if you didn't have the Voting Rights Act to guide you,  
2 how would that -- and you had to draw up a redistricting plan  
3 this year with the numbers in our census, what do you think that  
4 map would look like?

5 A. If there were no Voting Rights Act in place anymore we  
6 wouldn't -- minorities wouldn't be much worse off in Texas  
7 because they pretty much have been given the minimum. So it's  
8 not a situation like 1991 where clearly -- I mean, if this  
9 enacted map stands where the Voting Rights Act seemed to yield  
10 important returns, if this -- if we allow this act to go into  
11 effect you'd pretty have gotten the same results. There were no  
12 Voting Rights Act -- has not been in my judgment a map that  
13 carried through on the substantive purpose of the Voting Rights  
14 Act to protect minority vote interest.

15 Q. And how much of a change would you see on the House side?

16 A. Retrogression on the House side, less change, less  
17 opportunity. In Harris County we eliminated an effective  
18 performing district, 149. Our county, again, is down to about a  
19 third Anglo population, high 30s in voting age population, but  
20 will dominate 13 out of 24 districts or possibly 14 out of 24.

21 MR. BLEDSOE: Thank you. Pass the witness.

22 EXAMINATION

23 BY MR. GARZA:

24 Q. Dr. Murray, I've got just a few questions regarding the  
25 discussions you had with counsel and with the Court regarding the



1 available data to evaluate the citizen voting age population of a  
2 particular district.

3           Is it my understanding from your testimony -- I want to  
4 be clear that -- first of all, we can agree that Spanish surname  
5 registration data is a subset of citizenship, that is you have to  
6 be a citizen in order to register to vote. So SSVR is normally  
7 going to be lower than citizenship rates; is that correct?

8 A. That is correct.

9 Q. So if a district is 50 percent Spanish surname registration,  
10 it is without a doubt then that that district would be majority  
11 citizenship?

12 A. Almost certainly.

13 Q. For Hispanics. I'm sorry.

14 A. Yes.

15 Q. And at the same time I understand that you have criticisms  
16 about the -- about the ACS data that estimates citizenship, but  
17 again your criticisms deal with undervaluing the citizenship as  
18 opposed to it being totally irrelevant to the matter; is that  
19 correct?

20 A. Yes, I think it's systematically biased to understate the  
21 true ratio of citizens to population.

22 Q. Okay. So that if a district is shown under either the TLC  
23 data or the special tabulation data that's produced by the  
24 Department of Justice or the modifications that Dr. Chapa made,  
25 if a district is shown to be Hispanic citizen VAP with that data,

1 it is undoubtedly a Hispanic citizen majority district?

2 A. I would agree.

3 MR. GARZA: Pass the witness.

4 JUDGE GARCIA: Anything else over here? All right.  
5 Yes, sir.

6 EXAMINATION

7 BY MR. MATTAX:

8 Q. Good afternoon, Mr. Murray. Let me follow up on that last  
9 line of questioning a little bit. My understanding from your  
10 testimony is that the -- the citizen -- Hispanic citizen voting  
11 age population data used to be better because the census took  
12 into account more -- a broader sample?

13 A. Would you repeat your --

14 Q. Sure. I'll phrase it this way. I think your testimony was  
15 that since the census no longer has a long form the citizen  
16 voting age population data that's coming from the ACS survey is  
17 not as good as the census data -- excuse me -- is not as good as  
18 the citizen voting age population used to be from the census?

19 A. Oh, that's absolutely true.

20 Q. Okay. Is it also your understanding that as a general  
21 proposition the number for Spanish surname voter registration is  
22 generally somewhat lower than Hispanic citizen voting age  
23 population?

24 A. Yes, that's correct.

25 Q. So assume with me, if you will, or let's -- strike that.

1           Do you know, for example, in the '90s when we used to  
2 have a long form or the 2000 census was the Spanish surname  
3 voting population less than the Hispanic citizen voting age  
4 population?

5 A.    I hadn't thought of those in combination. I generally know  
6 what percentage of Hispanic persons counted by the census were  
7 not citizens. I haven't ever thought about relating that to --

8 Q.    Let me ask this question and then we'll move on. Here's  
9 what I'm suggesting. If in the '90s when you had good data and  
10 your citizen voting age is up here, fairly accurate, and your  
11 Spanish surname is below here, if over time this data becomes  
12 less reliable and underpopulates, wouldn't SSVR be above that  
13 because this is going down, not estimating properly, but Spanish  
14 surname we know is actual voter registration?

15 A.    I'm not sure. I'd have to think about that.

16 Q.    That's fine. I'm not going to go through all the data on  
17 all the different maps because we're going to be out of time here  
18 and I'm not going to bring this up tomorrow, that's for sure.

19 But let's go back and look at the Congressional Plan C 185 and  
20 you were talking about some of the data with respect to two  
21 districts we're just going to concentrate on, Districts Number 9  
22 and Districts Number 18. So when it's convenient to get to those  
23 charts you were referring to in your direct testimony let me  
24 know.

25 A.    Okay.

1 Q. Up in the top left-hand corner of the maps there is a  
2 definition. It says "red." I just want to know -- make sure  
3 we're talking about the same maps. What is that called? Is that  
4 red 202 that you're referring to or a different number?

5 A. You're referring to district --

6 Q. No. The title of the page of the data --

7 JUDGE SMITH: In the very top in very small letters  
8 he's talking about -- what does it say? Red something? At the  
9 very upper corner of the page.

10 A. Red 400 or 100. Whatever.

11 JUDGE GARICA: Red 400, yeah.

12 Q. (BY MR. MATTAX) Red 400. Could we -- I'm sorry. If we  
13 could look at -- let me just read you these numbers --

14 A. Okay.

15 Q. -- and see if you disagree or don't, and we'll get through  
16 this.

17 MR. MATTAX: What I'm referring to, Your Honors, is  
18 called Red 202 which is the general one we refer to.

19 Q. (BY MR. MATTAX) Looking at District 9 I see the percentage  
20 of black population in District 9 at 38.3 and the percentage of  
21 Hispanic population at 38.8 --

22 A. Yes.

23 Q. -- in District 9.

24 A. Yes.

25 Q. Is that consistent with what you thought?

1 A. Yes.

2 Q. Okay. I see the Spanish surname voter registration in  
3 District 9 at 14.8 percent?

4 A. Let me look at --

5 Q. Would you accept for purposes --

6 A. I'll accept that, of course.

7 Q. Thank you. And we'll just make this a hypothetical  
8 question, not an actual question.

9 A. Sure.

10 Q. What I'm a little confused about in your testimony is you  
11 said that the problem with District 9, although I think you  
12 concluded it isn't necessarily a Voting Rights Act problem, is  
13 that because you have a percentage of population of blacks of  
14 approximately 38 and have Hispanics of approximately 38 percent  
15 you have a tension district?

16 A. More potential over the next decade than in this particular  
17 election cycle in 2012. First, I think the ratio between Spanish  
18 surname and Spanish adult populations is going to narrow  
19 dramatically. We don't have as much immigration and more people  
20 becoming citizens by turning 18, et cetera, so I think that SSRV  
21 is going to go up substantially.

22 Q. So does that mean then that a district like District 9 there  
23 may be more Latinos voting in the elections?

24 A. Over the next 10 years, yes.

25 Q. Okay. Well, I thought your testimony was based on the

1 concept of a coalition district, that Latinos and African  
2 Americans voted together and therefore we should create these  
3 districts?

4 A. My first comment is certainly there's strong evidence of an  
5 existing coalition between black and Hispanic voters. If you  
6 don't create some better opportunities for a growing Latino  
7 population as we move through the decade, I think we're going to  
8 see in this limited number of districts that minorities can be  
9 effective in, making those districts -- the Hispanic population  
10 is going to soar. If there are only 10, three of those  
11 African American, apparently affected, there's going to be some  
12 real tensions in these African American districts.

13 Q. Let me ask the question more directly. Is there tension  
14 between the African American community and the Hispanic community  
15 because if you had a Democratic primary in a district that was  
16 balanced between Hispanic citizen voting age and blacks that the  
17 Hispanics would vote for the Hispanic candidate and the  
18 black -- the African Americans would vote for the African  
19 American candidate?

20 A. That would be consistent with 200 years of American voting  
21 that people tend to vote for some of their own group,  
22 particularly in a primary or a non-partisan election.

23 Q. So assume with me if you will that the data on the ground  
24 actually show that in primaries Latinos vote for -- in a  
25 Democratic primary Latinos would vote for a Latino candidate and

1 African Americans would vote for the African American candidate.

2 Would you say based on your opinion that they vote cohesively?

3 A. They vote cohesively in general elections.

4 Q. I understand that.

5 A. In primaries it depends on the circumstances.

6 Q. Well, the circumstances that I just described. If you  
7 have -- let us assume that over time District 9 as developed that  
8 the percentage of the Hispanic voting -- citizen voting age  
9 population increases such that the Hispanics run a candidate in a  
10 primary. Correct? Okay? My question is quite simple.

11 Is -- does that reflect cohesion between the voters if the  
12 Hispanics or Latinos decide to vote for a Latino candidate?

13 A. It's a two-step process and the second step, of course, is  
14 to take office. In some circumstances the primary is the  
15 effective election. We can see that that used to be everywhere.  
16 In that case you may have a lot of tensions over time, but in  
17 competitive districts I don't think primaries are likely to -- to  
18 lead to that. And I think that's what the evidence shows,  
19 that where a district is overwhelmingly favorable to one party or  
20 the other then there's going to be meaningful primaries and  
21 possibly polarization.

22 We would see that in an overwhelmingly Republican  
23 district. If a Hispanic candidate runs, one of the reasons they  
24 have difficulty prevailing is there are no Hispanic voters much  
25 in those primaries.

1 Q. I'm not sure that answered my question but let's move on.

2 JUDGE SMITH: The question was about cohesion, wasn't  
3 it?

4 MR. MATTAX: Yes.

5 JUDGE SMITH: I thought it was. I didn't hear that  
6 word in the answer at all.

7 A. Cohesion in primaries is greatly variable and depends on the  
8 quality of the candidates and backing. There's no uniform  
9 pattern certainly in cohesion.

10 Q. (BY MR. MATTAX) Let me ask a very straightforward question  
11 and if you can't answer it yes or no that's fine. In a primary  
12 where you have an equal number of citizen -- Hispanic citizen  
13 voting age population voters and black voting age population  
14 voters, will the Hispanics vote for the candidate of choice of  
15 the African Americans?

16 MR. BLEDSOE: Your Honor, I'll object to that one. I  
17 don't think he's got a crystal ball. He can't --

18 JUDGE GARCIA: He wouldn't know that. And let's just  
19 move on.

20 MR. MATTAX: Sure.

21 Q. (BY MR. MATTAX) Let's then talk about the analysis you do  
22 to determine who the candidate of choice is. You do do analysis  
23 in your report to prove -- to determine who the candidate of  
24 choice is.

25 A. Some of my analysis goes to that question.



1 Q. Okay. And I believe you talked about looking at specific  
2 places where there's high percentages of either black  
3 voting -- in any particular precinct you'd look at high  
4 percentages of Hispanics or high percentages of African  
5 Americans; is that correct?

6 A. That's correct.

7 Q. And I believe in Dallas County you looked at two races for  
8 that analysis?

9 A. In my report I think two races for sheriff and district  
10 attorney.

11 Q. And with respect to that analysis is that evident -- is your  
12 analysis then intended to be representative of the entire state  
13 based on those two races?

14 A. Representative I would say of major urban centers,  
15 particularly Dallas/Fort Worth and Houston, and not projecting  
16 that to Beaumont or other environments.

17 Q. All right. In reading your report and hearing your  
18 testimony sometimes I get a little confused, and perhaps it's  
19 just I wasn't listening to the right words, about whether you  
20 were talking about a partisan difference or a racial prejudicial  
21 difference in the way people vote. For example, I read in your  
22 report that there's a partisan divide between Republicans and  
23 minorities. Well, is that a racial divide or a partisan divide?

24 A. Well, of course it's a partisan provide. It's Democrats and  
25 Republicans. But what's changed particularly in the 21st century

1 is the partisan division has become more rooted in racial ethnic  
2 differences in the country and even more so in Texas.

3 Q. So then it's based more on a policy choice versus a  
4 determination based on the color of someone's skin. Based on the  
5 color of someone's skin.

6 A. Skin color seems to be linked up to policy differences.  
7 Whatever the reasons, the pattern is clear. We've become a  
8 racially and ethnically more polarized country in terms of  
9 partisanship. Whites are more Republican. Minorities are more  
10 Democratic. That's driven by a lot of factors.

11 Q. Let me ask a couple of questions about your testimony about  
12 the Tea Party. Very quickly, I believe in your report you  
13 explain that the rise of the Tea Party movement was an economic  
14 consequence of -- at least you had a quote in there about the  
15 Tea Party arose because of the economic policies of the Obama  
16 administration. Do you recall that?

17 A. Well, the Tea Party occurred before the Obama administration  
18 had been in office very long, so I think the fact of his election  
19 was an important catalyst. And once the Tea Party movement got  
20 rolling, their opposition to specific policies of the Obama  
21 administration and the Democratic congressional majorities added  
22 fuel to that fire.

23 Q. Well, let me just refer you to page 14 of your report. I'm  
24 not going to -- and this is the report on Plan 283. I'm not  
25 going to belabor this, but at that portion of your report you

1 reference the fact that the Tea Party movement arose when CNBC  
2 reporter Nick Santelli, as you put it, burst into a tirade about  
3 the Obama administration's economic policies?

4 A. A lot of analysts credit that as the first visible spark to  
5 the Tea Party wildfire that broke out.

6 Q. You also mention on page 15 that Texas has a long tradition  
7 of opposing taxes, especially taxes on business and wealthy  
8 individuals. So the Tea Party's antitax, cut spending, get  
9 government off our backs was surely going to be welcome in the  
10 Lone Star state, correct?

11 A. Yes, I did.

12 Q. And I guess my only question is--again, since I'm a little  
13 confused--that has to do with economics and big government; that  
14 has to do with policy, doesn't it?

15 A. It does.

16 Q. Thank you. There's been some discussion about the  
17 difference in looking at these population growths between citizen  
18 voting age population and total population. At the end of your  
19 testimony you were sort of talking about a proportionality  
20 analysis of how many districts on some sort of proportionality  
21 scale should be provided to the Republicans and how many to the  
22 Democrats. Do you recall that?

23 A. Not to Republicans and Democrats. I recall talking about  
24 districts that would be dominated by Anglo voters, whether  
25 Democratic or Republican, or minority voters, again, without

1 respect to party.

2 Q. So that would be based purely on a percentage analysis  
3 of -- of the population of the different groups?

4 A. And the pattern of concentration in our state, that if you  
5 randomly drew districts what would likely turn up.

6 Q. And so your analysis as a political scientist is basically  
7 based on the concept that districts should be proportional?

8 A. Well, I take the number of considerations into effect in  
9 trying to -- you know, we wrestle with fairness. We've got a new  
10 commission in California trying to do it in a different way. I  
11 think we're experimenting to try to figure out better ways of  
12 doing this.

13 Q. Okay. Let me ask a couple of lines of questioning and then  
14 we've agreed for your -- the deposition I took of you to be  
15 placed into the record. And I think Mr. Bledsoe is going to try  
16 to get a couple of more witnesses done today, I hope. And I know  
17 the court is going to dismiss in about an hour so let me ask you  
18 some more questions.

19 JUDGE GARCIA: No. We're going to dismiss in 25  
20 minutes.

21 MR. MATTAX: Then I'll be less than five minutes.

22 JUDGE GARCIA: Well, you can take 25 minutes.

23 MR. MATTAX: Well, I think Mr. Bledsoe wants to try to  
24 get --

25 JUDGE GARCIA: Oh, I'm sorry.

1 MR. MATTAX: I'm accommodating him and I have his  
2 deposition testimony so I don't think we need to belabor this.

3 JUDGE GARCIA: All right.

4 Q. (BY MR. MATTAX) But let's talk about competition, because I  
5 read in your report and I'm getting the impression that part of  
6 what you're advocating for is competitive elections because as  
7 you testified, you know, we sort of lost that. My question is  
8 this: Is it up to this Court to create competitive elections?

9 A. Not in my opinion. That's just an opinion. No.

10 Q. If, in fact, districts were drawn that provide competition,  
11 is that a good thing?

12 A. Generally yes.

13 Q. Okay. I think you heard testimony -- were you here today  
14 when Representative Ciro Rodriguez was here?

15 A. I heard former Congressman Rodriguez' testimony.

16 Q. And did you hear him say he was going to run in District 23?

17 A. I did.

18 Q. And did you hear him say that, you know, it may be tough but  
19 he hoped he could win it?

20 A. I heard him say that.

21 Q. Would that be a competitive district?

22 A. I haven't looked at it closely. I would not have an  
23 opinion.

24 Q. Also I believe you heard testimony this morning with regard  
25 to how District 41 on the House map was drawn, that it was a

1 balanced district and one of the purposes was to try to see  
2 if -- provide the opportunity for a Republican to be elected in  
3 that district. If, in fact, that's a balanced district allowing  
4 Republicans and Democrats the opportunity to be elected, isn't  
5 that promoting competition?

6 A. Again, I haven't looked at the particulars of the district  
7 as redrawn and I wouldn't really want to state an opinion.

8 Q. Well, here's what I'm kind of driving at. In sort of  
9 developing the theory of how things should go in this country--I  
10 mean, you're a political scientist and so that's what you've been  
11 studying--there's sort of two ways to think about it. One is we  
12 have to sort of maximize all of the districts that minorities  
13 live in and then have all the Anglos in other districts, which is  
14 kind of what I think I'm hearing your testimony today say.

15 A. I've not testified to that.

16 Q. Well, let's talk about that then. You're not talking about  
17 creating a majority district for Hispanics or a majority district  
18 for African Americans or a majority district for Asians. Your  
19 discussion today and through your report has been to create a  
20 majority district for that combination of minorities that would  
21 control the election?

22 MR. BLEDSOE: Your Honor, that does mischaracter --  
23 he's talking about --

24 JUDGE SMITH: Let him answer.

25 JUDGE GARCIA: No, I'm going to permit that.

1 A. In my report and I think in my testimony -- most of my  
2 testimony has been about what I consider to be the unfairness to  
3 minority voters of the enacted plans of the Congress and the  
4 House. I've not spent that much time on proposing or I have not  
5 myself proposed any new districts to accomplish any particular  
6 purpose. I've reviewed plans proposed by the NAACP and I think  
7 they are superior in their fairness to minority voters, but I've  
8 not drawn any districts personally with any intent of anything.

9 Q. (BY MR. MATTAX) Okay. But those districts that you've  
10 analyzed where you -- in your words, you found them more fair, I  
11 guess is a more fair characterization?

12 A. Yes.

13 Q. Were those districts that were based upon a combination of  
14 minority voters such that if you add them together they would be  
15 more than 50 percent of the district?

16 A. In the Dallas/Fort Worth area, yes.

17 Q. Is that --

18 A. Somewhat less so in Harris County.

19 Q. Okay. The numbers will speak for themselves, but let's just  
20 conclude this line of questioning. From a political science  
21 perspective and for the health of this country is it a good thing  
22 to try to isolate all of the minorities in one district and then  
23 all of the majorities in other districts in order to have -- to  
24 try to dictate the political results of elections?

25 A. I don't think there's much possibility of doing that given

1 the way our population is changing and moving about, creating  
2 lots of mixed neighborhoods, but I think redistricting does make  
3 a lot of difference when you get around to electing folks so  
4 those different voter groups have an opportunity to -- a  
5 reasonably equal opportunity to elect folks of their choice  
6 wherever their housing patterns are.

7 Q. Well, let me just conclude this line of questioning. Would  
8 you advocate for an interpretation of the Voting Rights Act that  
9 required that courts draw districts that would put together all  
10 the minority groups in one area?

11 A. No, I would not -- certainly not advocate that.

12 Q. I believe you testified that one of the reasons that perhaps  
13 some Democrats lost in their districts in the last election was  
14 because of voter turnout?

15 A. Yes.

16 Q. And I believe that you testified that one of the reasons  
17 voter turnout was low was because it was a midterm election?

18 A. That's correct.

19 Q. But I think I also believe I heard you testify that the Tea  
20 Party had been rising in influence?

21 A. Yes.

22 Q. And that at least in your view the objectives of the Tea  
23 Party candidates were in opposition to minority voters' interest?

24 A. Generally yes.

25 Q. Then why wouldn't that spur a greater turnout among minority



1 voters?

2 A. The Tea Party is a new phenomenon of people who were angry,  
3 and they were angry at the end so it increasingly became  
4 President Obama and the congressional Democrats that the minority  
5 voters had largely voted for. So they weren't -- the minority  
6 voters in my judgment were not angry at the incumbents because  
7 they just helped elect these folks. It was the disappointed  
8 losers that got really stirred up, the folks who had voted for  
9 McCain and Palin. And they turned out very heavily.

10 Q. So here's my next question then: When we're talking about  
11 the Court's responsibility to draw districts, are they supposed  
12 to draw districts that protect against low turnout?

13 A. No.

14 Q. So if a district has a low turnout and the elected candidate  
15 of choice of that district changes party, are they supposed to  
16 try to reverse that election by redrawing the district?

17 A. No, they don't have to. The next election will be a  
18 presidential high turnout election. It's the natural cycle that  
19 works itself out.

20 JUDGE GARCIA: Anything else?

21 MR. MATTAX: No, sir.

22 JUDGE GARCIA: Thank you. Mr. Bledsoe?

23 MR. BLEDSOE: Just a couple, Your Honor.

24 EXAMINATION

25 BY MR. BLEDSOE:

1 Q. The -- in reference to the issue about whether or not it's  
2 inconsistent to say that those tension districts that were drawn  
3 up in CD 18 and CD 9 are not necessarily consistent with the  
4 Voting Rights Act, while at the same time saying that blacks and  
5 Latinos have a coalition, is there any conflict between those two  
6 statements, those two propositions?

7 A. Not in my mind, no.

8 Q. And why is that?

9 A. Well, we have strong evidence that there's an existing  
10 coalition in the general elections in Texas, but if you restrict  
11 minorities to a very limited number of districts and pack in as  
12 many of the two protected minority groups into those limited  
13 number of districts going forward, that seems to me is going to  
14 inevitably increase tensions between them in the electoral arena.

15 Q. Okay. And in reference to CD 18, what was done in CD 18,  
16 was that consistent with the Voting Rights Act the way that it --  
17 the tension was created in that district?

18 A. Unnecessarily created. The existing district was less  
19 likely to lead to such tensions than the modifications made by  
20 Plan C 185.

21 Q. Okay. And one other question here. In reference to the  
22 balanced districts and the House District 40 that Mr. Mattax just  
23 asked you about and the idea about competitive districts, if you  
24 have a minority opportunity district under the Voting Rights Act  
25 and change that to a competitive district to potentially deprive

1 that group of individuals the right to elect the person of their  
2 choice, is that consistent with the Voting Rights Act?

3 A. I don't believe it is.

4 MR. BLEDSOE: Thank you.

5 JUDGE GARCIA: Mr. Mattax?

6 MR. MATTAX: Nothing. Thank you.

7 JUDGE GARCIA: Thank you, sir.

8 MS. RIGGS: I don't have any questions.

9 JUDGE GARCIA: Okay. Thank you. Mr. Bledsoe, anyone  
10 else?

11 MS. RIGGS: Switching back. The NAACP plaintiffs call  
12 Charlie Chen.

13 JUDGE GARCIA: Okay.

14 WENTSANN CHEN,

15 having been first duly sworn, testified as follows:

16 EXAMINATION

17 BY MS. RIGGS:

18 Q. Would you state your full name for the record, please?

19 A. My name is Wentsann Chen, also called Charlie.

20 Q. Could you spell that?

21 A. W-E-N-T-S-A-N-N, last name C-H-E-N.

22 Q. And where do you live, Mr. Chen?

23 A. North Dallas.

24 Q. And how long have you lived in the Dallas area?

25 A. Over 20 years.

1 Q. Can you tell me about the demographics of the Asian  
2 population in the Dallas/Fort Worth area?

3 A. Okay. Over the 20 years I think we have seen quite a  
4 significant -- significant growth in Asian population. Is  
5 reaching to -- almost to my understanding almost to 400,000 Asian  
6 population in the DFW area. Most of them, I would say, about  
7 150,000 Chinese heritage including Taiwan, China, Hong Kong,  
8 Singapore, those Chinese heritage. Korean, probably about  
9 100,000 people. And then the others--southern Asian Pacific  
10 countries, the Thai, Vietnam, Cambodia, Filipino--all that  
11 probably another hundred thousand or so.

12 Q. And what is your national origin, sir?

13 A. I'm from Taiwan. Also called Republic of China.

14 Q. And what is your occupation?

15 A. I'm a business owner of an IT company.

16 Q. Are you involved in your community, Mr. Chen?

17 A. Yes, quite heavily.

18 Q. Are you involved with the Asian Advisory Committee for  
19 Congresswoman Eddie Bernice Johnson?

20 A. Yes, for almost 15 years by now that Congresswoman Johnson  
21 formed the Asian Advisory Committee to provide a vehicle for us  
22 to communicate with her.

23 Q. Can you tell me more about why this committee was formed?

24 A. I believe when she was new to the Congress, which is almost  
25 20 years ago, that she realized that Dallas is -- DFW area is

1 quite a diversified community. So it's very nice of her to form  
2 this advisory committee allowing all the ethnic community groups  
3 to have communication, chance to communicate with her to express  
4 all kind of issues of concerns we have facing them.

5 Q. And what are some of those issues and concerns that you're  
6 facing?

7 A. We hold a meeting at least once or twice a year. And  
8 sometimes when she's available she just call -- call the meeting.  
9 Most of the issues we discuss -- most common one certainly is  
10 immigration. Some the healthcare social program that most of the  
11 minority community are not familiar with. Social issues too  
12 including like retirement homes, maybe the special housing  
13 program like HUD. Yeah.

14 Q. What are some of the challenges facing the Asian community  
15 when it comes to immigration?

16 A. Like most of -- not particular to Asian community but most  
17 of minorities they have immigration issues. I think our -- the  
18 organization, as a big federal organization, sometimes the  
19 Africans or the natives -- it's kind of complicated to a regular  
20 citizen, and especially most of the time during the process that  
21 the information are not easy to -- to be shared. So there's a  
22 lot of inquiry about the status and we need a kind of  
23 representative to -- to ask, instead to ask -- to get an updated  
24 information, yeah.

25 Q. So you think there's some shared interest between various

1 minority communities about immigration?

2 A. Yes, there certainly is. Yeah.

3 Q. In your community work did you have the opportunity to work  
4 in coalition with Latino, African American and Asian groups?

5 A. Yes. As a small business owner I can share that we -- for  
6 example, in Dallas we have the DFW Minority Business Development  
7 Council. That is a very good example that we have about almost a  
8 thousand business owners. 70 percent probably is African  
9 American and 20 percent Latino and about 10 percent Asian. And  
10 we kind of work together to address the common issues in  
11 the -- in the business environment. I serve on a board along  
12 with many Latino and African Americans together to address some  
13 business development and all kind of business issues facing.

14 And communitywise we involve some of the interfaith  
15 programs that involving multiple churches and temples together  
16 for patients for either social or charity program together.

17 Q. Let me break that down a little bit. What are some of the  
18 shared interests or problems facing minority business owners in  
19 the Dallas/Fort Worth area?

20 A. We work together most of the time talking about a lot  
21 of -- individualwise I think that on the job you have some career  
22 pace bottlenecks to address, but as a business I think most of --  
23 in two area. The impact is business resource like banking,  
24 credit to conduct business, to gather more resource. On the  
25 front end I think it's -- development because of the

1 communication, the awareness of all the working with  
2 opportunities. And I think those are the one that very common  
3 for all minority business people. And being as one minority  
4 members we share very good common ground to understand each  
5 other. I serve also on other chamber of commerce as well as the  
6 minority counsel and the chambers. I can understand the  
7 difference, especially in the minority councils. And also Asian  
8 Chamber of Commerce. I think we can easily communicate very  
9 well.

10 Q. Does the Asian Chamber of Commerce work with other minority  
11 chambers of commerce?

12 A. Yes. I think we time to time form a coalition for the Asian  
13 chamber, with the black chamber of commerce and Hispanic chamber  
14 as well as the DFW Minority Business Development Council all  
15 together. Sometime we, all these three or four entities, work  
16 together with the county as far as the city to present a common  
17 issue or pursue a certain business presentation, yeah.

18 Q. How do you feel that minority groups in the Dallas/Fort  
19 Worth area work in coalition?

20 A. Quite well. I think the DFW area is perceived as one of the  
21 most diversified society so it's very common that all these  
22 people working together. Either in business environment or in  
23 the social community I think we interact quite well.

24 Q. And why do you think that they interact quite well and work  
25 well together?

1 A. Well, there are many common binding feelings together. I  
2 think being a minority groups either -- even we have a different  
3 language or cultures I think you face many common ground like  
4 immigration, education, government policies, social programs. I  
5 think those are common and sometimes even I would say unnecessary  
6 discrimination, the type of issues that it help us to put a  
7 common ground to interact and work together.

8 MS. RIGGS: Thank you so much, Mr. Chen. I have no  
9 more questions.

10 JUDGE GARCIA: Mr. Mattax.

11 MR. MATTAX: I have no questions.

12 JUDGE RODRIGUEZ: Thank you, Mr. Chen. Thank you.  
13 You're excused.

14 MR. BLEDSOE: Your Honor, we have one witness, Reverend  
15 Bill Lawson from Houston, who has two funerals to preside over  
16 tomorrow. And is it possible -- he will be a very short witness.

17 JUDGE RODRIGUEZ: How is his testimony going to be in  
18 addition to what we've already heard?

19 MR. BLEDSOE: Oh, well, he's different. He's a lay  
20 witness who is going to talk about historical -- but it's going  
21 to be brief. It's going to be like a five-minute...

22 JUDGE RODRIGUEZ: He's a lay witness that's going to be  
23 talking about history?

24 MR. BLEDSOE: A couple of coalition issues that we  
25 think is important for Harris County for CD 18.



1           JUDGE SMITH: Is the rule being waived as to Dr. Lawson  
2 or Reverend Lawson?

3           MR. BLEDSOE: He's a party.

4           JUDGE RODRIGUEZ: He's a party. We'll give him three  
5 minutes because we've got a time-line. Okay. Come on.

6                               WILLIAM LAWSON,  
7 having been first duly sworn, testified as follows:

8                               EXAMINATION

9 BY MR. NOTZON:

10 Q. Good afternoon, Reverend Lawson.

11 A. Good afternoon.

12 Q. I'm Robert Notzon representing the NAACP. Reverend Lawson,  
13 could you please tell the Court -- kind of introduce yourself to  
14 them, tell them who you are, how old you are, your race and how  
15 long you've been in Texas?

16 A. Your Honors, my name is William Bill Lawson. I'm pastor  
17 emeritus of Wheeler Baptist Church in Houston which I  
18 established. I'm 83 years old and I'm an African American.

19 Q. And have you had a chance to work in coalition with the  
20 people of Houston, Latinos specifically in Houston and Harris  
21 County in addressing certain issues?

22 A. Yes, I have.

23 Q. Could you tell the court one example about a litigation you  
24 were involved in as a party? And if you could kind of describe  
25 that for them?

1 A. We were interested in helping the garbage workers in  
2 Houston, most of whom were Latino. And we worked with them in  
3 this case with the Harris County Commissioner's Court and with  
4 the city council to make sure that they were given proper rights.  
5 And there were mostly Latinos in that case. There were a few of  
6 us African Americans, but because we did have common labor  
7 interest we worked with them more than for them.

8 Q. Reverend Lawson, there was also a recent event that happened  
9 within the last 12 months in relation to the absence of public  
10 defenders in Harris County. Could you tell the Court about what  
11 you did in relation to that?

12 A. Houston was perhaps the last of the metropolitan counties in  
13 the nation which did not have a public defender and we were  
14 concerned about that because in Harris County, as in every other  
15 county in Texas, there were far more minorities who remained in  
16 jail or prison that shouldn't have simply because they had not  
17 had their day in court, and therefore whether they were innocent  
18 or guilty had not been determined.

19           There are a whole lot of other things that can be said  
20 about that, but the bottom line is we wanted to have a public  
21 defender for Harris County. And we asked our friends in the  
22 Hispanic community to work with us to appeal to the county  
23 commissioners court in Harris County to see if we could get a  
24 public defender. We did pull them together and we gathered a  
25 large number of clergy, Anglo, African American, Hispanic, Asian,

1 and it was that group of clergy which faced the county  
2 commissioners' court that persuaded them to name a public  
3 defender.

4           So in December of 2010 a public defender was named for  
5 Harris County and right now that public defender is active and  
6 we're working on a number of cases where people have been  
7 arrested and in prison but not yet tried.

8 Q.   And the last issue for the Court.  Could you tell them about  
9 your experience in desegregating Houston when you first arrived  
10 in Texas?

11 A.   My three minutes are gone.

12           JUDGE SMITH:  It's okay.

13 A.   But in Houston we were involved in the civil rights movement  
14 a little bit late.  There were students protesting in other  
15 cities, in other states, and there had not been very many  
16 students protesting in Houston.  And the students in Texas  
17 Southern University, which was right down the street from our  
18 church, were very much interested in being part of the protest.  
19 They were eager.  This is the typical young person's desire to be  
20 part of a movement.  And while we discouraged them to start with,  
21 they were determined so they did get involved in protests.  They  
22 were getting arrested and put in jail and our concern -- I was a  
23 parent.  Our concern was that these young people were -- were  
24 risking their futures protesting.

25           So there were a number of us who decided that Houston

1 did need to desegregate, but we certainly -- but we certainly did  
2 not need to risk the futures of our young people. And so we came  
3 together as a group of adults in Houston, gathered with  
4 the -- with the Anglo adult leaders in Houston and began to have  
5 some private meetings.

6           The meetings were held in an old hotel known as the  
7 Rice Hotel in Houston. And that Rice Hotel was still heavily  
8 segregated so the white leaders that came to those meetings came  
9 through the front door and we came up the freight elevator, but  
10 we got together in that upstairs room and we talked in private  
11 about what it would mean for Houston to have a Birmingham. We  
12 had just completed a domed stadium. We had just begun a major  
13 space program. We were trying to woo gas and oil companies to  
14 come to Houston. And this would not just destroy our image but  
15 it could also damage us economically. It was that argument that  
16 at least made it possible for them to decide Houston does need to  
17 desegregate and it doesn't need to have bulldogs and fire hoses.  
18 And so it was decided in that private room that we would  
19 desegregate one day, simply take the signs down from the buses  
20 and simply take the signs down from public water fountains and  
21 have the restaurants and department stores to welcome anybody who  
22 came in. And all this would just be done in one day. And media  
23 in Houston agreed not to publish it.

24           So one day black people got on the bus and went back to  
25 the back like they always do and discovered they had young white

1 people rushing to the back where the big windows were just where  
2 they had always wanted to be. And so blacks were confused, but  
3 at least they knew something had happened. There were no longer  
4 the signs up.

5           There were people who went into the department stores,  
6 the largest of which was Foley's, and they had been allowed to  
7 come in and buy before, but they had never been allowed to try  
8 clothes on. And now the salespersons would -- would welcome  
9 them. "Would you like to try on these shoes?" And it confused  
10 everybody, whites and blacks. But at least Houston probably had  
11 the quietest desegregation of any city in the nation largely  
12 because of that determination of leaders to coalesce.

13 Q.   And you're saying the black and Latino leaders?

14 A.   The black and Latino leaders.

15           MR. NOTZON: Thank you. No more questions.

16           JUDGE GARCIA: Mr. Mattax.

17           MR. MATTAX: No questions, Your Honor.

18           JUDGE GARCIA: Thank you, sir. You're excused.

19           Tomorrow we will reconvene at -- but we have a couple  
20 of housekeeping matters. We will reconvene at 8:30. We'll work  
21 to no later than 1:30. Who are your witnesses for tomorrow?  
22 First of all, who is --

23           MR. NOTZON: Your Honor, we haven't finished yet, but I  
24 haven't consulted the remainder of our lay witnesses.

25 There's -- there is three lay witnesses left. They're all the

1 same lengths.

2 JUDGE GARCIA: You mean for tomorrow?

3 MR. NOTZON: I don't know if they can come tomorrow or  
4 it will have to be Monday.

5 JUDGE GARCIA: Well, in any event it's not going to be  
6 today?

7 MR. NOTZON: No, Your Honor. I know that.

8 JUDGE GARCIA: That's fine. Okay.

9 MR. GARZA: So we do have four or five witnesses that  
10 we believe we can put on between 8:30 and 1:30.

11 JUDGE GARCIA: Who has four or five witnesses? And who  
12 are they?

13 MR. HICKS: Rodriguez plaintiffs.

14 JUDGE GARCIA: And who are they?

15 MR. HICKS: We will have Dr. Ansolabehere here, our  
16 expert. David Butts to testify about coalition in Travis County.

17 JUDGE GARCIA: He's an expert or who is he?

18 MR. HICKS: He's a long-time political operative and  
19 we'll talk about what's happened here. He should be -- I'm  
20 guessing 20 minutes at the most.

21 JUDGE GARCIA: Make it 15 or less, okay?

22 MR. HICKS: I'll talk really fast but they get mad at  
23 me when I talk fast. And then the third one is County Judge Sam  
24 Biscoe who will be probably 10 minutes.

25 JUDGE GARCIA: Okay. All right. Good enough. And --

1 okay. You have three witnesses and then who else?

2 MR. HEBERT: The Quesada plaintiffs have one witness.  
3 It's an expert, Dr. Alan Lichtman. We brought him in last night  
4 so he's available tomorrow morning.

5 JUDGE GARCIA: Okay. And who else will you have?

6 MR. HEBERT: That's all I have.

7 JUDGE GARCIA: So then we have your three and one and  
8 who else?

9 MR. BLEDSOE: The Congress folks on Monday, Your Honor.

10 JUDGE GARCIA: But tomorrow we're meeting until 1:30.

11 JUDGE SMITH: We have it filled up tomorrow is what  
12 you're saying?

13 JUDGE GARCIA: So do we have it filled up or not?

14 MR. GARZA: I believe we do, Your Honor. I think we  
15 have an expert witness. We have three witnesses on the Travis  
16 County plaintiffs and we have at least one and maybe more  
17 witnesses from the --

18 JUDGE GARCIA: Okay. So we'll fill it up then.

19 MR. GARZA: So I think we have four or five witnesses.

20 JUDGE GARCIA: All right.

21 MR. GARZA: But it does look like we'll be able to  
22 finish then either Monday evening or early Tuesday morning, the  
23 plaintiff's case.

24 JUDGE GARCIA: Okay. And then the State will have how  
25 many witnesses or days or --

1           MR. MATTAX: I think we were calculating probably two,  
2 two and a half at the max. I think we'll have two or three  
3 experts.

4           JUDGE GARCIA: We're trying to finish before 1:00  
5 o'clock, I guess, right, on Friday, which would include argument  
6 so that's going to be a tight deadline.

7           MR. GARZA: So I think if we're able to finish either  
8 Monday with the plaintiff's case or midday Tuesday, then the  
9 State's going to have the rest of Tuesday, all of Wednesday and  
10 all of Thursday and we can reserve Friday for closing arguments.

11          MR. MATTAX: I think that should work.

12          JUDGE GARCIA: Okay. All right. Now I just  
13 received -- there's a motion.

14          MR. MATTAX: Two motions.

15          JUDGE GARCIA: Two motions. Ms. Perales, are you here?  
16 Do you want to briefly tell us quickly -- not necessarily argue  
17 about, but tell me what they are? I don't even know that the  
18 State has had an opportunity to look at them.

19          MS. PERALES: We've spoken to the State and conferred  
20 with them yesterday evening. I don't know if they have copies  
21 yet, but we've communicated with them. One is really more of a  
22 housekeeping motion.

23          JUDGE GARCIA: Okay. Well, forget about that one. Get  
24 to the real one.

25          MS. PERALES: We have a Daubert motion regarding



1 Dr. Reeves, who is one of the expert witnesses for the State.

2 JUDGE GARCIA: Okay. And you haven't had an  
3 opportunity to look at it? We'll just have to deal with it  
4 perhaps tomorrow or whenever you respond to it.

5 MR. MATTAX: We'll try to get a response maybe Monday  
6 morning just to try to --

7 JUDGE GARCIA: Okay. Thank you. See you in the  
8 morning at 8:30.

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1 UNITED STATES DISTRICT COURT.)  
2 WESTERN DISTRICT OF TEXAS )

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5 I certify that the foregoing is a correct  
6 transcript from the record of proceedings in the above-entitled  
7 matter. I further certify that the transcript fees and format  
8 comply with those prescribed by the Court and the Judicial  
9 Conference of the United States.

10 Date signed: September 8, 2011.

11 /s/ Karl H. Myers

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