

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 10, 2011  
-----

VOLUME 5

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

A P P E A R A N C E S:

FOR THE MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF  
REPRESENTATIVES:

Texas Rio Grande Legal Aid  
Mr. Jose Garza  
1111 North Main Street  
San Antonio, Texas 78212

Mr. Joaquin G. Avila  
Attorney at Law  
Seattle University School of Law  
901 12th Avenue  
Seattle, Washington 90222

Davis, Cedillo & Mendoza  
Mr. Ricardo G. Cedillo  
Mr. Mark W. Kiehne  
755 East Mulberry Avenue  
San Antonio, Texas 78212

1 FOR SHANNON PEREZ, ET AL:

2 Gray & Becker, P.C.  
3 Mr. Richard Edwin Gray, III  
4 900 West Avenue, Suite 300  
5 Austin, Texas 78701-0001

6 Richards Rodriguez & Skeith  
7 Mr. David R. Richards  
8 816 Congress Avenue, Suite 1200  
9 Austin, Texas 78701

10 FOR THE TEXAS LATINO REDISTRICTING TASK FORCE:

11 Mexican American Legal Defense & Educational Fund  
12 Ms. Nina Perales  
13 Ms. Rebecca Couto  
14 Mr. Nicholas Espiritu  
15 Mr. Luis Figueroa  
16 Ms. Marisa Bono  
17 110 Broadway Street, Suite 300  
18 San Antonio, Texas 78205

19 Gale, Wilson & Sanchez, PLLC  
20 Mr. Robert W. Wilson  
21 115 East Travis Street, Suite 1900  
22 San Antonio, Texas 78205

23 FOR LULAC:

24 Law Offices of Luis Roberto Vera & Associates  
25 Mr. Luis Roberto Vera, Jr.  
111 Soledad, Suite 1325  
San Antonio, Texas 78205

Mr. Manuel Escobar, Jr.  
Attorney at Law  
201 West Poplar  
San Antonio, Texas 78212

FOR TEXAS STATE CONFERENCE OF NAACP BRANCHES, ET AL:

Law Office of Robert Notzon  
Mr. Robert Stephen Notzon  
1507 Nueces Street  
Austin, Texas 78701

1 Southern Coalition for Social Justice  
Ms. Allison Jean Riggs  
2 1415 West Highway 54, Suite 101  
Durham, North Carolina 27707

3  
4 FOR HOWARD JEFFERSON, EDDIE BERNICE JOHNSON, SHEILA  
JACKSON-LEE AND ALEXANDER GREEN:

5 Law Office of Gary L. Bledsoe & Associates  
Mr. Gary L. Bledsoe  
6 316 West 12th Street, Suite 307  
Austin, Texas 78701

7  
8 FOR U.S. CONGRESSMAN HENRY CUELLAR:

9 Law Offices of Rolando L. Rios  
Mr. Rolando L. Rios  
10 115 East Travis Street, Suite 1645  
San Antonio, Texas 78205

11 FOR EDDIE RODRIGUEZ, CITY OF AUSTIN, ET AL:

12 Law Office of Max Renea Hicks  
Mr. Max Renea Hicks  
13 101 West Sixth Street, Suite 504  
Austin, Texas 78701

14 Perkins Cole, LLP  
15 Mr. Abha Khanna  
1201 Third Avenue, Suite 4800  
16 Seattle, Washington 98101

17 FOR MARGARITA V. QUESADA, ET AL:

18 J. Gerald Hebert, P.C.  
Mr. J. Gerald Hebert  
19 191 Somerville Street, Suite 405  
Alexandria, Virginia 22304

20 Goldstein, Goldstein & Hilley  
21 Mr. Donald H. Flanary, III  
310 South St. Mary's Street, Suite 2900  
22 San Antonio, Texas 78205

23 FOR TEXAS DEMOCRATIC PARTY:

24 Brazil & Dunn  
Mr. Chad W. Dunn  
25 4201 FM 1960 West, Suite 530  
Houston, Texas 77068

1 FOR THE DEFENDANTS, STATE OF TEXAS, ET AL:

2 Attorney General's Office  
Mr. David J. Schenck  
3 Mr. David C. Mattax  
Mr. Bruce Cohen  
4 Mr. Matthew H. Frederick  
Mr. John McKenzie  
5 Ms. Angela Colmenero  
P.O. Box 12548  
6 Austin, Texas 78711-2548

7 COURT REPORTER:

8 Karl H. Myers, CSR, RMR, CRR  
Official Court Reporter  
9 655 E. Durango Blvd., Rm. 315  
San Antonio, Texas 78206  
10 Telephone: (210) 212-8114  
Email: karlcsr@yahoo.com

11 Proceedings reported by stenotype, transcript produced by  
12 computer-aided transcription.

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   \*-\*-\*-\*-\*-\*-\*-\*

2                   (September 10, 2011.)

3                   MR. NOTZON: Your Honor, Robert Notzon for the  
4 NAACP. Our one lay witness for the day is, I think she is in  
5 the Federal Building parking lot, so Renea is going to go  
6 ahead and start.

7                   JUDGE GARCIA: Okay.

8                   MR. NOTZON: And pick up with her. She is a short  
9 witness.

10                  JUDGE GARCIA: All right. Go ahead.

11                  MR. HICKS: Renea Hicks for the Rodriguez  
12 plaintiffs. And before I call the witness, let me just  
13 mention the report, the binders that you all should pull, Your  
14 Honors should pull. Sorry about "you all." It will be the  
15 expert report binders, Exhibit 15, binder 4, volume 33.

16                  JUDGE SMITH: I'm sorry. Start over. Just give us  
17 the binder numbers first.

18                  MR. HICKS: 4.

19                  JUDGE SMITH: 4. Okay.

20                  MR. HICKS: And if I may, I am going to go move  
21 these off, so --

22                  JUDGE GARCIA: Go ahead.

23                  MR. HICKS: In that binder, it will be -- there are  
24 two reports from Dr. Ansolabehere, and his curriculum vitae.  
25 We are only going to look at his two reports, and the first

1 report we are going to look at -- I know I am setting this up,  
2 but I think it will make it easier. The first report will  
3 actually be the rebuttal report. That is where we are going  
4 to start.

5 JUDGE SMITH: So which tab is that in binder 4?

6 JUDGE RODRIGUEZ: Exhibit 15.

7 JUDGE SMITH: Exhibit 15. Okay.

8 MR. HICKS: 15.

9 JUDGE SMITH: I'm sorry. You said that once.

10 MR. HICKS: I said it and put it out of my head,  
11 thinking I have taken care of that.

12 JUDGE RODRIGUEZ: And we are starting on the  
13 rebuttal report, which is towards the back.

14 MR. HICKS: Behind the blue sheet, I think.

15 JUDGE SMITH: Okay.

16 MR. HICKS: The Rodriguez plaintiffs call  
17 Dr. Stephen Ansolabehere.

18 COURTROOM DEPUTY: Would you please raise your right  
19 hand.

20 (Oath administered to the witness.)

21 COURTROOM DEPUTY: You may have a seat, sir.

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

23 DIRECT EXAMINATION

24 BY MR. HICKS:

25 Q. Dr. Ansolabehere, would you tell the Court what you do for

1 a living?

2 A. I teach government at Harvard University and I currently  
3 am teaching law and politics at NYU. I am a professor.

4 Q. Visiting?

5 A. Visiting NYU.

6 Q. And just very briefly, run down your academic history for  
7 the Court, please. Don't run it down, but recount your  
8 academic history.

9 A. I received my bachelor's in economics and politics at  
10 University of Minnesota, received my Ph.D. in government from  
11 Harvard University. I taught at UCLA as an assistant  
12 professor. I taught at MIT as a full professor, and then I  
13 moved to Harvard University four years ago as a full  
14 professor.

15 Q. And in what areas have you devoted most of your work?

16 A. I mostly study elections and representation. I work for  
17 CBS News as a consultant on the election night decision desk.  
18 We call elections on election night, and I run several large  
19 research projects.

20 Q. Just a couple of quick ideas on what the research projects  
21 are.

22 A. One of the research projects is called the Cooperative  
23 Congressional Election study.

24 Q. Slow down just a little bit.

25 A. It is a National Science Foundation-sponsored project that

1 involves researchers from 50 universities and involves roughly  
2 250 faculty and Ph.D. researchers around the United States.  
3 It includes places like -- UT participate, Akron, NYU. And I  
4 also run a project on voter registration that has been funded  
5 by the Pew Foundation, and I run a project on election data  
6 called the Harvard Election Data Archive, which is funded by  
7 the Sloan Foundation.

8 I was the creator and director of the Voting  
9 Technology project at MIT and Cal Tech that focused on how to  
10 be -- improve voting equipment and improve election systems  
11 for the past decade.

12 Q. And I have a really important question to ask you, but  
13 first, would you move the microphone closer to you or you  
14 closer to the microphone.

15 A. Okay.

16 Q. This is an important question, because your name provokes  
17 curiosity. Can you just say what the origin of your name is,  
18 your last name?

19 A. It is a Basque last name. My grandparents immigrated from  
20 the border between France and Spain in the twenties.

21 Q. Thank you. Now, you have prepared at my request two  
22 reports in connection with this case; is that right?

23 A. Yes, I have.

24 Q. What are the basic subjects of the two reports?

25 A. The first report concerns patterns of minority voting and



1 the nature of the districts in Texas, plan 185 and other  
2 plans, considered in other plans. And the second report  
3 concerns the calculation of the citizen voting age population  
4 in the census data and its implications for Texas.

5 Q. And in connection with preparing those reports, have you  
6 formed opinions and expressed those opinions in those reports  
7 based on your background and training?

8 A. That is correct.

9 Q. Let's turn first to the second report, what we call the  
10 rebuttal report. It is called response to Professor Rives,  
11 rebuttal report, et cetera.

12 Can you just basically tell the Court what you were  
13 undertaking to do in that report?

14 A. The Rives report and previous report by Dr. Chapa had  
15 raised questions about the citizen voting age population and  
16 its size and the accuracy of the ACS data, the American  
17 Community Survey data, and so my attempt was to look at those  
18 data more closely, because neither report offered any factual  
19 evidence to help resolve any of the claims in the reports.  
20 ACS data are important, because they help to address the first  
21 factor that is identified in Thornburg versus Gingles, the  
22 ability to actually create plausibly -- plausible districts  
23 where you would elect Hispanic or black candidates.

24 Q. Of choice?

25 A. Of choice.

1 Q. And when you just briefly say, when you say "ACS data,"  
2 what is that? You don't have to go into great detail, but  
3 just a bit about that.

4 A. The American Community Survey is a survey of 3 million  
5 people in the United States. It is conducted every year, and  
6 it was adopted in the middle of the past decades, so this is  
7 the first decade we are actually using it for districting. It  
8 replaced the data provided by the long form, which was also a  
9 sample, but it was a much larger sample.

10 The ACS data were -- the census moved to the ACS as  
11 a format for measuring residency, veteran status, many other  
12 factors, because the census is used to allocate spending for  
13 federal, state and local programs, and the old census data  
14 from the decennial census would be out of date, say, by mid  
15 decade, and they just needed better data to stay up on formula  
16 programs and their other services the census provides.

17 Q. And because it isn't in the long form of the census, but  
18 it is done in the form of a survey, rather than in connection  
19 with an enumeration, do you have any opinion with respect to  
20 its accuracy, especially in the citizen -- in a general sense  
21 of its accuracy or viability, I guess you could say, in  
22 connection with determining citizenship?

23 A. So we use the ACS data a lot in designing a --  
24 congressional election study and working with it at CBS, and I  
25 find that the survey itself, that the survey is accurate for

1 the years that it covers, so it is accurate for 2006 or 2008,  
2 so forth.

3 I don't find any major problems with the survey.  
4 The ACS, as it is used for districting, is a five-year  
5 average, because the sample sizes are not sufficient for a  
6 single state to give you enough precision at a very local  
7 level, which you need for redistricting.

8 So the Census Bureau adds together, in this case,  
9 2005, '6, '7, '8, and '9 to come up with enough data to have  
10 precision down to the census tract or block level, which is  
11 the level which you are constructing districts.

12 Q. And as far as it goes, referring to the ACS 2005 through  
13 2009 survey, would you conclude whether it is accurate, as far  
14 as it goes?

15 A. I think the data are an accurate picture, as far as they  
16 go for that period, '05 to '09.

17 Q. And what did you determine about how far it goes?

18 A. The problem is that it only goes part way through the  
19 decade. In fact, it only goes -- if you take the average of  
20 '05 to '09, in terms of the years, '07 is the midpoint, so it  
21 looks like it is an accurate portrait of the 2007 electorate  
22 in Texas.

23 And one way to think about that is if I take the  
24 total population and voting age population estimates that ACS  
25 provides, they look like they are exactly 70 percent of the

1 way through the decade, comparing the 2000 and 2010  
2 enumerations.

3 And that is addressed in tab -- table 1 in the  
4 report deals with the discrepancy. And the way I came to this  
5 problem was, I, in preparing my first report, I had difficulty  
6 getting the ACS numbers to add up to the enumeration numbers,  
7 so I really focused on voting age population and total  
8 population, because of the enumeration of the data I have the  
9 most confidence in and their applicability to 2010.

10 And I solve this problem, which is table 1. And ACS  
11 produces a total population estimate and a voting age  
12 population estimate, and the enumeration has a total  
13 population count and voting age population count, so I can  
14 compare those directly.

15 And if you will look at the first column in this --  
16 two columns in this table, the first column is the --

17 JUDGE SMITH: This is table 1, page 14, I believe --

18 THE WITNESS: Yes.

19 JUDGE SMITH: -- is that right?

20 MR. HICKS: I'm sorry. I should have pointed out  
21 the page number.

22 JUDGE SMITH: I wanted to make sure.

23 THE WITNESS: The first number I saw that struck me  
24 was that just the total number of persons estimated by ACS is  
25 about 1.3 million people fewer than was provided in the

1 enumeration, so there is a pretty sizable discrepancy, almost  
2 two congressional districts' worth of people are different  
3 between these two counts, and the ACS is much lower.

4           When I looked at each of the population subgroups,  
5 whites, blacks, Hispanics and others, others being Asians,  
6 people who claim multiple races and American Indians and so  
7 forth, I saw just discrepancies, especially in the Hispanic  
8 count, which was different by 1.1 million persons. I saw the  
9 same pattern in the voting age population, which was different  
10 by 1.1 million persons.

11 Q. When you say "different," what do you mean? Lower?

12 A. The ACS number is lower by 1.1 million persons.

13 Q. This is for the state?

14 A. For the state of Texas.

15           JUDGE SMITH: I don't see the 1.1 here on table 1.

16           THE WITNESS: On the second column.

17           JUDGE SMITH: Okay.

18           THE WITNESS: The enumeration counted 18.2,  
19 18.3 million persons of voting age, those last two columns.

20           JUDGE SMITH: Oh. You mean the total, not the  
21 Hispanic --

22           THE WITNESS: Yes. Right. It is just what -- and  
23 then the ACS counted 17.2.

24           JUDGE SMITH: Okay.

25

1 BY MR. HICKS:

2 Q. To what did you attribute this difference? That is, why  
3 is there a difference, as best you understand it?

4 A. Well, there might have been many reasons for the  
5 difference. It could have been the case that there were  
6 changes in the citizenship patterns in the state. It could  
7 have been a simple trend because the time periods of the ACS  
8 are different from the enumeration.

9 And so I first looked at the extrapolation of the  
10 trend from 2000 to 2010, and it turns out that this -- these  
11 numbers are -- hit almost exactly 70 percent of the way  
12 through the decade.

13 It looks like this is just a -- if you had a  
14 straight, linear trend of population growth through the  
15 decade, these numbers would look like they were exactly at  
16 what you would expect at year seven of a ten-year decade of  
17 constant population growth.

18 Growth, population growth is not constant. It is  
19 not -- it is not the same within each group, so I started  
20 digging down, and I saw that the same pattern was holding  
21 within each group as well, so the Hispanic growth was more in  
22 number and total pop -- persons than the black or white or  
23 other groups, and it turns out that that was -- their growth  
24 was -- the ACS number was exactly predicted by being  
25 70 percent of the way through the decade.

1           JUDGE SMITH: Did you take the possibility of  
2 out-migration into account? We had some testimony here that  
3 beginning approximately with the recession in '08 that there  
4 was some indication of Hispanics -- I don't recall whether it  
5 was citizen or noncitizen -- actually leaving the state, so  
6 that maybe the population would have peaked and then gone  
7 down.

8           I just wonder whether you have observed that  
9 phenomenon or whether you are taking that into account in your  
10 estimate.

11          THE WITNESS: I did. So the other possibility is  
12 that there is change in the composition. Perhaps the  
13 citizen -- the percentage of people who are citizens within  
14 each of these groups might be changing.

15          What I looked at was the percentage of people who  
16 are citizens within each of the years of the ACS, '05, '06,  
17 '07, '08, '09. I saw that was constant among Hispanics;  
18 actually, among all of the groups. Among Hispanics, it was  
19 43 percent in every year.

20          And then I compared that also with the census long  
21 form estimate from 2000, and it was -- that year was  
22 44 percent. So it looks like the percent of Hispanics who  
23 were citizens of voting age has not changed throughout that.  
24 So it looks -- and the trends look fairly constant in the  
25 population growth.

1           The annual population growth looks fairly uniform  
2 within the groups. So the rate of change and the composition  
3 of the electorate or of the groups looks fairly stable, and it  
4 didn't look like there was a great out-migration of  
5 noncitizens since 2007, for example.

6 BY MR. HICKS:

7 Q. When you say it didn't look like it, you mean it didn't  
8 look like it, but it could have been? Or it didn't look like  
9 it and you concluded there wasn't?

10 A. I concluded there didn't look -- it didn't look like there  
11 was a disproportionate out-migration. There might have been a  
12 net flow in and out, but the velocity of change might have  
13 increased or decreased. I don't know. But the percent  
14 citizen -- percent of each groups who were citizens of voting  
15 age did not change. That was constant. So it didn't look  
16 like the composition of the electorate was somehow changing.

17 Q. What is the next step you did after observing this  
18 particular phenomenon?

19 A. I further looked within counties, saw the same trends were  
20 holding within counties, and that was true. That was table 2.  
21 That is, the difference between the ACS enumeration in voting  
22 age population counts looked to be showing the same trends or  
23 consistent trends within the counties.

24           So the next step was to turn to the citizen voting  
25 age population, because so far, I compared the two studies in



1 terms of their enumeration of total persons and of voting age  
2 persons.

3 Both studies provide estimates that the census  
4 obviously does not provide us citizenship estimates, so I  
5 wanted to see what the implications of this were for the  
6 citizen voting age population.

7 Q. And is there a table that reflects what you did with that?  
8 Or what did you do? is a better way to ask the question.

9 A. What do you mean?

10 Q. Well, you said the next thing you turned to is citizen  
11 voting age population.

12 A. Yes.

13 Q. What did you do when you turned to that?

14 A. Well, what I did when I turned to it, first, I wanted to  
15 see how the citizen voting age population in 2000 long form  
16 compared to the 2005 to 2009 ACS and whether there was  
17 noticeable difference or growth for the composition and  
18 change.

19 That's what I just addressed with Justice Smith.  
20 And then I wanted to ascertain whether or not the trend that I  
21 observed had implications for the likely count of citizens of  
22 voting age population in each of the groups and the state as a  
23 whole in 2010, because what I like to do is say: How does the  
24 population breakdown look in 2010, if we project that trend  
25 forward?

1 Q. So are you essentially trying to move the citizenship data  
2 that is in ACS, 2005, 2009, into sync, so to speak, with the  
3 2010 enumeration?

4 A. Yes. I would like to make the entire ACS consistent with  
5 the enumeration, because total ACS numbers don't add up to the  
6 whole population in the enumeration.

7 Q. And yesterday, I don't think you were here, I was asked  
8 about this, and in my inexperienced way, I said we were going to  
9 have an expert that talks about how the citizen voting age  
10 population in the survey we have been talking about and that  
11 the State uses lags the enumeration.

12 Can you explain to the Court how close I was to  
13 being right about that?

14 A. It looks like it lags by three years, which is the average  
15 of '05 to '09. And it looks like if I project total population  
16 voting age population forward simply by three years, following  
17 the trends within each of the groups, I get the right estimate  
18 for 2010.

19 So following that line of thinking, what happens if  
20 we project forward the citizen voting age population following  
21 the trends that we see from the census long form enumerated --  
22 from the 2000 census, and the ACS 2005 to 2009 estimate of  
23 citizen voting age population for each of the groups in the  
24 period of '05 to '09, and project that forward by three years  
25 to 2010.

1 Q. And so at the statewide level, what numbers did you come  
2 up with, so to speak, when you did this trend?

3 A. Well, the way -- actually, I think the right way to  
4 project it is to calculate from the ACS the percent of  
5 Hispanics, blacks, whites, and total, and all persons who are  
6 citizens of voting age population, and then multiply that  
7 fraction times the census enumeration.

8 The census enumeration is a number we felt is right,  
9 and so I am just going to take the composition proportion,  
10 that is, the percentage of people who are of that group, who  
11 are citizens of voting age, and multiply those two numbers  
12 together, and that will give me the right number, in the sense  
13 of scaling it, the ACS, to the 2010 enumeration.

14 JUDGE SMITH: So you accept the census enumeration  
15 as correct?

16 THE WITNESS: I accept the enumeration.

17 BY MR. HICKS:

18 Q. Okay. So is there something that the Court can look at to  
19 see what happened when you did that rescaling and what the  
20 numbers are? Is that table 5?

21 A. Table 4 shows how I do the rescaling and table 5 gives you  
22 the results of that.

23 Q. And table 5 is on page 18; is that correct?

24 A. That is correct.

25 Q. All right. Will you talk through those numbers -- and

1 that is statewide, correct?

2 A. Yes.

3 Q. Will you tell the Court what the results were of those  
4 calculations?

5 A. The first column reports the ACS citizen voting age  
6 population estimate for the state and for whites, blacks and  
7 Hispanics statewide. And we see that there are 3.674 million  
8 Hispanics who are citizens of voting age in the '05 to '09  
9 ACS, and that 42.9 percent of persons of Hispanics in the ACS  
10 were citizens of voting age population. Multiplying those two  
11 numbers together, we get slightly lower than 4.1 million  
12 persons, citizens of voting age population -- Hispanic citizen  
13 voting age population in 2010.

14 Q. And --

15 A. So that would be --

16 Q. Go ahead.

17 A. That would be a little over 300,000 more between the two  
18 estimates.

19 Q. So in your approach, to determine what the Hispanic  
20 citizen voting age population is in Texas or was in Texas at  
21 the time of the enumeration, essentially, rephrasing it to be  
22 in sync with the enumeration, you are saying that the Court  
23 can look at table 5, look at the ACS percent CVAP?

24 A. Yes.

25 Q. And look at the -- and subtract the last column across

1 from Hispanic, 4 million, 4.1 million, essentially?

2 A. Yes.

3 Q. Subtract from that 3-point -- the first column?

4 A. Yes. 4.1 million --

5 THE REPORTER: One at a time.

6 BY MR. HICKS:

7 Q. Subtract 3.7 million from 4.1 million to see the growth in  
8 that period?

9 A. That is correct.

10 Q. And so the actual numbers statewide should be essentially  
11 4.1 million, in your opinion?

12 A. Of Hispanics.

13 Q. Hispanic citizen voting age population?

14 A. Right.

15 Q. Okay. And did you take this down to a more lower or more  
16 detailed geographic level in your analysis?

17 A. I took it down to the county level, which is the lowest  
18 level that I have access to the data. Census has access to  
19 the data all the way down to the lowest level, and I believe  
20 the Texas Legislative Council may have access to that low  
21 level of aggregation as well.

22 Q. And we don't have to go through it, but if the Court wants  
23 to see what happened when you took it down to the lowest level  
24 in Dallas, Harris and Tarrant Counties, it would look at table  
25 6 on page 19; is that correct?

1 A. That is correct.

2 Q. And then you would do essentially the same subtraction to  
3 see the difference in the ACS 2005-2009 survey from your  
4 trending analysis to rephrase it with the 2010 enumeration; is  
5 that correct?

6 A. That is correct.

7 Q. Now, is it your opinion that to determine Hispanic citizen  
8 voting age population, just at the county level, now, that it  
9 is important for the Court and for anybody doing this kind of  
10 analysis to do this trend analysis and projection into 2010?

11 A. Yes, because the composition of the electorate is  
12 noticeably different when you just do the simple adjustment.  
13 You end up with more Hispanics and blacks who are citizens of  
14 voting age population as a percentage of the state and as a  
15 percentage of the major metropolitan counties and some of  
16 the -- some of the other areas, such as the Rio Grande Valley.

17 Q. And as I understand it, the ACS is supposed to release its  
18 2006 through 2010 survey numbers later this year, correct?

19 A. Correct. They have a schedule for releasing data. They  
20 will release a three-year average, which is '07 to 0 -- '08,  
21 '09, '010 in October, and they will release a five-year  
22 average, which is analogous to the data relied on here, in  
23 December.

24 Q. In the October release -- this is actually something you  
25 and I haven't talked about. But in the October release, will

1 that go down to the level sufficient for analyzing the  
2 districts here with respect to citizen voting age population?

3 A. It will be precise down to areas of 65,000 persons or  
4 more, so probably not sufficient to get down to the district  
5 level.

6 Q. And what about the December -- the anticipated December  
7 release?

8 A. The December release is supposed to be precise down to a  
9 level of blocks and tracks, so you can do the sort of analysis  
10 you would like.

11 Q. It will be down to the same level as that of the ACS  
12 2005-2009 survey, right?

13 A. Correct.

14 JUDGE SMITH: Could you just give us those dates  
15 again? In October, they will release which years?

16 THE WITNESS: The three-year average, '08, '09, '10.

17 JUDGE SMITH: And in December?

18 THE WITNESS: The five-year average, '06, '07, '08,  
19 '09, '10.

20 JUDGE SMITH: Okay. Thank you.

21 BY MR. HICKS:

22 Q. Now, of course, we are in the middle of redistricting  
23 litigation. We have got new districts being drawn. We have  
24 got campaign declarations, whether you are running for office  
25 or not.

1           Starting at this point anyway, either in November or  
2           December, unless there is anything that changes those dates,  
3           what is the Court supposed to do with the information you have  
4           given them if they want to get more recent data sufficient to  
5           do this analysis? Are there any alternatives available?

6           A. Alternatives to --

7           Q. To the Court.

8           A. To the Court? Well, one possibility is that they use the  
9           annual ACS to try to adjust down to the county level for the  
10          population demographics for citizen voting age population.  
11          The 2010 ACS is already released, so the annual survey is  
12          already released.

13          The other alternative is to work with the Texas  
14          Legislative Council and to see if they could get the data  
15          expedited for Texas, the release of the data expedited for  
16          Texas, possibly to work with Census directly to see if they  
17          could expedite the data release.

18          Q. I guess another alternative is just to say it is too late  
19          and we are going to use the current numbers, right?

20          A. That's an alternative as well.

21          Q. Would that be using, in your opinion, fairly significantly  
22          inaccurate numbers with respect to citizen voting age  
23          population in Texas?

24          A. Yes, it would understate, and there would also be the  
25          problem of getting the data simply to add up to the actual



1 enumerations, so we would have an accounting issue.

2 Q. In connection with this, why can't the Court just  
3 substitute use of Spanish surname registered voters as a way  
4 to get at the same number? I think Judge Rodriguez was asking  
5 some questions about Spanish surname registered voters  
6 yesterday.

7 Can you address that?

8 A. To step back a second, which is that we deal with Spanish  
9 surname voters matching quite a bit in studying registration  
10 lists for Pew, and also in the Amer -- in the Cooperative  
11 Congressional Election Study, because we validate the voters.  
12 We match them to their voter registration records.

13 And from those, we see that there are ten to fifteen  
14 percent more people identifying themselves as Hispanics than  
15 have a Hispanic surname match, Spanish surname match. So some  
16 of the concerns that were mentioned yesterday about  
17 inter-marriage and so forth lead to understatement of the  
18 number of persons who identify as Hispanic, but have --  
19 compared with those who have Spanish surnames.

20 Q. Unless the Court wants further information on this, I  
21 think we will turn to your first report, the larger report.  
22 Plan C-185, can you turn to that?

23 A. Yes.

24 Q. Now, and let's start off with what I guess I would call  
25 the first principles. One part of your analysis is a racially

1 polarized voting analysis, correct?

2 A. That is correct.

3 Q. What -- just to reorient everybody, so that there can be  
4 an understanding of why we go through racially polarized  
5 voting analysis in the first place in connection with these  
6 line drawings, what if there is no racially polarized voting?  
7 What is the consequence of that with respect to drawing lines  
8 and redistricting and drawing them, taking into account the  
9 demographic patterns of the three major ethnic groups in  
10 Texas?

11 A. If there is no racially polarized voting, then the  
12 construction of the districts will not have any appreciable  
13 effect on the ability of groups to elect candidates of their  
14 choice, because there is no difference between what the groups  
15 want. They are all choosing the same sorts of candidates or  
16 they are not cohesive as groups.

17 Q. So what is it that racially polarized voting does, if it  
18 exists, does with respect to -- put aside the law for a  
19 second -- the scrutiny of where lines are drawn actually in  
20 these congressional districts?

21 A. What do you mean by "scrutiny"?

22 Q. Just to look at it and see what the effects of it are.

23 A. Okay.

24 Q. What does that do?

25 A. When I have -- when there is racially polarized voting in

1 an electorate, where the lines are drawn can effect the  
2 ability of voters in those districts to have an opportunity to  
3 elect the candidates that they would like to elect.

4 So if I had districts that systemically packed one  
5 group or split one group, I could dilute the ability of that  
6 group to have power in the legislature by setting the lines in  
7 a way that diluted their voting strength. So it would have  
8 effect of altering their ability to have a voice in the  
9 political system.

10 Q. But you only worry about that if there is some kind of  
11 racially polarized voting present in the system; is that  
12 right?

13 A. That is correct.

14 Q. But racially polarized voting comes first, so to speak?

15 A. That is correct.

16 Q. What are the basic methods -- please don't go into all of  
17 the detail, but the basic methods for assessing racially  
18 polarized voting that are used in the academic or professional  
19 community?

20 A. The standard methods are looking at exit poll data,  
21 looking at aggregate election results, either analyzing  
22 precincts that are overwhelmingly of one racial group,  
23 typically, over 85 percent of one racial group. Those are  
24 called homogenous precinct analyses.

25 And the other common approach is ecological

1 regression, which looks at the correlation between the percent  
2 Hispanic, white, black in a precinct and voting patterns in  
3 that precinct.

4 Q. Did you mention ecological inference in this?

5 A. Ecological inference is a newer method. It corrects for a  
6 concern with ecological regression. I look at the predictions  
7 out of ecological regression in extreme areas, say, where  
8 there are all blacks and all blacks are voting Democratic,  
9 then I might have a number that is above 100 percent, just by  
10 chance, so -- so ecological inference imposes bounds, but it  
11 doesn't have any substantive or material effect on the  
12 inferences that I would draw about the extent or presence of  
13 polarized voting. It might help with the predictive factors.

14 Q. For purposes of your analysis of racially polarized voting  
15 in Texas, what did you use?

16 A. I used ecological regression and homogeneous precinct  
17 analysis. The key assumption underlying ecological regression  
18 is that the voting behavior of the racial groups is roughly  
19 constant across areas.

20 So I mean, one county, the extent of racial  
21 polarization and racial cohesion is roughly the same as in  
22 another county, and across all of the counties that would be  
23 true. I use the homogeneous precincts to verify that that  
24 assumption looked roughly correct.

25 Q. And you looked across the state of Texas using this

1 method?

2 A. Yes.

3 Q. And what conclusion did you reach?

4 A. The conclusion that I reached was that there was  
5 substantial racial polarization in the state of Texas, that  
6 whites tended to vote 75 percent or so, 70, 75 percent for one  
7 type of candidate, and Hispanics 75 percent or so for another  
8 type of candidate, and blacks 90 percent or so for their  
9 preferred candidate.

10 Q. And when you say "type of candidate," what do you mean?

11 A. Well, in this case, I was looking at partisan contests,  
12 and the outcome variable was percent Republican. And so in  
13 this case, it would be 75 percent of whites tended to vote for  
14 Republicans, 75 percent of Hispanics tended to vote for  
15 Democrats, 90 percent of blacks tended to vote for Democrats.

16 Q. And why would you use the political parties in the way you  
17 did instead of something else?

18 A. I could have looked at nonpartisan elections. It is just  
19 common to look at the partisan elections. They are the most  
20 important elections in the state. They have the same  
21 candidates running everywhere, so it holds the candidates  
22 constant.

23 I looked only at statewide elections as well. And I  
24 looked at the average of the votes, as well as some individual  
25 vote elections, to get a sense of how people are voting on

1 average.

2 The key question is not a partisan question. It is  
3 a question of whether or not the groups have different  
4 preferences, regardless of what those preferences are about,  
5 and are expressing those preferences in a consistent, routine  
6 way in the state.

7 Q. And the test for the preference, the basic test would be  
8 which political party they are voting for?

9 A. In this case, yes.

10 Q. And why isn't this just a backdoor way of assessing  
11 partisan breakdowns in the state of Texas, for instance?

12 Instead of race -- why do you call it a racially polarized  
13 voting analysis, if what you are doing is looking at the way  
14 races vote in political races where two parties are opposing  
15 each other?

16 A. With the Gingles decision, the Court pointed us toward  
17 this type of analysis for studying the effect of any kind of  
18 design, like a district design, for -- on a racial group; that  
19 is, to see if they have different preferences, whatever those  
20 preferences are about, do they have -- is it going to have  
21 different effects? And the legislative elections,  
22 congressional elections are partisan elections, so that seemed  
23 like a factor that was relevant. They are not nonpartisan  
24 elections.

25 Q. Well, as a political scientist, not as a lawyer looking

1 at -- or somebody trying to do work consistent with what  
2 Gingles has laid out as a framework, but as a political  
3 scientist, does this way of doing racially polarized voting  
4 analysis make sense to you?

5 A. Yes. This is what is commonly done in my discipline when  
6 we look at racial -- voting in the United States.

7 Q. Now, you mentioned earlier the constancy issue, constancy  
8 element --

9 A. Yes.

10 Q. -- underlying this. Did you find this constancy across  
11 the state of Texas?

12 A. Yes, with one exception, which was Travis County.

13 Q. How was that an exception?

14 A. When I looked at homogeneous precinct analyses in the  
15 major urban areas, Tarrant, Dallas, Harris, Bexar, Travis,  
16 what I found was that in those areas in the homogeneous  
17 precincts, whites were voting 75 percent or so for Republican  
18 candidates, blacks were voting 90 percent or so or 95 percent  
19 for Democratic candidates, Hispanics were voting 25 percent  
20 (sic) or so for Democratic candidates, except in Travis.

21 And in Travis, there were not any homogeneous  
22 precincts that were Hispanic or black, but there were a number  
23 that were white, and the white homogeneous precincts were  
24 voting 53 percent for Republicans. So it was a noticeably  
25 lower level of cohesion than I saw elsewhere in the state, and

1 when that assumption is violated, I need to do something to  
2 make sure that my ecological regression is not being affected,  
3 so I removed Travis County from the statewide analysis.

4 And when I did that, I saw the coefficient changed.  
5 Interestingly enough, the projected voting rate of whites  
6 became consistent with -- or the cohesion rate of the pref --  
7 the percent Republican vote for whites became consistent with  
8 the numbers from the other major metropolitan areas, just  
9 about the same 75-percent number.

10 Q. Have you heard the term "crossover voting"?

11 A. Yes. Yes, I have.

12 Q. And in Travis County, what conclusion did you reach with  
13 respect to block voting or crossover voting by whites?

14 A. Very low level of block voting by whites and a fairly high  
15 number of crossover voting; that is, whites in Travis County  
16 appear to have, at least significant numbers of them, vote for  
17 the same candidates preferred by black and Hispanic  
18 candidates -- voters in that county.

19 Q. And have you taken a look at the reports of other experts  
20 here, such as Dr. -- in this case, such as Dr. Kousser,  
21 Dr. Engstrom in connection with the conclusions you have  
22 reached with respect to racially polarized voting in Texas?

23 A. I have.

24 Q. And do you see any major inconsistencies between you and  
25 them?



1 A. No.

2 Q. And this is so with respect to Travis County also?

3 A. That's true.

4 Q. Thank you. Okay. So we now have the backdrop that you  
5 have concluded that -- what you just testified to about  
6 racially polarized voting in Texas in different locales around  
7 the state.

8 So now you turn to, with that as a backdrop, to  
9 analyze plan C-185; is that correct?

10 A. That is correct.

11 Q. And what is it you wanted to do as the first step to begin  
12 to test this map, so to speak, its effects?

13 A. Given the degree of cohesion of the groups and the degree  
14 of polarization, I would like to see whether or not the map  
15 treats blacks and Hispanics and whites similarly in creating  
16 the districts; that is, do we see patterns of similar  
17 concentrations of whites and blacks across all of the  
18 districts and so forth.

19 Q. And the first step you took was to take a district and --  
20 a statewide view; is that right?

21 A. Correct.

22 Q. And what did you learn when you did that?

23 A. What I saw when I did that, which is reflected in table 3,  
24 it was just striking numbers. That is where I -- table 3 is  
25 on page 53 of my report. That is table 3.

1 Q. Tell us --

2 JUDGE SMITH: My copy of the report goes up to  
3 page 48.

4 THE WITNESS: I'm sorry. Would you like my copy?

5 JUDGE SMITH: 49.

6 MR. HICKS: I am going to blame the State on that,  
7 since they made the copies. I don't have any notes. I will  
8 give you my copy. Sorry. Does anybody else have that  
9 problem?

10 JUDGE RODRIGUEZ: It stops at 49.

11 MR. HICKS: (Pointing.) Let me just pull -- I don't  
12 have notes on mine, so -- I just have one copy, though.

13 MR. MATTAX: I have one.

14 THE WITNESS: I have no notes on mine, if you would  
15 like mine.

16 MR. HICKS: My apologies.

17 JUDGE RODRIGUEZ: You can just give them to us later  
18 and you can continue.

19 MR. HICKS: We can work off of that.

20 JUDGE GARCIA: Right.

21 BY MR. HICKS:

22 Q. So let's talk about the elusive table 3. What does table  
23 3 reflect with respect to this statewide analysis that you  
24 did?

25 A. Given that whites and blacks and Hispanics have different

1 preferences or express different preferences in elections, I  
2 wanted to see if whites and blacks and Hispanics ended up in  
3 different kinds of districts.

4 For example, one of the things that I have heard  
5 about the drawing of the map in the state is it is difficult  
6 to put blacks and Hispanics and create black and Hispanic  
7 majority districts, because they live in proximity to each  
8 other, so it is the case that Hispanics ended up  
9 disproportionately in black districts and blacks ended up  
10 disproportionately in Hispanic districts -- one question that  
11 actually when I started into this analysis.

12 But what I saw was that whites ended up in very  
13 large numbers in white majority districts. 7.5 million white  
14 nonHispanics end up in white majority districts. That is  
15 about 88 percent of all whites in the state end up in white  
16 majority districts.

17 Hispanics, about 2.8 million end up in Hispanic  
18 majority districts. Only 500,000 end up in black plurality  
19 districts. But almost 3 million, 2.85 million end up in white  
20 plurality and white majority districts, so that the map is --  
21 the map has the effect of putting many more Hispanics in white  
22 districts than it puts whites in Hispanic, black districts.  
23 And only 44 percent of Hispanics end up in majority Hispanic  
24 districts in plan 185.

25 And when I looked at blacks, I saw the same pattern.

1 There are no black majority districts in the plan. Only  
2 625,000 blacks end up in plurality black districts.  
3 1.3 million blacks end up in majority white districts, and  
4 another 100,000 almost end up in --

5 Q. So what does that -- what question does that raise in your  
6 mind? Why would you even look at that? What does it tell  
7 you?

8 A. Well, again, I started thinking, well, maybe the Hispanics  
9 are ending up in the black districts and the blacks are ending  
10 up in the Hispanic districts. But when I saw the numbers, it  
11 indicated to me that the map really has the effect of treating  
12 Hispanics and blacks differently than whites.

13 If I am a Hispanic or black voter in the state, I am  
14 much less likely to be in a place where I can have a chance of  
15 electing candidates of my choice, compared with whites.  
16 Whites are very likely to be in districts where they are  
17 electing candidates of their choice, or have the opportunity  
18 to.

19 Q. But why can't you just say that whites are in districts  
20 where they are more likely to be able to elect the candidates  
21 of their choice, just because that is the way the proportions  
22 in this state worked out, or the residential patterns in this  
23 state worked out?

24 A. So one possibility is, this is just a phenomenon of  
25 plurality rule, plurality rule, single-member district system,

1 and sometimes just drawing of districts means that the  
2 majority group will be benefitted in that way.

3 When I looked at individual counties, I saw that in  
4 Harris and Dallas, where Hispanics are the plurality, and  
5 whites and blacks combined are the majority -- I'm sorry --  
6 Hispanics and blacks combined are the majority, that of the  
7 twelve districts that are majority in Harris and majority in  
8 Dallas, only one of the twelve districts is majority Hispanic,  
9 three are plurality black, and the remainder are white  
10 majority districts.

11 So if it was just a plurality system and that is the  
12 fact -- or the effect of plurality rule, then I would have  
13 expected the same pattern to have happened in Harris and  
14 Dallas, but with Hispanics being -- getting a disproportionate  
15 share of the districts or being disproportionately in Hispanic  
16 districts and whites being relatively spread into Hispanic and  
17 black districts, but that was not the case. It was the case  
18 that the whites ended up in the white districts and those  
19 areas.

20 JUDGE SMITH: Could you just summarize one thing? I  
21 know you already said this, but I couldn't write fast enough.  
22 You gave us the figure. As I wrote it down, 88 percent of  
23 whites are in white majority districts.

24 Could you give us again the percentages for Hispanic  
25 and black, the corresponding percentages?

1 THE WITNESS: Forty-four percent of Hispanics are in  
2 majority Hispanic districts.

3 JUDGE SMITH: Okay.

4 THE WITNESS: And I forget what the black percentage  
5 is. There weren't any black majority districts, so the actual  
6 number is zero for blacks in black majority districts, but  
7 there are 625 black plurality districts, and that is going to  
8 be about, a little under 20 percent of blacks in black  
9 plurality districts.

10 JUDGE SMITH: All right. Thank you. Sorry for the  
11 interruption.

12 BY MR. HICKS:

13 Q. So, again, the question is, if you assume there is no  
14 racially polarized voting, I suppose this doesn't raise any  
15 problems with respect to fairness in the allocation. Is that  
16 a good way to say it? Probably not.

17 A. Phrase your question again. I am not sure I understand  
18 what you are saying.

19 Q. Well, if there is -- this goes back -- I want to keep  
20 bringing back into play here the idea of racially polarized  
21 voting in the backdrop.

22 If there is no racially polarized voting, then this  
23 allocation that you see doesn't particularly raise any concern  
24 with you, does it?

25 A. Correct. It would have no effect or no consequence.

1 Q. So if there is racially polarized voting, which you  
2 concluded there is, to the degree there is, what is the  
3 concern with this allocation that you see?

4 A. The concern is that Hispanic -- the majority of Hispanics  
5 and blacks are in districts where they are not able to have an  
6 effective chance to elect candidates of their choice, but  
7 whites are disproportionately in districts where they have  
8 that opportunity, and that map just seems to treat these  
9 groups quite differently in terms of the distribution of the  
10 populations across districts.

11 Q. Did you take any other further steps in your analysis to  
12 see if there was what you would call a valid explanation for  
13 why this happened this way, why the map ended up with this  
14 allocation, 88-percent versus 44-percent allocation that you  
15 have just testified about?

16 A. Well, I looked at individual districts to see --  
17 individual candidates to see what the distribution of the  
18 voters was across those areas, and I looked also at how the  
19 map divided those areas and where the concentrations were, so  
20 where the blacks and Hispanics are ending up in white  
21 districts and where the whites ended up in Hispanic and black  
22 districts.

23 Q. What did you conclude when you undertook that study?

24 A. When I undertook that step of the analysis, what I  
25 concluded was that in major metropolitan areas, the blacks and

1 Hispanics were being put into districts that moved into  
2 suburban areas.

3 We saw some examples of that in earlier -- in other  
4 reports, like the Kousser report, and there were a few  
5 specific areas, Nueces County --

6 Q. Let's -- would it help to point this out by calling a map  
7 up, plan C-185 up, so you can look at that?

8 A. Certainly.

9 Q. Let's do that. C-185. And let's go to -- go to Nueces  
10 County first. Let's go to Dallas, the Dallas-Tarrant County.

11 A. Certainly.

12 Q. Okay. What did you -- zoom in on that. What did you  
13 learn when you looked at the map, at the demographics here?

14 A. The first thing that -- the first thing that I saw  
15 immediately was District 6, actually, because District 6 is a  
16 district that is plurality Hispanic in total population.

17 Q. So we can get oriented, where is District 6?

18 A. 6 comes from the south. It includes two more rural and  
19 suburban district -- counties to the south, and then it  
20 stretches up into Dallas, along the border between Dallas and  
21 Tarrant, and then cuts into the center of the city a bit, and  
22 then it also stretches along the Tarrant, southern Tarrant  
23 border.

24 Q. And what did you learn when you looked at District 6 more  
25 closely?



1 A. When I looked at District 6 more closely, it is that two  
2 counties below are disproportionately white and that the arm  
3 that sticks up into Dallas takes pretty heavy Hispanic and  
4 black areas, and when I compared that with plan 100, the old  
5 District 6 was only about 22 percent or so Hispanic. This one  
6 is 45 percent Hispanic. So this arm that sticks up grabs a  
7 pretty sizable Hispanic population and puts it with a white  
8 population.

9 This is an example of how the plan actually strands  
10 all of those Hispanic voters, you know, in a white majority  
11 district. There are other examples that the Kousser report  
12 points out, points to District 26, which cuts down along the  
13 freeway, deep into Tarrant, and grabs substantial Hispanic  
14 populations there.

15 Q. So what did that -- again, what question did that raise in  
16 your mind with respect to what you had seen, and I will call  
17 it the 88 percent, 44 percent?

18 A. Well, it helped me to understand that the plan was  
19 designed, the construction of these districts were how they  
20 were taking population and putting Hispanic and black  
21 population into white districts, the 26 -- Denton County to  
22 the north is largely white. Six, the southern parts are  
23 largely white. And they are taking them out of what one might  
24 consider their natural political areas, which are the cities  
25 of Dallas and the cities of Fort Worth.

1 Q. And putting them in with what you might call suburban  
2 or --

3 A. Far outer suburban or rural areas.

4 Q. Now, you also mentioned Nueces County earlier. If we can  
5 go to Nueces County. And pull back a little bit, when you get  
6 there, so we can see the districts coming out of Nueces  
7 County. If you will pull back just a little.

8 Why did you look at Nueces County?

9 A. Nueces County was among the counties that I was asked to  
10 look at by you, but without any -- you just told me a list of  
11 counties to look at, Harris, Dallas, Travis, Bexar, Nueces, El  
12 Paso.

13 The previous plan had a district that stretched from  
14 Cameron at the southern tip and grabbed a part of Nueces, and  
15 that was one district.

16 Nueces is entirely contained in District 27. Nueces  
17 is a county that is about two-thirds Hispanic, and it moved  
18 from -- the large Hispanic population is moved from a Hispanic  
19 majority district, which was the old 27 on the south that went  
20 to Cameron, and into a white majority district, which is  
21 district -- the new District 27, which is Farenthold. Mr.  
22 Farenthold holds that district.

23 Q. Again, what does that have to do with your discovering the  
24 88-44 percent split?

25 A. I am trying to understand where the Hispanics were --

1 ended up, how that -- how they end up, so many Hispanics end  
2 up in white majority districts, and this is an example of a  
3 pretty sizable move, about 200,000 Hispanics being moved from  
4 a Hispanic majority district into a white majority district.  
5 So this helps me to understand how and where the populations  
6 came from and why -- and where they are.

7 Q. And you also looked at Nueces County in conjunction with  
8 considering Harris County, correct?

9 A. That is correct. I started looking at Nueces in terms of  
10 the whole Rio Grande Valley and the districts that were  
11 constructed there. And my thinking was, you know, to move  
12 Nueces into the 27th might have affected the ability to  
13 construct more districts in the Valley, if that was an  
14 objective.

15 Then I noticed that this had a shift in -- a shift  
16 in the effect on the population. So if you add 300,000 people  
17 to the 27th District, just in terms of the accounting of  
18 keeping the populations in the districts exactly identical,  
19 you must start pulling all of the districts that are along the  
20 seacoast, along the Gulf Coast in a southeasterly direction --  
21 I'm sorry -- southwesterly direction.

22 And that seems to have had an effect on the Harris  
23 districts, because 22 shifts down, 10 shifts down, 14 shifts  
24 down. And when I looked at the Harris, the districts in  
25 Harris and compared them with plan 100, I noticed that all of

1 the districts in Harris get moved in a southwesterly  
2 direction.

3 It is like the move of Nueces from -- into 27  
4 actually has big ripple effects and ends up pulling all of the  
5 districts in a southwesterly direction.

6 JUDGE SMITH: Southwesterly or southeasterly?

7 THE WITNESS: Southwest, so the districts in  
8 Harris -- so --

9 JUDGE SMITH: Down the coast from Harris?

10 THE WITNESS: Yes. If you look at District 2 in  
11 plan 100, District 2 did not wrap around into western Harris  
12 County.

13 MR. HICKS: Doctor, let me interrupt, and maybe we  
14 can get a pointer, so you can point to what you are talking  
15 about, or if you can get up and point. If that is okay, Your  
16 Honor.

17 THE WITNESS: Is that okay? So the old District  
18 2 --

19 JUDGE SMITH: I think Mr. Gray wants to help you  
20 with something.

21 MR. GRAY: There is a laser here.

22 THE WITNESS: Yes, but I don't want to poke my eye  
23 out. I only taught -- I didn't master in technology.

24 So the old District 2 used to be out in Liberty  
25 County, and then stretch in to about here, so it went from

1 here out into Liberty County.

2 But down here, down 2, it is entirely in Harris  
3 County. It is the Harris County border, and it gets pulled  
4 all the way down here. 9 got pulled seriously in this  
5 direction.

6 We heard some testimony about that yesterday. 7 got  
7 pulled in this direction. Actually, 8 gets pulled down now.  
8 8 comes down further than it used to, and so forth. So all of  
9 these districts get -- the whole map is shifted, because you  
10 have to, in drawing the map, you have to find an extra 300,000  
11 people all the way up the Gulf Coast, so it looks like the  
12 whole map got shifted.

13 Regardless of where the specific lines were drawn,  
14 300,000 people in drawing maps is a big number, so the whole  
15 thing slides down. And I think it had -- I think that move  
16 might have been done to help the Farenthold district or  
17 configure the Valley a certain way. It had a ripple effect up  
18 in Harris.

19 Q. While you are there, so do you know where there are large  
20 concentrations or whether there were large concentrations of  
21 Hispanic population in Harris County that are pushed -- that  
22 either 2 or 7 or 8 or any of the other districts you are  
23 talking about being pushed -- got pushed?

24 A. Yes. This is a substantial Spanish concentration right in  
25 here, so when 2 came in, I see Hispanic percentage went up

1 noticeably, because it was adding Hispanic population right in  
2 here, so that was pretty noticeable.

3           This seemed to be a pretty large Hispanic area, and  
4 I think we heard from some of the demographers that this is  
5 also a growth area in Harris. Not only is it  
6 disproportionately Hispanic, its population is growing, so it  
7 is increasing, so over the next few years, we are going to  
8 expect that area to become even more Hispanic. And that this  
9 is a nongrowth area.

10 Q. And District 2, just to be clear with -- on the record,  
11 District 2 is not a Hispanic opportunity district or a  
12 majority Hispanic VAP district, even remotely; is that  
13 correct?

14 A. No. District 18 is the plurality -- one of the plurality  
15 black districts, and District 9 is one of the plurality black  
16 districts. I've looked at so many maps. I am trying to  
17 remember --

18 Q. District 29 --

19 A. -- is a majority Hispanic district.

20 Q. So District 2 is overwhelmingly Anglo?

21 A. Yes.

22 Q. Or at least it is substantially Anglo?

23 A. This is an Anglo district, 8 is an Anglo district, 10 is  
24 an Anglo district.

25 Q. 7 is --

1 A. Yes.

2 Q. All right. So for the Hispanic population into which --  
3 that those districts picked up and they were pushed by the  
4 Nueces County action, is this another example of what you  
5 talked about, about stranding the Hispanic voters?

6 A. Yes. So there is a large number of -- 2 increased the  
7 Hispanic percentage, so it increased the number of Hispanics  
8 here, so more -- we saw more Hispanics being added to a white  
9 majority district here.

10 This is a Hispanic area in here. More Hispanics  
11 were added to a white majority district in 8 up here. So we  
12 saw this pattern over and over again when I looked at how the  
13 districts had shifted from 185. More Hispanics, more blacks  
14 were being added.

15 And this was also noticeable from the growth  
16 patterns in the state. Whites only grew by about 500,000  
17 statewide. Blacks grew by about 550,000 statewide. And  
18 Hispanics grew by about 2.8 million statewide. So the growth  
19 areas are being taken -- in the areas where we have seen a lot  
20 of this growth -- are being taken and added into white  
21 majority districts.

22 Q. Okay. Let's go to one more place on the map, and you  
23 might as well stay there. If we can go to Travis county.

24 Did you also take a look at what happened with  
25 respect to minority voters or population in Travis County and

1 the stranding issue that you have discussed?

2 A. I did. So Travis County, it is hard to refer to any of  
3 these districts as a Travis district, unlike the Harris  
4 district, you can refer to the --

5 THE REPORTER: Sir, slow down. Thank you.

6 THE WITNESS: In none of these districts are of -- a  
7 majority of -- the district population levels from Travis. So  
8 what --

9 BY MR. HICKS:

10 Q. Just to break in briefly. Travis is large enough to have,  
11 essentially, at least one full congressional district?

12 A. It is a little over a million people, so there is enough  
13 for one and a half congressional districts comfortably. This  
14 is a Hispanic area, and it is added to 35.

15 So this area is at -- is taken to create a Hispanic  
16 majority district. So this is an example where the map took a  
17 Hispanic area and created a Hispanic majority district. This  
18 stretches down to Bexar County. This piece takes quite a few  
19 blacks and Hispanics and puts them into 25.

20 Q. Where are they?

21 A. In District 25.

22 Q. No. Where are --

23 A. Part --

24 Q. Where are the black and Hispanic --

25 A. This is --



1 Q. -- population?

2 A. This is in Austin.

3 Q. What part of District 25 in Austin are the blacks and  
4 Hispanics that District 25 takes from Tarrant County? (sic)

5 A. This piece right here.

6 Q. Thank you.

7 A. 10 takes some of that population here. And there is  
8 Hispanic population down here that goes into District 21.  
9 These are white majority, 21, 25.

10 Q. Okay. Thank you. You can go have a seat. Well, I take  
11 it you have made this observation about the stranding in the  
12 areas you have mentioned, but did you surmise that there might  
13 be a defense to this, that, for instance, that you couldn't  
14 draw districts, coherent districts, so to speak, that would  
15 include that population?

16 A. That is always a possibility. And without undertaking the  
17 difficult task of drawing a map for a state the size of Texas,  
18 I decided to compare this map with other maps that had been  
19 proposed, and I focused on plan 166.

20 There are other analyses, particularly, I believe  
21 table 11 in Dr. Kousser's report, that provide descriptions of  
22 eight or so alternative plans. So I am focusing on 166.

23 Q. All right. So let's --

24 A. And mainly as -- to see whether or not another plan could  
25 produce more districts or as many districts that are more

1 Hispanic or more black.

2 Q. Okay. And so let's go the same route, so to speak, or  
3 take the same trail you took as you looked at the stranding  
4 issue.

5 So what did you -- let's go to the Dallas-Fort Worth  
6 area first.

7 JUDGE SMITH: When you say Hispanic or black  
8 districts here, you are talking about greater than 50 percent?

9 THE WITNESS: Yeah. I was looking at the voting age  
10 population district, because at the time I wrote the report, I  
11 was still grappling with this issue about what to do about the  
12 citizen voting age population, so --

13 JUDGE SMITH: Okay.

14 BY MR. HICKS:

15 Q. So what did you find when you looked -- again, this is an  
16 example. This isn't a proposal you are making on our behalf  
17 to the Court; is that correct?

18 A. That is correct. This is an example to see how other  
19 plans -- could other plans have accomplished more black or  
20 Hispanic districts, and how would they have accomplished them?

21 Q. Okay. And what did you find in the Dallas-Fort Worth area  
22 in plan 166 with respect to the ability to kind of unstrand  
23 the Hispanic population?

24 A. So District 35 is quite -- the structure here is quite  
25 different, that districts, many districts stayed more closer

1 in to the city, like 24 is in, 12 is more fully into the city  
2 area.

3 And what is noticeable is that this plan creates a  
4 District 35, which goes from Fort Worth to Dallas and connects  
5 the two populations there, which is a big Hispanic population  
6 concentration in the center of Fort Worth, and a big Hispanic  
7 concentration at the center of Dallas, and it connects those  
8 two.

9 And that is how this plan accomplished, in this  
10 particular area, of trying to create a district that was a  
11 Hispanic district.

12 JUDGE RODRIGUEZ: Professor, yesterday we heard from  
13 the map drawer. Were you in for that part of the testimony?

14 THE WITNESS: Only a little bit.

15 JUDGE RODRIGUEZ: He states that that is not able to  
16 create a 50-percent. What is wrong with his analysis?

17 THE WITNESS: I don't know, because I didn't hear  
18 what he said.

19 MR. HICKS: What was the answer? I didn't hear it.

20 THE WITNESS: I don't know, because I didn't hear  
21 what he said. This is well over a majority HVAP, which is  
22 what I looked at here, and I think it is about -- when I  
23 looked at the CVAP numbers, I think it is like 49-percent  
24 HCVAP in the 2005 to 2009 ACS, and given the projections of  
25 the population growth, I think this is almost surely over

1 50 percent.

2 JUDGE RODRIGUEZ: So, then, you are just  
3 extrapolating upwards --

4 THE WITNESS: Yes. I extrapolate upwards, given the  
5 trends. But we don't know specifically what is happening  
6 inside the different areas, and that is why we would want to  
7 wait for the ACS 2010 data to go ahead and answer that  
8 question.

9 I think it is very hard to get -- draw a bright line  
10 at 50 percent in this example, just because the ACS data  
11 lagged, but this district is right at the cutoff.

12 JUDGE RODRIGUEZ: But using the numbers you used,  
13 you were at 49?

14 THE WITNESS: No, no. Using the original ACS  
15 numbers, I believe it was 49, so it was one that I think  
16 looked like it had tipped over.

17 JUDGE RODRIGUEZ: Thank you.

18 BY MR. HICKS:

19 Q. Is another way of saying this about the HCVAP or that plan  
20 166, District 35, is that it had about 49-percent Hispanic  
21 citizen voting age population in 2000 -- I mean, in 2007?

22 A. Right.

23 Q. So the question is: What does it have in 2010?

24 A. Correct.

25 Q. And --

1 A. I have no idea.

2 Q. You have no idea --

3 A. Well, I have a projection based on the population changes  
4 that we saw, and I don't know what the adjusted ACS figures  
5 will show when the Census releases. I did have the  
6 conversation with Census about that, and they said that they  
7 were going to take the '06 to '10 ACS and actually adjust it  
8 to the enumeration, not unlike what I have done, so I think I  
9 am doing something that is consistent with what they will do  
10 and what the numbers will likely show. They want their data  
11 to add up as well.

12 Q. Do you have a reasoned basis for -- do you have a reasoned  
13 basis for projecting whether it is going to kick over by 2010  
14 into the 50-percent Hispanic citizen voting age population?  
15 Not just a surmise, but a reasoned basis?

16 A. When I looked at the county level data in Tarrant and  
17 Dallas and looked at the trends in the county, the trends  
18 were -- looked sufficient to create enough population in the  
19 county.

20 I don't know if the exact blocks are lining up, but  
21 it looked like there was sufficient growth in that population  
22 of the county, in the citizen voting age population of the  
23 county of Hispanics and blacks, so --

24 Q. And if we can get the machine working again, let's go down  
25 to the Valley and to Nueces County area in 166. I would

1 rather wait until the machine comes up. I think it is a  
2 little easier to paint a picture.

3 MR. HICKS: Sorry, Your Honor. He keeps telling me  
4 to talk slower and you all keep wanting me to go faster.

5 BY MR. HICKS:

6 Q. While this is booting up again, let's go back to talk  
7 about District 35 in the plan 166.

8 A. Fine.

9 Q. Mr. Mattax was just telling me, would you like to ask  
10 Dr. Ansolabehere here to correct the number on the 49 percent?  
11 Their data shows under the ACSs 45.6.

12 A. This is just what I recalled.

13 Q. Okay. You don't -- 45.6 --

14 A. Yes. This looks like there was enough growth in the area  
15 to move the number.

16 JUDGE SMITH: So we can forget what you said, 49?

17 THE WITNESS: Yes. Sorry.

18 JUDGE SMITH: That's all right.

19 THE WITNESS: I am getting my districts messed up.

20 BY MR. HICKS:

21 Q. Would that change what you would project would happen with  
22 respect to that district when you kind of rephrase or resync  
23 the data, the citizenship data to the 2010 enumeration?

24 A. I recall that when I used the county level figures and  
25 adjusted upward that that district was right at 50-percent

1 HCVAP.

2 Q. And growing, correct?

3 A. And growing.

4 MR. HICKS: Sorry, Your Honor. I am blaming the  
5 Texas legislators.

6 JUDGE GARCIA: Why don't we take a break and break  
7 here and hear from our lay witness while you all set this up.

8 MR. HICKS: Okay. That's fine.

9 (Brief recess.)

10 (Change of court reporters.)

11 \*-\*-\*-\*-\*-\*-\*-\*

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   MR. NOTZON: Robert Notzon for the NAACP. May it  
2 please the Court.

3                                   TERRYSA GUERRA,  
4 having been first duly sworn, testified as follows:

5   EXAMINATION

6 BY MR. NOTZON:

7 Q. Please state your name for the record.

8 A. Terrysa Guerra.

9 Q. And were you born in Texas?

10 A. Yes.

11 Q. And where were you raised?

12 A. Los Fresnos, Texas.

13 Q. Okay. That's down in the Valley?

14 A. Yes. It's around Brownsville.

15 Q. And did you go to university in Texas?

16 A. I did. I went to Texas A&M University in College Station.

17 Q. Okay. And what do you do for a living?

18 A. I work on different campaigns, either consulting or staffing  
19 different campaigns around Texas.

20 Q. And would you say how many counties would you have operated  
21 in?

22 A. Numerous counties throughout Texas, North Texas  
23 predominantly but Central Texas and South Texas as well along the  
24 border.

25 Q. Okay. And have you had an opportunity to observe what we're



1 calling coalitions between African Americans and Latino voters?

2 A. Absolutely. Specifically over the last two election cycles  
3 when I worked in North Texas.

4 Q. And which candidate were you working for?

5 A. Chris Turner. He was a state representative.

6 Q. Out of what county?

7 A. Tarrant County.

8 Q. Okay. So would you say the majority of your focus in the  
9 last two election cycles, that would be '08 and '10, 2010, were  
10 in the Tarrant County area?

11 A. Yes.

12 Q. Okay. And could you tell the Court, please, what you have  
13 observed in terms of black/brown coalitions in Tarrant County?

14 A. Sure. When I first started working in Tarrant County in  
15 2008 we found that these groups and organizations of  
16 African Americans and Latino communities had already existed. So  
17 when I went in we began talking to them. We talked to -- I  
18 remember specifically an African American group in southern  
19 Fort Worth, a Latino group in northern Fort Worth, another  
20 African American group in south Arlington.

21 So we were talking to these groups and when we brought  
22 them together we found that they had already been working  
23 together on different neighborhood issues or issues unrelated to  
24 a candidate. So they were already -- had working relationships.

25 So when we brought them together we gave them tools

1 obviously to advocate for another cause that was important to  
2 them which was getting the candidate I was working for elected.  
3 And so while I was there we also brought other folks from those  
4 respective communities into the mix and we found that we were  
5 also forging new relationships between these different  
6 communities as well. So that was my experience in 2008 and when  
7 I went back in --

8 Q. And let me ask a question.

9 A. Sure.

10 Q. In 2008 were those coalitions successful in electing the  
11 candidate of their choice?

12 A. Absolutely. And by the way, these were all the same  
13 coalitions that helped Senator Wendy Davis while she was a  
14 candidate in 2008 because her House district was totally in that  
15 Senate district as well.

16 Q. Okay.

17 A. And then when I went back in 2010 I found that those  
18 relationships, even the new ones that we had forged between these  
19 communities, still existed. And so we continued to bring more of  
20 the different voters and folks and leaders in these respective  
21 communities into the mix as well.

22 Q. And in 2010 were they successful that year?

23 A. No, they were not.

24 Q. We've heard testimony in this trial about the heavy Anglo  
25 vote that came out in 2010. Would you tell the Court what you

1 observed the differences between the 2008 and 2000 election in  
2 terms of the nature and tone of the campaigns?

3 A. I think the nature and tone of the difference between 2008  
4 and 2010 is that -- the only word I can describe it is the word  
5 "venomous." There was a lot of racial undertones to the things  
6 that we were hearing and the things that we were seeing out on  
7 the ground and in the field.

8 Q. Could you explain the kind of racial issues that were raised  
9 in the campaigns in 2010 that were not present in 2008?

10 A. One of the notable things is just the mail pieces that our  
11 opponent sent out. You know, we had the same opponent, the same  
12 district in 2008 and 2010, so --

13 MR. MATTAX: I object on hearsay. If they have the  
14 actual mail pieces to introduce that would be the best evidence  
15 so I object to testifying about what a mail piece would look  
16 like.

17 MR. NOTZON: I'm glad you asked. Exhibit 607 -- I mean  
18 609, I believe. 609 in binder 10, but the -- and I'm not sure if  
19 the pages in the binder are in color, but the ones that we have a  
20 soft copy are color.

21 Q. (BY MR. NOTZON) Could you go ahead and tell the Court -- we  
22 have a pointer there too if you need it, and kind of tell the  
23 Court what you noticed were the racial issues that were part of  
24 this campaign that were not a part of the 2008 campaign.

25 A. Sure. One of the first notable things is that this is the

1 candidate I was working for. His skin is darker in this picture.  
2 They painted his skin a little darker and they gave him a gap as  
3 well.

4 Q. In his teeth you mean?

5 A. Yes. He does not have a gap in his teeth. So they gave him  
6 a gap and made his skin a little darker as well. And of course  
7 one of the main things throughout a lot of the mail pieces in  
8 last year in 2010 was that they plastered his face right next to  
9 Barack Obama face -- Barack Obama's face trying to link them  
10 together even though they've never met before at all.

11 Q. And let's -- before we go too far down on these fliers would  
12 you please tell the Court the candidate that he was running  
13 against, that Mr. Turner running against, who was that?

14 A. His name was Bill Zedler.

15 Q. And do you understand Bill Zedler to be a member of the  
16 Tea Party?

17 A. Absolutely. As you know, the Tea Party came into existence  
18 right after the 2008 election. And in 2009 and 2010 Bill Zedler  
19 had declared himself a Tea Party candidate, attended Tea Party  
20 events. He was the Tea Party darling, I guess, but he was the  
21 Tea Party candidate.

22 Q. And there has been testimony in this trial about the  
23 Tea Party having racial connections and making race an issue in  
24 elections. Do you have that understanding as well?

25 A. From what I've seen in the last election, absolutely.

1 Q. And you're saying that Mr. Turner ran against the same  
2 individual in 2008; is that correct?

3 A. Yes.

4 Q. And unseated that person?

5 A. Yes.

6 Q. And in the 2008 elections were the fliers -- did they  
7 include Mr. Obama, President Obama?

8 A. They did not include his face. They mentioned him by name  
9 maybe a few times and it was in small print, his name in small  
10 print, but no.

11 Q. Okay. And was his skin darkened in the 2008 fliers?

12 A. Not that I noticed, no.

13 Q. Was that ever a part of the conversation in the campaign?

14 A. No.

15 Q. Was the skin darkening and the gap in the teeth, was that  
16 part of the conversation in the 2010 elections?

17 A. Yes.

18 Q. So it's not something that you just started talking about as  
19 part of this trial?

20 A. It was very evident not only to us but those -- those voters  
21 who received these mail pieces and brought them in to us.

22 Q. And who did your campaign understand was receiving these  
23 mail pieces?

24 A. Anglo voters. The only people that told us that they -- the  
25 people who brought these into us were Anglo voters. These mail

1 pieces only went to Anglo households.

2 Q. Okay. Go ahead. Is there something else on here related to  
3 welfare?

4 A. Yes. Up here you see that they have "drive a Mercedes and  
5 receive welfare." They're trying to indicate that Chris voted  
6 for some vote that would allow those on welfare who own Mercedes  
7 to continue to be on welfare. And then down here they had Obama  
8 Democrat. So Chris Turner is not just a Democrat but an Obama  
9 Democrat.

10 Q. And he's running for the State House, not for the Congress?

11 A. Yes. He's running for the State House.

12 Q. Okay. Let's go ahead and go to the next one and see if you  
13 have any comments about that one.

14 A. Again, here they plastered -- they have Chris's face right  
15 next to Barack Obama's face, his skin is darkened, gap between  
16 his tooth and Obama-style spending sprees.

17 Q. Okay. Next.

18 A. Again, some of the same stuff. Chris Turner's face was  
19 darkened, his skin was darkened, gap between his teeth. You'll  
20 notice it's a little bit -- it's a little bit more prominent  
21 here--I'm not sure if it's because the picture is bigger--and in  
22 the background a Chinese flag. And again we see the Obama  
23 Democrat.

24 This is a piece that it's a little bit more  
25 controversial. We see the same kind of stuff, darkened skin,

1 gap, and now we have -- Barack Obama's actually laying in bed to  
2 indicate that they were in bed together on top of an ACORN  
3 pillow.

4 Q. And this Obama's top ally in Texas, had he ever actually met  
5 President Obama?

6 A. No, he has never met President Obama.

7 Q. And the next page? Is this an example of the 2008 fliers?

8 A. Yes, this is an example of a 2008 flier. If you actually go  
9 to the other part of the page you'll see how they only mention  
10 Barack Obama by name and they don't actually have any sort of  
11 picture of him on these fliers.

12 Q. And that seems to be a black and white. And again --

13 A. Yeah.

14 Q. -- you don't recall the skin darkening being an issue in  
15 that 2008 --

16 A. It was never a conversation.

17 Q. And I think if we keep going down -- keep going down. Okay.  
18 Again, this is just more examples of the skin darkening?

19 A. Yes. Skin darkening, gap between his tooth. His head right  
20 next to Barack Obama's --

21 Q. Okay. And let's go down.

22 A. -- along with Democrat.

23 Q. More. Okay. Here. You see he's wearing a Mexican button?

24 A. Yes, he's wearing a Mexican button.

25 Q. Does he have a Mexican button?

1 A. No, he does not. And Chinese flag in the background.  
2 Again, you can really notice the gap that they put between his  
3 teeth and his darkened skin.

4 Q. Okay.

5 A. And here, I mean, obviously his skin is darkened and it's  
6 just half Obama and Chris Turner.

7 MR. NOTZON: Okay. No more questions, Your Honor.  
8 I'll pass the witness.

9 EXAMINATION

10 BY MR. MATTAX:

11 Q. Just a very few questions. While you were -- I apologize.  
12 While you were testifying my colleague just got on the website  
13 and pulled up Mr. Turner's web page and there's a picture on it.  
14 If you could go back to the first picture. If I were to tell you  
15 that picture of Mr. Turner is the identical picture that's on his  
16 website would you have a reason to disagree with me?

17 A. I'd have to --

18 Q. Would you show him the picture, please?

19 A. Often they would use stock photos from our website but they  
20 would still darken the skin. It's the same photo, just darker up  
21 there.

22 MR. MATTAX: Your Honor, with the Court's permission we  
23 will provide a copy of this later to the Court.

24 JUDGE GARCIA: All right.

25 Q. (BY MR. MATTAX) You've been involved in politics, I think



1 you testified, for a while?

2 A. Yes.

3 Q. Is it unusual in campaigns for the opposing -- for the  
4 candidate in the opposite party of who has the presidency to try  
5 to tie a local district into a local race -- to tie that with the  
6 current president incumbent?

7 A. It's unusual in local races. It's done mostly in  
8 congressional races because that link can actually be made if  
9 they're working in Washington.

10 Q. Well, I think the arc to my point was just simply--and then  
11 I'll just pass the witness--that it's not unusual for people to  
12 use politics to, for example, tying people to positions, for  
13 example -- I'm not going to get into this, but give tax breaks to  
14 companies that shift our jobs overseas. There's nothing unusual  
15 with trying to tie policies of national leaders or national  
16 parties to members of that same party in other elections, is  
17 there?

18 A. Again, congressional -- it's mostly done in congressional  
19 races has been my past experience.

20 MR. MATTAX: Nothing further.

21 MR. NOTZON: One clarification, Your Honor.

22 EXAMINATION

23 BY MR. NOTZON:

24 Q. You've been working campaigns for over six years?

25 A. Yes.

1 Q. Have you ever seen race raised as an issue in campaigns like  
2 you've seen in the 2010 cycle?

3 A. Yes.

4 Q. Like in the same character and nature as 2010?

5 A. Not -- not as badly, but I've seen it before.

6 Q. And when did you see it before?

7 A. In 2006.

8 Q. And what way did you see it?

9 A. In 2006 there were campaign ads on TV after the immigration  
10 marches that had pictures of those who marched in the immigration  
11 marches on TV. They had Hispanic people jumping over a fence to  
12 indicate that they were illegal. So that's how I saw it.

13 MR. NOTZON: Thank you. I'll pass the witness.

14 JUDGE GARCIA: Anything else, Mr. Mattax?

15 MR. MATTAX: No, Your Honor.

16 JUDGE GARCIA: Thank you, ma'am. You are excused.

17 We'll continue --

18 MR. HICKS: Shall we continue with Dr. Sullivan?

19 JUDGE GARCIA: Yes, of course.

20 STEPHEN ANSOLABEHERE,

21 having been previously duly sworn, testified as follows:

22 CONTINUED DIRECT EXAMINATION

23 BY MR. HICKS:

24 Q. Dr. Ansolabehere, I want to resume our tour of Plan 166 to  
25 see if you found examples of the ability to draw districts where

1 Hispanic voting age majority districts and so on where they have  
2 been stranded as you indicated in Plan C 185 of your earlier  
3 testimony. And we've covered -- we had covered the Dallas/Fort  
4 Worth area and now let's go to the Rio Grande Valley and Nueces.  
5 If you can expand it to cover the whole Rio Grande Valley down to  
6 Brownsville. Again, this is 166, Plan 166.

7           Tell me what you found there--can you go a little  
8 lower--with respect to -- with respect to putting Nueces County  
9 back in the mix so to speak heading south and west.

10 A. Nueces County is the northern part of District 27 and  
11 stretches down to Cameron. And this plan also takes part of  
12 Hidalgo and stretches north and takes part of Nueces County and  
13 puts it with that district. So Nueces County is put into two  
14 Hispanic majority districts, 15 and 27.

15 Q. Okay. And what does that do with respect to that district  
16 that's labeled 33 there in terms of freeing up population to  
17 account for the racial polarization that you found and to create  
18 another Hispanic majority district?

19 A. So 33 is an additional district. 33 is put into  
20 this -- into the Valley heading up north. It stretches almost up  
21 to Bexar County. It might even grab a little of the bottom of  
22 Bexar County.

23 Q. And is it your understanding -- what understanding do you  
24 have about District 33 and its Hispanic citizen voting age  
25 population?

1 A. It's majority HCVAP to my recollection.

2 Q. If I said it was 63.3 would that sound about right?

3 A. I recall this being a pretty solid Hispanic.

4 Q. In this particular one we don't have to take into account  
5 the synchronization issue that you had talked about from the ACS  
6 survey to the 2010 enumeration, right?

7 A. No, that wouldn't affect this.

8 JUDGE SMITH: Does that split Nueces three ways or two?

9 THE WITNESS: Two. So 15 takes a little bit of the top  
10 of Nueces.

11 Q. (BY MR. HICKS) If you would, let's just go in on Nueces a  
12 little bit so Judge Smith can see it better. And  
13 Dr. Ansolabehere, if you could just talk about it a little bit  
14 more so it's on the record.

15 A. So the southern half of Nueces is taken into District 27 and  
16 the northeastern part of it is taken into 15.

17 JUDGE SMITH: Thank you.

18 Q. (BY MR. HICKS) Now let's go to Harris County. I guess  
19 the system decides to slow down on Saturdays.

20 Okay. Looking at Harris County did you find that Plan  
21 166 was able to create an additional Hispanic opportunity  
22 district in Harris County in addition to what had been  
23 District 29?

24 A. Yes, I did, and that's District 7.

25 Q. And how does that District 7 mesh, so to speak, with what

1 you had described earlier in 185 about the push southwest of  
2 those districts into Harris County that had been less in it  
3 before?

4 A. The District 7 in 185 is further to the south. It's pushed  
5 to the southwestern part of Harris County. Nine here is pushed  
6 farther into Harris County. Two, which is at the top, is pushed  
7 out into Liberty County and does not wrap around and grab  
8 Hispanic population in western Houston. Eight no longer has that  
9 snaking piece that reached down into the northwestern part of the  
10 county. So all the districts are shifted up but the additional  
11 population or flexibility in population from putting Nueces into  
12 15 and 27 creates more flexibility so that an additional Hispanic  
13 district, number 7, could be created here while preserving 9 and  
14 18 and --

15 Q. 29?

16 A. -- 29.

17 Q. You keep forgetting 29.

18 A. Yeah.

19 Q. And do you recall what the Hispanic citizen voting age  
20 population is in this version of District 7 roughly?

21 A. I don't recall. In addition there's 36. 36 is the --

22 Q. 36. Let's go back and talk about that again.

23 A. So 7 is pushed out and 36 is the new district.

24 Q. That's right.

25 A. And it's majority HVAP. And I'd have to look up what the

1 HCVAP --

2 Q. Would 45.1 under the 2005/2009 ACS survey sound about right  
3 to you?

4 A. Yes.

5 Q. And just so it's a little clearer on the record, really what  
6 happened -- is it correct that what happened is District 29 got  
7 moved over into the area you had been describing?

8 A. Correct.

9 Q. Okay.

10 JUDGE SMITH: You said 36 is --

11 THE WITNESS: Is new.

12 JUDGE SMITH: Right. But the percentage for 36 is  
13 what?

14 THE WITNESS: In the '07/'09 HCVAP it's --

15 MR. HICKS: 45.1.

16 Q. (BY MR. HICKS) And what would be your expectation with  
17 respect to what you found in your trending analysis that you  
18 testified to at the beginning of your testimony?

19 A. Based on the total population counts of Hispanics and the  
20 percent HCVAP I expect us to be slightly over 50 percent HCVAP.

21 Q. And what did you find with respect to the -- again, in your  
22 trending analysis with the -- I guess you could say the  
23 additional numbers in Harris County of Hispanic citizen voting  
24 age population as compared to the additional numbers that you  
25 found in the Dallas/Fort Worth area?

1 A. Harris actually added many more Hispanics of citizen voting  
2 age population numerically than Dallas/Tarrant did. So there's  
3 more -- there's more to work with here and I'm not even -- this  
4 map may not even be the best way to achieve an additional  
5 district in the area.

6 Q. But this is an example of how you think it could be done and  
7 achieved in 2010 terms, 50 percent Hispanic citizen voting age  
8 population as an additional district in Tarrant -- I mean Harris  
9 County?

10 A. Correct.

11 JUDGE SMITH: So that would leave, as I understand it,  
12 36 and 7 and 29 as Hispanic districts?

13 MR. HICKS: 7 was a mistake.

14 THE WITNESS: Sorry. 7 was a mistake. 29 and 36.  
15 It's 33 --

16 JUDGE SMITH: I thought it looked a little funny to  
17 have 7 there.

18 THE WITNESS: That was my mistake.

19 MR. HICKS: I'm testifying, so I'll quit testifying.

20 JUDGE SMITH: No, that's okay.

21 THE WITNESS: So 33 -- creating 33 by switching Nueces  
22 out of -- out of the 27 -- map 185 and into 27 in map 166 allows  
23 you to squeeze another district into the valley, but it also  
24 frees up population heading up the gulf and gives you flexibility  
25 around Harris. It's just conceptually at a high level --

1           JUDGE SMITH: I understand. But according to this  
2 map -- so the Hispanic would be 36 and 29?

3           THE WITNESS: Correct.

4           JUDGE SMITH: And black would be 18 and 9?

5           THE WITNESS: Correct.

6 Q.     (BY MR. HICKS) So we'll stop our tour of 166 now. And  
7 now I want to ask -- I want to kind of wrap this up--one thing,  
8 so you can get back to New York--but let's return to the  
9 partisanship issue. What can you tell the Court about the issue  
10 of the partisanship being the explanatory factor rather than race  
11 with respect to what you've looked at in looking at Plan 185 and  
12 polarized voting?

13 A.     Party and race matter in three different ways. And the  
14 question comes up about party or race in three different domains.  
15 One is voters' behavior, what voters want or what their  
16 preferences are. And that question is raised in the Gingles  
17 standards, the Gingles factors, and that's clearly -- what I  
18 followed is what the Court proscribed in Gingles and what's  
19 proscribed in the Voting Rights Act amendments in '82 as to how  
20 we want to answer the question of whether there's a racial  
21 difference in people's preferences and therefore whether or not a  
22 particular design of a map will translate those preferences  
23 fairly or whether it will have a disparate effect on one or the  
24 other.

25           The second is whether there's a partisan effect of a



1 map. And it's possible for a map to have a partisan effect and a  
2 racial effect and I'm more focused on the racial affect.

3 Q. You mean a partisan effect and a racial effect at the same  
4 time?

5 A. Yeah. They're not exclusive with one another.

6 Q. In fact, they could even be operating hand and glove, I  
7 suppose, right?

8 A. They could be.

9 Q. And --

10 A. But finally there's a question of intent, whether the  
11 intention behind this was partisan or racial. And it's very hard  
12 to separate out those questions of intentionality. The Voting  
13 Rights Act points us to looking at effect and Gingles points us  
14 to looking at effect rather than intentions of where the lines  
15 were drawn.

16 To the extent that I can divine intent in this setting  
17 is more that the legislature had two maps, multiple maps before  
18 it, and was grappling with these and making a choice. But  
19 there -- legislators are -- legislatures are collectives and it's  
20 hard to talk about collective intentions so it's really more  
21 focused on effect.

22 Q. Let's just assume that the legislature, which was dominated  
23 by Republicans during this session overwhelmingly -- let's just  
24 assume the legislature's intent. Each individual that voted for  
25 the map, their intent was to advantage Republicans as much as

1 they thought they could legally. Let's assume that.

2 A. Okay.

3 Q. Could you still reach the conclusion that the effect of this  
4 map had a racial -- racially discriminatory effect with respect  
5 to the voting opportunities of minority voters, both Hispanic and  
6 black?

7 A. Yes, it could.

8 Q. And did you conclude that it did?

9 A. That is my conclusion.

10 MR. HICKS: Pass the witness.

11 EXAMINATION

12 BY MR. MATTAX:

13 Q. Would you please pull up Exhibit -- sorry. Page 55,  
14 exhibit -- table 5, the racially polarized voting analysis.

15 MR. MATTAX: I apologize to the Court but apparently  
16 these tables did not end up in the books.

17 JUDGE GARCIA: We have them now.

18 JUDGE SMITH: It's okay.

19 JUDGE GARCIA: We have them. Go ahead.

20 Q. (BY MR. MATTAX) Let's look at the top line because it's  
21 confusing to me. It says for the ecological regression and  
22 you're predicting the vote of Republicans; is that correct?

23 A. That's the outcome variable I'm predicting.

24 Q. So for all counties in Texas the prediction from this is  
25 that 81 percent of the white voters vote Republican?

1 A. Right. But that is not the analysis I'm primarily relying  
2 on because of the constancy assumption being violated by Travis  
3 County. And when I exclude that I end up with a different  
4 estimate.

5 Q. And that's my point is that when you did your ecological  
6 regression or when this regression analysis was used, it didn't  
7 make any sense because one of the assumptions had been violated  
8 because when you do that, according to this chart, Travis County  
9 is 52 percent Republican?

10 A. That's the only violation I found. When I exclude Travis  
11 and I redid the statewide numbers they end up consistent with the  
12 homogeneous precinct analysis numbers, which are -- vary county  
13 to county between a low of 71 in Bexar and a high of 78 in  
14 Harris.

15 Q. I understand that. And so when we were discussing during  
16 your deposition you said because you had that assumption problem  
17 in ecological regression you went to homogeneous analysis. And  
18 with the homogeneous analysis I noticed that if you look, for  
19 example, at the white line you have some asterisks under El Paso.  
20 And also for Hispanic you have some asterisks in Travis. Does  
21 this indicate there are no homogeneous precincts in those  
22 counties?

23 A. None with sufficient numbers that I would do the analysis.  
24 There might be some that are three people in number or something  
25 like that.

1 Q. And when you're looking at a homogeneous precinct you're  
2 talking about a voter tabulation district of 85 percent  
3 population of one race or the other?

4 A. Correct.

5 Q. And from that you extrapolate for the whole state?

6 A. I'm using the homogeneous precinct analysis as a robustness  
7 checker, a check on this particular assumption.

8 Q. Okay.

9 A. And when I -- that's why when I go back to the ecological  
10 regression, which uses all the precincts in the state, I excluded  
11 Travis. It's the second column that I think is close to the  
12 correct numbers.

13 Q. I guess what I'm trying to suggest is when you're talking  
14 about homogeneous precincts with respect to ethnicity, certainly  
15 you could find with respect to Hispanics many in South Texas that  
16 are homogeneous. But otherwise with the dispersion of the  
17 Hispanic population across the state you're going to be looking  
18 at urban areas to draw these calculations?

19 A. Most of the Hispanic population is in South Texas and in  
20 urban areas, the concentrations.

21 Q. And the third thing that I believe you testified in your  
22 deposition that you look at is exit polling; is that correct?

23 A. Yes, I did look at some of the exit polling.

24 Q. And is any of that exit polling reflected in your report?

25 A. I believe in comparisons of some of the races. Just a

1 couple of the races.

2 Q. Just a couple? Not --

3 A. It's not the focal point. I just focused on the ecological  
4 regression as the evidence. That's the main source of evidence  
5 that Gingles points us to look at.

6 Q. Let me close out this line of questioning and see if you'll  
7 agree with me on this, because as I look at page 55 there's a  
8 glitch in the ecological regression. You have to go to  
9 homogeneous precincts, but not all across the state are there  
10 homogenous precincts. And so none of these are perfect. They  
11 all have their faults; is that correct?

12 A. Correct. With any statistical analysis there are  
13 assumptions and I've done my best to validate those assumptions.  
14 And where I found problems I corrected the primary analysis.

15 Q. And so again I think people would argue or disagree about  
16 exit polling as well, but that could also be reflective and  
17 helpful in seeing how these imperfect systems relate to what's  
18 really going on on the ground?

19 A. Correct. And one of the issues for not using exit polls is  
20 there is not sufficient exit polling in the local areas. So I  
21 can't dig down to Bexar and Tarrant and Dallas, but there's  
22 sufficient data from the election return history that I can look  
23 more closely at counties.

24 Q. Correct. But on a statewide level or a broader level exit  
25 pollings can be reflective?

1 A. They can be helpful.

2 Q. Let's turn to table number 2 which is page -- excuse me.

3 Yes, table number 2 which is page 52.

4 A. Okay.

5 Q. My understanding of this table is that it is an attempt to  
6 just by number compare the benchmark Plan C 100 and C 185 just by  
7 looking at the arithmetic in determining the number of different  
8 districts that reached certain levels; is that correct?

9 A. That's correct.

10 Q. So let's look at Plan C -- well, we'll just look left to  
11 right so it's easier. Let's skip to Hispanic total population.  
12 In plan C 185 there are eight districts?

13 A. Correct.

14 Q. And in C 100 there are seven districts?

15 A. Correct, and one plurality.

16 Q. And there are three pluralities in C 185?

17 A. Correct.

18 Q. So --

19 A. In total population.

20 Q. Correct. And so quick math would be at least C 185 has  
21 total population plus plurality of 11 and C 100 has a total  
22 population plurality of 8?

23 A. Correct.

24 Q. A gain of three districts?

25 A. In total population.

1 Q. And a gain of one district in majority population?

2 A. Correct, but not a gain of one district net if you take the  
3 majority of plurality together.

4 Q. Help me on the arithmetic because I thought we counted --

5 A. Seven plus one is eight. I'm sorry.

6 Q. That's okay. I thought we counted 11 in 185 versus 8?

7 A. Correct.

8 Q. And so I have -- so you're saying it's equal -- I'm looking  
9 at total population. Let's move on. The numbers are what the  
10 numbers are. On the black voting age population you have three  
11 plurality districts in 185 and only one in C 100; is that  
12 correct?

13 A. That was an error that was corrected at deposition. I'm  
14 sorry. The three percent is an error. Yeah.

15 Q. But the number is correct?

16 A. Yeah.

17 Q. So the Plan 185 has an increase of two plurality districts  
18 in voting age population over plan C 100?

19 A. Correct.

20 Q. Let's now look at page 56 which is table number 6.

21 A. May I say one thing about the --

22 Q. Sure.

23 A. -- the previous plan which is there are three plurality  
24 districts in total population but none in voting age population  
25 Hispanic. And my question is what happened with those districts.

1 And that's where I found that District 6 and District 9 and  
2 District 27, I think is the other one, were districts that by  
3 total population look to be quite Hispanic but when you look at  
4 voting age population they're not. When you look at citizen  
5 voting age population they're majority white or plurality black  
6 in the case of District 9.

7 Q. I appreciate that because I think that establishes something  
8 we've been trying to clarify throughout this case, that looking  
9 at these total population numbers is not necessarily reflective  
10 of citizen voting age population and who can actually -- as well  
11 as is eligible to vote?

12 A. Correct. And getting that citizenship number right is a big  
13 question.

14 Q. And now let's look at -- can we turn that? Yeah. Now we're  
15 going to compare Plan 185 to C 166. And I'm not going to go  
16 through an exercise of pulling up the maps and talking about the  
17 different districts. We can be here all day and move this around  
18 and move that up north and put a split here. Let's just look at  
19 total numbers.

20 A. Okay.

21 Q. So looking at C 185 compared to C 166 -- and I understand  
22 that the plurality and total population, you know, is  
23 questionable with respect to the Hispanic situation, but  
24 nevertheless you have those numbers in here so let me point them  
25 out. Hispanic total population in C 185, when you include



1 majority districts and plurality, is 11; is that correct?

2 A. Correct.

3 Q. And in Plan C 166, the plan you looked at, it's only 10?

4 A. Correct.

5 Q. So there's actually one more combination if you include both  
6 those numbers in C 185; is that correct?

7 A. Total population, correct.

8 Q. And if you look at -- for the voting age population you have  
9 eight in Plan 185 and 10 in C 166; is that correct?

10 A. Correct.

11 Q. If I put a row below that that says Hispanic citizen voting  
12 age population, do you know what the numbers would be for  
13 district --

14 A. I know that for 185 eight is the row I would put there, or  
15 it looks like eight. And it would be -- using the '05 to '09  
16 data it would be seven plurality -- seven majority HCVAP  
17 districts for 166 and three plurality where those three plurality  
18 districts are in the high 40s.

19 Q. So in conclusion with respect to that issue, with respect to  
20 map C 166, the alternate map being discussed today, using the  
21 data the legislature had before it and using the data the Court  
22 currently has today, plan C 185 has one more majority Hispanic  
23 district than Plan C 166; is that correct?

24 A. That's correct using the HCVAP numbers. And keep in mind  
25 they don't add up to the total population, so there's this

1 funkiness in the calculation of that percentage.

2 Q. I understand that. In looking at the -- both Plan C 185 and  
3 C 166 for the voting age population for the African American  
4 population, both C 185 and C 166, both have three districts with  
5 a plurality?

6 A. Correct. And here's the typo. It should be 8 percent under  
7 plurality nine. We discussed this at a deposition and for some  
8 reason it didn't get corrected in the table.

9 Q. Right. And so what we're basically saying then is that on  
10 the data we have today on the ground, Plan C 185 has one  
11 additional majority Hispanic district based on citizen voting age  
12 population and the same number of plurality districts for the  
13 African Americans?

14 A. Correct.

15 Q. Okay.

16 A. And that 166 has these three plurality Hispanic HCVAP  
17 districts that are in the high 40s. And the question is what  
18 happens with the trend in the population and whether those switch  
19 over. And we'll know when we get the census data.

20 Q. Well, theoretically if you're -- if the analysis is correct  
21 and it's trending higher with citizen voting age population and  
22 you have these plurality districts that exist, then over time  
23 they could, in fact, become majority in those districts?

24 A. That's correct. I think that in those areas Plan 166  
25 creates districts that are on the verge of becoming majority

1 HCVAP. In addition the white population is declining in some of  
2 those areas so the percentage is going -- that will accelerate  
3 the rate at which the HCVAP becomes majority in those areas.

4 Q. Thank you. One final question on the --

5 JUDGE SMITH: I just -- I know you've been over it  
6 twice but I'm confused. So this HCVAP, 185 has how many and 166  
7 has how many?

8 THE WITNESS: In terms of the 2005/2009 ACS numbers  
9 HCVAP --

10 JUDGE SMITH: I thought the question was HCVAP.

11 THE WITNESS: Right. But from the '05 to '09 ASC data.

12 JUDGE SMITH: Right.

13 THE WITNESS: There are eight majority HCVAP districts  
14 in 185. There are seven majority HCVAP numbers from the '05 to  
15 '09 period in Plan 166 and three plurality HCVAP districts and  
16 the numbers are all in the high 40s.

17 JUDGE SMITH: Okay.

18 Q. (BY MR. MATTAX) Let's turn to table number 8 now on page  
19 62. Table 8 is a reflection of a comparison between the two  
20 plans C 185 and C 166, the number of times districts cross county  
21 lines. And I'm just going to jump down to the median and the  
22 average scores at the bottom because they are roughly the same at  
23 least in my mind. Would you agree?

24 A. That's correct. The average is slightly higher. That's the  
25 number of districts that cross zero county lines, one county

1 line, two county lines and so forth. And the medians are two.  
2 So the median number of county crossings per district is two per  
3 district, two county crossings per district.

4 Q. But fundamentally they're essentially the same plan with  
5 respect to that?

6 A. Correct.

7 Q. And then if I look at your -- your fracturing down here --  
8 and I understand that we're pointing at Travis County, but if I  
9 look at these other districts -- for example, Bexar has five cuts  
10 in both plans, Dallas has five cuts in both plans, Harris has 10  
11 in the State's plan, 11 in C 166, in the State's plan Tarrant has  
12 six and in C 166 there's five. So, again, those are all very  
13 similar, aren't they?

14 A. Yes. And this is asking how many times -- how many  
15 districts cut into a county in some way or another. And they're  
16 fairly similar. The one that's quite different is Travis.

17 Q. Right. And that's the only one between those two plans?

18 A. Right. And the question was if you're comparing 166 and 185  
19 is there a reason why a plan that created more majority HVAP  
20 districts, because HVAP is what I was focussed on because I  
21 didn't trust the HCVAP numbers at that point -- was there a  
22 reason why you would not have liked 166 because it was doing more  
23 violence to the county boundaries, creating more complications in  
24 the -- in the city areas or doing something else to the plan that  
25 was -- that could be judged obviously inferior. In this case

1 they looked fairly similar. If anything, maybe there's a little  
2 more cutting of county lines in 185 and they do a little bit more  
3 chopping up with Travis.

4 Q. On a couple of other questions before I go to the last  
5 topic -- we can look this up if you want to, but I'm just going  
6 to mention a couple of things. And this would --

7           What I'm looking at is Red 109 for Plan C 166. And I'm  
8 not going to go through the numbers for the percentage HCVAP  
9 because we've already discussed that there's currently in C 166  
10 only seven with greater than 50 percent?

11 A. Uh-huh.

12 Q. The two that I think you're suggesting should be grown into,  
13 if you will, are 35 and 36, both of which have been discussed to  
14 have -- well, 35 has 45 and a half and 36 has 45 percent?

15 A. Uh-huh.

16 Q. Now, I just wanted to point out for the Spanish surname  
17 voter registration in 35 there's 42 percent and there's also 42.7  
18 percent in 36. Would you have any reason to quarrel with those  
19 numbers?

20 A. No, huh-uh.

21 Q. No. Now, one thing I noticed in looking at Red 109 or any  
22 of these charts particularly is if you compare SSVR to HCVAP you  
23 pretty much have a three to four percent differential. Sometimes  
24 there's an outlier. My question is: Did you ever do that? Did  
25 you ever look through and compare the two?

1 A. I've not compared that for Texas. Again, this is my  
2 understanding of the -- matching algorithms come and the ability  
3 to identify these and the difference is -- comes from working  
4 with aggregate data and with the survey data that we use in this  
5 cooperative congressional election study. And it could be as  
6 high as 10 to 15 percent. It could be as low as five percent,  
7 but there is a difference where SSVR understates the number of  
8 people who say that they're Hispanic.

9 Q. And I guess my question would be that if you -- if you sort  
10 of looked at that over time between, for example, 2000 and 2010,  
11 and you had seen roughly that same percentage or that same  
12 variance between citizen voting age population and Spanish  
13 surname population, would you expect that there would be a larger  
14 or lesser gap based upon the fact that the citizen voting age  
15 population data from ACS is lagging behind?

16 A. This is an area where you really need more information  
17 because women are less likely to have -- in a marriage women are  
18 less likely to have a Hispanic surname, but women Hispanics  
19 register at a much higher level than male Hispanics. So you'd  
20 really need to look very closely at the data. It's possible to  
21 use the data, I think, in the way that you're suggesting to learn  
22 what are the more Hispanic areas and how high is the  
23 concentration, but I think you'd want to be pretty careful in  
24 thinking about who is registered, who is not registered, what  
25 race am I looking at. So if I was in an area where it was mainly

1 women Hispanics or women registration was much beyond male  
2 registration, I'd want to be cautious about using that, for  
3 example.

4 Q. But as far as you're aware, the two data points that we have  
5 in trying to resolve this issue with respect to the Hispanic  
6 citizen voting age population are the ACS data or Spanish  
7 surname?

8 A. Yes, those are the data we have before us.

9 MR. MATTAX: Nothing further.

10 MR. HICKS: Very quick redirect. Very quick timing.  
11 Not very quick talking.

12 EXAMINATION

13 BY MR. HICKS:

14 Q. Would you look at table 5. I think there was a mistake  
15 made. In looking at the ecological regression, Mr. Mattax asked  
16 you if this didn't show a mistake because it showed that 52  
17 percent of Travis County voters were Republican. It doesn't show  
18 that, does it? It shows 52 percent of white Travis County voters  
19 are Republican?

20 A. Correct. That's the predicted value from the regression.

21 Q. Vote Republican. Sorry, not are Republican.

22 A. Correct.

23 Q. By the way, is that an important distinction, are or vote?

24 A. It's an interesting distinction. And political scientists  
25 have a complicated view of partisanship. That's somewhat

1 disputed.

2 Q. One other question. Mr. Mattax asked you -- he used the  
3 phrase "as we currently have it in C 166," and he mentioned the  
4 three districts that -- the two districts, Harris County and the  
5 Dallas/Fort Worth district, that you said added a Hispanic  
6 opportunity district there. You said as we currently have it  
7 it's below 50 percent CVAP. Do you recall that?

8 A. Correct.

9 Q. Do you agree that we currently have it that way?

10 A. Well, current as of roughly '07.

11 Q. Right. So you mean -- and it's your understanding -- it's  
12 your surmise, an educated surmise, that actually currently it's  
13 50 percent Hispanic CVAP, correct?

14 A. It's very close to it.

15 MR. HICKS: Thank you.

16 JUDGE GARCIA: Mr. Mattax.

17 MR. MATTAX: No further questions. If I can rise on a  
18 matter of personal privilege, an emergency has occurred in  
19 Houston. I have to leave the courtroom.

20 JUDGE GARCIA: You saw what?

21 MR. MATTAX: I'm sorry. A family emergency has  
22 occurred for me in Houston. I have to leave the courtroom right  
23 now.

24 JUDGE GARCIA: I'm sorry. Yes, of course. You're  
25 excused now, Doctor. Thank you.



1 THE WITNESS: Thank you.

2 MR. HICKS: We'll call our next witness. It will be  
3 Mr. David Butts. We'll have to retrieve him from the hallway.

4 JUDGE GARCIA: Okay.

5 MR. HICKS: He's under the rule.

6 DAVID BUTTS,  
7 having been previously sworn, testified as follows:

8 EXAMINATION

9 BY MR. HICKS:

10 Q. Mr. Butts, we're under an injunction to go really fast.

11 A. Okay.

12 Q. So tell me your name and where you live.

13 A. David Butts, 1914 Patton Lane, Austin, Texas.

14 Q. And where do you live -- what do you do for a living?

15 A. I'm a political consultant. Probably more pertinent to this  
16 case is I was one of the people who helped create the political  
17 movement in Austin, the coalition so to speak. And that's what  
18 I've been involved with for 30 or 40 years now.

19 Q. And is your political expertise mainly focused in political  
20 consulting -- mainly focused in Austin and the Travis County  
21 area?

22 A. Primarily.

23 Q. In local elections?

24 A. Yes.

25 Q. When you say the local political movement do you mean what

1 is referred to, I think, in our pleadings as a tri-ethnic  
2 coalition that operates in Travis County?

3 A. Yes.

4 Q. Could you explain what you mean when you say or what I mean  
5 or what anybody means when they talk about a tri-ethnic coalition  
6 and what we're talking about in Travis County?

7 A. Well, with liberalized voter registration laws in the early  
8 '70s, the advent of the 18-year-old vote, the process a number of  
9 people recognized that there could be a change in the political  
10 climate in Austin and began to organize. And that was done in  
11 sort of tandem with the Hispanic and African American Community  
12 where we would meet periodically to talk about the political  
13 situation in Travis County. And then, of course, discussions  
14 about candidates that were going to run. And it's sort of -- was  
15 promoted and evolved as it has gone forth over the decades.

16 Q. And how has it evolved?

17 A. Well, there's been a number of political organizations that  
18 have developed across the city, somewhat regionalized. They're  
19 not necessarily working in tandem with each other but often as  
20 not the effect is that they do.

21 Q. How do you mean that?

22 A. Well, meaning that they interview the same set of candidates  
23 that are running for office whether it be for the city or in the  
24 party primary or whatever. And generally they come up with the  
25 same slate of candidates. They endorse that slate and promote

1 those candidates to the voters.

2 Q. How do they promote it?

3 A. Well, it's grass roots oriented, door to door, to some  
4 extent direct mail, newspaper advertising where it's appropriate,  
5 that kind of thing. To send a message to the general voters that  
6 there's -- these are the candidates, they're recommended.

7 Q. And is it literally a slate?

8 A. Yes.

9 Q. And does the slate typically -- let's just talk since 1995  
10 maybe, 2000. Has the slate included a mixture of Anglo,  
11 Hispanic, black candidates that are being endorsed by the  
12 particular clubs?

13 A. Since the inception of it, yes.

14 Q. And is that an unusual occurrence when you have all  
15 different races of candidates endorsed or is it a typical  
16 occurrence in Travis County? Let's just say this decade.

17 A. Typical.

18 Q. And you have some experience and knowledge about the urban  
19 politics around Texas, don't you --

20 A. Yes.

21 Q. -- over this 40 years. Is it your sense that Austin and  
22 Travis County are the same as other counties and urban areas in  
23 the way this operates or is it different?

24 A. Oh, they're very different really. It's partly due to the  
25 makeup of the electorate and who turns out to vote.

1 Q. Now, Austin is predominantly white or Anglo, right?

2 A. Anglo, yes. 50 percent.

3 Q. At least 50 percent?

4 A. In Travis County, yes.

5 Q. And it was even more so earlier in the decade and even more  
6 so the decade before that, right?

7 A. Yes, absolutely.

8 Q. So it's increasingly coming close to being a plurality of  
9 Anglos; is that right?

10 A. It will next census drop below 50 percent.

11 Q. These political clubs or local organizations that are  
12 scattered around Austin and Travis County, are they -- are they  
13 all Anglo clubs, Anglo-dominated clubs? Give a couple of  
14 examples of some of the clubs if they cover more than just Anglos  
15 running the system.

16 A. There's Black Austin Democrats, there's the Tejano  
17 Democrats, South Austin Democrats--which is significant Hispanic  
18 membership, not all--significant as examples.

19 Q. And they are part of this endorsement slating system that  
20 you've been talking about?

21 A. Yeah. Many times we meet as individual clubs but in one  
22 location.

23 Q. How does that work?

24 A. Well, we just invite the candidates to come. It keeps them  
25 from having to go to 15 different meetings. And they can come

1 and each club can then vote to endorse at that meeting.

2 Q. And do you have any sense that these endorsements in this  
3 slating makes one bit of difference in the way -- who wins?

4 A. I would say probably 80 or 90 percent win.

5 Q. 80 or 90 percent of the time of this group's set of  
6 endorsements?

7 A. If there's a consensus or there's pretty much of a general  
8 direction of the groups those candidates are most likely to win.

9 Q. And is this --

10 JUDGE SMITH: You mean in the primary?

11 THE WITNESS: In the primary or in the city election.

12 MR. HICKS: That's exactly --

13 THE WITNESS: School board election.

14 Q. (BY MR. HICKS) And in the city council elections in  
15 Austin -- Austin has six city council members and a mayor,  
16 correct?

17 A. Yes.

18 Q. And it's all at-large elections, correct?

19 A. Yes, it is.

20 Q. And of course the county -- there are countywide elections  
21 for county judge?

22 A. Yes.

23 Q. County attorney, matters like that.

24 A. There are presently 13 African Americans elected into  
25 positions of both district and countywide in Travis County and 16

1 Hispanics.

2 Q. You've testified that the minority population and the  
3 minority electorate in Travis County and Austin has grown. But  
4 my question is: Can a candidate -- running at-large in city  
5 council or running countywide, can a candidate win those  
6 elections just relying at this point on minority voting support?

7 A. No.

8 Q. What does that he or she have to do?

9 A. Well, 83, 85 percent of the vote in a city council election  
10 is Anglo. 15 -- about nine or 10 percent is Hispanic and about  
11 five percent is black. Maybe one or two percent Asian depending  
12 on the election. In many races, you know, you have to be able to  
13 pull a percentage of Anglo votes in combination if you're -- if  
14 you're a minority candidate.

15 Q. You said in many races?

16 A. Well, there's some races where the Anglos are split and the  
17 minority vote is actually the decisive factor.

18 Q. Can you give me an example of that?

19 A. Just recently the city council race we just had where there  
20 were two Anglo women running against each other and one of them  
21 incumbent. The Anglo community was fairly split. The black  
22 community and Hispanic community supported the challenger.

23 Q. Who won?

24 A. A woman named Kathie Tovo over Randi Shade.

25 Q. She was the challenger?

1 A. She was the challenger.

2 Q. The winner was the challenger with the minority support?

3 A. Uh-huh. Yes.

4 Q. Do Hispanic and black voters tend to vote together in the  
5 primary -- in the -- cohesively in the primary -- Democratic  
6 primary or in the city council elections?

7 A. Unless they're running against each other they do usually.

8 Q. Okay. Let's go through some examples and it will be just  
9 very few examples of how the coalition works in actual elections.  
10 You're familiar, I take it, with essentially every election in  
11 the Travis County area for the last 30 years; is that --

12 A. Probably.

13 Q. Intimately familiar?

14 A. Probably.

15 Q. Do you recall the race in 2004 for a district judgeship  
16 between Gisela Triana and Jan Soifer?

17 A. Yes.

18 Q. That was in the Democratic primary, correct?

19 A. Yes, it was.

20 Q. Describe how the coalition worked in that situation?

21 A. Well, the legal community supported Jan Soifer.

22 Q. Jan Soifer was Anglo; is that correct?

23 A. Yes.

24 Q. And Gisela Triana is Hispanic, correct?

25 A. Yes. And the political community supported Gisela Triana.

1 Gisela Triana was a County Court at Law judge, but she didn't  
2 have a lot of support in the legal community, but Gisela Triana  
3 won without a runoff. She also defeated an Anglo male. So there  
4 were two Anglo candidates in that race and she won with an  
5 absolute majority with the endorsement of the coalition.

6 Q. And the coalition being --

7 A. Most all the clubs, organizations, individuals, sort of an  
8 assortment.

9 Q. Okay. And that was a countywide race, correct?

10 A. Countywide.

11 Q. Let's talk about the 2002 race between Sam Biscoe and  
12 Bob Honts in the general election.

13 A. Yes.

14 Q. Sam Biscoe is African American, correct?

15 A. Yes, he is.

16 Q. And Bob Honts is Anglo?

17 A. He's a former county commissioner as a Democrat. He  
18 switched parties.

19 Q. Sam Biscoe also was a former county commissioner, right?

20 A. Yes.

21 Q. At this time, though, he was what? When he ran in 2002  
22 against Bob Honts what was he?

23 A. He was the county judge.

24 Q. The incumbent county judge?

25 A. Yes.



1 Q. They were running for county judgeship?

2 A. Yes, in 2002.

3 Q. Describe real quickly how the coalition worked in that  
4 situation.

5 A. Well, that's working, of course, through the Democratic  
6 Party and we basically -- the conservative Anglo voters were  
7 going to vote for Honts. That was in 2002 and it was a  
8 Republican year. And so basically they voted for Honts. We made  
9 sure that we got as big a turnout in the central city which is  
10 the Anglo progressive community. And of course working the  
11 minority voters also to get as big a turnout. And he won with 54  
12 percent of the vote.

13 Q. He being Sam Biscoe?

14 A. Sam Biscoe.

15 Q. And did he get most or all of the minority voter support?

16 A. Yes, he did.

17 Q. But he couldn't have won, could he, without the Anglo  
18 support?

19 A. No, he wouldn't have won.

20 Q. All right. Let me go to two races kind of back to back.  
21 I'd like for you to talk about the countywide judgeship race,  
22 district judgeship race in 2008 between John Lipscombe and Carlos  
23 Barrera in the Democratic primary.

24 A. Yes.

25 Q. And then talk about the 2010 race between John Lipscombe and

1 Olga Seelig in the Democratic Primary. Tell me what happened in  
2 2008. The first question let me ask: Is John Lipscombe white,  
3 black or Hispanic?

4 A. He's an Anglo.

5 Q. And Carlos Barrera?

6 A. Is Hispanic.

7 Q. What happened in that race?

8 A. Carlos Barrera won pretty decisively in 2008 in the  
9 Democratic primary. And the club sort of split on that. Most of  
10 them -- I think a majority of them went for John Lipscombe, but a  
11 lot of individuals supported Carlos Barrera, including myself.  
12 And he won the race.

13 Q. Does this mean that the coalition didn't work there since  
14 you described the clubs as being a vital part of the coalition?

15 A. Well, it didn't -- obviously John Lipscomb did better having  
16 some of that support than he would have otherwise, but it wasn't  
17 enough.

18 Q. And could Carlos Barrera have won the Democratic primary  
19 without significant Anglo support?

20 A. No.

21 Q. So he beat the Anglo candidate?

22 A. Yes, he did.

23 Q. All right. 2010 -- Mr. Lipscombe has lost in 2008 and he  
24 runs again against Olga Seelig. Is Olga Seelig Anglo or  
25 Hispanic?

1 A. Hispanic.

2 Q. She's Hispanic. And what happened in that race?

3 A. John Lipscombe won.

4 Q. And who won the endorsements of the coalition?

5 A. John Lipscombe, solidly.

6 Q. So this time who -- where did the minority votes go in that  
7 particular situation?

8 A. African Americans went for John Lipscomb. Hispanics went  
9 for Olga Seelig.

10 Q. So minority candidates in these fights don't always win over  
11 the Anglo candidates?

12 A. No, they do not.

13 Q. In the primaries or in the non-partisan --

14 A. That's correct.

15 Q. But it's a regular occurrence that they do win, right?

16 A. Yes. Yes, it is.

17 Q. Let me ask you and this is in -- I don't think Your Honors  
18 need to look at it but you can describe it. It's in binder 11.

19 It's Plaintiff's Exhibit 901. Do you have a copy of that? This  
20 is the chart we had asked you to put together. Just quickly say  
21 what that chart is.

22 A. This is a chart that details starting in 2000 -- actually  
23 2002 every minority candidate that's been elected either for  
24 county offices or for --

25 Q. Countywide offices?

1 A. Countywide offices or city council in Austin and Travis  
2 County.

3 Q. And is it -- would you consider it to be a vague term of a  
4 significant number?

5 A. Well, considering the county is a majority Anglo and you  
6 have substantial numbers of minorities as judges, county -- our  
7 sheriff is an African American. Our county judge is an  
8 African American. We just elected a majority of school board  
9 members that are minority.

10 Q. What about county attorney since --

11 A. County attorney is a minority.

12 Q. And what about on the city -- Austin city council?

13 A. Well, there's been an African American and a Hispanic on the  
14 city council since the '70s.

15 Q. And what about --

16 A. There still an at-large system though.

17 Q. What about the mayoral race?

18 A. We've had a Hispanic mayor, Gus Garcia.

19 Q. Did he win with the support of the coalition?

20 A. Yes, he did.

21 Q. And did minority voters, African American and Hispanic, vote  
22 for him?

23 A. Hispanics voted for Gus. The black community split. There  
24 was an African American running in the race.

25 Q. Who was that?

1 A. That was Eric Mitchell, a former council member.

2 Q. When you say they split it, do you mean they split their  
3 vote between Gus Garcia and Eric Mitchell?

4 A. Yes.

5 Q. And where did the Anglo votes go?

6 A. For Gus.

7 Q. Do you recall -- there was a state senatorial district  
8 essentially entirely located in Travis County --

9 A. Yes.

10 Q. -- in this round of redistricting.

11 A. Yes.

12 Q. And do you recall Gonzalo Barrientos?

13 A. Yes.

14 Q. He's Hispanic, correct?

15 A. Yes.

16 Q. Did he run with the support of the coalition?

17 A. Yes, he did.

18 Q. And was his district predominantly Hispanic?

19 A. No.

20 Q. What was it?

21 A. It was a majority Anglo.

22 Q. And when did he first run and win in his state senatorial --

23 A. 1984.

24 Q. And how many times did he run and win?

25 A. He was elected from '84 to 2006.

1 Q. And did he win with the support of the coalition you  
2 described?

3 A. Every time, yes.

4 Q. Did he win the Anglo vote?

5 A. Yes, he did.

6 Q. Would he win the minority vote?

7 A. Yes, he did.

8 Q. Would you call up Plan C 100? Oh, you've already done it.  
9 Thank you.

10           Would you -- before looking directly at that map would  
11 you just describe generally where is the -- if you had to  
12 describe the heart, the geographic heart of the coalition you've  
13 described, where does it function in Travis County?

14 A. Well, if you understand the geography of Austin, MO-PAC,  
15 which is the Missouri Pacific Railroad, but it's actually a major  
16 arterial lane on the west side of the county, most everything  
17 east of I-35 is more or less in the coalition. Not every  
18 precinct but most of them. I mean, the voters instinctively are  
19 inclined to vote that way. West of -- west of MO-PAC it's more  
20 of a mixed bag.

21 Q. Do you -- I don't know if you can use the pointer right  
22 there in front of you, but -- don't look at it.

23 A. Okay.

24 Q. Can you -- can you show -- there, you got it. Hang on.  
25 Quit looking at it.

1 A. Is it working? I don't see it.

2 Q. Well, let's just put that aside.

3 A. I do see it there.

4 Q. Show where MO-PAC is.

5 A. Well, I think that's Interstate I-35 right there.

6 Q. Right. So just east of there is where you said the one

7 major --

8 A. And then MO-PAC would be right in there.

9 Q. So from MO-PAC east essentially is where the coalition

10 functions --

11 A. Yes.

12 Q. -- at its finest, so to speak?

13 A. Yes.

14 Q. Okay. And up there we've called up the current  
15 redistricting -- the current congressional districts we're going  
16 to run through right now.

17 Do you see District 25 coming into Travis County from  
18 Bastrop and Hays County?

19 A. Yes.

20 Q. How does that overlay with what you've described as the  
21 heart of the coalition, this area?

22 A. Probably about 70 percent of it.

23 Q. And does the incumbent in that -- in that congressional seat  
24 have the support of the coalition?

25 A. Absolutely.

1 Q. Does -- that's Congressman Doggett, correct?

2 A. Yes, it is.

3 Q. Does he get the support of the minority voters in that part  
4 of Travis County?

5 A. Yes. He would have been defeated last time but for the  
6 minority vote.

7 Q. In Travis County?

8 A. In Travis. Well, in his whole district. He carried the  
9 minority vote. You know, 90, 95 percent.

10 Q. And is this -- would you consider this kind of a regular  
11 occurrence in his part in that area of Travis County?

12 A. Yes.

13 Q. He's a long-time politician there, right?

14 A. Yes.

15 Q. And did he get significant support from the Anglo community,  
16 part of the coalition too then?

17 A. From the coalition part that's Anglo, yes.

18 Q. Okay. Now let's go to Plan C 185. And we have about five  
19 more minutes, Your Honors, of this. And could you go to the  
20 Travis County part. Have you seen this map before?

21 A. Yes.

22 Q. Describe what this redistricting plan inside Travis County  
23 does to the coalition, the tri-ethnic coalition that you've  
24 explained to the Court its functioning, for the last 30 years?

25 A. Well, it splits the African American Community into, I



1 believe, four congressional districts, including the area that's  
2 the fastest-growing African American population in the county.  
3 And the African Americans have been declining as a total  
4 percentage in Travis County, but the Pflugerville area,  
5 that's -- that's that gray area on top there. Let's see.

6 Q. I'll just walk over.

7 A. There, I've got it. Well...

8 Q. Are you describing this area?

9 A. That area right there. That has shown dramatic growth for  
10 African Americans, also Hispanics, but they're shipped out to  
11 Waco.

12 Q. Okay.

13 A. Basically.

14 Q. Now --

15 A. Then below that is Congressional District 10, which Manor  
16 which is -- Manor, right in there, also significant  
17 African American growth. It goes on to Congressional District 10  
18 to Houston. Then this is the heart of the traditional  
19 African American Community right there. It's a mix of Hispanics  
20 and blacks and some Anglos, but mainly minority. It goes into  
21 this new District 25. It goes all the way up to Fort Worth. And  
22 then they have this congressional district.

23 Q. At what number?

24 A. 35, that basically takes in Hispanics and is very artfully  
25 drawn. It takes and cuts off at part of black east Austin to

1 basically connect it to this part, which is Hispanic and some  
2 black right there. So basically the African American community  
3 in particular is split into four congressional districts.  
4 There's a hundred thousand blacks in Travis County and Hispanics  
5 are basically split primarily. The heaviest concentration is  
6 into three congressional districts.

7 Q. In three. Which three?

8 A. Well, 25, 35 and down there in part of District 21.

9 Q. Let's go to the very top of 35, the northernmost tip. And I  
10 just want you to explain to the court very quickly again what  
11 happened there.

12 A. Well, they basically cut this -- it's very interesting in  
13 that they were very artful in drawing those lines for District  
14 35. Every place else they seemed to basically just throw it into  
15 a pile, but on 35 they were very focused on, you know, cutting  
16 away blocks or census tracts. And so they split through 141,  
17 which is heavily minority, which is -- let's see, 141 right there  
18 to go to here and go up into this area right here which is  
19 heavily Hispanic and black.

20 Now, the interesting thing is that 140 is heavily  
21 Hispanic also. Not as heavy as this precinct, but they didn't  
22 reach up and grab that one. I'm not sure why, but they didn't.

23 Q. Everybody makes mistakes.

24 A. Yeah. Then, you know, you have Hispanics also going into  
25 Congressional District 10. And it's a Hispanic growth area very

1 clearly if you compare the 2000 census to the 2010 census and you  
2 look at the number of Hispanics. Interestingly enough right here  
3 they cut me out of my own precinct, but primarily to get to all  
4 the Hispanics and blacks that live right in that area. I'm sure  
5 that was the case.

6 Q. Go up to the very tip -- they weren't out to cut you out?

7 A. Oh, no, I don't think so.

8 Q. Go up to the very tip-top of 35.

9 A. Uh-huh.

10 Q. District 35.

11 A. Right in there.

12 Q. Right up there. Tell us about that area.

13 A. Well, it's basically low-middle income. It's a transition  
14 area. It's where people who come to Austin wind up moving  
15 because the housing is affordable. And so they're basically -- a  
16 substantial Hispanic population has moved into that area right  
17 there.

18 Q. Is it high-performing in terms of voter turnout?

19 A. Very low performing. This area does not turn out at all.

20 Q. And what part of Austin would you say this is?

21 A. That's north central.

22 Q. How far back down Highway 35 would you come before you get,  
23 let's say, to the capital?

24 A. Oh, probably about two and a half miles.

25 Q. So that -- that area up in the northern part of Austin is

1 connected ultimately to the south -- south Bexar County line; is  
2 that right?

3 A. Yes.

4 Q. Now let's go --

5 JUDGE SMITH: That's north of 290?

6 THE WITNESS: Yes. Yes, it is. Here's 290 right  
7 there. Excuse me. 290 is right there. This is 183 and that's  
8 290. So it's north of 183, 290.

9 Q. (BY MR. HICKS) Then I want to look at -- we could but  
10 wouldn't dare take a lot of time to go through with your  
11 analysis. I want to look at one other area --

12 A. Could you move it? Go ahead.

13 Q. -- one area you pointed out to me. I want to go to the  
14 St. Edwards University area. Now, I don't know if you know where  
15 it is but maybe you could help him find it.

16 A. Go south.

17 JUDGE SMITH: It's on South Congress, right?

18 THE WITNESS: Yes, sir.

19 A. 433, how that line splits right there.

20 Q. (BY MR. HICKS) Let me ask you a question about this.

21 A. Yes, sir.

22 Q. Point out the precinct that St. Edwards University is.

23 A. That one right there.

24 Q. And what is unique, I guess you could say, about St. Edwards  
25 University?

1 A. Well, it's a Catholic school and it has a significant number  
2 of Hispanic students.

3 Q. And is that precinct split?

4 A. Yes.

5 Q. In this map?

6 A. Yes, it is.

7 Q. All right. Which side of the precinct is District 35 on?

8 A. This side right here.

9 Q. South side?

10 A. Uh-huh.

11 Q. And which side of the precinct is District 21 on?

12 A. Right here.

13 Q. Okay.

14 A. And the administration building is on the north side of 21  
15 and the dorms or the student housing are on the south side right  
16 here. So they just artfully drew a line down that street there  
17 to do that.

18 Q. To put the students into District 35?

19 A. Yes. Yes, they are.

20 Q. Are they more likely to be Hispanic?

21 A. Yes.

22 Q. And I guess there's one lonely white guy working in  
23 the -- in the administration office in District 21?

24 A. Well, I don't know if they're registered to vote there or  
25 not, but they -- you know, they drew this line here and it's --

1 you know, they really focused on that. I must, you know,  
2 compliment them on their drawings.

3 Q. This will be the last one. District 4, do you see the  
4 arrowhead that comes in just to the right in blue?

5 A. Right there?

6 Q. Yes. What happened there?

7 A. Well, that has a substantial Anglo population and a large  
8 Hispanic population. So what they've gone in and done is to draw  
9 the -- make that little point because that's where the Hispanics  
10 are the most heavily concentrated.

11 Q. That goes into -- they split the precinct there too, right?

12 A. Yes.

13 Q. And they put what -- the inside the arrowhead in District 35  
14 and outside the arrowhead in District 21?

15 A. 21. Yes, sir.

16 JUDGE SMITH: That's south of Riverside?

17 THE WITNESS: Yes. Here's the Riverside Apartments  
18 right there, off that area right in there. That's in -- that is  
19 in 35, Congressional District 35.

20 MR. HICKS: Thank you, Mr. Butts. I pass the witness.

21 MR. COHEN: One question, Your Honor.

22 JUDGE GARCIA: Sure, of course.

23 \*\*\*\*\*

24 CROSS EXAMINATION

25 BY MR. COHEN:

1 Q. Mr. Butts, I'm trying to understand the ethnic makeup of the  
2 coalition. You said it's white, Hispanic, African American and  
3 some Asian. Is that a correct statement?

4 A. It's beginning to become -- there are some Asians involved,  
5 yes.

6 Q. Isn't it possible that every county in Texas, with the  
7 exception of a few that have infinitesimally small numbers of one  
8 race or another, could form or claim to form similar coalitions  
9 in the election of their candidates?

10 A. They could claim it, yes.

11 Q. In claiming it wouldn't it make it infinitely more difficult  
12 for courts and legislatures to draw districts to suit or allow  
13 for the acceptance of such a coalition?

14 A. I'm not sure I'm following what you're saying.

15 Q. Sure. If every county were to come forward into this court  
16 and say, "We were able to elect a candidate because we had some  
17 white votes, we had some African American votes and some Hispanic  
18 votes," then doesn't it make it almost an impossible task for  
19 courts or legislatures to start drawing these sorts of maps?

20 A. Well, you can look at polarized voting in the state of Texas  
21 and see, you know, where those forces don't come together. And  
22 they do and they're present in today's Texas, I assure you. But  
23 it's not -- I said they're present in today's Texas, but in  
24 Travis County, you know, there is a working coalition. It's not  
25 that we always agree. It's politics we're dealing with here.

1 Q. Aren't there some whites, some Hispanics and some  
2 African Americans and a small number of Asians who presumably are  
3 voting in the election but aren't voting for the coalition?

4 A. Absolutely.

5 MR. COHEN: Okay. That's all I have. Thank you.

6 JUDGE GARCIA: Okay. Thank you, Mr. Butts. You're  
7 excused.

8 THE WITNESS: Thank you.

9 JUDGE GARCIA: And your next witness?

10 MR. HICKS: Ms. Abha Khanna, my co-counsel, will be  
11 handling the witness.

12 JUDGE GARCIA: Okay.

13 MS. KHANNA: I call Sam Biscoe to the stand.

14 SAM BISCOE,

15 having been first duly sworn, testified as follows:

16 EXAMINATION

17 BY MS. KHANNA:

18 Q. Please state your name for the record.

19 A. Sam Biscoe.

20 Q. And what is your current occupation?

21 A. County judge on the Travis County Commissioners Court.

22 Q. And is that an elected position?

23 A. It is.

24 Q. And does that vote happen through a countywide election?

25 A. Yes.



1 Q. When did you first run for elected office?

2 A. 1988.

3 Q. And what was that for?

4 A. Precinct 1 Commissioner on the Commissioners Court.

5 Q. Where is Precinct 1?

6 A. East and northeast of Travis County.

7 Q. And do you know roughly the ethnic composition of Precinct 1  
8 at the time that you ran?

9 A. Then it was a little bit more than 20 percent  
10 African American, about 20 percent Hispanic. Maybe 23, 24. Two  
11 or three percent Asian and 51, 52 percent Anglo.

12 Q. And were you reelected as county commissioner?

13 A. Yes.

14 Q. And in your time as county commissioner did you have to  
15 appeal to a coalition of voters?

16 A. I did.

17 Q. And in what way?

18 A. Well, what was clear was that with a 20 percent African  
19 American vote, even if I got a hundred percent I still would fall  
20 far short of the number that I needed. And so my strategy was  
21 always to put together a platform that would attract  
22 African Americans, Hispanics and Anglos. And my goal from the  
23 beginning was 80 percent or more African American, 65 to 70  
24 percent Hispanic, at least 40 percent Anglo. And from the  
25 beginning that worked.

1 Q. And you heard Mr. Butts testify that Travis County as a  
2 whole is dominated by the Anglo voting age majority or voting age  
3 population, correct?

4 A. Yes.

5 Q. And when did you decide to run for countywide office in  
6 Travis County?

7 A. 1997. I had served two full terms as Precinct 1  
8 commissioner and was about to start a third term. And I served  
9 one year of the third term. Then I ran for county judge and by  
10 law I had to resign the Precinct 1 position.

11 Q. And so why did you think that you had a chance as an  
12 African American candidate in an Anglo-dominated county, with a  
13 significant Hispanic population as well, why did you think you  
14 had a chance to win in this county?

15 A. Well, I think the effective coalition strategy had worked.  
16 I had served on the Commissioners Court for nine years and  
17 concluded myself that I had performed well. I still had the  
18 support of the coalition as well as other constituents.

19 Kind of like politics. The incumbent county judge at  
20 that time, Bill Aleshire, actually encouraged me to run for  
21 county judge and endorsed me. And luckily I prevailed.

22 Q. And so how did your experience running for office on the  
23 precinct level translate to the countywide level?

24 A. It was real consistent just on a smaller scale.  
25 African Americans make up 20 percent of Precinct 1 but only

1 10 percent of Travis County, so I had that to work with. The  
2 Hispanic concentration countywide is larger now, but I was  
3 dealing with roughly the same coalition need and either I would  
4 get the votes or not.

5 That first race was against another person who had been  
6 a member of the Commissioners Court, Valerie Bristol, and so it  
7 was a very heated, intense and competitive campaign, but thanks  
8 to the coalition I did win.

9 Q. What election was that with Ms. Bristol?

10 A. That was for county judge. And that would have taken place  
11 back in 1998.

12 Q. And that was the Democratic primary?

13 A. Yes.

14 Q. And what ethnicity was Ms. Bristol?

15 A. White female.

16 Q. And as far as you understood was she a significant candidate  
17 or a viable candidate?

18 A. I think she was quite significant because she had the  
19 support of prominent Anglos in Travis County. George Bristol was  
20 her former husband. He was one of the top advisors to Lyndon  
21 Baines Johnson when he was president. Darrell Royal, the former  
22 coach of the University of Texas, endorsed her also. Ann  
23 Richards endorse her. J. J. Pickle, long-time Congressman from  
24 Travis County, endorsed her. And I can say endorsed because  
25 clearly there was an endorsement. They appeared on all of the

1 political literature.

2 Q. So how did you win that election?

3 A. I think the coalition. Of course I think that I've done an  
4 outstanding job as Precinct 1 commissioner, but I think I had a  
5 good practice of putting together a pretty good platform. And  
6 the promises that I made were realistic and I worked real hard to  
7 achieve them. And when I went out to chat with constituents --  
8 you know, when you go to the black community you really need to  
9 talk with them about programs and services that you have  
10 advocated and implemented that benefited them. You would do the  
11 same thing for the Hispanic constituents, I think, for Anglo  
12 constituents. But luckily if you promote good government, good  
13 programs and services, you can deliver roughly the same message  
14 to all of them, but I think ultimately your performance speaks  
15 for you and decides whether you win or lose.

16 Q. In the Democratic primary in Travis County would you or any  
17 other candidate be able to win without a significant percentage  
18 of the Anglo vote?

19 A. No.

20 Q. And have you encountered any other major opponents since  
21 your first election?

22 A. Well, reference was made to the run against Bob Honts, so  
23 his challenge to me about six years ago. And, you know,  
24 Mr. Honts was significant also. Raised a whole lot of money, had  
25 switched parties and was on the court of the Democrat 15 -- more

1 than that ago. More than 20 years ago because I've been part of  
2 County Government 21 and I never served with him. But he was  
3 endorsed by Red McCombs, the Red McCombs, a very wealthy Texas  
4 citizen as well as some others and, you know, had a unique  
5 strategy. He believed that Travis County Commissioners Court  
6 could resolve all of the county's transportation problems and so  
7 he promised to do that, but he raised a lot of money, pretty good  
8 campaign effort and it was a close race.

9 Q. So how did you win that race?

10 A. I think the strategy that had helped me for years worked, an  
11 effective coalition. That and hard work. Also if you are the  
12 incumbent you can really raise money, you've got name ID and you  
13 have a record to run on so there's always that. But at the same  
14 time you campaign as though you want a hundred percent of the  
15 vote and you should, but in the end it's getting out your people  
16 to vote for you and it's also many others helping you do the same  
17 thing, and so I think ultimately it goes back to an effective  
18 coalition.

19 Q. And those many others, you mean in helping in the campaign  
20 and fund-raising?

21 A. Right. Hispanics, African Americans, Anglos and now Asians  
22 because they make up seven to eight percent of the population.

23 Q. The coalition you described among Anglo, Hispanic,  
24 African American and now Asian voters, does that still exist?

25 A. It does.

1 Q. And are you familiar with the effect of C 185 of the state's  
2 congressional plan on Travis County on that coalition?

3 A. Generally.

4 Q. And are you aware that C 185 divides Travis County into five  
5 congressional districts, none of which contains more than 75  
6 percent of the county's population?

7 A. Yes.

8 Q. So how would the state's plan affect this coalition if it  
9 will have any effect?

10 A. Well, I think the chief effect it will have on Travis County  
11 is when you go to Washington, DC in search of federal dollars you  
12 need to have somebody there advocating for you. And when I think  
13 of some of the programs and services for which we get huge  
14 federal dollars now, we would be competing against other counties  
15 in Texas and we would not have an anchor congressman that we  
16 could depend on. And the examples that come to mind would be the  
17 Balcones Canyonlands Conservation Preserve that we've been  
18 working on for more than 14 years for which we received more than  
19 \$30 million from the federal government.

20 The other thing is transportation dollars. We've got a  
21 bus system in Travis County. We're trying to get urban rail  
22 started. The other Texas counties, including Bexar though, are  
23 searching for the same dollars to fund similar initiatives in  
24 their areas. And so if you don't have one congress person really  
25 looking out for you then I think you're placed at a distinct

1 disadvantage.

2           From the coalition perspective you've just got a whole  
3 lot more races to run in and from an African American's  
4 perspective if you started out with us being 10 percent of Travis  
5 County and cut us into five pieces we really are very, very  
6 small. And I think the same thing would be true for Hispanics  
7 and Asians. Not so much the case but they would be adversely  
8 affected to some degree.

9           MS. KHANNA: Thank you very much. I pass the witness.

10          MR. COHEN: No questions.

11          JUDGE GARCIA: Thank you, Judge. You're excused. Your  
12 next witness?

13          MR. HICKS: That concludes the Rodriguez Plaintiffs'  
14 presentation.

15          JUDGE GARCIA: All right. Thank you.

16          MR. HEBERT: Good morning, Your Honor. For the Quesada  
17 plaintiffs I'm Jerry Hebert and we've got one expert witness.

18                I want to thank the Court for holding session on  
19 Saturday so we could accommodate his travel schedule. And I'm  
20 calling this witness not only on behalf of the Quesada plaintiffs  
21 but the Perez plaintiffs. As Mr. Gray indicated earlier, we're  
22 sharing this expert so I call Dr. Allan Lichtman to the stand.

23          JUDGE GARCIA: All right.

24                               (Witness sworn.)

25          MR. HEBERT: Your Honors, we're going to be speaking I

1 believe exclusively out of volume two, the joint expert exhibit  
2 list.

3 JUDGE GARCIA: All right.

4 MR. HEBERT: Tab Exhibit Number 3 within that.

5 JUDGE GARCIA: Number 3. All right.

6 MR. HEBERT: Book 2, binder 2, Exhibit 3 within that  
7 volume.

8 JUDGE GARCIA: Okay.

9 MR. HEBERT: The State has stipulated that Dr. Lichtman  
10 is an expert. I'm not going to go through qualifications.

11 JUDGE GARCIA: Thank you.

12 MR. HEBERT: I would report to the Court he's an expert  
13 in racially polarized voting, vote dilution, political history,  
14 application of social science and historical methods to voting  
15 rights issues.

16 JUDGE GARCIA: Okay.

17 ALLAN LICHTMAN,  
18 having been previously sworn, testified as follows:

19 EXAMINATION

20 BY MR. HEBERT:

21 Q. Would you state your name, please?

22 A. Alan J. Lichtman.

23 Q. And Dr. Lichtman, where are you employed?

24 A. I'm a professor of history at American University in  
25 Washington, DC.



1 Q. And how long have you been a professor at American  
2 University?

3 A. I hate to admit it but 38 years.

4 Q. Are you presently up for any awards at American University?

5 A. I've just been nominated for distinguished professor, which  
6 is the highest academic honor that the university can bestow. I  
7 also won the scholar teacher of the year award, the highest  
8 yearly award of the university. Very humble to have gotten those  
9 awards.

10 Q. Now, what did you examine or study in this case?

11 A. I examined a number of issues. First of all, I examined the  
12 issue of whether Latino and African American voters are cohesive  
13 in their choice of participation given that they can participate  
14 in either Democratic or Republican primaries within the state of  
15 Texas.

16           Secondly, I examined the issue of Latino,  
17 African American and Anglo voting in general elections in the  
18 state of Texas to see whether or not Latinos and  
19 African Americans were cohesive in support of the same candidates  
20 and in turn whether Anglos block-voted against the candidates of  
21 choice of Latino and African American voters.

22           In addition I examined turnout rates of those same  
23 three voter groups since obviously election outcomes depend not  
24 only on voting but also on turnout.

25           I examined the implications of voting behavior and

1 turnout for the opportunities for Latin -- Latino and  
2 African American voters to elect candidates of choice to the  
3 Texas State House and the U.S. Congress. I then looked at the  
4 State House elections and considered whether or not an  
5 alternative plan that was proposed would, in fact, create more  
6 majority minority districts than the state-passed proposed plan  
7 and whether those majority minority districts were effective in  
8 providing minority voters opportunities to elect candidates of  
9 their choice to State House positions.

10 I then did the same thing for Congress. I also looked  
11 at alternative -- an alternative plan proposed for congressional  
12 districts, again to determine whether or not that plan created  
13 more effective districts that provided minority voters a  
14 reasonable opportunity to elect candidates of their choice to  
15 Congress as compared to the state-passed proposed plan.

16 So when I use the word "effective minority districts" I  
17 mean districts that provide reasonable opportunities for  
18 minorities to elect candidates of their choice to public office.

19 Q. What data did you rely upon in conducting your study of  
20 cohesion? Let's start with that. That was your first item.

21 A. I actually had two cohesion analyses. The first was choice  
22 of primary elections and for that I relied on the Democratic  
23 Texas voter file.

24 Q. All right. And where did you get those data from?

25 A. That was given to me by Sam Harper who I believe works for

1 Angle Strategies at the direction of counsel.

2 Q. What is the Democratic party or Democratic voter file?

3 A. This is a file on individual voters designed to identify  
4 their race or ethnicity and among other things their  
5 participation in Democratic or Republican primaries. It was not  
6 compiled for this or any other litigation. Rather like similar  
7 voting files across the nation, it was compiled for strategic  
8 purposes, in this case for the Democratic party. So they had  
9 every incentive to make sure that the data included here on  
10 individual voters was as accurate as possible given the methods  
11 available.

12 Q. Well, let's go to the results of your cohesion study, this  
13 first part. And that's recorded, I believe, on page 5, table 1,  
14 correct?

15 A. That is correct.

16 Q. Can you tell us what did you find with regard to cohesion?  
17 And let's start with the state overall, the state of Texas, with  
18 regard to the cohesiveness of Latinos and African Americans  
19 choosing their party primaries.

20 A. Yes. The first set of analyses on the first rows of data on  
21 table 1 are for Texas overall. And I looked at two different  
22 election years, the two most recent cycles, 2008 and 2010. And  
23 these are very good years to look at, not only because they're  
24 the most recent but because they're fundamentally different. In  
25 2008 when the lead primary was the Democratic primary for

1 president, many more Texans overall participated in Democratic  
2 rather than Republican primaries. And in 2010 when the lead  
3 primary was the Republican primary for governor, many more Texans  
4 overall participated in the Republican rather than the Democratic  
5 primaries.

6           What I found was for the state of Texas, if you look at  
7 the 2008 Democratic primary percentages, that slightly more than  
8 89 percent of Latinos participated in Democratic rather than  
9 Republican primaries, and 96 percent of African Americans  
10 participated in Democratic rather than Republican primaries.

11           When you look at 2010, not surprisingly the percentages  
12 are lower but they still show overwhelming participation by both  
13 groups in the Democratic rather than Republican primaries. More  
14 than 74 percent for Latinos and more than 85 percent for African  
15 Americans. Moreover, if you drill down into the individual  
16 numbers you can see the reason for the decline in these  
17 percentages, even though they're still overwhelming, is not any  
18 upsurge in Latino or African American participation in Republican  
19 primaries. Those numbers are almost constant. Between 2008 and  
20 2010, in fact, they're slightly lower for Latinos.

21           What happened, of course, is given the lack of a lead  
22 Democratic primary you had a falloff of Hispanics and blacks in  
23 the Democratic primary.

24           But regardless in the most recent years in two very  
25 different primary years overwhelmingly Latinos and blacks were

1 cohesive in the choice they had to participate in primaries in  
2 that they chose the Democratic primaries.

3 Q. Now, does table 1 also confirm those results with regard to  
4 the individual counties that you studied, Dr. Lichtman?

5 A. Yes. Table 1 also goes through, I believe, it's eight  
6 individual counties selected because these are the areas where  
7 the minority majority districts at issue here are being drawn.

8           In the 2008 primary in every case and very robust  
9 numbers both Latinos and blacks chose to participate in the  
10 Democratic rather than the Republican primary. And even in 2010  
11 county by county, but with no exceptions for African Americans  
12 and -- but two exceptions for Latinos, both groups chose to  
13 participate in the Democratic rather than Republican primaries  
14 even while Texas -- Texans overall were overwhelmingly  
15 participating in Republican primaries.

16           And the two exceptions are Hispanics in Fort Bend and  
17 in Tarrant County. And these are very small numbers. Just a few  
18 thousand as compared to hundreds of thousands statewide and,  
19 again, they reflect a decline of interest in the Democratic  
20 primaries, not any upsurge of interest in Republican primaries.

21           So county by county as well we're able to confidently  
22 find that given a choice both African Americans and Latinos are  
23 cohesive in their decision to participate in Democratic rather  
24 than Republican primaries.

25 Q. Before we move on to the next table I want to call your

1 attention, Dr. Lichtman, to the numbers of people actually voting  
2 in 2008 primaries compared to 2010 primaries for Hispanic and  
3 black voters. And I was wondering if you could comment on any  
4 differentials you see between the number of people turning out in  
5 Republican primaries in these eight counties compared to the  
6 Democratic primaries.

7 A. Well, if you'll look at the sheer numbers, as I said, for  
8 participation in the Republican primary it's pretty constant over  
9 both years.

10 But for participation in the Democratic primaries  
11 there's an enormous upsurge when you compare 2008 to 2010. If  
12 you look at statewide about three times as many Hispanics  
13 participated in the 2008 Democratic primary as compared to 2010  
14 and more than three times as many African Americans.

15 So if you kind of look at the potential pool there of  
16 those willing to participate in Democratic primaries it's  
17 extremely large for Latinos and African Americans, particularly  
18 when you consider generally turnout in primaries is much lower,  
19 of course, than in general elections.

20 Q. And overall what is your conclusion about the choices being  
21 made by Latino and African American candidates in Democratic  
22 primaries?

23 A. Overall when you look at individual voters, both for the  
24 state of Texas and for eight critical counties, we find that  
25 Latinos and African Americans are overwhelmingly cohesive in

1 their decision to participate in Democratic rather than  
2 Republican primaries.

3 Q. Now, have you done any ratification or confirmation of these  
4 results that you've reached with regard to participation in  
5 primaries?

6 A. I did.

7 Q. And what did you do?

8 A. I did an ecological regression analysis of five general  
9 elections in 2008 and 2010. And I chose, again, the most recent  
10 election cycles. And I chose five elections that involved a mix,  
11 a different racial mix of candidates. In 2000, president, we  
12 had, for example, an African American Democrat and Anglo  
13 Republican. In the U.S. Senate in 2008 we had a Latino Democrat  
14 and an Anglo Republican. In the Supreme Court Chief Justice race  
15 in 2010 we had an African American Republican against an Anglo  
16 Democrat. In the 2010 governor's race we had two Anglos for both  
17 parties. And in the 2010 lieutenant governor we had a Latino  
18 Democrat against an Anglo Republican.

19 So my ecological regression analysis encompassed the  
20 recent election cycle and elections with a racial mix of  
21 candidates. All general elections of course.

22 Q. And so your reason for choosing these elections was what?

23 A. To cover the most recent election cycle and to get a mix of  
24 different ethnicities in the elections.

25 Q. Now, you mentioned ecological regression. We've heard that

1 term used. Could you just in your own words give us a sentence  
2 or two about that method that you use so we can understand it in  
3 comparison to other testimony.

4 A. Yeah. I was actually one of the originators of what's now  
5 become the standard ecological regression methodology. I wrote  
6 this up in my book "Ecological Inference," which I hate to say  
7 was published many, many years ago in 1978. And I've written  
8 numerous scholarly articles on the topic.

9           Simply put, ecological regression is a mathematic means  
10 of comparing the breakdown precinct by precinct of  
11 African Americans, Anglos, Latinos and in some cases we can do  
12 with Asians, and then comparing the precinct-by-precinct  
13 breakdown of the demographic groups with the precinct-by-precinct  
14 breakdown of the votes for the candidates in the election that  
15 you're looking at.

16           So you've essentially got this precinct-by-precinct  
17 comparison for the state of Texas, over 8,000 individual  
18 precincts. And from that comparison you are able mathematically  
19 to come up with an estimate of how each of the demographic groups  
20 voted for each of the candidates in the election.

21           And the way I do it, because it's weighted, it takes  
22 into account differences in the populations of voting age of the  
23 precinct and it -- and because it's what we call a  
24 double-equation method it takes into account non-voting by each  
25 of these groups as well since we know not everybody votes.



1           And I've with been using this method for decades. It's  
2 the method I've used in all the cases that I've been involved  
3 with. I've tested it, I would say, more than 10,000 times. I've  
4 seen it tested in numerous other analyses. It was the method  
5 accepted by the United States Supreme Court in the Thornberg  
6 versus Gingles landmark decision. It was applied by the Supreme  
7 Court to single-member districts in Quilter v. Voinovich [sic],  
8 and it was the method I used back in the 2003 congressional  
9 redistricting case here in Texas which became the LULAC v. Perry  
10 Supreme Court case and my statistical results were cited  
11 authoritatively several times by Justice Kennedy in his majority  
12 opinion.

13 Q.   Speaking of Texas redistricting cases, you've testified  
14 previously in not only LULAC v. Perry but Terrazos versus Slagle,  
15 Vera v. Bush and the Balderas case, correct?

16 A.   That is correct.

17 Q.   Among others?

18 A.   Among others to the best of my recollection.

19 Q.   Now, what -- in conducting an ecological regression analysis  
20 do you use any population data?

21 A.   I do.

22 Q.   What do you use?

23 A.   I use for this analysis by precinct voting age population.

24 Q.   All right. So you have the voting age population by race  
25 within each precinct?

1 A. That is correct.

2 Q. All right. Why not use citizen voting age population?

3 A. You could. And what I've seen of other experts using  
4 citizen voting age population, these and other methods, none of  
5 us have come up with any substantive differences with regard to  
6 voting behavior in general elections.

7 But the reason I used voting age population--and I'm  
8 not going to go into this too much, you've heard this ad  
9 nauseam--is obviously the citizen voting age population is a  
10 sample. And when you drill down to 8,000 individual precincts  
11 you're drilling down to some pretty small geography. And in my  
12 view the voting age population data, when you get down -- which  
13 is based on the 2010 census, not on the American Community Survey  
14 sample, is more accurate at that fine grain level of analysis  
15 that I've used in my ecological regressions. I don't know what  
16 level of analysis anyone else may have used for their studies.

17 Moreover, my methodology takes into account non-voting,  
18 so non-citizens and other non-voters would not be counted in  
19 these estimates that I report in table 2.

20 But the bottom line is at this fine grain level I have  
21 more confidence in the voting age population data than the sample  
22 citizen voting age data.

23 Q. Well, let's go to your results of the regression analysis  
24 which I believe are on table 2, page 8 of Dr. Lichtman's report.  
25 What did you find first with regard to Texas statewide?

1 A. Well, I found overwhelming -- for the five elections I  
2 looked at overwhelming Latino and African American support for  
3 the Democratic candidate regardless of the racial identity of  
4 that candidate or the racial identity of the opponent. That  
5 Hispanics and blacks were cohesive in support of the Democratic  
6 candidate, which is important information unto its own regard but  
7 also ratifies what I found with an entirely different method,  
8 with an entirely different source of data. That is what I found  
9 in table 1 using the individual Texas Democratic voter file that  
10 overwhelmingly African Americans and Latinos choose to  
11 participate in Democratic primaries.

12           If that's the case you'd also expect overwhelming  
13 Democratic voting which is what you get here. And my estimate  
14 statewide is 89 percent in these five elections for Latinos and a  
15 hundred percent for blacks. It doesn't mean, of course, that  
16 every single African American voted Democratic but it just means  
17 that the percentages are so high that you can get an estimate at  
18 the mathematical maximum.

19 Q. What did it show with regard to Anglo voting?

20 A. And with regard to Anglo voting it showed a fundamentally  
21 different pattern. It showed that overwhelmingly Anglo voters  
22 block-voted against the candidates of choice of Latino voters,  
23 again, regardless of the racial identity of those candidates.  
24 Only a little more than 20 percent of Anglo voters in our  
25 statewide estimates voted for the Democratic candidate.

1 Q. Now, in the county-by-county analysis that's set forth in  
2 that table, how does that compare to the statewide results you  
3 found?

4 A. It very strongly confirms what I found statewide. Once  
5 again, in every individual county African American voters and  
6 Latino voters were overwhelmingly jointly cohesive in voting for  
7 the Democratic candidate regardless of race. And likewise in  
8 every single county with one exception Anglo voters  
9 overwhelmingly block-voted against the candidates of choice of  
10 Latino and African American voters.

11 Q. How does -- how do your results of 2008, 2010 and the  
12 analysis that you've done in these elections, how does that  
13 compare to the study of -- that you did, the ecological  
14 regression study in 2003 for LULAC v. Perry?

15 A. Yeah. I submitted an extensive report cited in my report  
16 here and I found an identical pattern of Latino and African  
17 American cohesion behind Democrat candidates and Anglo block  
18 voting against those candidates. In fact, when you average it  
19 out by county the numbers are almost identical. They're within a  
20 percentage point or two.

21 And as I pointed out in that 2003 report, that was the  
22 universal finding of all the many experts cooking the broth in  
23 that case, including Dr. John Alfort, the expert for the State  
24 who likewise found African American and Latino cohesion in  
25 general elections and white block voting.

1           And once again a bit of an outlier was Travis County  
2 where the votes are pretty evenly divided on the part of Anglos.  
3 But I don't believe any of the districts I'm looking at comprise  
4 any significant portion of Travis County. And that doesn't  
5 affect my Texas statewide results because I looked at it precinct  
6 by precinct, not county by county. The analysis doesn't know  
7 anything about Travis County. It just looks at the precincts.  
8 And the results in Travis County simply average out across the  
9 entire state.

10           So my statewide results are not distorted or biased in  
11 any way and they incorporate every single precinct in the state.  
12 Not just the heavily white, heavily black or heavily Latino  
13 precincts. And my county-by-county analysis incorporates every  
14 single precinct in those counties so we're looking at everything.

15           JUDGE SMITH: So your conclusion then is block voting  
16 by all three groups?

17           THE WITNESS: I'm sorry, Judge.

18           JUDGE SMITH: Your conclusion then is block voting by  
19 all three groups?

20           THE WITNESS: Yes, Judge Smith, that's correct.

21           JUDGE SMITH: Black, Hispanic and Anglo?

22           THE WITNESS: That's right. Obviously very different  
23 block voting when it comes to the Anglos, but you're right.

24           JUDGE SMITH: I mean, you seem to use the phrase "block  
25 voting" in your testimony just to refer to the Anglo vote but

1 it's block voting for all three.

2 THE WITNESS: You're absolutely right. I tend to fall  
3 into the terminology the Court used in Gingles, but regardless of  
4 the terminology it is absolutely block voting by all groups.  
5 You're absolutely right.

6 Q. (BY MR. HEBERT) And what did you conclude with regard to  
7 your analysis here set forth in table 2 insofar as it relates  
8 back to table 1, the first table you gave us on cohesiveness?

9 A. Well, this is an extremely powerful confirmation of what we  
10 found in table 1 with respect to cohesiveness in the choice of  
11 primaries. You know, I'd have to reconsider the analysis if it  
12 turned out that Hispanics and black voters in actual general  
13 elections were voting overwhelmingly against Democratic  
14 candidates. But that's not even close to what I found. What I  
15 found is exactly consistent with what I found as I said using  
16 entirely different methods and entirely different data sets for  
17 choices to participate in Democratic or Republican primaries.

18 Q. And what did you find with regard to the cohesiveness of the  
19 voting patterns in general elections with regard to the  
20 candidates chosen?

21 A. I found there was no question about the cohesiveness of  
22 Hispanic and black voters in general elections. And let me say  
23 these are the elections that actually send people to office and  
24 these are the elections that have many, many more voters than  
25 primary elections. So regardless of what might be happening in

1 primary elections this certainly establishes a usual pattern of  
2 cohesion on the part of Hispanic and black voters or, you know,  
3 block voting on their part for candidates of their own choice.

4 JUDGE SMITH: Why was Fort Bend not included in table  
5 2? I believe it was the only county that was dropped from table  
6 1 to table 2.

7 THE WITNESS: I don't think I had data individually  
8 broken out for Fort Bend County. That would be the only reason.  
9 I wouldn't know any selectivity otherwise.

10 JUDGE SMITH: Oh, wait. I beg your pardon. You did.  
11 You have it listed there.

12 THE WITNESS: It's there.

13 JUDGE SMITH: I'm sorry.

14 THE WITNESS: No problem, Judge Smith.

15 JUDGE SMITH: My mistake.

16 THE WITNESS: Sure.

17 Q. (BY MR. HEBERT) So I believe, Dr. Lichtman, you also  
18 indicated that another part of your study was regarding turnout?

19 A. Yeah. I don't think I quite finished my answer there which  
20 was the other part of this is Anglo voters are also block voting.  
21 And they're cohesive, but they're cohesive in the opposite  
22 direction of Latinos and African Americans, block voting against  
23 their candidates of choice.

24 Q. So does the identity of the Democratic candidates seem to  
25 matter here with regard to the way the voting choices break down?

1 A. What's absolutely remarkable about this analysis is it  
2 doesn't matter who emerges from the Democratic primary. They may  
3 or may not have had preferences in the Democratic primary, but  
4 that makes no difference. The racial identity of the Democratic  
5 candidate, the racial identity of the opposition candidate  
6 doesn't seem to matter and that --

7 I also looked at Professor Engstrom's report. I looked  
8 at some elections with Republican Latinos against Anglo Democrats  
9 and he found the same thing, that Latinos were voting for the  
10 Anglo Democrat, not the Republican Latino.

11 So, you know, we all seem to be finding -- you know,  
12 cutting into the pie and finding it's a cherry pie no matter what  
13 we do.

14 Q. So you found that the choices of African Americans and  
15 Latinos with regard to which party primary they choose, they  
16 choose overwhelmingly the Democratic party. And then you also  
17 found that in general elections they tend to support the same  
18 candidates, correct?

19 A. The same candidates who are Democrats in every case.

20 Q. Right. And so even if their voting preferences may have  
21 diverged in the primary does the data show that they came  
22 together in the general?

23 A. Yes. And as I said, the general elections are the most  
24 important. They send the people to office and they encompass  
25 many, many more voters than are encompassed in the primaries.



1 And generally there are more general elections because there are  
2 a lot of uncontested primaries as well.

3 Q. And did you study the turnout rates for the various groups  
4 in Texas?

5 A. I did, Mr. Hebert.

6 Q. Okay. And are those results reported on table 3, page 10?

7 A. They are.

8 Q. All right. And what is the significance of turnout, first  
9 of all?

10 A. The significance of turnout is that if you just looked at  
11 the block voting numbers for Latinos, African Americans and  
12 Anglos that we just went over, because Latinos and African  
13 Americans are so cohesive it may appear that even in districts  
14 that were not majority minority Anglos and Latinos might have  
15 opportunities to elect candidates of their choice. Might.

16 But electoral opportunities are composed of three  
17 things: The demographic composition of the district, the voting  
18 behavior of the groups in the district and the turnout of the  
19 groups within the district particularly when you're dealing with  
20 voting age population. So that's a third important component  
21 that you have to look at in assessing electoral opportunities.

22 Q. And let's turn to your analysis then. And what does your  
23 turnout analysis show?

24 A. Well, again it shows the same thing we all found in 2003,  
25 that there are turnout differences in general elections among the

1 three groups with, not surprisingly, Anglos in terms of the VAP  
2 participating having the highest participation rates.

3 I'm looking right now at the Texas statewide numbers  
4 but they're ratified everywhere. Blacks having the next highest  
5 participation rate. And not surprisingly, Latinos, as a  
6 percentage of VAP, having the lowest participation rate. That's  
7 the Texas statewide findings.

8 Q. And with regard to the individual counties -- we won't go  
9 through all those numbers, but what generally do they show?

10 A. Well, there are two things that they show. One, that the  
11 same patterns that you see statewide are replicated county by  
12 county with generally Latinos having the lowest rate of turnout,  
13 blacks the next lowest rate and Anglos the highest.

14 But there's also something very important that comes  
15 out of this and that is turnout varies and varies a great deal  
16 from county to county. For example, the estimated Latino turnout  
17 in Bexar County is 19 percent. In Tarrant it's four percent. In  
18 Harris it's six percent. You don't have quite that large a  
19 variation among the other groups, but there is still a variation.

20 This is a very important point because it means that  
21 you can't have a single number whether it be citizen voting age,  
22 voting age or any metric you want that can apply statewide and  
23 that can be a target statewide because the turnout behavior is so  
24 fundamentally different county by county.

25 That's means, as we'll see later on I suspect, that

1 what you've really got to do is follow what Thornberg versus  
2 Gingles said: Do a searching, practical inquiry. And here in  
3 Texas, given these variations, a searching practical inquiry  
4 means you've got to assess electoral opportunities district by  
5 district. And you've got to actually look at elections, not just  
6 demographic numbers, not even just demographics and voting  
7 numbers.

8 Q. And did you, in fact, do that?

9 A. I did for both the State House and the Congress.

10 Q. All right. Well, let's take the State House plan first and  
11 let's go to that section of your report. What data did you look  
12 at to do an analysis of the proposed alternative State House map?

13 A. I used data supplied by the Texas Legislative Council on the  
14 voting age population breakdowns in districts. And then for the  
15 practical analysis of voting opportunities I used actual  
16 elections. I used the same five elections from the most recent  
17 election cycle in comprising a mix, a racial mix of candidates.

18 And we're fortunate here in Texas and at the  
19 Legislative Council we'll do something called reconstituted  
20 elections. We relied on these very heavily in the LULAC case in  
21 2003. And I heard some testimony about them in this case as  
22 well.

23 And what they do is they'll take the precincts of any  
24 given district and then take the election results in any given  
25 election for those precincts and come up with actual percentage

1 votes for the individual candidates confined to the district that  
2 you're looking at. So you can actually look at the bottom line  
3 which is really what counts here; how did candidates actually  
4 fare in those districts. Did the choices of Latino and African  
5 American voters, which are the Democratic candidates, prevail or  
6 did the choices of the Anglo voters, which are the Republican  
7 candidates, prevail in these general elections.

8 Q. And did you apply this data analysis to House plan H232?

9 A. Yes. I applied the double analysis that I've spoken of,  
10 first looking at majority minority districts and then looking at  
11 what I call their effectiveness in terms of actual elections.

12 Q. Before we look at the effectiveness, how did you know which  
13 ones to look at in Plan 232 that were minority opportunity  
14 districts?

15 A. Yeah. Well, I didn't, you know, a priori, but what I  
16 isolated first was majority minority districts, some of which  
17 were also majority Latino VAP that were in alternative Plan 232  
18 but not in the state-passed proposed House plan. In other words,  
19 where there are net add-on majority minority districts. That was  
20 my first step.

21 Q. And what was -- did you do any other inquiry into what  
22 districts were minority opportunity districts besides that?

23 A. Well, what I did was I talked to the drawer of the plan, who  
24 I believe was Ed Martin, and asked him what additional districts  
25 there were. And then, of course, I did my own check. I went

1 back to the Texas Legislative Council data which reports all the  
2 majority minority districts as well as the other districts to  
3 make sure that, in fact, we had the same add-on districts that I  
4 identified. And I believe they're in table 4, I think.

5 Q. Right. And that would be on page 11. Is that a table that  
6 describes each of these districts demographically?

7 A. Yes, it is.

8 Q. All right. Let's -- what does table 4 show?

9 A. All right. First in the Dallas County area it shows there  
10 are two net additional majority minority districts in alternative  
11 Plan 232: HD 101 with 54.2 percent combined minority, HD 102  
12 with 75.5 percent combined minority. There is also in the Dallas  
13 County area an additional district that is Latino VAP majority.  
14 That is HD 105, 60 percent Latino VAP, 72.3 percent combined  
15 minority VAP.

16 If we get to the Harris area there are two districts  
17 that are majority minority, HD 132, which is 67.3 percent  
18 combined minority VAP; HD 149 which is 84 percent combined  
19 minority VAP. Then there is a district that's also a majority  
20 Latino VAP district in that area, HD 138, 57.3 percent Latino  
21 VAP, 71.2 percent combined minority VAP.

22 Tarrant County we found there is HD 96, which is 51  
23 percent combined minority, and in Fort Bend, HD 28, 70.6 percent  
24 combined minority.

25 MR. HEBERT: And, Your Honors, I'm not going to bring

1 the map up but they obviously -- this Plan 232 --

2 JUDGE GARCIA: In volume -- table 4?

3 MR. HEBERT: -- is in volume 1 along with its  
4 statistics. And I'm not going to take the Court's time up  
5 showing where those districts are. They'll speak for themselves.

6 JUDGE GARCIA: All right.

7 Q. (BY MR. HEBERT) Dr. Lichtman, on the next page of your  
8 report you have a statement in the report in which you reach the  
9 conclusion that with regard to the eight districts that you just  
10 outlined that they provide a reasonable opportunity for minority  
11 voters to elect the candidates of their choice, correct?

12 A. I did say that, correct.

13 Q. How did you -- how did you find that -- how did you reach  
14 that conclusion?

15 A. As I said, you cannot judge a district by its demographics  
16 alone because of the great turnout differences county by county.  
17 And therefore what you have to do is go to the direct evidence,  
18 the actual elections themselves. You know, judging a district by  
19 its demographics alone is like judging a basketball player by his  
20 height alone. It's an indirect indicator. It's much better to  
21 look at how well the guys rebounds, scores, passes and plays  
22 defense. That's what we're doing here. We're looking at the  
23 bottom line, what actually happens in elections, not demographics  
24 alone. What I found was --

25 Q. And before you continue --

1 A. Yeah.

2 Q. -- your results are reported on page 13, table 5?

3 A. Correct.

4 Q. Continue, please.

5 A. And they're summarized on table 6. I don't know if you want  
6 to go through each individual or if we just go to the summary.

7 Q. Well, just give us first with regard to table 5 --

8 A. Yeah.

9 Q. Essentially just give us a snapshot of what that's showing  
10 and then you can jump to the next table --

11 A. Sure.

12 Q. -- table 6, which is a summary of what table 5 is.

13 A. Yeah. Table 5, you know, looks very busy but it's actually  
14 fairly simple. It's the same five elections: 2010 governor,  
15 lieutenant governor; 2008 President, U.S. Senate, Supreme Court  
16 Chief with different racial mixes. And for each of the eight  
17 districts that I examined in table 4 it looks at the actual  
18 results of these five elections. Did the Latino candidate of  
19 choice, which is the Democratic candidate, prevail or did the  
20 Anglo candidate of choice, the Republican candidate, prevail?  
21 And it gives you actual percentages for each election.

22 For example, in District 28 it shows in 2010 in the  
23 governor's election the candidate of choice prevailed with 50.5,  
24 but in the lieutenant governor election the candidate of choice  
25 of Anglos prevailed with 53.9.

1           If we go on to 2008 in District 28 we see in every one  
2 of those elections the candidate of choice of Latinos prevailed.  
3 So it's not a locked district. It's not a guaranteed district.  
4 But in four out of five cases the candidate of choice of Latinos  
5 prevailed, so it certainly falls within the classification of  
6 what I call an effective minority opportunity district. That is  
7 a district that gives minorities a reasonable opportunity to  
8 elect candidates of their choice. And in four out of five cases  
9 with this great mix in two very different kind of election years  
10 the candidate of choice of minorities would have prevailed.

11 Q. In the summary of table 5 as set forth in table 6 it's a  
12 number of Democratic candidate wins and a number of Republican  
13 wins for each of the eight districts, correct?

14 A. Right. And of course the Democrat is the candidate of  
15 choice of the minorities and the Republicans are the candidate of  
16 choice of Latinos. And we can see in seven of eight districts,  
17 with the exception of 132, the candidate of choice of Latinos won  
18 at least four out of five times. Four out of five. And in a  
19 couple of cases, five out of five. In District 132 the candidate  
20 of choice of Latinos won three out of five times.

21           So in every district there clearly is a reasonable  
22 opportunity for minority voters to elect candidates of their  
23 choice. Not all of them may be locked or guaranteed districts,  
24 but that's not what we talk about when we talk about effective  
25 minority opportunity districts.



1 Q. So in comparison to the state's map, proposed Plan H 283,  
2 compared to this alternative map 232 that you studied, that the  
3 Perez plaintiffs have proffered as an alternative map, what in  
4 your expert opinion -- how would you compare those two maps with  
5 regard to the creation of minority opportunity districts?

6 A. In my expert opinion map or Plan 232 provides eight  
7 additional majority minority districts, some of which are  
8 majority Latino and all of which provide reasonable opportunities  
9 for Latino and African American voters to elect candidates of  
10 their choice.

11 Q. Now, I believe the last section of your study dealt with  
12 your similar analysis for congressional plans, correct?

13 A. Yes.

14 Q. All right. In the two plans here that we're talking about  
15 are Plan C 121, the Fair Texas Plan also known as the Fair Texas  
16 Veasey Plan and the state's enacted map C 185, correct?

17 A. Those are the two sets of comparison I performed. That's  
18 correct.

19 Q. Right. And what did you do first in doing your analysis in  
20 comparing these two plans?

21 A. Well, first I had to look at state proposed plan -- I  
22 believe it's 185.

23 Q. That's correct.

24 A. And on the surface that plan seemed to create 13 districts  
25 with voting -- in fact, it did from the surface, even deep down,

1 it created 13 majority minority districts.

2 But I know and I've already testified you can't judge  
3 the effectiveness of a district from the demographics alone. In  
4 fact, a very good plan drawer can create districts that on the  
5 surface appear to elect the candidates of choice of minorities,  
6 but in fact when you drill down to real elections actually elect  
7 the candidates of choice of Anglos.

8 So what I did was is I looked to see whether or not all  
9 of these 13 districts were effective minority opportunity  
10 districts by applying exactly the same methodology I applied to  
11 the State House plan seeing if there were districts in there  
12 that, in fact, when you looked at the elections, did not provide  
13 opportunities for Latinos and African Americans to elect  
14 candidates of their choice; was the plan what it appeared to be.

15 Q. And what did your analysis show when you analyzed the  
16 State's plan and looked at these 13 majority minority districts?  
17 And if we could pull up table 7 on page 16.

18 A. Yeah. I found that there were three districts, which  
19 although majority minority, and one of them quite substantially  
20 majority minority, the other two fairly close, that none of these  
21 three districts were even close to being effective opportunity  
22 districts for Latino and African American voters. That is they  
23 did not provide reasonable opportunities for Latino and  
24 African American voters to elect candidates of their choice. And  
25 those are District 23 in Plan 185, 68.3 percent combined minority

1 VAP, 63.8 percent Latino VAP; District 6, 55.6 percent combined  
2 minority; and District 27, 52.8 percent combined minority.

3 Like I said, you can't tell anything from just looking  
4 at these numbers. You have to drill down to the elections and  
5 that's what I did.

6 Q. And those results are reported on table 8, the next page,  
7 page 17?

8 A. They are.

9 Q. And what does that analysis show of the actual election  
10 results plugged into these three districts?

11 A. Let me give you an example. District 23, which is by far  
12 the highest combined minority district and actually has what  
13 looks like a fairly substantial Latino VAP majority, District  
14 23 -- the candidate of choice of Latino voters lost all five  
15 elections and in some cases by wide margins. For example, in the  
16 Perry versus White election, Perry got about 53 and a half  
17 percent and White got about 43.8, about a 10-point win. And  
18 Lieutenant Governor Dewhurst got about 58 percent.  
19 Chavez-Thompson got about 39 percent, a 20-point win.

20 The elections were closer for obvious reasons in 2008  
21 but the pattern was exactly the same. McCain defeated Obama in  
22 this district by four points. Cornyn defeated Noriega by about  
23 two and a half points and Jefferson defeated Jordan by about two  
24 and a half points.

25 So not in a single election, even in District 23, did

1 the candidate of choice of Latino and African American voters  
2 prevail. And the same pattern, much more extreme, overwhelming  
3 victories even in 2008, for the candidate of choice of Anglo  
4 voters who was not the candidate of choice of Latino voters in  
5 District 6 and District 27.

6           So I concluded that none of these districts -- what you  
7 really have to look at, actual elections, provided reasonable  
8 opportunities for minorities to elect candidates of their choice.  
9 And two of them are nearly safe districts for Anglo voters.

10 Q.    So of the 13 majority minority voting age population  
11 districts that the State's proposed plan creates, C 158, what's  
12 the net number of effective minority districts that -- where  
13 minorities have a reasonable opportunity to elect their preferred  
14 candidate of choice?

15 A.    So you take 13 districts, you subtract three, and you get  
16 10 districts in which by my analysis minorities had reasonable  
17 opportunities to elect candidates of their choice and could be  
18 counted as effective minority districts. I have no quarrel with  
19 any of those 10 districts.

20 Q.    Now, in studying the State's plan did you draw any  
21 conclusions as an expert as to why the state's plan didn't  
22 include more majority minority districts than it did?

23 A.    Well, I don't know exactly why, but I can speculate if you  
24 like. It seems this plan was very carefully crafted to maximize  
25 Anglo voter preferences and minimize minority preferences. The

1 same thing I saw in 2003. These are very smart people and they  
2 knew what they were doing.

3 Q. Well, let's turn to C 121, the Fair Texas or Veasey Plan.  
4 Did you also study that plan in terms of the minority opportunity  
5 districts that were created?

6 A. I did, Mr. Hebert.

7 Q. What did you find with regard to the number of majority  
8 minority districts in that plan?

9 A. I found there were 14 majority minority districts in that  
10 plan.

11 Q. And where were those results reported?

12 A. I simply reported 14 and then reported the one I found  
13 ineffective on table 9.

14 Q. All right. So of the 14 -- there are 14 majority minority  
15 districts --

16 A. Yes.

17 Q. -- in C 121?

18 A. Yes.

19 Q. All right. And of them you found one reported in table 9  
20 was not an effective district for minority voters?

21 A. Yes. That was District 22 in what you call the Fair Texas  
22 Plan.

23 Q. And --

24 A. It's 50.8 percent combined minority according to table 9. I  
25 then did the election analysis in table 10.

1 Q. And that shows -- that confirms the results that District 22  
2 was not an effective district for minority voters notwithstanding  
3 the fact that it is a bare majority of minority VAP?

4 A. That's correct. It's a district in which the candidates of  
5 choice of Latino and African American voters lose every time.

6 Q. So tables 9 and 10 on pages 18 and 19 show the results as to  
7 that District 22?

8 A. That's right.

9 Q. Now, you also studied, did you not, the other minority  
10 opportunity districts in Plan C 121, correct, the other --

11 A. I looked at --

12 Q. 13?

13 A. There were 13. And I looked at the three that were net  
14 majority minority districts that were not comparable districts in  
15 the State plan. And so obviously you have to look at their  
16 demographic composition and then test it because we don't know  
17 just by looking at the Democrat composition whether these are net  
18 add-on effective minority opportunities districts or not.

19 Q. And did you employ the same approach in identifying the  
20 three new minority opportunity districts in Plan C 121 as you did  
21 with the House map earlier?

22 A. Absolutely. I checked with Ed Martin, who was deeply  
23 involved in drawing this plan. And, of course, I then was able  
24 to check with the Texas Legislative Council data, which has  
25 extensive data on all districts and all plans.

1 Q. And what were your results when you looked at the -- from a  
2 demographic standpoint of looking at the three new minority  
3 opportunity districts in Plan C 121?

4 A. Okay. In Bexar/Hidalgo there was CD 33, which was a Latino  
5 VAP majority district at 74.5 and a combined VAP majority  
6 minority district at 79.

7 Q. Excuse me. This is on page -- page 21, table 11?

8 A. Yes. And I think that table is up. So CD 33, 74.5 percent  
9 Latino VAP, 79 percent combined minority VAP. Dallas/Tarrant,  
10 CD 34, 66.2 percent Latino VAP, 79.9 percent combined minority  
11 VAP. CD 35 did not have a single group as a majority, but was  
12 combined 66.4 percent majority minority.

13 Q. Now, did you do any analysis of these three new districts  
14 beyond the demographics to determine whether or not they provided  
15 that opportunity for minority voters to elect their preferred  
16 candidates?

17 A. Yes. I performed exactly the same analysis I have done for  
18 the State House and for the districts both in the state-passed  
19 plan for Congress and the alternative plan for Congress that I  
20 did not find to be effective minority opportunity districts.

21 Q. And are those results reported on page 22, table 12?

22 A. They are.

23 Q. And what did that analysis show?

24 A. They showed that these are all districts that provide  
25 reasonable opportunities for Latino and African American voters

1 to elect candidates of their choice to Congress. In every  
2 district and every election the candidate of choice of Latino and  
3 minority voters prevailed and usually by a wide margin.

4 Q. So five out of five times in the two election cycles  
5 minority preferred candidates prevailed in those elections?

6 A. Yes. Those are clearly reasonable opportunity or effective  
7 minority opportunity districts.

8 Q. So I'm going to ask you the same question now that I did  
9 with regard to the House plan. Based on your analysis of the  
10 State's maps, C 185 and its comparison to C 121 --

11 A. Yes.

12 Q. -- what is your expert opinion with regard to minority  
13 opportunity districts in the two maps?

14 A. My expert opinion is that as compared to the state-passed  
15 proposed plan, alternative Plan 121, sometimes called the Fair  
16 Texas Plan, provides a net of three additional majority minority  
17 districts, two of which are majority Latino VAP, all of which  
18 provide reasonable opportunities for Latinos and African American  
19 voters to elect candidates of their choice and thus they are all  
20 effective minority opportunity districts.

21 MR. HEBERT: I have nothing further. Thank you.

22 JUDGE GARCIA: Thank you.

23 MR. COHEN: Your Honor, can we have a few minutes?

24 JUDGE GARCIA: Sure. Of course. Do you need a recess?

25 MR. COHEN: Yes.



1 JUDGE GARCIA: Of course.

2 (Change of reporter.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (Change of court reporters.)

2 JUDGE GARCIA: Okay. You may begin.

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

4 CROSS EXAMINATION

5 BY MR. COHEN:

6 Q. Hi, Dr. Lichtman. First of all, it is good to see you,  
7 sir.

8 A. Good to see you again.

9 Q. I have a few different areas that I want to discuss with  
10 you. We discussed a great deal at your deposition, and I will  
11 be moving the deposition into the record, so we can eliminate  
12 many of the things we talked about then.

13 But I first would like you to look at what is on the  
14 screen. It is actually the 25th page of your report. It is  
15 the appendix that shows the Texas Democratic voter file.

16 A. I have it.

17 Q. Okay. You discussed it with Mr. Hebert. First off, it is  
18 in a different font. Is this a copy of something that you got  
19 from the Texas Democratic Party, this page?

20 A. Yes.

21 Q. Okay. And if I understand from your explanation in the  
22 text, it is used by the Democratic Party with the intent of  
23 generating a database with the address and voter history of  
24 every voter in Texas, right?

25 A. I don't -- yes. It says including address -- I am not

1 sure every voter history, but it says address and voter  
2 history, yes.

3 Q. Regardless --

4 A. As best as they can.

5 Q. Regardless of partisanship, right? Now, these data or  
6 this file is based on data that the Texas Democratic Party got  
7 from the Secretary of State; that is correct, isn't it?

8 A. Originally, yes. And, of course, they have applied their  
9 own methodologies to it.

10 Q. Okay. Now, presumably -- now, you indicated that because  
11 they are using it for voting purposes, for canvassing  
12 purposes, perhaps, that you believe it is more accurate than  
13 whatever -- than the Secretary of State data; is that correct?

14 A. I never said that.

15 Q. Okay. Did I understand you to say that there is at least  
16 an incentive for it to be accurate?

17 A. I did say that.

18 Q. Okay. The purpose that presumably the party uses for this  
19 is to identify individual -- individuals that it can solicit  
20 for funds, that it can help drive to the voter booth, that it  
21 can call. Isn't that a correct statement?

22 A. Among many other things, those certainly would be  
23 encompassed.

24 Q. Okay. And the Democratic Party indicates that its  
25 methodologies are, for Hispanics, to do -- to use Spanish

1 surnames, right?

2 A. Correct.

3 Q. And then for African-Americans, they use a vendor  
4 specializing in ethnic coding. Do you know who that vendor  
5 is?

6 A. I don't, but I do know that there are such vendors around,  
7 and that this is used by Republicans and Democrats all over  
8 the country.

9 Q. Okay. And the methodology is, as I understand it, is to  
10 take districts that are principally known to be Latino and  
11 African-American or African-American and Asian and then do  
12 subtraction of surnames, right?

13 A. That's incorrect.

14 Q. What is the methodology?

15 A. You don't use something as high a level as districts.

16 Q. Okay.

17 A. You drill down to a much finer level for your analysis,  
18 and that would be the precinct level, and then you do a series  
19 of other analyses on the precinct level, including the  
20 subtraction of Hispanic and Asian surnames.

21 Q. Okay. Let's put up the next chart. Now, you were here  
22 earlier when Dr. Ansolabehere was testifying?

23 A. I heard only pieces of his testimony, so I could not  
24 accurately tell you what he said.

25 Q. Well, neither can I, sir, but let me --

1 A. That is your issue.

2 (Laughter.)

3 Q. Let me try one thing with you. If I understand his  
4 ecological inference results, he reported approximately  
5 75-percent Anglo cohesion, 75-percent Hispanic cohesion for  
6 the other candidate, that is, against the candidate, the Anglo  
7 candidate, and greater than 90-percent African-American?

8 A. No. That is not what I heard. Again, let me explain what  
9 I heard.

10 Q. Sure.

11 A. What I heard was, he got those results from homogeneous  
12 precinct analysis. And the problem with homogeneous precinct  
13 analysis, when you are looking at minority, particularly  
14 Latino voting, is you are going to greatly underestimate  
15 Latino block voting, because precincts that may look like they  
16 are 80 or 90-percent Latino in their demographic composition  
17 are going to be much less than that in their actual voters,  
18 because the turnout of Latinos is so much lower than the  
19 turnout of other voter groups.

20 So I am not surprised that he would underestimate  
21 Latino cohesion using the methodology of homogeneous precinct  
22 analysis. You do that every time when there is such vast  
23 disparities in turnout.

24 Q. Is turnout a factor that the state legislature can control  
25 for when it is drawing districts?

1 A. Of course.

2 Q. Is turnout a function of state action with respect to the  
3 ability to exercise one's franchise?

4 A. In part, absolutely, yes.

5 Q. And how is that, sir?

6 A. State policies can greatly affect turnout, because we know  
7 that turnout is very closely tied to socioeconomic standing.

8 Q. Okay.

9 A. Let me finish. And state policies with regard to economic  
10 development, education, welfare, and a host of other matters  
11 can affect the socioeconomic standing, particularly of  
12 minority groups and, therefore, affect turnout.

13 The state can also directly affect turnout with  
14 respect to the laws it has, with regard to registration and  
15 with regard, for example, to identification that is required  
16 at the polls, so it can indirectly affect turnout and it can  
17 directly affect turnout.

18 Q. Okay. I certainly didn't mean to interrupt you.

19 A. No problem. I don't mind that. It happens to me all the  
20 time. I am from New York.

21 Q. Let me show you this chart that I put together. And this  
22 derives data from Dr. Kousser, who did a statewide analysis of  
23 a series of 2010 races, and Dr. Engstrom, who did some 2010  
24 and 2008; and then, first, your analysis. And this was Anglo  
25 general election voter estimates.

1           Now, if I understand it correctly, these numbers  
2 correlate pretty closely, and you used -- again, they used  
3 specific elections that they identified, used five general  
4 elections in which the Democrats -- in the general elections,  
5 the candidate of choice, right?

6 A. I cannot speak to either the elections they chose --

7 Q. Okay.

8 A. -- or to their methodologies.

9 Q. Okay.

10 A. I can only speak to what I did.

11 Q. Of course, sir. Now, these numbers, you will agree with  
12 me, are fairly correlative; they are not too far from one  
13 another? Is that a fair statement?

14 A. Yes. But they are based on different elections.

15 Q. Okay. Actually -- okay. That's fine.

16           MR. COHEN: Could we have the next slide?

17 BY MR. COHEN:

18 Q. Now, here, this was using Dr. Engstrom's sort of basket of  
19 South Texas counties and your basket of eight counties, as  
20 well as statewide number, and Dr. Kousser, which is statewide.  
21 As you suggested, you can't go true apples to apples, because  
22 nobody used all of the same elections, but this was something  
23 I put together.

24           And if I understand Dr. Engstrom, he has got a  
25 number up top and a number on the bottom, and that is

1 bivariate ecological inference reporting; is that right?

2 A. I cannot speak to what Dr. Engstrom did. I'm sorry.

3 Q. Do you not recognize those numbers or what -- if I  
4 represent to you that he testified that those are ecological  
5 inference numbers that he came up with, for example,  
6 81.9 percent Latino general election voting for  
7 Ms. Chavez-Thompson in 2010?

8 A. Are you saying that's bivariate or multivariate?

9 Q. He said they were bivariate.

10 A. Okay.

11 Q. Okay.

12 A. I will take your representation, but I can't speak to what  
13 Dr. Engstrom did, obviously.

14 Q. Okay. Similarly, 88.8 -- the number was reported as 88.8.  
15 It had to have been between 86.0 and 87.7, if that's the way  
16 it was presented; isn't that correct?

17 A. Again, you know, I don't know where the error lies in  
18 Dr. Engstrom's work. It could be the 88.8 is correct and the  
19 numbers on the bottom are incorrect. I have no idea.

20 Q. Okay. With respect to the Land Commissioner Uribe as the  
21 candidate, the 79.8, the 0.8 in parentheses, that means,  
22 essentially, plus or minus 0.8 in normal usage for that sort  
23 of reporting; isn't that a correct statement?

24 A. It could be. Again, I don't know what Dr. Kousser did, so  
25 I can't comment on it.



1 Q. You do know what you did, and --

2 A. That, I do know.

3 Q. And I understand your report to be 94 percent as the mean  
4 with the eight-county report, and 89 percent statewide for  
5 Latino general election voter estimates for those five general  
6 elections?

7 A. That sounds right.

8 Q. And you will agree with me that irrespective of what those  
9 numbers reflect and how Dr. Kousser and Dr. Engstrom got to  
10 them, 89 percent is a little bit higher than Dr. Engstrom,  
11 fairly, substantially higher than -- or certainly  
12 statistically higher than Dr. Kousser, right?

13 A. Yes. Let me say several things.

14 Q. Sure.

15 A. One, I don't know what they did. Two, we looked at  
16 different elections, so it is an apples and oranges comparison  
17 entirely. Three, all of us found overwhelming Latino cohesion  
18 for whoever the Democratic candidate was that we analyzed,  
19 including elections that I didn't analyze. So while I can't  
20 comment on anything that they did substantively, all three  
21 analyses reached the same conclusion.

22 Q. Understood. And what I am trying to understand is not the  
23 similarities between what you all reported, because truly,  
24 there is cohesion in each. I am trying to understand why your  
25 numbers come in a little bit higher.

1 A. And I can't tell you, because, A, we have used different  
2 elections and, B, I don't know what they did, so you are  
3 asking me to shoot in the dark to analyze analyses that I  
4 haven't seen.

5 Q. Okay. Well, let's go to the next slide. This one, again,  
6 it is a Dallas County slide. It is Ms. Yanez, came in at --  
7 these, by the way, are the highest reports that Dr. Engstrom  
8 reported with the campaigns in Dallas County that he tracked.

9 And he came in with Yanez at 90.3, with a confidence  
10 number up as high as 95.6. And Mr. Molina, running for  
11 criminal court, at 88.9, with a confidence level, taking him  
12 up as 94.1.

13 Now, for the five general elections that you did,  
14 you came in with Latino general election vote, estimates of  
15 99 percent, right?

16 A. I think that's right.

17 Q. Okay.

18 A. I can check it, but --

19 Q. You certainly can check.

20 A. This is which county?

21 Q. Drawn from table 2, sir.

22 A. Right.

23 Q. If I understand ecological regression, as you explained  
24 it, it is easy to come in at 100, because that is -- because  
25 that doesn't actually mean 100 percent of the voters voted for

1 a candidate. It is just that is the way the upper bound  
2 works, right?

3 A. It is not easy to come in with 100. You only get that  
4 when, in fact, the voting by one group is so heavy that  
5 sometimes you get estimates of 100, 99, 94, 96.

6 Q. Don't you sometimes get estimates well above 100?

7 A. You can, but I correct for that by using -- and I have  
8 written about this extensively --

9 Q. Sure.

10 A. -- a method of bounds that limits that.

11 Q. Okay. Do you correct for it by notating a number of 117  
12 as 100, or is there a further calculation?

13 A. There is a further calculation that you do. You set the  
14 upper limit at 100, and then you readjust the other estimates  
15 accordingly. It doesn't change things very much at all. We  
16 are talking about the far extremes here, and that is where you  
17 sometimes get, you know, estimates that can be around 100 or  
18 96 or 99 or 90. But regardless, that is overwhelming  
19 cohesion.

20 Q. Sure. Understood. And I believe you would agree with me  
21 that there is overwhelming -- I think you just stated that  
22 Dr. Engstrom's numbers depict an overwhelming cohesiveness, at  
23 least with respect to these two elections?

24 A. Right, which are elections I didn't look at, but  
25 certainly.

1 Q. Sure. But your numbers, again, are about ten percentage  
2 points higher than the highest numbers Dr. Engstrom reported,  
3 right?

4 A. They are not ten percentage points higher than the range,  
5 he points out; they may be four or five higher, and it is a  
6 distinction without a difference. Whether it is 94, 90, 89 or  
7 99 makes absolutely no difference substantively.

8 Q. Okay. We will go one more. And I guess the same is true  
9 here, that the numbers are higher; again, the highest report  
10 that Dr. Engstrom came in with Harris County, with the  
11 exception that I think Yanez was the highest number, but there  
12 is actually another candidate, Mr. Molina, who came up with  
13 86.6 as a high bound.

14 But you would agree with me that there is a marked  
15 difference between the mean of his two and your five general  
16 elections basket of 94 percent, right?

17 A. Well, it is a meaningless comparison, because I analyzed  
18 five different elections than the ones he is looking at here,  
19 so the comparison tells you nothing, except that, again, take  
20 any of these estimates you want -- and I don't know anything  
21 about their methods or what they came up with or, overall,  
22 what elections they analyzed -- there is overwhelming cohesion  
23 from every expert, from every single, individual election,  
24 including the five I looked at and the many they looked at  
25 that I didn't.

1 Q. Okay. Let's go to the next chart. And the next chart is  
2 actually table 1 from your report that you described, that I  
3 think you discussed --

4 A. I am there.

5 Q. -- extensively with Mr. Hebert. And I understood you to  
6 explain this chart as suggesting that, once more -- and I am  
7 going to speak with respect to Hispanics again, that Hispanics  
8 have shown an overwhelming choice to appear -- to vote in the  
9 Democratic primary, and that that was -- while there is a  
10 large dropoff between 2008 and 2010, that the trend holds true  
11 that irrespective of whether Perry was the lead election or  
12 Obama was the lead election, as in 2008, Hispanics still chose  
13 to -- still vote in large numbers in the Democratic primary,  
14 right?

15 A. That is correct. And let's make clear, when we are  
16 talking about Perry and Obama, we are talking about their  
17 primaries.

18 Q. Of course.

19 A. Not --

20 Q. Of course. And whether it was to vote for Obama or for  
21 Hillary Clinton or whoever the candidate was of choice in the  
22 primary, it was the Democratic primary of 2008, and it dropped  
23 off in the Democratic primary in 2010, right?

24 A. Right. Regardless of what candidate they may or may not  
25 have preferred, they wanted to participate in the Democratic

1 primaries, giving an open choice in Texas.

2 Q. But let's talk about the other column. And I think you  
3 mentioned that in 2008, the Republican primary, and 2010, the  
4 Republican primary, the numbers hold strangely constant, don't  
5 they?

6 A. And I pointed that out. That's really interesting. It is  
7 kind of, you know, a small base for participation in  
8 Republican primaries, regardless of the year, but when there  
9 is a reason to participate in Democratic primaries, many, many  
10 more Hispanics and Latinos come out, African-Americans turn  
11 out.

12 But even just looking at the 2010 primaries, where  
13 twice as many Texans participated in the Republican primaries,  
14 you are getting 86 percent of African-Americans and 74 percent  
15 of Latinos bucking that trend and participating in Democratic  
16 primaries. That is striking.

17 Q. Well, isn't it equally significant that -- doing my  
18 math -- 25.8 percent of Hispanics statewide were in the  
19 Republican primary in 2010? It is the same number. It is  
20 87,000, within, what, 1,500, versus 89,000 in 2008, but that  
21 is 25 percent of the voters in 2010, isn't it?

22 A. Of course. Mathematically, but that means three times as  
23 many participate in the Democratic primary at a time when,  
24 overall, twice as many were participating in the Republican  
25 primaries.

1           That is pretty extraordinary. And if you average  
2 the numbers for the two years, it is an average of 85-percent  
3 participation in Democratic primaries, averaging out two very  
4 different years. That is a very high number for Latinos,  
5 comparable, comparable quite to my numbers that I found for  
6 cohesion in general elections.

7 Q. I understand. I wanted to talk more about these Hispanics  
8 who were, I think you used the term "bucking the trend" and  
9 showing up at the Republican primary, though?

10 A. No, no. I said bucking the trend and showing up in the  
11 Democratic primary of 2010, when the trend was overall for  
12 twice as many Texans to turn out in the Republican primary.

13 Q. I understand, and I apologize.

14 A. No problem.

15 Q. Let's look at Tarrant County. Tarrant County, the numbers  
16 are pretty startlingly different, I guess, from the state  
17 average, right, in that the same -- virtually the same number  
18 voted in 2008 and 2010, the difference being only twelve out  
19 of 4,834.

20           But, of course, that, as a percentage, that dropped  
21 that -- that changes markedly, because there were actually  
22 more appearing in the Republican than in the Democrat. Now,  
23 that -- I suspect that is because of the lead election being  
24 in the Perry -- being the governor, gubernatorial election; is  
25 that it?

1 A. I am not sure of all of that, that I got the question, but  
2 I will try to answer the best as I can. And I went over this  
3 in my direct testimony.

4 Q. Yes, sir.

5 A. First of all, it is a very small number, compared to much  
6 larger numbers statewide in Tarrant County. It doesn't affect  
7 statewide trends at all.

8           Secondly, in fact, the number participating in the  
9 Republican primaries remains the same. This is the small  
10 residual I am talking about among Latinos, but when you have a  
11 reason to participate in the Democratic primaries, the number  
12 increases tenfold for Latinos in Tarrant County, and the  
13 number increases to 83.5 percent. And if you were to average  
14 the numbers over these two very different election years, you  
15 would still find a very high percentage of Latinos voting in  
16 the Democratic rather than the Republican primary, better than  
17 three to one.

18 Q. Are you saying that 4,800 votes in a county, in a primary  
19 is not a substantial number?

20 A. I am saying if we are assessing overall Latino voting  
21 behavior statewide, it is not, and even in Tarrant County, it  
22 is not that much, because as you can see, that number is  
23 dwarfed in 2008, almost six to one, by Latinos participating  
24 in the Democratic primary, so it is, relatively speaking, a  
25 small number.



1 Q. Could you explain, with numbers like this, cohesive  
2 numbers like this, is it solely turnout that explains why  
3 Republicans won Congressional Districts 23 and 27, given that  
4 these were districts that had at least sufficient numbers of  
5 Hispanic citizen voting age population, that their candidate  
6 of choice it seems should have won overwhelmingly?

7 A. Okay. So we are going now to a different table, right?  
8 You were talking about 23 and 27?

9 Q. Uh-huh.

10 A. Yes. And my point was, you cannot judge those districts  
11 by the demographics alone, because demographics can be  
12 deceptive, A, because of massive turnout differences; and, B,  
13 because there can be differences in the degree to which Anglos  
14 vote against the candidate of choice of Latino voters.

15 So I would expect both -- what has gone on in these  
16 districts is that low turnout Latinos were put in and very  
17 high turnout Anglos were put in, who strongly vote against the  
18 Latino candidate of choice. So it is a combination of effects  
19 which explain why you can never judge a district by its cover  
20 alone.

21 Q. Okay. And it is your contention that, essentially, part  
22 of the analysis the legislature should do is an analysis  
23 based, in no small part, on voter turnout, as you described?

24 A. I think the legislature should look at the actual election  
25 results; why do anything indirect -- voter turnout is one

1 component, as I said, of the three components --

2 Q. Sure.

3 A. -- that determine elections. This data is readily  
4 available from the Texas Legislative Council. When I have  
5 advised state governments -- and I have advised many -- and  
6 they ask me, "You know, is this an effective minority  
7 opportunity district?" I always direct them to the elections.

8 Q. Is it your contention that each of the districts that you  
9 showed, that you described that could have been drawn had to  
10 have been drawn?

11 A. You are asking me a legal question?

12 Q. I am just asking your contention, sir.

13 A. If you are asking me a legal question, I can give you my  
14 opinion, which is, yes.

15 Q. Okay. Let me ask this question. Do you know the term  
16 pull, haul and trade?

17 A. The term what?

18 Q. Pull --

19 A. Oh. Pull, haul and trade, from the DeGrandy decision?

20 Q. Yes, sir.

21 A. Yes, I do know it. I was the expert witness in DeGrandy.  
22 Yes. It is a long time ago, but I am not that old yet.

23 Q. Is it your contention that in the pulling, hauling and  
24 trading that takes place in order to get a bill passed that  
25 the plans that you discussed, other than plan C-185 and plan

1 H-283, actually could have passed the Texas legislature?

2 A. I have no idea. I haven't studied the Texas legislature,  
3 but if they wanted to conform to the Voting Rights Act, which  
4 I think should be a top priority, yes.

5 Q. Okay. Let me ask another question. You did a lot of  
6 analysis of general elections, in identifying who the  
7 perceived candidate of choice is for Hispanics, for Anglos,  
8 for African-Americans, right?

9 A. Yes.

10 Q. Did you look at any primaries?

11 A. No. And the reason was, I looked at participation in  
12 primaries, and that the general elections are the key  
13 elections. As I said in my direct, they are the elections  
14 that send members to the State House and Congress and they  
15 involve many, many more voters than the primary elections.  
16 And thirdly, it doesn't seem to matter to Latinos and  
17 African-Americans who comes out in the primary on the  
18 Democratic side.

19 The race doesn't matter. Nothing else seems to  
20 matter. Whoever they are, they get the Latino and  
21 African-American votes, and whoever they are, with the  
22 exception of old Travis County, they don't get the Anglo  
23 votes.

24 Q. But doesn't the race seem to matter in Democratic  
25 primaries?

1 A. I don't know. It probably does, but I haven't studied  
2 that for the purposes of this report. It may. It may not.

3 Q. Let me ask you a specific question. In this context, we  
4 will just make it hypothetical. If a district had nine  
5 racially contested Democratic primaries --

6 A. Okay.

7 Q. -- and the Latino-preferred candidate in the Democratic  
8 primary is defeated in six of those nine, is that a Latino  
9 opportunity district?

10 A. It certainly can be, if it gives Latinos the opportunity  
11 to elect whoever comes out of the Democratic primary. The  
12 other thing I know about primaries, since you opened that up,  
13 even though I haven't actually studied it for this purpose, is  
14 voting in primaries is much closer. The preferences are much  
15 finer grained than you find in general elections.

16 Yeah, you might find that in a number of primaries  
17 African-Americans and Latinos diverging and whites block  
18 voting, but it is not this 89, 90, 95 percent that we see in  
19 general elections. And it is a tiny electorate, particularly  
20 in Texas; particularly among Latinos, you get very, very low  
21 turnouts in primary elections, and many, many more in  
22 generals, and that is true of all groups.

23 Q. So it is fair to say, based on what you just said, that  
24 you could have studied primaries, but chose generals, the  
25 general elections for the purp -- for the reasons that you

1 just stated?

2 A. Sure. There are lots of things I could have done and  
3 didn't do, obviously, but you are absolutely right.

4 MR. COHEN: Thank you.

5 THE WITNESS: Thank you.

6 MR. COHEN: I have no further questions, Your Honor.

7 JUDGE GARCIA: Any redirect?

8 MR. HEBERT: No, sir.

9 JUDGE GARCIA: Thank you, Doctor. Have a safe trip  
10 back home.

11 Any other witness?

12 MR. HEBERT: No. That's all for the Quesada  
13 plaintiffs.

14 JUDGE GARCIA: I'm sorry?

15 MR. HEBERT: That's all the witnesses we have, Your  
16 Honor, for the Quesada plaintiffs and --

17 JUDGE GARCIA: Okay. All right. So there are no  
18 other witnesses today from the plaintiff's side?

19 MR. GRAY: Not from this side today, Your Honor.

20 JUDGE GARCIA: Okay. Then, first of all, has the  
21 State had an opportunity to review the motion filed by the  
22 Latino Task --

23 MR. COHEN: We did, Your Honor.

24 JUDGE GARCIA: Are you going to be -- well, not are  
25 you, but have you filed something yet?

1 MR. COHEN: I wasn't able to use the ECF last night,  
2 Your Honor.

3 JUDGE GARCIA: Okay.

4 MR. COHEN: Our expectation is at 8:00 o'clock  
5 Monday morning it will be --

6 JUDGE GARCIA: That would be fine. That would be  
7 perfect. Thank you.

8 So what is the lineup for Monday morning?

9 MR. BLEDSOE: We have the congresspersons, Your  
10 Honor.

11 JUDGE GARCIA: So four, five of them?

12 MR. HEBERT: Four.

13 MR. BLEDSOE: We have four.

14 JUDGE GARCIA: Okay.

15 MR. BLEDSOE: And I think for one we may need the  
16 afternoon. We have three, and Ms. Perales and I have been  
17 talking about the order. I think we may take Congressman  
18 Johnson, Congressman Cuellar and Congressman Green to start.

19 JUDGE GARCIA: Okay. And who are the other  
20 witnesses set for Monday?

21 MR. NOTZON: We have two short lay witnesses, and  
22 that is the end of the NAACP --

23 JUDGE GARCIA: Okay. And then anybody else?

24 MR. HEBERT: I believe that's it on our side, Your  
25 Honor.

1 JUDGE GARCIA: That's it?

2 MR. HEBERT: That's it on our side, yes.

3 JUDGE GARCIA: So we can very likely conclude on  
4 Monday, then?

5 MR. HEBERT: We should conclude the plaintiff's case  
6 some time Monday afternoon.

7 JUDGE GARCIA: All right. And then --

8 MR. COHEN: Your Honor, we will have our first  
9 witness -- well, Mr. Interiano, we will have him available  
10 Monday afternoon, with the expectation -- we have got two  
11 legislators, and I was hoping that we could schedule them  
12 specifically for Tuesday.

13 JUDGE GARCIA: That would be fine. And who are  
14 they?

15 MR. COHEN: Chairman Solomons and Representative  
16 Larry Gonzalez.

17 JUDGE GARCIA: All right.

18 JUDGE SMITH: So your witnesses will be ready to go  
19 at 8:00 o'clock Monday?

20 MR. HEBERT: Oh, yes.

21 JUDGE GARCIA: Correct. And how many witnesses does  
22 the State intend to produce, or present, rather?

23 MR. COHEN: Your Honor, there are one or two that we  
24 are still iffy on, on whether they will be necessary, but  
25 Dr. Rives, Dr. Alford, the two representatives, who I just

1 mentioned --

2 JUDGE GARCIA: Right.

3 MR. COHEN: -- and Mr. Interiano are all certain.

4 JUDGE GARCIA: Okay.

5 MR. COHEN: We may bring one or two others.

6 JUDGE GARCIA: Of course. And then possibly -- and  
7 how long will that take? Tuesday and Wednesday?

8 MR. COHEN: Yes, Your Honor. We will be done by  
9 Wednesday.

10 JUDGE GARCIA: So, then, possibly Thursday and  
11 Friday, or Friday alone, we will be set for argument, then?

12 MR. GARZA: Your Honor, I think that based on the  
13 discussions that we have had, it is likely that the State will  
14 finish on Wednesday, and we would -- at that point, there  
15 might be rebuttal witnesses that we would call on Thursday.

16 JUDGE GARCIA: Right.

17 MR. GARZA: And then all of Friday would be reserved  
18 for closing.

19 JUDGE GARCIA: Okay. Now, "all of Friday" just goes  
20 to 1:00 o'clock.

21 MR. GARZA: I understand.

22 JUDGE GARCIA: Okay. That is what "all" means.

23 (Laughter.)

24 MR. GARZA: We are urging the State to proffer their  
25 closing argument.



1 JUDGE GARCIA: Or concede at that point. Okay.  
2 Now, as a result of working today and beginning at 8:00 and  
3 working until 5:00 or 6:00, we made up for Monday and perhaps  
4 a little bit more, so we have worked a whole week, and the  
5 Court appreciates the lawyers being on time, getting the  
6 witnesses on time, presenting them on time, et cetera. And so  
7 we will intend to work next week at 8:00 to 6:00, 6:15 on  
8 Monday and Wednesday; 5:15, Tuesday, Thursday; and up to  
9 1:00 on Friday.

10 And I think that is it. Anything else, Judges?

11 JUDGE SMITH: Yes. I would just like to express my  
12 appreciation. I think both sides have made a really good and  
13 successful effort to cooperate and make the presentations  
14 meaningful to the Court. I think there has been a lot of  
15 professionalism shown, which is what we expected, but -- and  
16 this goes for both sides.

17 JUDGE GARCIA: Right. Anything, Judge?

18 JUDGE RODRIGUEZ: No. Likewise, thank you.

19 JUDGE GARCIA: Okay.

20 MR. GARZA: We appreciate the Court's patience.

21 JUDGE GARCIA: Okay. We will reconvene at 8:00  
22 o'clock Monday.

23 \*-\*--\*-\*-\*--\*-\*--\*  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\*-\*-\*-\*-\*-\*-\*

UNITED STATES DISTRICT COURT )  
WESTERN DISTRICT OF TEXAS )

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.  
I further certify that the transcript fees and format comply  
with those prescribed by the Court and the Judicial Conference  
of the United States.

Date signed: September 10, 2011.

/s/ Karl H. Myers

---

**KARL H. MYERS**  
United States Court Reporter  
655 East Durango Blvd., Suite 315  
San Antonio, Texas 78206  
(210) 212-8114

/s/ Jerry Anderson

---

**JERRY ANDERSON, CSR, RMR, CRR**  
Freelance Court Reporter  
8705 Mystic Trail  
Fort Worth, Texas 76118  
(817) 891-6249